FEDERAL ELECTION COMMISSION
Washington, DC 20463

Toner

SENSITIVE

MEMORANDUM

TO: Commissioners
Staff Director
Director, ADR
General Counsel

FROM: Office of the Commission Secretary

DATE: November 10, 2005

SUBJECT: Withdrawn and Resubmission of
Statement of Reasons ADR 271/MUR 5649
Chairman Scott E. Thomas,
Vice Chairman Michael E. Toner,
Commissioners David M. Mason,
Danny L. McDonald, and Ellen L. Weintraub

The attached document is being circulated for a 48-hour review prior to public release. Absent objection, the Office of Alternative Dispute Resolution will include this statement in the public record file in this case.

cc: Vincent Convery
Thomasenia Duncan

Attachment

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO THE COMMISSION SECRETARY

FROM: **COMMISSIONER DAVID MASON**

SUBJECT: **STATEMENT OF REASONS – ADR 271/MUR 5649**

DATE: **NOVEMBER 10, 2005**

The attached Statement of Reasons for ADR 271/MUR 5649 replaces the Statement of Reasons dated November 9, 2005 circulated yesterday by your Office. We ask that the earlier document be withdrawn. Thank you.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Taff for Congress, and	)	ADR 271/MUR 5649
Kimberly S. Stewart, Treasurer	)	

STATEMENT OF REASONS OF CHAIRMAN SCOTT E. THOMAS, VICE CHAIRMAN MICHAEL E. TONER AND COMMISSIONERS DAVID M. MASON, DANNY L. McDONALD AND ELLEN L. WEINTRAUB

Adam Taff was a candidate for the United States House of Representatives in the 2004 primary and general elections. The complaint alleges that during the primary campaign his authorized committee, Taff for Congress, paid for computer-generated telephone-bank calls without a disclaimer, an omission Respondents admit but argue was inadvertent. On October 20, 2005, the Commission voted 5 to 0[1] to reject a settlement agreement proposed through our Alternative Dispute Resolution ("ADR") Program, dismiss this matter, and close the file.

The Federal Election Campaign Act ("FECA") provides that when a political committee makes a disbursement for a communication "through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising," the communication, "if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee ... ." 2 U.S.C. § 441d(a)(1) (2002).

Parallel Commission regulations apply this disclaimer requirement to all public communications for which a political committee makes a disbursement. 11 C.F.R. § 110.11(a)(1) (2002). Effective November 6, 2002, the date following the 2002 general elections, *see* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49064 (July 29, 2002), the term "public communications" includes telephone banks to the general public:

> *Public communication* means a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising. The term public communication shall not include communications over the Internet.

[1] Chairman Thomas, Vice Chairman Toner and Commissioners Mason, McDonald, and Weintraub voted for the motion. The Commission has five members because Commissioner Smith left the Commission in August 2005.

11 C.F.R. § 100.26 (2002).

The Commission initially referred this matter to ADR, because the matter was low rated and not worthy of the resources it would have taken to pursue through the standard enforcement track. Thereafter, Taff was indicted on other campaign-related matters.[2]

To avoid potential conflict between ADR and Commission enforcement, Commission procedures prohibit referring to ADR any respondents who have other enforcement matters outstanding. Even when there are no other civil enforcement matters against particular respondents, a criminal indictment of those respondents could eventually lead to this agency activating an enforcement matter. In light of the indictment against Taff, and because ADR remedies may have conflicted with the criminal case, the Commission rejected the proposed settlement agreement.

The Commission then dismissed this matter based on prosecutorial discretion. *See Heckler v. Chaney,* 470 U.S. 821 (1985). The 2004 election cycle was the first in which the disclaimer requirement applied to telephone banks, and some committees were unaware of this. Moreover, the Taff for Congress telephone calls in question appear not to have been numerous, the campaign is in debt, and the candidate has said he is not running again. Under these circumstances, pursuing the less serious alleged disclaimer violation is not worthy of the Commission's limited resources while the more serious indictment is pending.

November 10, 2005

Scott E. Thomas
Chairman

Michael E. Toner
Vice Chairman

David M. Mason
Commissioner

Danny L. McDonald
Commissioner

Ellen L. Weintraub
Commissioner

[2] *See* Brad Cooper, Robert A. Cronkleton & Steve Kraske, *Adam Taff indicted in fraud case,* KANSAS CITY STAR (Aug. 18, 2005) (available at http://www.kansascity.com/mld/kansascity/12410383.htm) (visited Oct. 6, 2005).