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December 22, 2003

**Via Hand Delivery**

Lawrence H. Norton, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

RE: MUR 5390 -- Robert Mitchell Delk and Amanda Delk

Dear Mr. Norton:

This is in response to the October 22, 2003 letters that the Federal Election Commission ("FEC" or "Commission") sent to Robert Mitchell Delk and his wife, Amanda Delk (the "Delks") notifying them of a complaint filed by Public Citizen and Public Citizen's Congress Watch (collectively "Public Citizen"). In particular, Mr. Delk hosted various fundraisers at Galileo Restaurant ("Galileo") during the 2001-2002 election cycle where the Delks paid Galileo for the food served at the fundraisers. Public Citizen claims that Galileo under-charged the Delks for the food served at those events, and thus, the Delks may have under-reported, and made excessive, in-kind contributions to campaigns in connection with those fundraisers.<sup>1</sup> This claim against the Delks and Galileo is legally and factually unfounded.

**1. Background on Galileo Arrangement**

Mr. Delk and Michael Nayeri, who was at that time the Manager of Galileo, had a commercially reasonable arrangement under which (1) Mr. Delk would commit in advance to host approximately 25 dinners a year at Galileo during the 2001-2002 period, (2) the Delks would guarantee to pay Galileo for a minimum

<sup>1</sup> Public Citizen also claims that Epiphany Productions, Inc. ("Epiphany") made impermissible corporate contributions to campaigns by organizing nineteen (19) fundraisers during the 2001-2002 election cycle without being paid for those services. This response does not address the above claim against Epiphany given that it does not allege any violation by the Delks.

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of twenty (20) dinners per event even if fewer than that number actually attended, and (3) the menu would be limited (with smaller portion sizes) and selected by Galileo and not the Delks. See attached Delk affidavit, Galileo's Letter to the Editor ("Letter to Editor"), and e-mail from Mr. Nayeri to Washington Post ("Post E-Mail").

The Delks guaranteed payment for a minimum of twenty (20) dinners per event by paying Galileo a specified flat fee depending on how many people attended the dinner -- \$500 (for 1 to 20 attendees), \$750 (for 21 to 30 attendees), and \$1,000 (for 31 to 40 attendees). See Id. As noted above, the Delks had to pay Galileo the relevant flat fee even if the maximum number of people in that flat fee category did not attend. For example, if twenty-one (21) people showed up at a fundraiser, the Delks had to pay Galileo \$750, the same as if thirty (30) people had attended. Indeed, most of the dinners only had twelve (12) to fifteen (15) attendees for which the Delks paid the \$500 flat fee as if there were twenty (20) attendees. See attached Post E-Mail.

The above payment schedule was based on a \$25 per attendee charge. Please note that in most cases, only twelve (12) to fifteen (15) people attended, and not the maximum twenty (20), making the charge per attendee much higher. The \$25 amount was in turn based on the approximately \$20 that Galileo charged other patrons for a comparable meal during its D.C. Restaurant week promotion. See attached Delk affidavit, Letter to Editor, and Post E-Mail. Mr. Nayeri assured Mr. Delk that Galileo would provide the above arrangement to any patron.

## **2. There Was No Violation of FECA**

Under the above arrangement, Galileo did not, for purposes of the Federal Election Campaign Act of 1971, as amended, ("FECA"), under-charge the Delks for the fundraising dinners. However, even if the Delks had been under-charged, it would not constitute a violation (i.e., an excessive in-kind contribution) on the part of the Delks. Any food that was under-charged by Galileo cannot be viewed as an in-kind contribution from the Delks, but rather as an in-kind contribution from Galileo. Indeed, if services are provided at less than usual or normal charge, the difference between that charge and the amount actually charged is deemed to be a contribution "from the seller." FEC Advisory Opinion ("AO") 1982-30 (citing 11 C.F.R. § 100.7(a)(1)(iii), which is now § 100.52(d)(1)). The only in-kind contributions that can be considered as coming from the Delks are the payments they made to Galileo for the fundraising dinners, which Public Citizen acknowledges were within applicable contribution limits.<sup>2</sup> Moreover, contributors, such as the

<sup>2</sup> In a footnote to the complaint, Public Citizen attempts to erroneously imply a violation by stating that contributions to Republicans are reported in the FEC records as coming from "Mitch Delk" and "Mandy Delk" while contributions to

Delks, are not subject to reporting requirements under FECA, as erroneously suggested by Public Citizen. Thus, even if Public Citizen's claims were true, they would not constitute a violation by the Delks.

