



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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SECRET/INT

2005 JUL 11 P 4: 54

July 11, 2005

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director *APS for JAP*

FROM: Allan D. Silberman *AS*
Director, ADR Office

SUBJECT: **ADR 272** – Amy Otis-Wilborn
Recommendation to Close the File

SENSITIVE

On June 17, 2005, the ADR Office (ADRO) received from OGC/CELA a complaint, MUR 5592, to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 272**, 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, Benjamin J. Plisklie, Chairman of the Republican Party of Ozaukee County, WI, contends that the Respondent, Amy Otis-Wilborn, and approximately 50 neighbors placed a newspaper advertisement in the local press promoting the Kerry/Edward ticket without including a disclaimer notice in the ad. The subject advertisement, which included the names of the fifty individuals, was published on October 14, 2004 by the Ozaukee Press of Port Washington, WI. The complainant is uncertain who financed the advertisement but suggests it may have been paid for either by the listed individuals or the Respondent. The Respondent acknowledged placing the advertisement, which she advises was a joint effort among a group of individuals who were unaffiliated with any party or organization. The Respondent explained that the group, which jointly financed the ad, was composed of neighbors and acquaintances from the Port Washington community.

Attached for the Commission's review is the ADR Case Analysis Report on **ADR 272** along with copies of the EPS Rating and ADR Rating Sheets.

Recommendations:

1. Dismiss ADR 272/MUR 5592 and close the file as to Respondent Amy Otis-Wilborn.
2. Send the appropriate letters.

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ADR CASE ANALYSIS REPORT

ADR Case: 272

Respondent: Amy Otis-Wilborn

MUR: 5592

Respondent's Rep: Amy Otis-Wilborn

Date Case Opened: 11-1-04

Committee Type: N/A

Date Forwarded to ADRO: 6-17-05

Committee Name: N/A

Date Reviewed by ADRO: 6-29-05

District #/or State: N/A

Tier Level: 4

Election – Won or Lost: N/A

EPS Rating: 15

Election Cycle: 2004

ADR Rating: 60

Complainant: Benjamin J. Pliskie, Chairman
Republican Party of Ozaukee Co., WI

Summary of Complaint: Complainant contends Respondent and approximately 50 neighbors produced a newspaper advertisement, without a disclaimer notice, which promoted the election of the Kerry/Edwards ticket. The subject advertisement, published on October 14, 2004 by the Ozaukee Press from Port Washington, WI, included the names of the supporters of the ad. The complainant is uncertain who paid for the advertisement but suggests that it was financed either by the named individuals or the Respondent who was listed as the contact in the advertisement.

Respondent's Reply: The Respondent acknowledged placing the advertisement, which she advises was a joint effort among a group of individuals who were unaffiliated with any party or organization. The Respondent explained that the group was composed of neighbors and acquaintances, who were brought together by their common concern. The Respondent also advised that there were two advertisements placed in the newspaper, however, the second contained a disclaimer notice, which was inserted on advice of the publisher.

Analysis: The regulations require disclaimers notices on public communications, which includes among others, communications by means of any broadcast, newspaper, magazine, etc. and advises that all public communications by any person that expressly advocate the election or defeat of a clearly identified candidate must include disclaimers 11 C.F.R. § 110.11(a)(2). There is no reference to the cost of the subject advertisement or any way to measure its impact on the community. Given the limited circulation of the paper, i.e., 9,000 per week, and the de minimis nature of the issue involved in this matter, the recommendation is that this matter be dismissed.

Issue:

- Disclaimer notices, 2 U.S.C. § 441d and 11 C.F.R. § 110.11(a)

Recommendation:

- Dismiss ADR 272/MUR 5592, close the file as it pertains to Respondent Amy Otis-Wilborn and send the appropriate letter.

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ADR Office (ADRO) Case Selection Criteria for Assigning Cases to ADR Processes

In order for cases to be considered by the ADR Office, respondents will need to first indicate their desire to submit their case to ADR. Cases reviewed by the Office will be evaluated according to the following factors, which will identify cases that are considered appropriate for ADR and prioritize them for processing

MUR # 5592/ADR 272

	<u>No/False</u>	<u>Yes/True</u>
1. Some remedial action has been taken by Respondent to correct violation (score 0 or 5) • Respondent conveys desire to comply with law and accept responsibility for actions	(0)	5
2. Respondent is inexperienced (score 0 or 5) • Respondent lacks knowledge in campaign finance matters	0	(5)
3. Amount of money at issue is limited (Below 10,000 (5), up to 50,000 (3), above 50,000 (1)) • Amount of money at issue is amenable to alternative resolution	(5)	3 1
4. Case involves a single, identified issue (score: 0 or 5) • Preference will be given to single as a opposed multi-issue case	0	(5)
5. Genuine <i>sua sponte</i> submission (score: 0 or 5) • Case submission is complete and lacks any gaps or discrepancies	0	(5)
6. "Accepted" allegation of FECA violation (score: 0 or 5) • Respondent admits or does not contest that a violation has occurred	0	(5)
7. Respondent has already "paid" for the same conduct at issue in complaint (score: 0 or 5) • Respondent has been assessed criminal or civil penalties for the conduct in question	(0)	5
8. Principal respondents have already filed complete and forthcoming response (score: 0 or 5) • Respondent has filed complete and forthcoming response to complaint	0	(5)
9. Violation appears not to have altered election outcome (score: 0 or 5) • Activity not conducted at critical time or significant in terms of overall campaign	0	(5)
10. Material facts are reasonably clearly known and identified (score 0 or 5) • Case lacks need for extensive fact-finding	0	(5)
11. Feasibility of reaching a voluntary resolution (score: 0 or 15) • Respondent's affirmative reply to letter conveys interest in voluntary resolution of case	(0)	15
12. Appropriate number of respondents (score: 0 or 5) • Appropriate number of respondents identified in case file	0	(5)
13. Commission interest in case (score: 0 or 10) • Commissioners have indicated interest in case (10) otherwise score "0"	(0)	10
14. Timely case (score 0 to 10) • Case is current, i.e. within 2 years of event (10) or beyond 2 years (0)	0	(10)
15. Worthy ADR action (score: 0 to 10) • EPS rating above 20 (10), between 19 and 0 (5) and below (0)	0	(5) 10

Maximum point total: 100.

60

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