



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

November 30, 2004

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

FROM: Allan D. Silberman   
Director, ADR Office

SUBJ: Recommendation to Close the File -- **ADR 211**

On October 29, 2004, the ADR Office (ADRO) received from OGC/CELA a complaint to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 211**, 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 this matter will not be returned to OGC for further action.

**ADR 211/MUR 5473:** Complainant alleges that District 11 of the Veterans of Foreign Wars ("VFW") sponsored attendance at a partisan campaign event and made illegal, in-kind contributions to the Bush campaign when they provided T-shirts to soldiers who attended the event. Complainant contends that by sponsoring the trip to the rally and supplying the T-shirts, which were worn by soldiers at the campaign rally, the VFW lodge made in-kind contributions to the Bush campaign. Respondents acknowledge providing the T-shirts, however, argue that the contributions were made to soldiers not to a political party and that the T-shirts did not make any mention of any candidate or political party. Given the absence of any reference to a candidate seeking Federal office, or a political party competing in an election for Federal office or evidence that Respondents sponsored the rally, there is no basis for finding that Respondents violated provisions of the Act. Accordingly, the ADR Office recommends that the Commission close the file on this matter.

Attached for the Commission's review is the ADR Case Analysis Report on **ADR 211** along with copies of the EPS Rating and ADR Rating Sheets.

**ADR Director's Recommendation:** We recommend that **ADR 211/MUR 5473** be closed and the appropriate letters sent.

## ADR CASE ANALYSIS REPORT

ADR Case: 211

Respondents: WI VFW District 11  
Calvin F. Wells, Commander

MUR: 5473

Respondents' Rep: Calvin F. Wells

OGC Case Open Date: 6-29-04

Committee Type: N/A

Date Forwarded to ADRO: 10-29-04

Committee's Name: N/A

Date Reviewed by ADRO: 11-12-04

District #/or State: N/A

Tier Level: 3

Election Won/Lost Cycle: N/A

EPS Rating: 21

Election Cycle: N/A

ADR Rating: 60

Complainant: Henry H. Zumach

**Summary of Complaint:** Complainant alleges that District 11 of the Veterans of Foreign Wars (VFW) sponsored attendance at a partisan campaign event and made illegal, in-kind contributions to the Bush campaign when they provided T-shirts to soldiers, stationed at a nearby camp, i.e., Fort McCoy, WI, who attended the event. The T-shirts were worn by the soldiers at the campaign rally, which was attended by President Bush. Complainant contends that by sponsoring the trip to the rally and supplying the T-shirts (a sample was included with the complaint) the VFW lodge made in-kind contributions to the Bush campaign.

**Respondent's Replies:** Respondents acknowledge providing T-shirts to soldiers stationed at Fort McCoy, which were worn at a Bush campaign rally. Respondents argue that the contributions were made to soldiers not to a political party and that the T-shirts do not make any mention of any candidate or political party.

**Alleged Violations:** None

**Analysis:** The T-shirts contain no reference to a political party or candidate for Federal office. The shirts contain a reference to the Veterans of Foreign Wars, the camp (i.e., Fort McCoy) and a statement on the reverse side proclaiming, "I am an American soldier". While the contributions of the T-shirts were solicited by personnel at the camp, there is no indication or evidence that the requests for the shirts were made in cooperation, consultation, or concert or at the request or suggestion of a candidate or the candidate's committee. The absence of any reference to a candidate or political party expressly advocating their election or defeat excludes the matter from being considered an independent expenditure. It also excludes the matter from being considered a coordinated communication on behalf of or opposition to a specific candidate or political party. The absence of a reference on the T-shirts to a candidate for Federal office also excludes the matter being considered an in-kind contribution made for the purpose of influencing an election for Federal office. Without any

reference to a candidate seeking Federal office, or a political party competing in an election for Federal office, or evidence that Respondents "sponsored" the rally, there is no basis for finding that Respondents violated provisions of the FECA.

**Issues:** In-Kind contribution – 2 U.S.C § 431(8)(A) and 11 C.F.R. §§ 100.52(d)

**Recommendation: Dismiss**