

JAN 21 2004

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

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

2004 JAN 21 P 12:04

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5304

DATE COMPLAINT FILED: September 27, 2002

DATES OF NOTIFICATION: October 2, 2002,
January 8, 2003, January 9, 2003, and January 15,
2003

DATE ACTIVATED: December 27, 2002

EXPIRATION OF STATUTE OF LIMITATIONS:
October 9, 2006

COMPLAINANT:

Donald F. McGahn II, General Counsel,
National Republican Congressional Committee

RESPONDENTS:

Federal Candidate and Committee

Dennis Cardoza

Cardoza for Congress and Gregory Ray Olzack,¹
as treasurer

State Committees

Friends of Dennis Cardoza and Cathy Paskin,
as treasurer

Tom Calderon for Assembly and Yolanda
Miranda, as treasurer²

Tony Cardenas 2000 and Kinde Durkee, as
treasurer

Tony Cardenas for City Council and Kinde
Durkee, as treasurer

Andrei Cherny for State Assembly and Stephen
J. Kaufman, as treasurer

Vince Hall for Assembly and May Ellen Padilla,
as treasurer

Latino Political Action Committee and Louis
Moret, as treasurer³

Carole Migden Leadership Committee and Roger
Sanders, as treasurer

¹ Mr. Olzack replaced former treasurer Cathy Paskin.

² Ms. Miranda replaced former treasurer Phillip J. Pace.

³ Mr. Moret replaced former treasurer Javier Rangel.

Re-Elect Assemblywoman Carole Migden and
Roger Sanders, as treasurer
Shelley for Secretary of State and Jay Wallace,
as treasurer

RELEVANT STATUTES
AND REGULATION:

2 U.S.C. § 441a(a)
2 U.S.C. § 441a(f)
2 U.S.C. § 441f
11 C.F.R. § 110.3(d)

INTERNAL REPORTS CHECKED: Federal and State Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The complaint in this matter alleges that Friends of Dennis Cardoza, the state campaign committee of Dennis Cardoza, a California state assembly member who was running for Congress, made contributions to Cardoza's federal committee, Cardoza for Congress, through several conduit state and local California committees, in violation of 2 U.S.C. §§ 441a and 441f. This Office recommends that the Commission find no reason to believe that the respondents violated 2 U.S.C. §§ 441a or 441f. However, after reviewing the disclosure reports of Cardoza's state and federal committees, this Office has discovered that the state committee made, and the federal committee accepted, a direct \$1,000 contribution in violation of 11 C.F.R. § 110.3(d). Therefore, although Cardoza's federal committee ultimately refunded the contribution to his state committee, this Office recommends that the Commission find reason to believe that Friends of Dennis Cardoza and Cathy Paskin, as treasurer, and Cardoza for Congress and Gregory Ray Olzack, as treasurer, violated 11 C.F.R. § 110.3(d). As explained below, however, this Office also recommends that the Commission take no further action with respect to these respondents. Finally, this Office recommends that the Commission close the file as to all of the respondents.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law⁴

The Federal Election Campaign Act of 1971, as amended ("the Act") defines "contribution" as including "any gift, subscription . . . or anything of value made by any person for the purpose of influencing any election for Federal office . . ." 2 U.S.C. § 431(8)(A)(i). The Act prohibits contributions in the name of another, stating that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person." 2 U.S.C. § 441f. The Act also prohibits individuals and political committees from making, and candidates and political committees from accepting, contributions that exceed the limits set forth in 2 U.S.C. § 441a(a). 2 U.S.C. §§ 441a(a) and (f).

In addition, 11 C.F.R. § 110.3(d) bans transfers from a candidate's campaign committee for a nonfederal election to the candidate's campaign committee for a federal election. This prohibition was enacted due to concern over "the indirect use of impermissible funds in federal elections." Explanation and Justification, Transfers of Funds From State to Federal Campaigns, 58 Fed. Reg. 3474, 3475 (January 8, 1993).

