



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

NOV 20 2003

Marc Elias, Esq.
Perkins Coie, LLP
607 14th Street, N.W.
Washington, D.C. 20005

RE: MUR 5158

Dear Mr. Elias:

On November 29, 2000, the Federal Election Commission notified your clients, Bill Nelson for U.S. Senate and Peggy Gagnon, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on November 4, 2003, found that there is reason to believe that Bill Nelson for U.S. Senate and Peggy Gagnon, as treasurer, violated 2 U.S.C. §§ 441b and 434(b), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

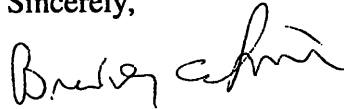
25044112578

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Kathleen Dutt, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Vice Chairman

Enclosure
Factual and Legal Analysis

25044112579

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FACTUAL AND LEGAL ANALYSIS

Respondents:

Bill Nelson for U.S. Senate and Peggy Gagnon,
as treasurer

MUR: 5158

I. INTRODUCTION

The complaint alleges that Handgun Control, Inc., now the Brady Campaign to Prevent Gun Violence ("the Brady Campaign"), and the Handgun Control Voter Education Fund, now the Brady Voter Education Fund ("the Brady Committee"), made prohibited, unreported, in-kind contributions to the campaigns of several federal candidates, including Senate candidate Bill Nelson, during the 1999-2000 election cycle in violation of the Federal Election Campaign Act of 1971, as amended ("the Act").¹ These alleged prohibited contributions resulted from television advertisements, press conferences, and websites that purportedly were sponsored by the Brady respondents.

The Bill Nelson for U.S. Senate Committee responded to the complaint, denying any coordination with the Brady respondents and requesting that the complaint be dismissed. This response, as well as the applicable law, will be discussed in the following sections, which analyze the specific allegations made in the complaint.

II. BACKGROUND

The Brady Campaign is a 501(c)(4) non-profit corporation chaired by Sarah Brady. Her husband, James Brady, is on the board of the Brady Campaign's self-described "sister

¹ All of the facts relevant to these matters occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act or statements of law regarding provisions of the Act contained in this report refer to the Act as it existed prior to the effective date of BCRA. Similarly, all citations to the Commission's regulations or statements of law regarding any specific regulation contained in this report refer to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

25044112589

1 organization,” the Brady Center to Prevent Gun Violence (“Brady Center”), a 501(c)(3) non-profit
2 organization which is not a respondent in this matter. The website for the Brady Campaign and the
3 Brady Center sets out the following “Vision and Mission Statement”:

4 As the largest national, non-partisan, grassroots organization leading the
5 fight to prevent gun violence, the Brady Campaign and the Brady Center are
6 dedicated to creating an America free from gun violence, where all Americans are
7 safe at home, at school, at work, and in their communities. The Brady Campaign
8 and the Brady Center believe that a safer America can be achieved without
9 banning all guns.

10 The Brady Campaign works to enact and enforce sensible gun laws,
11 regulations and public policies through grassroots activism, electing pro-gun
12 control public officials and increasing public awareness of gun violence.

13 The Brady Center works to reform the gun industry and educate the public
14 about gun violence through litigation and grassroots mobilization, and works to
15 enact and enforce sensible regulations to reduce gun violence including
16 regulations governing the gun industry.

17 www.bradiycampaign.org/about/mission.asp (emphasis added).

18 The Brady Committee is a separate segregated fund connected to the Brady Campaign. In
19 its Statement of Organization, the Brady Committee describes the Brady Campaign as a
20 membership organization. During the 1999-2000 election cycle, the Brady Committee reported
21 over three million dollars of combined receipts and disbursements. Included among its
22 disbursements are over one million dollars for independent expenditures, a number of which were
23 made in connection with U.S. Senate campaigns in Florida, Virginia, and Missouri.

