



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 29, 2004

MEMORANDUM

TO: Allan D. Silberman
Alternate Dispute Resolution Office

FROM: *Frankie D. Hampton*
Frankie D. Hampton
Complaints Examination Legal Administration

SUBJECT: Transferred Cases

The following enforcement cases are being permanently transferred to the
Alternate Dispute Resolution Office, effective October 29, 2004.

MUR 5464

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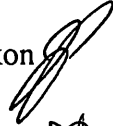
Federal Election Commission
Washington, DC 20463


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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 207**

DATE: January 7, 2005

On October 29, 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 207** 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 207/MUR 5464: The Complainant alleges that during a broadcast on KBJA Radio UNICA, a Spanish language radio station, Congressman Cannon and Marco Diaz, Congressman Cannon's Legislative Aide and the host for the program, Jose Elibardo Rivera encouraged listeners to make political contributions even if they were foreign nationals or make the contributions in the name of a citizen, including minor children. The Cannon Respondents contend there was no violation of the FECA and that there appears to be some discrepancies in the translation of the broadcast provided by Complainant. While most of the differences are not significant, the Cannon Respondents specifically point out the error where the translation filed with the complaint shows Congressman Cannon agreeing to Respondent Rivera's solicitations for any and all sources of funds. Respondents Cannon also point out that the prohibition against minors contributing to federal campaigns is in legal limbo due to *McConnell v. FEC*, 124 S. Ct. 619 (2003). Respondent Rivera stated that while he may have misspoke about who can contribute, the Cannon Respondents corrected him later in the program. Respondent United Broadcasting Company stated that it leases KBJA AM 1640 to "Radio UNICA" and has no knowledge of the program referenced in the complaint, as it is not involved with the management or operation of KBJA.

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Attached for the Commission's review is the ADR *Case Analysis Report* (CAR) on ADR 207, along with copies of the EPS Rating and ADR Rating reports.

ADR Director's Recommendation. We recommend that the Commission take no further action on ADR 207/MUR 5464, that the file be closed and the appropriate letters sent.

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ADR CASE ANALYSIS REPORT

ADR Case: 207

Respondents:

1. Cannon for Congress
Curtis S. Bramble, Treasurer
Christopher Cannon, U.S. Representative
Marco Diaz, Congressional Aide
2. United Broadcasting Company (dba KBJA radio)
3. Jose Elibardo Rivera

MUR: 5464

OGC Case Open Date: 6/14/04

Respondents' Reps.:

1. Alan P. Dye, Esq.
2. Richard Perry, President
3. Jose Elibardo Rivera

Date Forwarded to ADRO: 10/29/04

Committee Name: Cannon for Congress

Date Reviewed by ADRO: 11/09/04

Committee Type: Authorized

District #/or State: UT 3rd C.D.

Election - Won/Lost: Won

Election Cycle: 2004

Complainant: Russell Sias

Summary of Complaint: The Complainant alleges that during a broadcast on KBJA Radio UNICA, a Spanish language radio station, Congressman Cannon and Marco Diaz, Congressman Cannon's Legislative Aide ("Cannon Respondents") and the host for the program, Jose Elibardo Rivera ("Rivera") encouraged listeners to make political contributions even if they were foreign nationals or make the contributions in the name of a citizen, including minor children. The Complainant included a transcript of a portion of the program translated to English to substantiate his allegations that Respondents were soliciting prohibited contributions. The complaint contends KBJA Radio UNICA hosted a program on Saturday, May 22, 2004, with a stated purpose of informing Spanish speaking listeners about the election process. What actually occurred, as alleged in the complaint, was an opportunity for Respondents to solicit contributions, including prohibited contributions, for the Cannon for Congress campaign. The complaint goes on to argue that Respondents also suggested ways to contribute even if the listeners were in the United States illegally by donating through their minor children, if the child was a citizen, or through friends who were citizens.

