



**Federal Election Commission
Washington, DC 20463**

May 14, 2004

Thomas J. Josefiak, Esq.
P.O. Box 10648
Arlington, VA 22210

Re: ADR 161 (MUR 5402)

Dear Mr. Josefiak:

On January 16, 2004, the Federal Election Commission ("Commission") notified Bush-Cheney '04, Inc. and David Herndon, Treasurer, of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with the notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents, Bush-Cheney '04, Inc. and David Herndon, Treasurer. In its memorandum to the Commission, dated May 5, 2004, this office stated:

ADR 161/MUR 5402: Complainant alleges that Respondent Tanenblatt, Chief of Staff for the Governor of Georgia, used equipment and space in the Office of the Governor to make fundraising-related telephone calls on behalf of Bush-Cheney '04, Inc. The complaint further alleges that Respondent Tanenblatt was an employee paid by the State of Georgia at the time these calls were made. Complainant contends that these fundraising activities result in an in-kind contribution from the Governor of Georgia, the State of Georgia, and/or Respondent Tanenblatt as defined in 2 U.S.C. § 431(8)(A)(ii). As Respondent Tanenblatt had previously contributed the maximum allowed under the FECA to Bush-Cheney '04, Inc., Complainant contends any in-kind contribution from him would result in an excessive contribution.

Respondents Tanenblatt, Bush-Cheney '04, Inc. and Treasurer Herndon contend that Respondent Tanenblatt did not make fundraising calls during work hours, and therefore, there was no in-kind contribution to Bush-Cheney '04, Inc. resulting in an excessive contribution. Respondents the Governor of Georgia and the State of Georgia contend that they have been improperly named as Respondents based on a US Supreme Court decision which found that states and their agencies cannot be made respondent parties to complaints filed with federal agencies by private parties.

Accordingly, the Commission closed its file in this matter on May 11, 2004.

The FEC is obligated by federal regulations to make a finding to terminate its proceedings public, as well as the basis therefore. 11 C.F.R. § 111.20(b). In addition, as of January 1, 2004, the Commission will also place on the record copies of the complaint, correspondence exchanged between Respondents and this office, and reports prepared for the Commission by this office to assist in its consideration of this matter. Accordingly, copies of documents relative to this matter will be forwarded shortly to the FEC's Public Information Office.

If you have any questions regarding this matter please be in touch. My telephone number is 202-694-1665.

Sincerely,

Lynn M. Fraser
Assistant Director, ADR Office