



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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June 16, 2005

MEMORANDUM

SENSITIVE

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director, ADR Office

SUBJECT: **ADR 250** – Your Art Here, Inc. and Owen Mundy, Registered Agent
Recommendation to Close the File

On March 25, 2005, the ADR Office (ADRO) received from OGC/CELA a complaint, MUR 5574, to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 250**, 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.

Summary: Complainant, Paul Cauley, alleges that Respondents, i.e., Your Art Here, Inc., and Owen Mundy, Registered Agent, displayed along a busy interstate highway two billboards that lacked the necessary disclaimers. Complainant contend that the billboards, which displayed prominent pictures of George W. Bush, were "electioneering communications" and should be taken down until they are corrected. Respondents, a self described not-for-profit organization "concerned with art not politics", argue that the subject billboards are an "expression of art" rather than politics. They contend that billboards are excluded from the regulations and argue they are exempt from "electioneering communications". Respondents' further point out that the billboards do not advocate the election or defeat of any candidate.

Attached for the Commission's review is the ADR Case Analysis Report on **ADR 232** along with copies of the EPS Rating and ADR Rating Sheets.

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: 250

Respondents: Your Art Here, Inc.
Owen Mundy, Registered Ag.

MUR: 5574

Respondents' Rep: Owen Mundy

OGC Case Open Date: 10-20-04

Committee Type: N/A

Date Forwarded to ADRO: 3-25-05

Committee's Name: N/A

Date Reviewed by ADRO: 4-4-05

District #/or State: N/A

Tier Level: 3

Election Won/Lost Cycle: N/A

EPS Rating: 20

Election Cycle: 2004

ADR Rating: 50

Complainant: Paul Cauley

Summary of Complaint: Complainant alleges that Respondents displayed, along a busy interstate highway, two billboards that lacked the necessary disclaimers. Complainant contend that the billboards, which displayed prominent pictures of George W. Bush, were "electioneering communications" and, should be taken down until they are corrected. The complainant also raises questions about Respondents' not-for-profit status and whether they are a PAC or "527" organization.

Respondent's Replies: Respondents, a self described not-for-profit organization "concerned with art not politics", argue that the subject billboards are an "expression of art" rather than politics. They contend that billboards are excluded from the regulations, reference 11 C.F.R. § 100.29(c) (1), and argue they are exempt from "electioneering communications". Respondents' further point out that the billboards do not advocate the election or defeat of any candidate.

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

Analysis: The subject billboards, displayed publicly within sixty (60) days of the election, portrayed a "clearly identified candidate". The billboards contained no endorsement, guide regarding the forthcoming election or electioneering message. The billboards do not expressly advocate the election or defeat of the President, nevertheless, the negative reference to candidate Bush can only be interpreted as rejection of the President's candidacy. Billboards are specifically referenced in the regulations governing "public communications" which is defined at 11 C.F.R. § 100.26 as a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, et al. The regulations at 11 C.F.R. § 110.11(a)(2) provide guidance advising that public communications by any person that expressly advocate the election or defeat of a clearly identified candidate must contain a disclaimer. While the billboards did not promote, support, or oppose any candidate, one contained a message that attacked President Bush. There is no requirement, however, that the communication need to expressly advocate the election or defeat of a candidate to qualify as federal election activity (11 C.F.R. § 100.24(b)(3)).

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Although the Respondent is identified as a corporation, the complainant makes no mention of this in the complaint. Nor is the owner of the billboard listed as a respondent in this matter.

Respondents argue that they are not a political committee and their activity is excluded from the requirements of the FECA. Contrary to Complainant's contention billboards are not electioneering communications. Despite Respondents contention that they are not a political organization, political committees are defined at 11 C.F.R. § 100.5(a) as any committee, club, association, or other group of persons, which receives contributions aggregating in excess of \$1,000 or makes expenditures aggregating in excess of \$1,000 during a calendar year. Although the Complainant provided no estimate of the cost associated with the subject billboards a quick check of billboard advertising firms in the area placed the cost of the billboards well beyond the \$1,000 threshold. At least one of the subject billboards clearly implied message is to promote opposition to candidate Bush. When placed in the context of the proximity to the presidential election, one might conclude that the billboard is a call for the defeat of the President. However, although a case can be made to pursue the matter, the de minimis nature of the issues involved does not justify any additional expenditure of Commission resources on this case. Consequently, the recommendation is that the matter be closed.

Issues:

- Disclaimers, 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)
- Electioneering communications, 2. U.S.C. § 441b(c) and 11 C.F.R. § 114.14(b)

Recommendation: Dismiss

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