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Federal Election Commission
Washington, DC 20463

MEMORANDUM

SENSITIVE

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director, ADR Office

BY: Lynn M. Fraser
Assistant Director, ADR Office

SUBJECT: Case for ADR Activation

DATE: July 13, 2004

On June 28, 2004, the ADR Office received from Audit the following case to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 178/Audit 03-21, is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 178/Audit 03-21: Reports filed by Respondents Lindsey Graham for Senate and Neil Byerley, Treasurer, ("Respondents") in the 2002 election cycle were found to have misstatements of financial activity. In 2001, receipts and ending cash balance were overstated and disbursements were understated. In 2002, the reported financial activity began with the overstatement of the beginning cash balance. The overstatement of cash on hand combined with the understatement of receipts and the overstatement of disbursements in 2002, resulted in an overstatement of the ending cash balance for the second year. In addition, the audit of all transfers from authorized committees identified eight transfers that were not adequately disclosed. The errors included incorrect names of the transferring committees and incorrect amounts. In response to the interim audit, Respondents filed amended reports and amended Schedules A to correct the errors.

Attached for the Commission's review is the *ADR Case Analysis Report* on ADR 178, along with the ADR Rating report. The *ADR Case Analysis Report* includes an

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analysis of the case and a description of the issues that the ADR Office anticipates addressing if the case is assigned to ADR. In addition, the *ADR Case Analysis Report* has been reviewed by OGC, which concurs in the description of the case.

If the Commission concurs in the recommendation to assign the matter to ADRO, the above case description will be provided to Respondents as part of ADRO's notification package sent to Respondents.

Recommendation: We recommend that ADR 178/Audit 03-21 be assigned to the ADR Office for processing.

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ADR CASE ANALYSIS REPORT

ADR Case: 178

Audit: 03-21

Date Audit Approved: 06/14/04

Date Forwarded to ADRO: 06/28/04

Date Reviewed by ADRO: 07/07/04

Respondents:

Lindsey Graham for Senate

Neil Byerley, Treasurer

Respondent's' Rep.: Neil Byerley

Committee Type: Authorized

Committee Name: Lindsey Graham for Senate

District & State: SC

Election Cycle: 2002

Summary of Referral: An audit of Respondents' reported activity in the 2002 election cycle revealed misstatements of financial activity. Specifically, the 2001 receipts were overstated by \$97,041 and disbursements were understated by \$67,064. The 2001 misstated activity resulted in an overstatement of the ending cash balance of \$164,105. Starting 2002 with the overstatement of the cash balance combined with an understatement of receipts of \$61,486, and an overstatement of disbursements of \$18,799, resulted in an overstatement of the ending cash balance for 2002 of \$83,820. In addition, the audit revealed that there were eight transfers totaling \$510,839 that were not adequately disclosed, in that the transferring committees were incorrectly named and amount of the transfers were incorrect.

Alleged Violations: 2 U.S.C. §§ 434(b)(1), 434(b)(2), 434(b)(3)(C), 434(b)(4), 11 C.F.R. §§ 104.3(a), 104.3(b), 104.12.

Respondents' Reply to Audit: In response to the interim audit report, Respondents filed amended reports which corrected the misstatements of reported activity. In addition, Respondents filed amended Schedules A, albeit untimely, to correct the incorrect names and amounts of transfers to the committee.

Analysis: The statute and implementing regulations require the reports filed by a committee to disclose specific information; i.e., the amount of cash on hand at the beginning and end of the reporting period, as well as the total of receipts and disbursements for the reporting period and the calendar year. The errors appear to have been, at least in part, the result of the candidate having a prior federal campaign committee still active simultaneously with a new federal campaign committee.

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The candidate filed a new Statement of Organization for Lindsey Graham for Senate with the Commission on February 1, 2001, which was his only active federal election campaign. The candidate's prior campaign committee, the Committee to Elect Lindsey Graham ("House Committee") maintained an active checking account until May 31, 2001, receiving \$73,124 in receipts and making \$73,124 in disbursements. These receipts and disbursements were disclosed, however, on the Lindsey Graham for Senate reports. In addition, the Lindsey Graham for Senate reports disclosed four transfers from the House Committee checking account, as well as the transfer of the balance of the House Committee investment account. The amounts of the transfers were overstated, adding to the 2001 financial misstatement.