Violations Alleged: 2 U.S.C. §§ 441e(a)(2), 441i(e), 11 C.F.R. §§ 110.20(g), 110.20(h), 300.61

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Respondents' Reply: The Cannon Respondents contend that the Complainant only transcribed and translated a small portion of the Radio UNICA program. Radio UNICA is an educational program for the Hispanic community that addresses a variety of subjects; it is not a political program. The Cannon Respondents further contend that there appears to be some discrepancies in the translation provided by Complainant. While most of the differences are not significant, the Cannon Respondents specifically point out the error where the translation filed with the complaint shows Congressman Cannon agreeing to Respondent Rivera's solicitations for any and all sources of funds. Respondents Cannon also point out that the prohibition against minors contributing to federal campaigns is in legal limbo due to *McConnell v. FEC*, 124 S. Ct. 619 (2003).

Respondent Rivera stated that while he may have misspoke about who can contribute, the Cannon Respondents corrected him later in the program. The correct information was repeated on subsequent Radio UNICA programs. In addition, the Cannon Respondents said that if, in trying to keep up with what was being said in rapid Spanish, they misspoke, they also clarified the issues of who could contribute and vote, and who were prohibited from contributing to the campaign. The transcript has a number of references where the Cannon Respondents repeat that federal election law has very specific rules on who can contribute and that the laws must be followed. The Cannon Respondents each filed an affidavit outlining the interview on May 22, 2004. Respondent Diaz, in his affidavit, states that the Complainant filed the complaint because he was one of the founders of "UTAHNS for Immigration Reform & Enforcement," an organization opposed to Congressman Cannon's positions on immigration.

Respondent United Broadcasting Company ("UBC") stated that it leases KBJA AM 1640 to "Radio UNICA" and has no knowledge of the program referenced in the complaint. UBC goes on to state that it is not involved with the management or operation of KBJA.

Issues:

- Solicitation of prohibited contributions 2 U.S.C. §§ 441e(a)(2), 441i(e), 11 C.F.R. §§ 110.20(g), 110.20(h), 300.61

Related FEC Experience/Guidance: There are many matters that have come before the Commission in which the issues of prohibited contributions by a foreign national or in the name of another were resolved. The most prevalent resolution of these cases involved a civil penalty by committees for accepting prohibited contributions, as well as against the contributors.

Analysis: The FECA and the implementing regulations are clear on issue of soliciting prohibited contributions. The Complainant alleges that the Respondents were soliciting illegal contributions by telling the audience how they could circumvent the FECA. The Complainant also states that his translation is "accurate and verified by two separate and independent sources." The Complainant does not, however, indicate who those independent sources are, so that the Commission can evaluate the accuracy of the translation. Respondents Cannon provide a redlined version of Complainant's transcript translated by Dr. Mejia, a former ambassador and psychologist in Salt Lake City. The differences in the transcripts are not significant as to the law, but do change some aspects of the dialogue.

The statute and regulations state that it is prohibited to “knowingly solicit, accept or receive” any financial assistance from foreign nationals for a campaign for federal election, or other prohibited contributions. While Respondents could have been less vague in some statements, and the Cannon Respondents’ affidavits argue they did clarify the law on these issues later in the broadcast, what was said in the portion of the interview submitted by Complainant does not appear to be an attempt to encourage or solicit the listeners to violate the FECA. Solicitation is generally defined as seeking to obtain by persuasion, entreaty or to entice to illegal action. *The American Heritage College Dictionary* (Third Edition 1997). The commentary during the Radio UNICA program, especially by Respondents Cannon, does not rise to the level of solicitation of prohibited contributions. While Respondent Rivera was more effusive in his encouragement to listeners, there is no evidence that Respondents Cannon failed to clarify Rivera’s erroneous remarks. Due to the lack of evidence of solicitation of prohibited contributions, the Commission should not expend further resources on this matter.

ADR Director’s Recommendation: DISMISS

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