



Federal Election Commission  
Washington, DC 20463

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

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**MEMORANDUM**

August 24, 2006

**SENSITIVE**

TO: The Commission

THROUGH: Patrina M. Clark *pnc*  
Staff Director

FROM: Lynn M. Fraser, Acting Director *lmf*  
Alternative Dispute Resolution Office

SUBJECT: ADR 333 US-Cuba Democracy Political Action Committee  
and Gus Machado, Treasurer, Recommendation to Dismiss

On June 7, 2006, the ADR Office received MUR 5710 to review and determine its appropriateness for ADR processing. Based on that review, we 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.

**Respondents:**

- 1. US-Cuba Democracy PAC
- 1. Gus Machado, Treasurer
- 1. Fausto Diaz, Jr.
- 1. Anolan Ponce
- 1. Mauricio Claver-Carone
- 2. Citizens for Bunning
- 2. Richard L. Robinson, Treasurer

**Respondents' Reps.:**

- 1. Mauricio Claver-Carone, Esq.
- 2. Richard L. Robinson

**Complainant:**

Citizens for Responsibility and Ethics

**Committee Names:**

- 1. US-Cuba Democracy PAC
- 2. Citizens for Bunning

**OGC Case Open Date:** 3/3/06

**Committee Types:**

- 1. Non-Party
- 2. Authorized

**Date Forwarded to ADRO:** 6/19/06

**District #/or State:**

- 1. -
- 2. KY

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**Election - Won/Lost:**

2. General - Won

**Election Cycle:** 2004

**Summary of Complaint:** Complainant, the Citizens for Responsibility and Ethics, alleges that the US-Cuba Democracy PAC and Gus Machado, Treasurer ("US-CD PAC") held a fundraiser for Senator Jim Bunning on May 27, 2004. The complaint states that, during the fundraiser, Gus Machado ("Machado") and/or Mauricio Claver-Carone ("Claver-Carone") solicited individual contributions for the Bunning Committee, and also presented the Bunning Committee with a \$5,000 contribution from US-CD PAC. The Complainant alleges that the US-CD PAC asked Fausto Diaz, Jr. ("Diaz") to pay the \$2,200 for the luncheon fundraiser, so the US-CD PAC could present the full \$5,000 allowed under the FECA to the Bunning Committee. The complaint goes on to assert that US-CD PAC reported the luncheon expenses as an in-kind contribution from Diaz, but as US-CD PAC exercised direction and control over the \$2,200, Complainant argues that the \$2,200 should be reported as being made to the Bunning Committee from both Diaz and the US-CD PAC. Count 1 of the complaint states that this in-kind contribution results in excessive contributions from US-CD PAC of \$2,200, and from Diaz of \$200.

In Count 2, the Complaint alleges that Anolan Ponce ("Ponce") made seven (7) contributions to the US-CD PAC totaling \$12,715. The two contributions that were excessive were reported by US-CD PAC as a \$5,244.50 in-kind contribution for a PAC event, and a \$2,500 contribution on December 27, 2005. NOTE: The allegations refer to the latter contribution being \$2,500 in a list of all contributions by Ponce, and confirmed by the relevant report pages attached, but in the summary paragraph of the complaint, the Complainant refers to the contribution as being \$21,500.

**Respondents' Replies:** US-CD PAC contends that the allegations as to violations of the FECA are factually incorrect. As to Count 1, the US-CD PAC argues, and Diaz attests to in an affidavit, that Diaz paid for the luncheon as an in-kind contribution to the PAC, and was within the \$5,000 limit permitted by the FECA. US-CD PAC further contends that the Diaz contribution had not been solicited by Claver-Carone, Machado or any other person, and was reported to the Commission as an in-kind contribution to the PAC, and not to the Bunning Committee.

The Bunning Committee acknowledges that it reported the contributions received from the individuals listed in the complaint. The Bunning Committee contends, however, that it has no information to confirm or deny who solicited the contributions, or if the contributions were delivered directly to the Bunning Committee, or forwarded to the Bunning Committee by the US-CD PAC.

As to Count 2, the US-CD PAC contends that Ponce made five (5) contributions, between April 6, 2005 and May 25, 2005, totaling \$4,970.50, three of which were in-kind contributions. The response goes on to state that on December 8, 2005, Ponce presented the PAC with receipts for various operating expenses for a recent PAC-only fundraising event totaling \$5,244.50, and the US-CD PAC wrote Ponce a check immediately to reimburse her for the operating expenses. As for the last contribution of \$2,500, US-CD PAC contends that when contributing to the PAC, Ponce failed to note that the contribution exceeded her permitted \$5,000 annual contribution

limit, and PAC staff inadvertently deposited the contribution. US-CD PAC argues that it immediately recognized that the check exceeded the contributor's limit, and following 11 C.F.R. § 103.3(b)(3), refunded the excessive amount of \$2,470.50, within five days of receipt.

**Issues:**

- Excessive contributions 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(1)(C), 441a(a)(2)(A), 11 C.F.R. §§ 110.1(b), 110.1(d), 110.2(b)
- Conduit contributions 2 U.S.C. § 441a(a)(8), 11 C.F.R. § 110.6
- Advances from personal funds 11 C.F.R. § 116.5(b)

**Recommendation:**

**Dismiss ADR 333 (MUR 5710), approve the appropriate letters and close the file.**

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