B. Complaint

Complainant alleges that, between October 9, 2001 and June 21, 2002, "[t]he available evidence suggests that Cardoza conspired with state Democratic candidates and the Latino Political Action Committee to launder money from Cardoza's non-Federal assembly campaign

⁴ All of the facts in this matter 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 herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

fund into his federal congressional campaign fund." Complaint at 3. To support this charge, Complainant provided the Commission with the following chart that allegedly "details the contribution exchange scheme." *Id.* at 2.⁵

Contributions from Cardoza's Assembly Account (Friends of Dennis Cardoza) to:	Contributions to Cardoza's Congressional Account (Cardoza for Congress) from:
Shelley for Secretary of State 12/21/2001--\$1,000.00 01/21/2002 -- \$1,000.00	Shelley for Secretary of State 12/26/2001--\$1,000.00
Andrei Cherny for State Assembly 02/06/2002--\$3,000.00	Andrei Cherny for State Assembly 02/12/2002--\$1,000.00
Tony Cardenas 2000 01/10/2002--\$900.00	Tony Cardenas for LA City Council 01/21/2002--\$500.00 11/08/2001--\$500.00
Thomas Calderon for Assembly 01/21/2002--\$3,000.00	Thomas Calderon For Assembly 12/31/2001--\$1,000.00 05/17/2002--\$1,000.00
Latino Political Action Committee 06/07/2002--\$5,000.00 10/09/2001--\$250.00	Latino Political Action Committee 06/21/2002--\$500.00 01/31/2002--\$895.00 01/31/2002--\$105.00
Carole Migden Leadership Committee 12/21/2001--\$1,500.00	Re-Elect Assemblywoman Carole Migden 01/04/2002--\$1,000.00
Vince Hall For Assembly 02/14/2002--\$2,000.00 02/06/2002--\$1,000.00	Vince Hall For Assembly 01/31/2002--\$1,000.00

⁵ The chart provided by Complainant contains a number of inaccuracies. This Office has prepared a corrected chart. See Attachment.

C. Responses

Respondents provided specific denials to the Complainant's allegations that they had schemed to contribute to Cardoza's federal committee with funds received from Cardoza's state Committee.⁶

In their joint response, respondents Dennis Cardoza, his state and federal committees and their treasurers deny any "conspiracy . . . to move 'dirty money' from the state committees into the 'clean' federal committee," and state that it is common practice in California for individuals in leadership positions, such as Cardoza, to make contributions to other state and local officeholders. Cardoza Response at 1-2. Moreover, these respondents provide information to show that Complainant had "selected only those instances where there had been mutual support . . . and ignored all of the rest" of the contributions made and received by Cardoza's state and federal committees, respectively, where there were no corresponding contributions. *Id.* at 2 and attachment.

In their response, Thomas Calderon for Assembly and Phillip J. Pace, as treasurer, assert there was no agreement, express or implied, that Tom Calderon for Assembly would contribute to Cardoza for Congress if Friends of Dennis Cardoza contributed to Tom Calderon for Assembly. The [Calderon] Committee made a decision to contribute to Mr. Cardoza's congressional effort before, and independent of, Friends of Dennis Cardoza's contribution to the Committee . . . there was no connection between the Committee's contribution to Cardoza for Assembly [sic] and its receipt of a contribution from Friends of Dennis Cardoza. That friends and colleagues should support one another reflects mutual respect, not evidence of money laundering.

⁶ The Carole Migden Leadership Committee and Rogers Sanders, as treasurer, and Re-Elect Assemblywoman Carole Migden and Roger Sanders, as treasurer, did not respond.

1 Calderon Response at 1-2. The response notes that Cardoza was running in one of
2 the most competitive congressional districts in the country, and that Calderon was a
3 long-time colleague and supporter of Cardoza. *Id.* at 1.

4 The joint response by Tony Cardenas for City Council, Tony Cardenas 2000 and their
5 treasurers includes a declaration by Cardenas stating that “[a]t no time did I or anyone employed
6 (either as an employee or independent contractor) by my campaign ever agree, promise or
7 indicate that I would reciprocate for contributions to one of my campaign committees by making
8 one or more contributions to Cardoza for Congress.” Cardenas Declaration at 5. Cardenas also
9 states that he knew Cardoza because they had both been elected to the State Assembly at the
10 same time and they were both members of the Assembly Democratic Party caucus leadership.
11 *Id.* at 2. With respect to the contributions from Cardoza’s state committee to his primary and
12 general election committees, Cardenas points out that they were received during very active
13 fund-raising periods and were among the many received by his committees from his Democratic
14 colleagues in the Assembly, and from committees of other elected California officials. *Id.* at 2-
15 4. With respect to his committee’s contribution to Cardoza’s federal committee, Cardenas
16 declares that he knew the race was competitive and needed a strong Democratic candidate, and
17 he believed that Cardoza was that candidate. *Id.* at 4. According to Cardenas, “it was this
18 fact—and this fact alone—which motivated my contribution.” *Id.*

19 Respondents Andrei Cherny for State Assembly and Stephen J. Kaufman, as treasurer,
20 “adamantly den[ied]” the allegations in the Complaint. Cherny Response at 1. Their response
21 asserts that the Cherny committee’s contribution to Cardoza’s federal committee, made “in
22 response to a general solicitation in order to support a like-minded candidate running for the
23 United States Congress,” predated the receipt of the contribution from Cardoza’s state

1 committee, and "neither Mr. Cherny, his campaign treasurer, nor anyone else associated with his
2 campaign had any conversations or communications with Mr. Cardoza or any agents of Mr.
3 Cardoza's campaign prior to making the contribution." *Id.* at 2.

