



Federal Election Commission  
Washington, DC 20463

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

September 4, 2006

Melanie Sloan, Executive Director  
Citizens for Responsibility & Ethics in Washington  
11 Dupont Circle, N.W., 2<sup>nd</sup> Floor  
Washington, DC 20036

Re: ADR 333 (MUR 5710)

Dear Ms. Sloan:

On March 3, 2006, the Federal Election Commission ("FEC" or "Commission") received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the Respondents, U.S. Cuba Democracy PAC and Gus Machado, individually and as Treasurer, Mauricio Claver-Carone, Fausto Diaz, Jr., Anolan Ponce, Citizens for Bunning, and Richard L. Robinson, Treasurer. In its memorandum to the Commission, dated August 24, 2006, this office stated:

**Summary:** 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.

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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.

Accordingly, the Commission closed its file in this matter on August 31, 2006.

The FEC is obligated by federal regulations to make a finding to terminate its proceedings public, as well as the basis therefore. 11 C.F.R. § 111.20(b). In addition, the Commission will also place on the record copies of the complaint, correspondence exchanged between Respondents and the Commission, and reports prepared for the Commission by this office to assist in its consideration of this matter. Accordingly, copies of documents relative to this matter will be forwarded shortly to the FEC's Public Information Office.

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The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Lynn M. Fraser, Acting Director  
Alternative Dispute Resolution Office

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