



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

November 22, 2005

TO: The Commission

THROUGH: Robert J. Costa *AK*
Acting Staff Director

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

BY: Lynn M. Fraser *JMF*
Assistant Director, ADR Office

SUBJECT: ADR 297 Garrett Lott, Ashcroft 2000 and Garrett Lott, Treasurer, *et al*
Recommendation to Dismiss

SENSITIVE

On September 2, 2005, the ADR Office received MUR 5615 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, William O'Malley, alleges that Ashcroft 2000 and Garrett Lott, Treasurer (the "Ashcroft Committee") and counsel for the Committee Tony Trimble ("Respondent Trimble") solicited an illegal contribution. The solicitation occurred when Respondent Trimble offered a lesser amount than Complainant was demanding for past wages and expenses allegedly owed to Complainant by the Ashcroft Committee. The allegation is that the difference between what was owed and what was offered would result in an illegal excessive contribution.

In addition, the complaint alleges that on or about October 7, 2000 the Ashcroft Committee accepted an excessive contribution from a contributor. Specifically, a contributor's check in the amount of \$1,200 was forwarded to the Ashcroft Committee and the excessive portion of \$200 was not refunded.

The complaint also alleges that the Spirit of America PAC and Garrett Lott, Treasurer (the "Spirit Committee") failed to report \$10,000 in contributions received from the Ashcroft Committee. The allegations state that the Ashcroft Committee originally reported making \$10,000 in contributions to the Spirit Committee in 2000. The

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complaint goes on to allege that the Ashcroft Committee amended its report to disclose that \$5,000 was contributed on December 31, 2000 and \$5,000 was contributed on January 25, 2001. The complaint speculates that since Garrett Lott is the Treasurer for both Committees possibly he misappropriated the funds for personal gain, rather than pay the Ashcroft Committee's debts.

Respondent Trimble, as well as the Ashcroft Committee (collectively "Respondents"), contend that the Complainant is a disgruntled former employee trying to force reimbursement of expenses allegedly incurred by the Complainant on behalf of the Ashcroft Committee. To this end, Respondents maintain, Complainant has repeatedly threatened a civil lawsuit, but failed to ever file the suit with the courts. Respondents argue that the debt allegedly owed to the Complainant was the basis of MUR 5298, which was resolved in ADR 091, and the terms which Respondents agreed to in that matter were: amend reports to disclose the disputed debt; continue to report the debt unit it is resolved, and pay a civil penalty of \$1,000. Respondents assert that the Ashcroft Committee complied with the terms of the agreement in ADR 091. Respondents argue that the regulations do not prohibit settlement discussions, nor does the FECA define settlement discussions as solicitation for excessive contributions.

In response to the allegations that the Spirit Committee failed to report \$10,000 in contributions from the Ashcroft Committee, Respondents concede that the Spirit Committee failed to report the contributions. The Committees contend that shortly after the contributions were received from the Ashcroft Committee, the Spirit Committee refunded the contributions, but failed to report the contributions or the refund.

The complaint also raises allegations that the Ashcroft Committee accepted an excessive contribution from an individual for the General Election. Respondents agree that Kermit Bright made a \$1,200 contribution in October 2000. Respondents concede that they initially failed to refund the excessive portion of the contribution, but advise that \$200 has been refunded to the contributor.

RECOMMENDATIONS:

1. Dismiss ADR 297/MUR 5615 and close the file as to all Respondents.
2. Approve the appropriate letters.

ADR CASE ANALYSIS REPORT

ADR Case: 297

Respondents:

1. Ashcroft 2000
1. Garrett Lott, Treasurer
2. Spirit of America PAC
2. Garrett Lott, Treasurer
3. Tony Trimble

MUR: 5615

OGC Case Open Date: 11/16/04

Respondents' Rep.:

1. Tony Trimble, Esq.
2. Garrett Lott
3. Tony Trimble, Esq.

Date Forwarded to ADRO: 9/2/05

Committee Names:

1. Ashcroft 2000
2. Spirit of America

Date Reviewed by ADRO: 10/14/05

Committee Type:

1. Authorized
2. Non-Party

District #/or State:

1. Senate - MO

Election - Won/Lost:

1. Lost
2. N/A

Election Cycle: 2000

Complainant: William O'Malley

Summary of Complaint: Complainant alleges that Ashcroft 2000 and Garrett Lott, Treasurer (the "Ashcroft Committee") and counsel for the Committee Tony Trimble ("Respondent Trimble") solicited an illegal contribution. The solicitation occurred when Respondent Trimble offered a lesser amount than Complainant was demanding for past wages and expenses allegedly owed to Complainant by the Ashcroft Committee. The allegation is that the difference between what was owed and what was offered would result in an illegal excessive contribution.

In addition, the complaint alleges that on or about October 7, 2000 the Ashcroft Committee accepted an excessive contribution from a contributor. Specifically, a contributor's check in the amount of \$1,200 was forwarded to the Ashcroft Committee.

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The complaint also alleges that the Spirit of America PAC and Garrett Lott, Treasurer (the “Spirit Committee”) failed to report \$10,000 in contributions received from the Ashcroft Committee. The allegations state that the Ashcroft Committee reported making \$10,000 in contributions to the Spirit Committee shortly after the 2000 General Election, but amended the report on August 7, 2001 to disclose that \$5,000 was contributed on December 31, 2000. The Ashcroft Committee disclosed that a second contribution of \$5,000 was made to the Spirit Committee on January 25, 2001. The complaint suggests that as Garrett Lott is the Treasurer for both Respondent Committees that he may have misappropriated the funds, rather than pay the Ashcroft Committee’s debts.

Respondents’ Reply: Respondent Trimble, as well as the Ashcroft Committee (collectively “Respondents”), contend that the Complainant is a disgruntled former employee trying to force reimbursement of expenses allegedly incurred by the Complainant on behalf of the Ashcroft Committee. To this end, Respondents maintain, he has repeatedly threatened a civil lawsuit, but failed to ever file or serve such suit on Respondents. Respondents argue that the debt allegedly owed to the Complainant was the basis of MUR 5298, which was resolved in ADR 091 when the Respondents agreed to amend reports to disclose the disputed debt, continue to report the debt, and pay a civil penalty of \$1,000. Respondents deny that 11 C.F.R. § 116.5 prohibits settlement discussions, nor does the FECA define settlement discussions as solicitation for excessive contributions.

The complaint raises allegations that the Ashcroft Committee made \$10,000 in contributions -- \$5,000 in December 2000 and \$5,000 in January 2001-- to the Spirit Committee, and that the Spirit Committee failed to report the contributions. The Ashcroft Committee and the Spirit Committee (collectively the “Committees”) contend that the Spirit Committee refunded the contributions shortly after they were received, but concede they failed to report the contributions or the refund.

The complaint also raises allegations that the Ashcroft Committee accepted an excessive contribution for the General Election from an individual. Respondents agree that Kermit Bright made a \$1,200 contribution in October 2000. Respondents concede that they initially failed to refund the excessive portion of the contribution, but advise that \$200 has been refunded to the contributor.

Issues:

- Advances by committee staff 11 C.F.R. § 116.5(b)
- Settlement or forgiveness of debt 11 C.F.R. § 116.5(d)
- Failure to report contribution 2 U.S.C. § 434(b)(2)(D), 11 C.F.R. § 104.3(a)(4)
- Acceptance of excessive contribution 2 U.S.C. § 441a(f), 11 C.F.R. § 110.9
- Period of limitations 2 U.S.C. § 455(a)

Recommendation:
Dismiss