4 The response from the Vince Hall for Assembly Committee and its treasurer states "there
5 is no connection" between the Committee's \$1,000 contribution to Cardoza's federal committee
6 and the \$3,000 it subsequently received from Cardoza's state committee. Hall Response at 2.
7 According to the response, "[t]he simple truth is that Vince Hall and Dennis Cardoza are friends
8 and supporters of each other. . . . [I]t is perfectly understandable that Mr. Cardoza and Mr. Hall
9 would want to support each other." *Id.* at 1.

10 Likewise, the Shelley for Secretary of State Committee and its treasurer "adamantly
11 den[ied] the allegations set forth in the NRCC's complaint." Shelley Response at 1. They
12 assert:

13 The fact that the Committee received a contribution from Friends
14 of Cardoza (Mr. Cardoza's State Assembly committee) prior to making the
15 contribution had no bearing whatsoever on the decision to contribute to Mr.
16 Cardoza's congressional campaign. At no time did Mr. Shelley, his
17 Committee or his Treasurer have any conversations or communications
18 with Mr. Cardoza or any agents of Mr. Cardoza's campaign regarding the
19 "swapping" of contributions as alleged by the NRCC.

20
21 *Id.* at 2. Rather, according to the response, since Mr. Shelley and Mr. Cardoza had served
22 together in the California State Assembly, "it was natural for Mr. Shelley to support his friend,
23 colleague and fellow Democrat's congressional campaign." *Id.* at 1.

24 Finally, the Latino Political Action Committee and its treasurer ("LPAC") state that
25 LPAC's contributions of \$1,605 were all tied to the purchase of tickets for specific Cardoza for
26 Congress functions or events. They also assert "there have never been any communication (sic)

1 with the Cardoza campaign regarding contributions either to or from either entity." LPAC
2 Response at 1.

3 **D. Analysis**

4 For the reasons discussed below, this Office recommends that the Commission find no
5 reason to believe that any of the respondents in this MUR violated 2 U.S.C. §§ 441a or 441f.⁷ In
6 their Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory
7 Committee, issued December 21, 2000), four Commissioners stated, "Absent personal
8 knowledge, the Complainant, at a minimum, should have made a sufficiently specific allegation
9 . . . so as to warrant a focused investigation that can prove or disprove the charge." In their
10 Statement of Reasons in MUR 5141 (Moran for Congress, issued March 11, 2002), six
11 Commissioners stated that a complaint may provide a basis for reason to believe findings if it
12 alleges "sufficient specific facts" that, if proven, would constitute a violation of the Act. The six
13 Commissioners also stated, however, that "[u]nwarranted legal conclusions from asserted facts
14 . . . or mere speculation, . . . will not be accepted as true," and that "a complaint may be dismissed
15 if it consists of factual allegations that are refuted by sufficiently compelling evidence produced
16 in responses to the complaint." *Id. See also Democratic Senatorial Campaign Comm. v. Federal*
17 *Election Comm'n*, 745 F. Supp. 742, 746 (D.D.C. 1996) (noting with approval the evidentiary
18 standard applied by the Commission at the reason to believe stage: "the alleged facts must
19 present something that is, in the broad sense, 'incriminating' and not satisfactorily answered by
20 respondents.") (citation omitted)

21 The only facts provided by Complainant, derived from public disclosure records, show a

⁷ While the Complainant's section 441a theory of liability is not explicitly set forth in the complaint, this Office assumes that Complainant is alleging that Cardoza's state committee, through conduits, made excessive contributions that were accepted by Cardoza's federal committee.