Galileo also did not make an in-kind contribution, and thus did not violate FECA, in that Galileo charged the Delks, in the normal course of its business, the usual and normal amount for the dinners as required under FECA. See 11 C.F.R. § 100.52(d); see, also, FEC AOs 1982-30, 1985-28, 1987-24, and 1989-14. Galileo's decision to enter into the arrangement was based solely on commercial and economic considerations and was not in any way related to political considerations. It is apparent that Galileo entered into the arrangement to increase the volume of business at the restaurant in that Mr. Delk guaranteed a minimum number of events and a payment that is commensurate with a minimum number of attendees, even though that minimum number did not actually attend in most cases. Moreover, the Delk events attracted patrons who are likely to return to the restaurant, and in many instances, attendees stayed after the event and purchased drinks at their own expense. See attached affidavit. Indeed, although Mr. Delk informed Mr. Nayeri that the dinners would be in connection with holding fundraisers, Galileo did not provide the arrangement because of its political interest but because of the above commercial interest. This commercial interest was recognized by the Commission in AO 1982-30, in which the Commission determined that discounted restaurant charges qualified as being "usual and normal charges" under FECA because they were provided "to attract business to the restaurant." In the case of Galileo, there was not even a discount in that the food provided in the limited menu was commensurate with the price being charged.

Given that the arrangement with the Delks solely served a commercial purpose, Galileo would have provided the same arrangement to other non-political patrons. See attached Letter to Editor and Post E-Mail. Indeed, the \$25 per attendee charge was based on the approximately \$20 that Galileo charged other patrons for a comparable meal during its D.C. Restaurant week promotion. As noted above, only twelve (12) to fifteen (15) people attended in most cases, and not the maximum twenty (20), making the charge per attendee higher. This charge was for a limited menu (with smaller portions) that was selected by Galileo and which was commensurate with the \$25 per attendee charge. Moreover, Mr. Nayeri told Mr.

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Democrats are reported as coming from "Robert Delk" and "Amanda Delk." This distinction does not stem from the candidates' party affiliation. Rather, if a contribution was made by cutting a check directly to a campaign, it would be reported as coming from "Robert Delk" and "Amanda Delk" given that those names are printed on the face of the check. However, when notifying a campaign of an in-kind contribution, the notice letters used the names "Mitch Delk" and "Mandy Delk."

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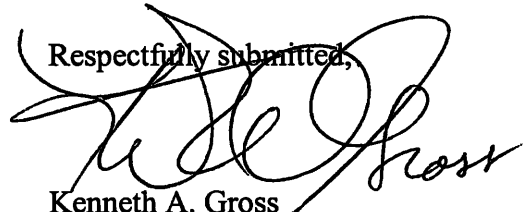
Delk that Galileo would provide the same arrangement to other patrons. Thus, Galileo charged the Delks the usual and normal amount for the fundraising dinners that it would have charged other non-political patrons and no in-kind contribution resulted.

Notwithstanding the above, please note that even if Galileo had charged less than the usual and normal amount for the fundraising dinners, it still would not result in a contribution. Indeed, Commission rules permit a restaurant to provide food to a campaign at less than its usual and normal charge without it resulting in an in-kind contribution as long as the charge is at least equal to the cost of the food and the discount does not exceed \$1,000 per candidate. 11 C.F.R. § 100.78. In this case, to the extent that any discount may have been given, if any, it would not exceed \$1,000 to any campaign.

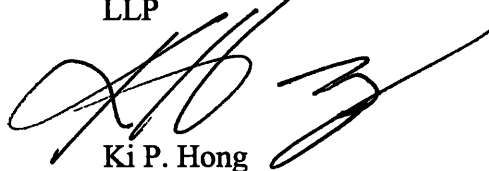
**3. Conclusion**

Based on the foregoing, we request that the Commission not take any further action in this matter.

Respectfully submitted,



Kenneth A. Gross  
Skadden, Arps, Slate, Meagher & Flom  
LLP



Ki P. Hong  
Skadden, Arps, Slate, Meagher & Flom  
LLP

Attorneys for Robert Mitchell Delk and  
Amanda Delk

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**Federal Election Commission  
Affidavit of Robert Mitchell Delk**

I, Robert Mitchell Delk, under the penalty of perjury, state that to the best of my knowledge:

1. During the 2001-2002 period, my wife, Amanda Delk, and I paid Galileo Restaurant ("Galileo") for the dinners served at various federal candidate fundraisers which we hosted. We made these payments as personal in-kind contributions to those candidates.
2. I made advance arrangements regarding those dinners with Michael Nayeri, who was at that time the Manager of Galileo. Under this arrangement,
  - (a) I committed that I would host approximately 25 dinners a year at Galileo during the 2001-2002 period.
  - (b) I guaranteed a payment to Galileo for a minimum of 20 dinners per event even if fewer than that number actually attended. Specifically, my wife and I would pay Galileo a specified flat fee depending on how many people attended the dinner -- \$500 (for 1 to 20 attendees), \$750 (for 21 to 30 attendees), and \$1,000 (for 31 to 40 attendees).
  - (c) The menu would be limited, with smaller portion sizes, and would be selected by Galileo and not by me.
3. The payment schedule, described in item 2 above, was based on a per attendee charge of no less than \$25. In many cases, fewer than 20 people attended making the charge per attendee higher. Mr. Nayeri informed me that the price of \$25 was established because Galileo charged patrons approximately \$20 for a comparable meal during its D.C. Restaurant week promotion.
4. I informed Mr. Nayeri that the events in question would be fundraisers. Mr. Nayeri expressed to me that he was entering into the above arrangement because it was good business for Galileo. Mr. Nayeri told me that Galileo would provide the above arrangement on the same terms to any patron.

