

## **Exhibit 3**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

SEP 11 2000

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

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DEMOCRATIC SENATORIAL  
CAMPAIGN COMMITTEE,

Plaintiff,

Civil Action No. 96-2184 (JHG)

v.

FEDERAL ELECTION COMMISSION,

Defendant.

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**ORDER**

The Democratic Senatorial Campaign Committee's ("DSCC") filed administrative complaints with the Federal Election Commission's ("FEC"), alleging that the National Republican Senatorial Committee ("NRSC") had committed violations of campaign spending laws. Subsequently the DSCC filed an action in this Court, and on May 30, 1997, this Court held that the FEC's failure to take meaningful action within a reasonable time frame with respect to the DSCC's administrative complaints was contrary to law. The FEC appealed the judgment, and our Court of Appeals remanded the case for further consideration of the issue of standing. On October 18 this Court found that the DSCC had standing, and ordered that the May 30 order remain in effect. The October 18 order allowed the DSCC to proceed with a civil action against the NRSC, to remedy the

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violation alleged in the underlying administrative complaint.<sup>1</sup> The FEC again appealed. However, before the appeal could be heard, the FEC completed its proceedings on the underlying administrative complaint, and entered into a conciliation agreement with the NRSC. After being notified of the conciliation agreement, the DSCC filed a notice of dismissal in its action against the NRSC. In the appeal that was pending at that time, the DSCC filed a motion requesting that the appeal be dismissed as moot, and the FEC filed a motion that this Court's decisions be vacated. The Court of Appeals granted the unopposed motion to dismiss, and on the court's own motion, the case was remanded for consideration of the motion for vacatur as a motion for relief from judgment. After thorough consideration, this Court declines to grant relief from her earlier judgments.

The FEC moved for vacatur in reliance on *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950), which describes the "established practice" of dealing with a case which has become moot pending appeal by reversing or vacating the judgment below and remanding it with a direction to dismiss. In remanding the motion, our Court of Appeals cited *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18 (1994). In that case, the court indicated that appellate courts should vacate a lower court's decision where such decision has become moot due to "circumstances unattributable to any of the parties," or the unilateral action of the prevailing party. *Id.* at 23 (internal quotation and citation omitted). However, the court held that a joint

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<sup>1</sup> The DSCC filed its action against the NRSC on June 30, 1997, but that suit was stayed pending the outcome of the FEC's appeal of this Court's May 30, 1997 order.

responsibility for rendering the case moot (in that case, settlement) did not permit vacatur. Joint responsibility was insufficient because the court placed the burden for demonstrating the equitable entitlement to vacatur squarely on the petitioner for vacatur. The court did suggest that a court of appeals could remand a case with instructions for the district court to consider the request for vacatur pursuant to Federal Rule of Civil Procedure 60(b). The Court of Appeals has done so in this case, therefore this Court will consider the request for vacatur under the standard applicable to a Rule 60(b) motion.

Rule 60(b) permits the court to relieve a party from a final judgment for a variety of reasons, including a catch-all “any other reason justifying relief from the operation of the judgment.” Rule 60(b)(6). Most pertinent to this case is Rule 60(b)(5), which permits relief if “the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.”

The FEC argued that it was the DSCC’s dismissal of its private cause of action, not the FEC’s entrance into a conciliation agreement with the NRSC, that mooted the appeal.<sup>2</sup> After the conciliation agreement had been entered but before the DSCC dropped its suit against the NRSC, the FEC filed a Notice of a New Development arguing that the case was not moot. It reasserted the same arguments in its motion for vacatur, asserting that the DSCC’s private cause of action was dependant on the

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<sup>2</sup> Neither party submitted arguments regarding relief from judgment under Rule 60(b), therefore the Court’s interpretation of the parties’ positions is drawn from their submissions to the Court of Appeal.

judgment on appeal, and that the private cause of action “represented a continuing incursion on the Commission’s exclusive jurisdiction to enforce the Act.”

The DSCC contended that the FEC mooted the appeal by complying with this Court’s order, and resolving the administrative complaint. The DSCC also argued that the FEC could have protected its exclusive jurisdiction to enforce the act by raising that issue in the context of the DSCC’s litigation against the NRSC. The FEC responded that the conciliation agreement did not constitute compliance with this Court’s Order because it was not entered in response to the Order, it did not address all of the alleged violations or provide all the relief requested in the DSCC’s complaint against the NRSC, and the FEC’s action was delayed long past the 30 day time period this Court gave for compliance. The FEC argues that its repeated attempts to appeal this Court’s Orders should not be thwarted by the DSCC’s decision to drop its suit against the NRSC.


The Court finds that the equitable standard described in *U.S. Bancorp* is also a useful guideline in making a decision under Rule 60(b). The FEC has not met its burden to show that the DSCC was exclusively responsible for mooting the appeal. The combination of the conciliation agreement and the dismissal of the DSCC’s suit against the NRSC clearly mooted the appeal, but it is at least a possibility that the FEC’s entrance into a conciliation agreement would have mooted the appeal by itself. Relief under Rule 60(b) is discretionary, and this Court is not convinced that equity demands

relief in this instance. No relief from judgment will be granted. It is therefore

**ORDERED** that, considering the motion for vacatur as a motion for relief from judgment, the motion is denied.

IT IS SO ORDERED.

September 11, 2000

  
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JOYCE HENS GREEN  
United States District Judge