24 **III. THE FLORIDA SENATE RACE**

25 The complaint alleges that the Brady respondents violated the Act in connection with
26 activities during the 2000 general election for Senate in Florida, including a press conference co-
27 sponsored by the Brady respondents and Senate candidate Bill Nelson. According to a newspaper
28 article attached to the complaint, Sarah Brady, Jim Brady, and Bill Nelson all participated in a press
29 conference on October 16, 2000, in which Jim and Sarah Brady endorsed Nelson on behalf of the
30 Brady Campaign. (Complaint Exhibit 20). The complaint alleges that expenditures related to the

25044112581

1 press conference were not reported to the Commission. Furthermore, the complaint contends that
2 the expenditures constituted a prohibited corporate contribution by the Brady Campaign. The
3 Nelson Committee, in its response to the complaint, denies any violation of the Act, though it states
4 that it "sponsored and publicized" the press conference.

5 The Commission first examined the complaint's allegation that expenses related to the press
6 conference were not reported. *See* 2 U.S.C. § 434(b) and 11 C.F.R. § 104.13 (requiring all
7 disbursements by committees, including in-kind contributions, to be reported). The Brady
8 Committee reported expenditures in connection with the event, but after the complaint was filed. In
9 its 2000 Post-General Report, the Brady Committee itemized two disbursements described as "in-
10 kind travel/Nelson for Senate." These disbursements, totaling \$2,078.13, were dated on November
11 21, 2000 to Grand Bay Hotel and American Airlines. After the Brady Committee submitted this
12 report, the Nelson Committee amended its 2000 Pre-General Report to include receiving an in-kind
13 contribution from the Brady Committee in the amount of \$2,078.13 on October 16, 2000.

14 Although the aforementioned expenditures were reported as being made by the Brady
15 Committee, a newspaper article attached to the complaint states that Jim and Sarah Brady endorsed
16 Nelson on behalf of the Brady Campaign. (Complaint Exhibit 20). Similarly, a press release from
17 the Nelson Committee also states that the Bradys endorsed Nelson on behalf of the Brady
18 Campaign. (Complaint Exhibit 19). The Brady Campaign, as a corporate entity, is prohibited from
19 making contributions or expenditures in connection with federal elections. *See* 2 U.S.C. § 441b.²
20 Likewise, candidates and their authorized committees are prohibited from accepting contributions
21 from corporations. *Id.*

² Although certain nonprofit corporations may make independent expenditures, the Brady Campaign has not claimed to be such a corporation. *See* 11 C.F.R. § 114.10

25044112583

1 The Act defines "contribution or expenditure" as "any direct or indirect payment, gift of
2 money, services, or anything of value, to any candidate or campaign committee in connection with
3 any federal election." 2 U.S.C. § 441b(b)(2). The phrase "anything of value" includes all in-kind
4 contributions. 11 C.F.R. § 100.7(a)(1)(iii).

5 Here, Jim and Sarah Brady reportedly endorsed Nelson on behalf of the Brady Campaign,
6 and the press conference was sponsored by the Nelson Committee and attended by Nelson himself.
7 This situation is analogous to MUR 4116 (National Council of Senior Citizens ["NCSC"]). In that
8 matter, NCSC's executive director attended a press conference with Charles Robb to endorse him
9 on behalf of NCSC. Although the NCSC's separate segregated fund reported expenditures in
10 connection with the event, the Commission found reason to believe that NCSC violated the Act.
11 Similarly, in this case the expenses related to the Brady Campaign's endorsement of Nelson were
12 corporate in-kind contributions to the Nelson Committee.

13 Furthermore, because Mrs. Brady appears to have attended the conference in her capacity as
14 director of the Brady Campaign, a portion of her salary should have been reported as an in-kind
15 contribution.³ See 2 U.S.C. § 434(b) and 11 C.F.R. § 104.13. Therefore, the Commission finds
16 reason to believe that the Nelson Committee violated 2 U.S.C. §§ 441b and 434(b) in connection
17 with this press conference.

18 The Commission did not make any reason to believe findings in connection with any other
19 allegations contained in the complaint.

³ According to the Brady Campaign's 1999 tax statement, Sarah Brady worked 50+ hours per week and was paid \$155,900 per year, half of which was paid for by the Brady Center (Complaint Exhibit 1).