The audit revealed a total of eight transfers in the amount of \$510,839, which were erroneously disclosed as coming from Lindsey Graham for Senate. In fact, five of the eight transfers came from the House Committee. The other three transfers were from authorized joint fundraising committees, one of which was also for an incorrect amount. In addition, three of the five transfers from the House Committee disclosed incorrect amounts, causing the 2001 receipts to be overstated by \$42,251. Transfers of funds between a candidate's previous federal campaign committee and a current federal campaign committee are unlimited, provided that the candidate is not a candidate for more than one federal office at the same time, and provided that the funds transferred are not comprised of contributions that would be in violation of the FECA. 11 C.F.R. § 110.3(c)(4).

Issues:

- Misstatement of financial activity 2 U.S.C. §§ 434(b)(1), 434(b)(2), 11 C.F.R. §§ 104.3(a), 104.12.
- Disclosure of transfers from authorized committees 2 U.S.C. §§ 434(b)(3)(C), 434(b)(4), 11 C.F.R. § 104.3(b).

ADR Recommendation: Assign to ADRO

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

FEC
ALTERNATIVE DISPUTE
RESOLUTION OFFICE

2004 JUN 28 A 17:03
June 24, 2004

MEMORANDUM

TO: Allan Silberman
Director of Alternative Dispute Resolution

THROUGH: James A. Pehrkon *JAP*
Staff Director
Robert J. Costa *RJC*
Deputy Staff Director

FROM: Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division
Wanda J. Thomas *WJTH*
Audit Manager
Bill Antosz *BA*
Lead Auditor

SUBJECT: Lindsey Graham for Senate (A03-21) – Referral Matter

On June 14, 2004, the Commission approved the final audit report on Lindsey Graham for Senate (LGFS). The report was released to the public on June 24, 2004. In accordance with the Commission approved materiality thresholds, the final audit report includes matters that meet the criteria for referral to Alternative Dispute Resolution (ADR):

- Finding 1. Misstatement of Financial Activity; and
- Finding 2. Disclosure of Transfers from Authorized Committees.

Specifically, in Finding 1., the understatement of disbursement activity during calendar year 2001 is being referred to your office.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Bill Antosz or Wanda Thomas at 694-1200.

Attachments: Finding 1. Misstatement of Financial Activity
Finding 2. Disclosure of Transfers from Authorized Committees

cc: Reports Analysis Division

24.19.023.4713

Finding 1. Misstatement of Financial Activity

Summary

LGFS had misstatements of reported activity in 2001 and 2002. In 2001, receipts and the ending cash balance were overstated and disbursements were understated. In 2002, misstated activity included an overstatement of the ending cash balance. In response to the interim audit report, LGFS filed amended reports that corrected the misstatement of reported activity.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
 - The total amount of receipts for the reporting period and for the calendar year; and
 - The total amount of disbursements for the reporting period and for the calendar year.
- 2 U.S.C. §434(b)(1), (2) and (4).

Background

On November 7, 2000, the Candidate was elected to the U.S. House of Representatives from the state of South Carolina, Third Congressional District. The Candidate's principal campaign committee was the Committee to Elect Lindsey Graham (the House Committee). In 2002 the Candidate only sought election to the U.S. Senate. However, the House Committee's checking account remained active through May 31, 2001, receiving \$73,124 in receipts and making \$73,124 in disbursements. These 2001 transactions related to LGFS. The receipts and disbursements were disclosed on LGFS's disclosure reports. During 2001, LGFS received four transfers from the House Committee checking account as well as the transfer of the balance of the House Committee investment account. The amount of the transfers was overstated, adding to the 2001 misstatement. The over-reporting, along with other disclosure issues relating to transfers from authorized committees, are addressed in Finding 2.

Facts and Analysis

The Audit staff reconciled reported financial activity to the bank records and determined that LGFS misstated receipts, disbursements and cash on hand in calendar year 2001. LGFS also misstated cash on hand in calendar year 2002. The following charts detail the discrepancies between LGFS's disclosure reports and bank records.