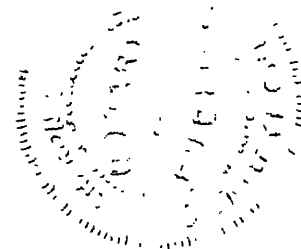
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5. In many instances, fundraiser attendees stayed after the event at Galileo to have drinks at their own expense.

  
Robert Mitchell Delk

Sworn to and subscribed before me this  
19<sup>th</sup> day of December 2003.

  
Notary Public  
My commission expires November 14, 2005



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Editor  
The Washington Post  
1150 15th Street, N.W.  
Washington, D.C. 20071

August 7 2003

To the Editor:

Your August 4<sup>th</sup> article, "Influence by Volume: Freddie Mac Lobbyist Got a Big Discount on GOP Fundraising Dinners at Galileo" incorrectly suggests that Mitchell Delk or Freddie Mac received a discounted arrangement at Galileo that is not available to other customers. The events held by Mr. Delk, as well as separate events held by Freddie Mac, were based on pricing arrangements commonly made at Galileo and throughout the restaurant and hospitality industry generally.

Here are the facts: Mr. Delk committed in advance to hold approximately 25 dinner events at Galileo during the course of the year. The meals served at Mr. Delk's dinners are based on the "Restaurant Week" menu that Galileo and other area restaurants advertise in the Washington Post for about \$20.00. The meals are a limited, set menu of three courses selected by the house, not by Mr. Delk or his guests. Mr. Delk was charged a rate of \$500 per 20 guests, or \$25 per guest per dinner. This is a commercially reasonable price, and would be available to anyone wishing to commit to multiple dinner events under the same circumstances (with a limited, house selected menu). Moreover, Mr. Delk guarantees a minimum of 20 persons for each event, and is charged for 20 even if fewer guests are present. We commonly use this kind of arrangement when the exact number of guests is not known in advance. (Typically, about a dozen or so guests attend Mr. Delk's dinners, resulting a per head charge of about \$40.00, well in excess of the price we charge for the similar Restaurant Week meals).

When your reporter contacted Galileo for a price on a dinner banquet, she apparently asked for a different kind of arrangement and was therefore quoted a different price. There is no mystery about that: the product and service requested by your reporter were different than that of Mr. Delk's dinners. In short, the price we charge Mr. Delk is a fair price and would be the same for anyone who asked for the same arrangements. Just ask the hundreds of guests who are served the similar Restaurant Week meal for \$20.03!

**Ristorante Italiano**

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Website: [www.robertodonna.com](http://www.robertodonna.com)

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**Galileo**  
da Roberto Donna

Your readers may also be confused by the references in the story to Freddie Mac. Like many area companies, Freddie Mac hosts corporate events at Galileo. These events are separately planned, priced, invoiced and paid for by Freddie Mac, and are not related to Mr. Delk's events. Mr. Delk is invoiced to his home and pays with his personal check.

Thank you for allowing me to set the record straight.

General Manager

*M. Nayeri*

Michael Nayeri

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TO: Ms. Kathleen Day, Washington Post

This is in response to your inquiries regarding Mr. Mitch Delk's fundraising dinners at Galileo.

As you know, Mr. Delk does a large number of dinners at Galileo. It is common practice for Galileo to offer a discounted price on a set menu for repeat customers. We would give the same deal to anyone who would commit to multiple dinners of the type hosted by Mr. Delk. They would be charged the same price as we charge Mr. Delk for the same type of dinner. Mr. Delk pays us in full with a check at the end of each dinner based on the head count

The price for the dinner is based on a set tasting menu. It is not comparable to the regular dinner menu. The price is based on the following factors:

- The number of dinners held here by Mr. Delk.
- The menus for Mr. Delk's dinners are limited, not the regular dinner menu.
- The portion sizes are sampler sizes, not the full meal.

Mr. Delk's dinners are based on the menu we do for "restaurant week", for which we charge \$19.95.

The price we charge for this type of dinner, depending on the number of dinners committed to and availability of facilities, is set as follows:

For a guarantee of 20 persons, \$500.00

(Most of Mr. Delk's events include 12-15 dinners, but he pays for 20).

If more than 20 dinners, but less than 30, our price is \$750.00

If more than 30 dinners, but less than 40, our price is \$1000.00.

Again, this is the price available for multiple dinners of this type, assuming our facilities are available.

During each dinner, I do a head count. After each dinner, Mr. Delk gives me a check based on the head count, and I give him a receipt for payment in full.

I hope this answers your questions, and I hope you will join us at Galileo for lunch or dinner in the near future.

Mike Nayeri  
General Manager  
Galileo

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