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BEFORE THE
FEDERAL ELECTION COMMISSION
OF THE
UNITED STATES OF AMERICA

RECEIVED
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OPERATIONS CENTER

2003 APR 18 P 4: 18

2003 APR 18 P 2: 32

In the Matter of:

Alfred C. Sharpton
Rev. Al Sharpton Presidential Exploratory Committee)
Respondents

MUR: 5363

SENSITIVE

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2003 APR 18 P 2: 51

COMPLAINT

NATIONAL LEGAL AND POLICY CENTER, a corporation organized and existing under the District of Columbia Non-profit Corporation Act and having its offices and principal place of business at 107 Park West Court, Falls Church, VA 22046, files this Complaint with the Federal Election Commission in accordance with the provisions of 2 U.S.C. §437g(a)(1) in the belief that Respondents violated provisions of the Federal Election campaign Act of 1971, as amended, 2 U.S.C. §§431, *et seq.*

The primary purpose of the National Legal and Policy Center, a charitable and educational organization described in section 501(c)(3) of the Internal Revenue Code, is to foster and promote ethics in government. In furtherance of that purpose, National legal and Policy Center educates the public about the "Code of Ethics for Government Service," as adopted by a Joint Resolution of Congress on July 11, 1958. It endeavors to ensure compliance by people in public life with provisions of the Code and the laws of the United States. The apparent violations alleged herein represent a serious lack of compliance with the law by a federal candidate and his campaign committee.

RESPONDENTS

ALFRED C. SHARPTON, 1941 Madison Avenue, New York, N.Y. 10035, (hereinafter "Sharpton") has been raising funds since August 2002 for a campaign for the Democratic Party nomination for President for the 2004 election.

REV. AL SHARPTON PRESIDENTIAL EXPLORATORY COMMITTEE (hereinafter "the Committee"), Post Office Box 25812, Washington, D.C. 20007 is the designated fund raising committee for Sharpton's presidential campaign.

FACTS

The facts supporting this complaint are found in press accounts regarding Sharpton's campaign and are fully cited where appropriate.

In an article by reporter Steve Miller appearing in the April 18, 2003 *Washington Times* (see "Sharpton won't file report with FEC - Says candidacy is not yet official"), it was reported that Sharpton had stated on April 17, 2003 that he will not file a quarterly financial report with the Federal Election Commission, required of presidential candidates, until he makes an official announcement of his intent to run later this spring.

The article cited FEC commission officials as saying that Sharpton "had registered his campaign in January - something required once a candidate receives \$5,000 in contributions or spends \$5,000 on campaign activities - they expected him to file the quarterly report."

The essential facts supporting this complaint are beyond dispute:

- Since August 2002, Sharpton has been openly soliciting funds for his exploratory committee. (See "Taking it to the Streets" by Mark Halperin, Elizabeth Wilner, & Marc Ambinder, Jan. 6, 2003, ABCNEWS.Com)
- Sharpton has also held fundraisers for his committee, the first in September 2002. (See "Taking it to the Streets" by Mark Halperin, Elizabeth Wilner, & Marc Ambinder, Jan. 6, 2003, ABCNEWS.Com)
- The website for Sharpton's committee is openly soliciting contributions to be sent to Rev Al Sharpton Presidential Exploratory Committee, P.O. Box 25812, Washington, D.C. 20007.
(See <http://www.sharptonexplore2004.com/contribute.htm>)

APPARENT VIOLATIONS

Since Sharpton's Committee has been raising and spending funds since August 2002 and it registered its existence with the Federal Election Commission in January 2003, why hasn't the Committee filed its quarterly report like all of the other candidates for the Democratic Party nomination in 2004? The short answer is that it should have.

The gravamen of this complaint is quite simple: under the Federal Election Campaign Act and Federal Election Commission regulations, Sharpton's Committee was required to have filed its quarterly report. The explanation offered by Sharpton on April 17, 2003 that he doesn't have to file reports until he "officially" announces is nonsense and is not supported by any reading of the Act or regulations nor is it supported by any precedent or FEC Advisory Opinion.

Numerous public activities by Sharpton and his Committee clearly indicate that the narrow exception found in FEC regulations for "testing-the-waters" does not apply in this case.

First, the regulatory definition of contribution applies the "testing-the-waters" exception only when

"Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions."

(emphasis added) 11 C.F.R. § 100.7(b)(1)

Funds raised that serve other campaign purposes must be disclosed in reports filed with the FEC.