Comparison of Disclosure Reports and Bank Records

2001 Campaign Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ 1/1/01	\$0	\$0	\$0
Receipts	\$3,096,269	\$2,999,228	\$97,041 Overstatement
Disbursements	\$1,019,084	\$1,086,148	\$67,064 Understatement
Ending Cash Balance @ 12/31/01	\$2,077,185	\$1,913,080	\$164,105 Overstatement

Explanation of Discrepancies

Receipts – 2001

The overstatement of receipts was the result of the following:

- Over-reported Transfers from Authorized Committees² - 42,250
- Reported March 9 Receipts that were not Deposited. These were disclosed on LGFS's receipt database, but they could not be traced to the bank deposits. - 22,949
- Overstated Interest Income - 7,885
- Unexplained Differences. Since LGFS did not provide workpapers to demonstrate how it derived its reported amounts, the Audit staff was unable to explain this discrepancy. - 23,957
- **Net Overstatement of 2001 Receipts** \$97,041

Disbursements – 2001

The understatement of disbursements was the result of the following:

- Disbursements not reported
 - a. 44 items that cleared bank, and were not on the disbursements database + 41,388
 - b. 23 items that cleared bank and were on the disbursements database + 44,748
- Fees on credit card contributions not reported. Credit card contributions were shown on LGFS's bank statements net of processing fees. The processor provided a listing of and LGFS reported gross receipts. However, the fees were not reported. + 3,350
- Reported disbursements that did not clear bank accounts. Most of these items were either voided disbursements or memos for credit card expenditures that were improperly disclosed as actual disbursements. - 21,938
- Disbursement amounts disclosed incorrectly (net) - 349
- Unexplained Differences - 135
- **Net Understatement of 2001 Disbursements** \$ 67,064

² See Finding 2

2011 LGFS 4715

Comparison of Disclosure Reports and Bank Records

2002 Campaign Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ 1/1/02	\$2,077,185	\$1,913,080	\$164,105 Overstatement
Receipts	\$3,241,291	\$3,302,777	\$61,486 Understatement
Disbursements	\$5,194,484	\$5,175,685	\$18,799 Overstatement
Ending Cash Balance @ 12/31/02	\$123,992	\$40,172	\$83,820 Overstatement

Explanation of Discrepancies

Closing Cash on Hand:

LGFS overstated the closing cash on hand balance at December 31, 2002 of \$40,172 by \$83,820. The misstatement was the result of the beginning cash on hand overstatement of \$164,105 and several reporting discrepancies in receipts and disbursements during the year.

At the exit conference, the Audit staff informed the LGFS representative of these misstatements and provided relevant workpapers. The representative stated that amendments would be filed to correct this matter.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that LGFS file amended reports for each reporting period, including amended Schedules A and B as appropriate, to correct the misstatements noted above. In response to the Interim Audit Report, LGFS filed amended reports for 2001 and 2002 to correct its misstatement of financial activity.

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Finding 2. Disclosure of Transfers from Authorized Committees

Summary

The review of all transfers from authorized committees identified eight transfers totaling \$510,839 that were not adequately disclosed. Errors included incorrect names of the transferring committees and incorrect amounts. In response to the interim audit report, LGFS filed amended Schedules A to correct this matter.

Legal Standard

Required Information for Transfers from Authorized Committees. For each itemized transfer from an authorized committee, the committee must provide the following information:

- The committee's full name and address (including zip code);
- The date of receipt (the date the committee received the contribution);
- The amount of the contribution; and
- The election cycle-to-date total of all transfers from the same committee. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(C).

No Limits on Transfers between a Candidate's Previous Federal Campaign Committee and His or Her Current Federal Campaign Committee. Transfers of funds between a candidate's previous Federal campaign committee and his or her current Federal campaign committee are unlimited, provided that the candidate is not a candidate for more than one Federal office at the same time, and provided that the funds transferred are not composed of contributions that would be in violation of the Act. 11 CFR §110.3(4).

Facts and Analysis

The review of transfers from authorized committees identified eight transfers totaling \$510,839 that were not adequately disclosed. For all eight of these items, the name of the transferring committee was disclosed as Lindsey Graham for Senate instead of the actual committees that made the transfers. Five of the eight transfers received were from the House Committee. In addition to the disclosure of the incorrect names, three of the House Committee transfers were disclosed with the incorrect amounts, causing the 2001 receipts to be overstated by \$42,251. See Finding 1. The other three transfers were from authorized joint fundraising committees. One of these transfers was also disclosed with the incorrect amount.

At the exit conference, the Audit staff advised the LGFS representative of these matters and provided a schedule detailing the errors. The representative stated that amendments would be filed to correct the matter.

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Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that LGFS file amended Schedules A to correct the disclosure of the transactions noted above. In response LGFS filed amended Schedules A, albeit untimely, to correct this matter.

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