



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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June 1, 2005

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director, ADR Office

SUBJECT: Withdrawal and Resubmittal.
Memorandum Regarding Recommendation to Close the File on **ADR 229**

SENSITIVE

The Memorandum, dated May 26, 2005, subject: **ADR 229** Van Hollen for Congress and Jennifer Lewis Smith, Treasurer is being withdrawn and is resubmitted with a revised Recommendation. The revised memorandum states:

Recommendations:

1. Dismiss the matter and close the file as to all Respondents.
2. Send the appropriate letters.

Thank you for your attention to this matter.

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THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

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: ADR 229 Van Hollen for Congress and Jennifer Lewis Smith, Treasurer
Recommendation To Close the File

DATE: June 1, 2005

On January 26, 2005, the ADR Office received MUR 5477 from the Office of General Counsel "OGC" to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case is inappropriate for ADR and recommend that it be closed. Following the procedures approved by the Commission on March 3, 2003, this matter will be closed by the ADR Office if the Commission approves the recommendation in this Memorandum. OGC concurs in the description of this matter and that it will not be returned to OGC for further action.

SUMMARY: Complainant alleges that Respondents Van Hollen for Congress and Jennifer Lewis Smith, Treasurer ("Respondents") violated the FECA by using his congressional staff and the federal government email system for campaign purposes. Respondents state that the activities involved in Complainant's allegations, an official Community Office Hours gathering for the Congressman, were congressional activities and not campaign activities. Based on the allegations and responses in this matter, there appears to be no violation of the FECA.

Attached for the Commission's review is the ADR Case Analysis Report on ADR 229, along with copies of the EPS Rating and ADR Rating reports.

RECOMMENDATIONS:

1. Dismiss the matter and close the file as to all Respondents.
2. Send the appropriate letters.

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ADR CASE ANALYSIS REPORT

ADR Case: 229

Respondents:

Van Hollen for Congress
Jennifer Lewis Smith, Treasurer

MUR: 5477

OGC Case Open Date: 07/06/04

Respondents' Rep.: Jennifer Lewis Smith

Date Forwarded to ADRO: 1/26/05

Committee Name: Van Hollen for Congress

Date Reviewed by ADRO: 2/7/05

Committee Type: Authorized

District #/or State: MD C.D. 8

Election - Won/Lost: Won - General

Election Cycle: 2004

Complainant: Chuck Floyd

Summary of Complaint: Complainant alleges that Respondents Van Hollen for Congress and Jennifer Lewis Smith, Treasurer ("Respondents" or "Committee") violated the FECA by using his congressional staff and the federal government email system for campaign purposes. Specifically the complaint alleges that campaign activity by congressional staff resulted in a prohibited contribution.

Respondents' Reply: Respondents state that the activities involved in Complainant's allegations were congressional activities and not campaign activities. An affidavit filed by the Congressman's District Director contends that the event discussed with the media in an email was an official Community Office Hours gathering scheduled for constituents to discuss items of interest with the Congressman. Respondents also included a copy of the communication that was mailed to constituents inviting them to come to the library to meet with the Congressman. Respondents further contend the purpose of the gathering was explained to two individuals from Complainant's staff that appeared at the library and questioned whether the Community Office Hours was actually a campaign event.

Issues: No violations of the FECA were alleged.

Analysis: The complaint alleges that the Congressman used his congressional staff for campaign activities. The Complainant also alleges that Respondents used congressional email for campaign purposes resulting in a prohibited contribution. Respondents provided a copy of a congressional

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mailing inviting district constituents to "Community Office Hours" that the Congressman would host at the Bethesda Library.

There appears to be no violation of the FECA alleged, nor evidence of any in the facts presented. A contribution is defined as a gift, subscription, loan, advance, or deposit of money or anything of value made by any *person* for the purpose of influencing any election for Federal office. The FECA, when defining a "person," specifically notes that the term does not include the Federal Government or any authority of the Federal government. Several Advisory Opinions, while not on point as to the central issue, reiterate that the definition of "person" under the statute excludes the Federal Government or any authority of the Federal Government (*see* AO 2005-1, AO 2004-14, AO 2000-5, and AO 1999-32). As stated above, if the facts are as presented in the complaint, it appears there may no violation of the FECA, although the complaint may raise legal issues that are not within the jurisdiction of the Commission.

ADR Director's Recommendation: DISMISS

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