



FEDERAL ELECTION
COMMISSION
SECRETARIAT

2004 AUG 17 P 3:06

Federal Election Commission
Washington, DC 20463

SENSITIVE

MEMORANDUM

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: Recommendation to Close the File on ADR 181

DATE: August 17, 2004

On July 30, 2004, the ADR Office ("ADRO") received this matter from OGC/CELA to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 181 is inappropriate for ADR and recommend that the case be closed. Following the procedures approved by the Commission on March 3, 2003, this matter will be closed by ADRO if the Commission approves the recommendation in this memorandum. The Office of General Counsel ("OGC") concurs in the description of this matter and also concurs that it will not be returned to OGC for further action.

ADR 181/MUR 5423: The complaint alleges that Respondents Republican Liberty Caucus of Texas and Don Zimmerman, Treasurer ("RLC TX") violated the FECA by mailing postcards in support of Wes Riddle, a federal candidate, and soliciting contributions for the national Republican Liberty Caucus PAC ("RLC PAC"), with no disclaimer to say who paid for the communication and if it was authorized by the candidate or the RLC PAC.

RLC TX contends that no disclaimer was required as the mailing was not a public communication as defined by the FECA, nor was it done in cooperation, consultation or concert with, or at the request or suggestion of Wes Riddle, his authorized committee, or the RLC PAC. RLC TX maintains that the postcards were sent to a select group of eighty-eight (88) individuals who were thought to be interested in the same issues as RLC TX to inform the recipients of RLC TX's endorsement of Wes Riddle and suggesting how they could help.

Respondent RLC PAC contends it did not authorize, approve, or pay for the mailing, nor did it request RLC TX to solicit contributions for the national organization's PAC. RLC PAC states that no contributions were received attributable to RLC TX's mailing.

Respondents West Riddle for Congress Campaign, and J. Anthony Van Slyke, Treasurer contend they were not even aware of the RLC TX mailing until the candidate received one of the postcards in the mail. In addition, they contend that no contributions were received by the campaign as a result of the RLC TX communication.

Attached for the Commission's review is the ADR *Case Analysis Report* (CAR) on ADR 181, along with copies of the EPS Rating and ADR Rating reports.

ADR Director's Recommendation: We recommend that ADR 181/MUR 5423 be closed and the appropriate letters sent.

ADR CASE ANALYSIS REPORT

ADR Case: 181

Respondents:

1. Republican Liberty Caucus of Texas
Don Zimmerman, Treasurer
2. Republican Liberty Caucus PAC
Alan H. Cousin, Treasurer
3. Wes Riddle for Congress Campaign
J. Anthony Van Slyke, Treasurer

MUR: 5423

OGC Case Open Date: 03/08/2004

Respondents' Reps.:

1. Don Zimmerman
2. Alan H. Cousin
3. Wesley Riddle

Date Forwarded to ADRO: 07/30/2004

Committee Name:

Republican Liberty Caucus of Texas
Republican Liberty Caucus PAC
Wes Riddle for Congress Campaign

Date Reviewed by ADRO: 08/09/2004

Committee Type:

1. Non Affiliated Organization
2. Political Action Committee
3. Authorized Committee

District #/or State:

TX 31st C.D. (Authorized Committee)

Election - Won/Lost: N/A

Election Cycle: 2004

Complainant: Anthony W. Dale

Summary of Complaint: The complaint alleges that Respondents Republican Liberty Caucus of Texas and Don Zimmerman, Treasurer ("RLC TX") sent out direct mail pieces to voters in Williamson County, Texas using soft money on behalf of Wesley Riddle, a federal Candidate, that displayed no disclaimer as to who paid for the mailing, and if it was authorized by the candidate.

Violations Alleged: 2 U.S.C. § 441d(a), 11 C.F.R. § 110.11

Respondents' Reply: Respondents RLC TX states that they are a small membership organization of approximately 5-8 individuals. The mailing the complaint refers to was a postcard sent to a select list of eighty-eight (88) individuals making two points: first, Respondents RLC TX wanted the

recipients to know that RLC TX was endorsing Wesley Riddle for Congress, and second, if the recipients wanted to help they could volunteer for Riddle's campaign, or make a donation to the national Republican Liberty Caucus PAC. Respondents RLC TX contend that no disclaimer was required due to the facts that the postcards were not a public communication, nor a mass mailing, and the total expenditure was approximately \$30. RLC TX went on to state that the mailing was not done in cooperation, consultation or concert with, or at the request or suggestion of Respondent Riddle.

Respondents Republican Liberty Caucus PAC and Alan Cousin, Treasurer ("RLC PAC") contend that they are not named in the complaint, nor did they authorize, approve or pay for the mailing referred to in the complaint. In addition, RLC PAC did not authorize RLC TX to solicit funds for the national PAC, nor were any funds received that could be attributed to the RLC TX postcards.

Respondents Wes Riddle for Congress Campaign and J. Anthony Van Slyke, Treasurer ("Respondents Riddle") stated that they knew nothing about the mailing of the postcards until the candidate received one in the mail. Respondents Riddle contend that they did not ask for, nor pay for, the mailing by RLC TX. In addition, Respondents Riddle stated that no contributions were received from RLC TX or RLC PAC.

Issues:

- Disclaimers on public communications 2 U.S.C. § 441d(a), 11 C.F.R. § 110.11

Analysis: The RLC TX does not appear to qualify as a political committee for reporting purposes as the expenditure of less than \$30 to mail the postcards at issue in this matter, was the only expenditure made thus far in this election cycle. RLC TX does not appear to be affiliated with the national RLC or RLC PAC, as there is nothing to suggest the national organization established RLC TX, nor does it appear the national RLC maintains or controls the RLC TX as defined in 11 C.F.R. § 100.6(g). What appears most definitive about the violations alleged in this complaint is the lack of a public communication as defined in the regulations. A communication becomes a *public* communication for purposes of the FECA when a broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising, mass mailing, or telephone bank is utilized. 11 C.F.R. § 100.26. The subsequent regulation, 11 C.F.R. § 100.27, defines a mass mailing as mail or facsimile of more than 500 pieces. Crediting Respondent RLC TX's contention the postcards at issue were only sent to a selected list of individuals on a mailing list containing a total of eighty-eight (88) names, it does not appear that a violation of the FECA occurred.

ADR Director's Recommendation: DISMISS