1 series of contributions between respondents that are legal on their face. Proof that these
2 contributions were actually made, therefore, would not be sufficient to show violations of the
3 Act. From these facts, Complainant speculates or draws unwarranted legal conclusions that
4 respondents engaged in an illegal reciprocal scheme to convert nonfederal funds from Cardoza's
5 state committee to contributions to his federal committee. Contrary to Complainant's
6 allegations, however, there is nothing--including their timing or amounts--that indicates that
7 these contributions were made "in a manner that raises suspicion." Complaint at 2. Without
8 more to support the allegations of an illegal scheme, there is not a "sufficiently specific
9 allegation" warranting "a focused investigation that can prove or disprove the charge," *see*
10 Statement of Reasons in MUR 4960, and Complainant's "unwarranted legal conclusions" and
11 "mere speculation" should not be credited. *See* Statement of Reasons in MUR 5141.
12 Accordingly, the complaint does not meet the threshold for finding reason to believe that any of
13 the respondents violated 2 U.S.C. §§ 441a or 441f. Further, as discussed above, the responses all
14 specifically denied the existence of any illegal scheme, and provided reasonable explanations for
15 the contributions. *See* Statement of Reasons in MUR 5141.

16 In MUR 4974 (Tiberi), the complaint alleged a similar conduit scheme involving
17 Representative Tiberi's state and federal committees. Because the Tiberi committees failed to
18 respond to the Commission's initial notification, the Commission found reason to believe they
19 had violated 2 U.S.C. § 441f (among other provisions) and entered into pre-probable cause
20 conciliation on that violation in the hope that they would respond. When the Tiberi committees
21 responded, they specifically denied any scheme to exchange nonfederal contributions for federal
22 contributions, and presented explanations for the contributions similar to the ones offered by the
23

1 respondents in this MUR. The Commission thereafter accepted this Office's recommendation
2 to remove the violations of 2 U.S.C. § 441f from the conciliation agreements. Here, the
3 Commission already has in hand the primary respondents' (and most of the other respondents')
4 specific denials of a conduit scheme, as well as their reasonable countervailing explanations,
5 and therefore can make no reason to believe findings at this time.

6 Based on the above, this Office recommends that the Commission find no reason to
7 believe: that Dennis Cardoza violated any provision of the Act or the Commission's regulations;
8 that Cardoza for Congress and Gregory Ray Olzack, as treasurer and Friends of Dennis Cardoza
9 and Cathy Paskin, as treasurer violated 2 U.S.C. §§ 441a or 441f; that Tom Calderon for
10 Assembly and Yolanda Miranda, as treasurer; Tony Cardenas 2000 and Kinde Durkee, as
11 treasurer; Tony Cardenas for City Council, and Kinde Durkee, as treasurer; Andrei Cherny for
12 State Assembly and Stephen J. Kaufman, as treasurer; Vince Hall for Assembly and Mary Ellen
13 Padilla, as treasurer; the Latino Political Action Committee and Louis Moret, as treasurer;
14 Carole Migden Leadership Committee and Roger Sanders, as treasurer; Re-Elect
15 Assemblywoman Carole Migden and Roger Sanders, as treasurer; and Shelley for Secretary of
16 State and Jay Wallace, as treasurer, violated 2 U.S.C. § 441f.

17 However, Friends of Dennis Cardoza made a \$1,000 contribution to Cardoza for
18 Congress on February 25, 2002, which the federal committee reported as received on February
19 27, 2002. 11 C.F.R. § 110.3(d) bans transfers from a candidate's campaign committee for a
20 nonfederal election to the candidate's campaign committee for a federal election. *See* MUR
21 4974 (Commission found reason to believe that transfers from candidate's state committee to
22 his federal committee violated 11 C.F.R. § 110.3(d)). Therefore, this Office recommends that
23 the Commission find reason to believe that Friends of Dennis Cardoza and Cathy Paskin, as

1 treasurer, and Cardoza for Congress and Gregory Ray Olzack, as treasurer, violated 11 C.F.R.
2 § 110.3(d). However, this Office also recommends that the Commission take no further action,
3 send an admonishment letter, and close the file with respect to these respondents for the
4 following reasons: Cardoza for Congress refunded the contribution to Friends of Dennis
5 Cardoza on September 19, 2002, before the complaint was filed; the dollar amount is relatively
6 small; and taking no further action will conserve Commission resources. With respect to
7 Dennis Cardoza himself, this Office recommends that the Commission find no reason to believe
8 that he violated 11 C.F.R. § 110.3(d), as there is no information in the complaint or otherwise
9 currently available that shows that Cardoza was personally involved in this contribution. This
10 Office also recommends that the Commission close the file as to Cardoza. Finally, this Office
11 recommends that the Commission close the file as to all of the other respondents in this matter.

