



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 233**

SENSITIVE

The Memorandum, dated May 25, 2005, subject: **ADR 233 Von's Grocery Company** is being withdrawn and is resubmitted with a revised Recommendation.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.

25190260836



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 233 Von's Grocery Company
Recommendation to Close File

DATE: June 1, 2005

25190260837

On January 26, 2005, the ADR Office received MUR 5503 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: The complaint alleges that for four days leading up to the 2004 4th of July holiday, Respondent Von's Grocery Company played patriotic music and rebroadcast President Bush's State of the Union address over the sound system in the store. Complainant further alleges that this was done in an attempt to influence customers and employees to vote to reelect President Bush. Respondents did not file a reply to the allegations.

RECOMMENDATIONS:

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

ADR CASE ANALYSIS REPORT

ADR Case: 233

Respondents:
Von's Grocery Company

MUR: 5503

OGC Case Open Date: 8/3/04

Respondent's Rep.: CT Corporation System

Date Forwarded to ADRO: 1/26/05

Committee Name: N/A

Date Reviewed by ADRO: 2/9/05

Committee Type: N/A

District #/or State: CA

Election - Won/Lost: N/A

Election Cycle: 2004

Complainant: Jaime Vega

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Summary of Complaint: The Complainant alleges that the supermarket where he works, Von's Grocery Company ("Respondent"), subjected employees and shoppers to "electioneering" communications. The complaint states that for four days leading up to the 4th of July holiday, Respondent played patriotic music and rebroadcast President Bush's State of the Union address over the sound system in the store. Complainant further alleges that this was done, rather than the normal advertising that is broadcast over the store's sound system, in an attempt to influence customers and employees to vote to reelect President Bush.

Respondents' Reply: Respondents did not file a reply to the allegations.

Issues:

- Corporate contributions 2 U.S.C. § 441b(a), 11 C.F.R. § 114.2

Analysis: The statute and regulations are quite clear that corporations are prohibited from making contributions in connection with any election for federal office. 2 U.S.C. § 441b(a), 11 C.F.R. § 114.2. A contribution is defined as any 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. 2 U.S.C. § 431(8)(A). The Complainant states that he is an employee of Vons, and that it is a "major supermarket chain" in California. It does not appear, however, that playing patriotic music and/or rebroadcasting the President's State of the Union address over the store's public address system on the 4th of July would result in a prohibited independent expenditure. The President of the United States is clearly identified as the speaker

of the State of the Union address, but that address is not a campaign related activity. While the Commission received no answer to the complaint from Respondent, it seems reasonable Respondent could contend that it is not uncommon for businesses open to the public to play patriotic music in celebration of the 4th of July. The definition of an independent expenditure also requires express advocacy, 2 U.S.C. § 431(17), but there is no allegation that the broadcast included a statement advocating the reelection of the President. While the Complainant felt that the juxtaposition of patriotic music and the State of the Union address was clearly done to influence customers and employees to reelect the President of the United States, there could reasonably be more than one interpretation of those events. There is no evidence that Respondent made an expenditure to obtain the patriotic music or the State of the Union address, which was available to the public, for the purpose of trying to influence a Federal election.

ADR Director's Recommendation: DISMISS

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