Second, even a cursory examination of news accounts shows that Sharpton is raising and expending funds for campaign activities far beyond those specifically approved for an individual considering whether to be a candidate. The types of activities cited by the FEC regulations undertaken by an individual weighing a candidacy include polling, telephone calls and travel. 11 C.F.R. § 100.7(b)((1)(i)

Third, Sharpton through his Committee have undertaken numerous political activities which are specifically cited in FEC regulations as activities which do not meet the exploratory campaign exception. The relevant guidance can be found at 11 C.F.R. § 100.7(b)(ii):

This exception does not apply to funds received for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(A) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(B) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(C) The candidate makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(D) The individual conducts activities in close proximity to an election or over a protracted period of time.

In Sharpton's case, he has hosted numerous fundraising events, conducted political activities over a protracted period of time (eight months), solicited and received endorsements, used Committee funds to publicly advertise his campaign (including a web page at <http://www.sharptonexplore2004.com>), and participated in a variety of public events, including candidate events featuring other candidates for the 2004 Democratic Party nomination for President.

Moreover, Sharpton's Committee has already filed its registration with the FEC, spent far in excess of \$5,000, and is clearly amassing funds to be spent on Sharpton's candidacy.

CONCLUSION

Sharpton is clearly a candidate and his Committee is required to file quarterly reports.

Financial disclosure through reports filed with the FEC is the very heart of Federal election law. Therefore the media and the public is entitled to have access to the Sharpton Committee's information.

Anything less than action to compel disclosure sets an unfortunate precedent that rewards candidates who break the law.

NATIONAL LEGAL AND POLICY CENTER
107 Park Washington Court
Falls Church, VA 22046
Tel: (703) 237-1970
Fax: (703) 237-2090
www.nlpc.org

By: Kenneth F. Boehm
Kenneth F. Boehm
Chairman

Subscribed and sworn before me this 18th day of April 2003

State of Virginia

My Commission Expires:

Embossed Hereon Is My
Commonwealth of Virginia Notary Public Seal
My Commission Expires October 31, 2003
JUDITH V. LEAPLEY

Judith V. Leapley
Notary Public

The Washington Times

www.washingtontimes.com

Sharpton won't file report with FEC

Steve Miller
THE WASHINGTON TIMES

Published April 18, 2003

The Rev. Al Sharpton said yesterday that he will not file a quarterly financial report with the Federal Election Commission, required of presidential candidates, until he makes an official announcement of his intent to run later this spring.

"We are in the late stages of the exploratory phase," Mr. Sharpton said, answering questions during an appearance at George Washington University. "We will do whatever is required when we make an official announcement ... next, we will get together our campaign staff."

Earlier in the day, Mr. Sharpton's aides said that the quarterly report did not apply to them because the campaign was only exploratory, citing the advice of the candidate's lawyers.

Mr. Sharpton was the lone Democrat of the nine who have appeared at various candidate forums not to turn in a quarterly financial report by Tuesday's deadline.

His campaign treasurer, Luis Miranda, and a key adviser, Roberto Ramirez, did not return calls. A longtime Sharpton attorney, Sanford Rubenstein, declined to comment.

Election commission officials said that since Mr. Sharpton registered his campaign in January — something required once a candidate receives \$5,000 in contributions or spends \$5,000 on campaign activities — they expected him to file the quarterly report.

"He registered with us. We were expecting a report, because we assumed with the registration he crossed the threshold," said Kelly Huff, spokeswoman for the election commission.

She said the commission would evaluate whether Mr. Sharpton should have filed if and when someone challenges Mr. Sharpton's failure to file.

Any penalty the FEC might assess if he were found delinquent would depend on how many days late his filing is, what kind of money he raised, and what explanation he had for being late.

Several insiders and people around Mr. Sharpton have portrayed his inner circle as disjointed and in need of organization.

The failure to file a campaign-finance report, even if he did not have the \$5,000 minimum to report, "will just give people a reason to dismiss him," said one Sharpton supporter.

"This just hurts his credibility," the source said on the condition of anonymity. "I don't know why this happens."

Last night, Mr. Sharpton delivered a 20-minute speech to 150 George Washington students, most of them white, outlining his criticisms of President Bush's leadership, the refusal of the Augusta National Golf Club to have female members, and affirmative action.

Mr. Sharpton did not criticize, or even mention, his opponents in the Democratic primary, all of whom have been fair game during most of his previous public speaking engagements.

He did allude to the overall Democratic defeat in last fall's elections, contrary to the midterm victories usually won by the party out of the White House.

"We must bring more people to the party," Mr. Sharpton said. "And if we run the same traditional clubhouse campaign, we will get the same results as 2002."

• *Stephen Dinan contributed to this report.*

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