12 **III. RECOMMENDATIONS**

- 13 1. Find no reason to believe that Dennis Cardoza violated any provision of the Federal
14 Election Campaign Act or regulations in connection with MUR 5304 and close the file as
15 to him.
16
- 17 2. Find no reason to believe that Cardoza for Congress and Gregory Ray Olzack, as
18 treasurer, violated 2 U.S.C. §§ 441a(f) or 441f.
19
- 20 3. Find reason to believe that Cardoza for Congress and Gregory Ray Olzack, as treasurer,
21 violated 11 C.F.R. § 110.3(d), take no further action and send an admonishment letter.
22
- 23 4. Find no reason to believe that Friends of Dennis Cardoza and Cathy Paskin, as treasurer,
24 violated 2 U.S.C. §§ 441a(a) or 441f.
25
- 26 5. Find reason to believe that Friends of Dennis Cardoza and Cathy Paskin, as treasurer,
27 violated 11 C.F.R. § 110.3(d), take no further action and send an admonishment letter.
28
- 29 6. Find no reason to believe that Tom Calderon for Assembly and Yolanda Miranda, as
30 treasurer, violated 2 U.S.C. § 441f.
31
- 32 7. Find no reason to believe that Tony Cardenas 2000 and Kinde Durkee, as treasurer,
33 violated 2 U.S.C. § 441f.
34

8. Find no reason to believe Tony Cardenas for City Council, and Kinde Durkee, as treasurer, violated 2 U.S.C. § 441f.
9. Find no reason to believe that Andrei Cherny for State Assembly and Stephen J. Kaufman, as treasurer, violated 2 U.S.C. § 441f.
10. Find no reason to believe that Vince Hall for Assembly and Mary Ellen Padilla, as treasurer, violated 2 U.S.C. § 441f.
11. Find no reason to believe that the Latino Political Action Committee and Louis Moret, as treasurer, violated 2 U.S.C. § 441f.
12. Find no reason to believe that the Carole Migden Leadership Committee and Roger Sanders, as treasurer, violated 2 U.S.C. § 441f.
13. Find no reason to believe that Re-Elect Assemblywoman Carole Migden and Roger Sanders, as treasurer, violated 2 U.S.C. § 441f.
14. Find no reason to believe that Shelley for Secretary of State and Jay Wallace, as treasurer, violated 2 U.S.C. § 441f.
15. Approve the appropriate letters.
16. Close the file.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

1/21/04
Date

BY:

Susan L. Lebeaux
Susan L. Lebeaux
Assistant General Counsel

Ruth Heilizer
Ruth Heilizer
Attorney

Attachment:
Revised contribution chart

Contributions from Cardoza's Assembly Account (Friends of Dennis Cardoza) to:	Contributions to Cardoza's Congressional Account (Cardoza for Congress) from:
Shelley for Secretary of State 12/21/2001--\$1,000.00 01/21/2002 -- \$1,000.00	Shelley for Secretary of State 12/26/2001--\$1,000.00
Andrei Cherny for State Assembly 02/06/2002 --\$3,000.00 <u>02/15/2002</u> (according to state disclosure reports)	Andrei Cherny for State Assembly 02/12/2002 --\$1,000.00 <u>02/4/2002</u> (according to contribution check provided by Cherny Respondents)
Tony Cardenas 2000 01/10/02 --\$900.00 <u>Tony Cardenas for LA City Council</u> <u>11/08/2001</u> --\$500 <u>01/21/2002</u> --\$500 (according to Cardoza's FEC reports)	Tony Cardenas for LA City Council 01/21/2002 --\$500.00 11/08/2001 --\$500.00 <u>Tony Cardenas 2000</u> <u>01/10/02</u> --\$900 (according to Cardoza's FEC reports)
Thomas Calderon for Assembly Friends of Tom Calderon (according to state disclosure reports) 01/21/2002--\$3,000.00	Thomas Calderon For Assembly 12/31/2001--\$1,000.00 05/17/2002--\$1,000.00
Latino Political Action Committee 06/07/2002--\$5,000.00 10/09/2001--\$250.00	Latino Political Action Committee 06/21/2002--\$500.00 01/31/2002--\$895.00 01/31/2002--\$105.00 <u>11/29/2001--\$105.00</u> 01/31/2002--\$895.00 01/31/2002--\$105.00 06/21/2002--\$500.00 (According to LPAC's response and Cardoza's FEC records)
Carole Migden Leadership Committee 12/21/2001--\$1,500.00	Re-Elect Assemblywoman Carole Migden 01/04/2002--\$1,000.00
Vince Hall For Assembly 02/14/2002--\$2,000.00 02/06/2002--\$1,000.00	Vince Hall For Assembly 01/31/2002--\$1,000.00