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**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

FROM: Allan D. Silberman  
Director, ADR Office

BY: Lynn M. Fraser  
Assistant Director, ADR Office

SUBJECT: Case for ADR Activation

DATE: April 22, 2004

**SENSITIVE**

On March 19, 2004 the ADR Office received from CELA the following case to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 159/AR 04-02, is appropriate for ADR and recommend that it be assigned to the ADR Office.

**ADR 159/AR 04-02:** An audit of contributions for the 2002 election for Battles for Congress revealed thirteen (13) individuals who exceeded the contribution limit for the Primary Election. The aggregate of these contributions totaled \$8,350. In addition, since the candidate was not involved in the General Election, Respondents Battles for Congress and Gil Baird, Treasurer ("Respondents") were required to reattribute, redesignate, or refund those contributions designated for the General Election. The audit identified another seven (7) contributors who had given contributions totaling \$4,425 which Respondents disclosed as designated to the General Election. These seven individuals had contributed the maximum to the Primary Election. Respondents informed Audit staff that there were insufficient funds to make refunds to the identified contributors. Respondents disclosed the refund amounts due to the identified contributors as debts beginning on its 2003 July Quarterly Report.

Attached for the Commission's review is the *ADR Case Analysis Report* on **ADR 159**, along with copies of the Audit Finding, EPS II Rating and ADR Rating reports. The *ADR Case Analysis Report* includes an analysis of the case and a description of the issues that the ADR Office anticipates addressing if the case is assigned to ADR. In addition, the *ADR Case Analysis Report* has been reviewed by OGC, which concurs in the description of the case.

**Recommendation:** We recommend that **ADR 159/AR 04-02** be assigned to the ADR Office for processing.

## ADR CASE ANALYSIS REPORT

**ADR Case:** 159

**Respondents:**

Battles for Congress

Gil Baird, Treasurer

**AR:** 04-02

**Date Audit Report Approved:** 01/6/04

**Respondents' Rep.:** Gil Baird, Treasurer

**Date Audit Forwarded to OGC:** 01/15/04

**Committee Type:** Authorized

**Date Forwarded to ADRO:** 03/18/04

**Committee Name:** Battles for Congress

**Date Reviewed by ADRO:** 03/25/04

**District & State:** RI 1<sup>st</sup> CD

**Election Cycle:** 2002

**Election - Won/Lost:** Lost Primary

**Summary of Referral:** Audit identified, in a review of contributions following the 2002 election, thirteen (13) individuals that exceeded the limitation for the Primary Election by \$8,350. Ten (10) of the individuals contributed more than the limit using a check with a single account holder name imprinted on the check. Respondents could not presumptively reattribute portions of the contributions to other individuals, nor seek redesignation of the contributions as the candidate lost in the Primary Election. Two of the thirteen individuals gave \$2,000 each using their joint bank account, but each spouse already had contributed the maximum amount to the Primary Election. The remaining individual gave an in-kind contribution of \$1,900, and the excessive portion of this contribution could not be reattributed to another individual.

In addition, since the candidate was not involved in the General Election, Respondents were required to reattribute, redesignate, or refund those contributions designated for the General Election. Audit staff identified another seven (7) contributors who had given contributions totaling \$4,425 which Respondents disclosed as designated to the General Election. These seven individuals had contributed the maximum \$1,000, allowed under the statute in effect at that time, to the Primary Election.

**Alleged Violations:** 2 U.S.C. §§ 441a(a)(1)(A), 441a(f), 11 C.F.R. §§ 103.3(b)(3), 103.3(b)(4), 103.3(b)(5), 110.1(a), 110.1(b), 110.1(k)(3)(ii)(B).

**Respondents' Reply to Audit:** Respondents stated that there were insufficient funds to make refunds to the identified contributors. In response to the recommendation in the interim audit, therefore, Respondents disclosed the refund amounts due to those individuals as debts beginning on its 2003 July Quarterly Report.

**Analysis:** Under the statute in effect at the time of the violations, an authorized committee could not receive more than a total of \$1,000 per election from any one contributor. If the committee accepts contributions for the General Election and the candidate loses in the Primary Election, or withdraws prior to the General Election, the committee must seek redesignation or refund the contributions within sixty (60) days of the Primary Election. If a committee receives a contribution that appears excessive on its face, the committee must either return the questionable check to the donor, or deposit the contribution in its federal account while seeking redesignation or reattribution of the contribution. The committee must maintain enough money in the account to cover all potential refunds. The treasurer should make a written notation of why the contribution may be illegal and include this explanation on schedule A if the contribution must be itemized on a report before its legality is established. If unable to obtain a proper redesignation or reattribution within 60 days after receiving the excessive contribution, the committee must refund the excessive portion to the donor.

The contributions relevant to this referral were evaluated under the new regulations which allow committees greater latitude to reattribute contributions to joint account holders.

**Issues:**

- contribution limits 2 U.S.C. § 441a(a)(1)(A), 11 C.F.R. §§ 110.1(a), 110.1(b)
- committee acceptance of illegal contributions 2 U.S.C. § 441a(f), 11 C.F.R. § 110.9(a)
- deposit of receipts 11 C.F.R. §§ 103.3(b)(3), 103.3(b)(4), 103.3(b)(5)
- joint contributions and reattribution 11 C.F.R. § 110.1(k)(3)(ii)(B)

**ADR Director's Recommendation: Assign to ADRO**