



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 24 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul Rolf Jensen, Esq.
650 Town Center Drive
12th Floor
Costa Mesa, CA 92626

RE: MUR 5408
Roger J. Stone, Jr.

Dear Mr. Jensen:

On February 24, 2005, the Federal Election Commission notified your client, Roger J. Stone, Jr., 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 client at that time.

Upon further review of the allegations contained in the complaint, the Commission, on May 3, 2005, found that there is reason to believe your client, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Please note that Respondents have an obligation to preserve all documents, records and materials relating to the Commission's investigation.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. 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

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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.

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 investigation to be made public.

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

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis

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

FACTUAL AND LEGAL ANALYSIS

Respondent:

Roger Stone

MUR: 5408

I. INTRODUCTION

The amended complaints in this matter allege that Reverend Alfred C. Sharpton and his principal campaign committee; Sharpton 2004 (f/k/a the Rev. Al Sharpton Presidential Exploratory Committee) received excessive in-kind contributions from Roger Stone between 2003 and 2004.¹ After evaluating all available information, the Commission finds reason to believe that Roger Stone violated the Federal Election Campaign Act of 1971, as amended ("the Act").

II. BACKGROUND

A. Identities of Respondents and Related Principal Actors

1. *Reverend Alfred C. Sharpton and Sharpton 2004*

Sharpton was a candidate for the Democratic Party's nomination for President of the United States in the 2004 primary election. Sharpton's principal campaign committee is

¹ The vast majority of the events discussed in this Factual and Legal Analysis occurred after the effective date of BCRA and its corresponding regulations. Therefore, this Report analyzes the relevant portions of the Act and its corresponding regulations, including those amendments implemented by BCRA, Pub. L. No. 107-155, and those regulations promulgated to implement the BCRA amendments.

1 Sharpton 2004.² Although he has never held public office, Sharpton has been a federal candidate
2 on three prior occasions, having run in New York's Democratic primaries for the United States
3 Senate in 1978, 1992 and 1994. Both prior to and during his presidential candidacy, Sharpton,
4 who has a national reputation as a civil rights activist, served as President of the non-profit
5 corporation, the National Action Network, Inc.

6 2. *National Action Network, Incorporated ("NAN")*

7 NAN, a domestic non-profit organization incorporated in the state of New York in 1994,
8 was founded by Sharpton in 1991 as an outlet for his civil rights work. The organization appears
9 to be focused on grassroots activity designed to speak out on civil and human rights issues.
10 Sharpton has served as President of NAN since it's founding. Between 2001 and 2004, Sharpton
11 engaged in an extensive travel schedule that he purports was dedicated, at least in part, to NAN-
12 related activity.

13 3. *Roger Stone*

14 Roger Stone is an experienced political consultant who reportedly helped Sharpton staff
15 his campaign and hire consultants for the Democratic Party primaries. Stone also reportedly
16 assisted Sharpton in his bid for presidential matching funds from the Commission, and served as
17 a general consultant to Sharpton during the campaign. It has been reported that Stone either
18 contributed or loaned more than \$200,000 to NAN during the pendency of the Sharpton

² On April 29, 2003, Sharpton filed a Statement of Candidacy, designating Sharpton 2004 as his principal campaign committee. The Committee's then-treasurer also filed the Committee's first disclosure reports on that date. On January 21, 2004, Sharpton and the Committee entered into a Conciliation Agreement with the Commission in MUR 5363 admitting that Sharpton was a candidate at least as early as October 2002, yet failed to file his Statement of Candidacy, an Amended Statement of Organization, and two disclosure reports in a timely manner. See MUR 5363 Conciliation Agreement ¶¶ V.1-3. MUR 5363 did not take up the issue of whether the Committee's reports, once filed, disclosed all expenditures made during the time that Sharpton was "testing the waters" of his candidacy. See MUR 5363, 1st GCR at note 10.

1 campaign and paid for Sharpton's travel expenses to various campaign-related events. *See*
2 Wayne Barrett, *Sleeping With the GOP*, VILLAGE VOICE, Feb. 5, 2004; *see also* Wayne Barrett,
3 *Sharpton's Cynical Campaign Choice*, VILLAGE VOICE, Feb. 11-17, 2004.

4 4. *Shared Consultants*

5 Beginning in Fall 2003, a number of political consultants reportedly had concurrent
6 relationships with NAN and Sharpton 2004. Charles Halloran is the owner of Charles Halloran
7 Development, a political consulting firm based in Alexandria, Virginia. Halloran, reportedly at
8 the request or suggestion of Roger Stone, took over as Sharpton's campaign manager in
9 September 2003.³ Halloran then reportedly enlisted assistance for the campaign from Archer
10 Group, Inc., a consulting firm, and an individual named Elizabeth Burke. *Id.* Halloran is not a
11 named respondent in this matter.

12 Archer Group, Inc. is a San Francisco-based political consulting firm which provided
13 consulting services to both NAN and Sharpton's campaign beginning in late September 2003.
14 Archer Group, Inc. was reportedly initially enlisted by Charles Halloran to design a voter
15 registration program for NAN in exchange for a \$20,000 per month fee. *Id.* However, Archer
16 Group, Inc. reportedly began working primarily for Sharpton 2004 shortly after it was retained.⁴
17 *Id.* The two Archer Group, Inc. executives working on the campaign were Michael Pitts, who
18 was named Sharpton's Deputy Campaign Manager in December 2003, and Ron Coleman.

³ Sharpton 2004 disbursed \$10,000 in consulting fees to Halloran Development in January 2004 and approximately \$46,000 in reimbursement expenses between November 2003 and January 2004. Sharpton 2004's most recently filed disclosure report lists a \$65,000 debt to Charles Halloran Development for "campaign management consultant fees." *See* Sharpton 2004 Year-End Report, filed Jan. 31, 2005 at 13.

⁴ Sharpton 2004 disclosure reports show that Sharpton campaign paid Archer Group, Inc. a total of \$20,000 between December 2003 and January 2004 for campaign fieldwork, campaign logistics, and campaign consultants. Sharpton 2004's most recently filed disclosure report lists a debt of approximately \$26,000 to Archer Group/Michael Pitts for "campaign consultant/field operations." *See* Sharpton 2004 Year-End Report, filed Jan. 31, 2005 at 11.

1 Elizabeth Burke worked as a scheduler for the Sharpton campaign beginning in October
2 2003. Burke, who was reportedly brought into the campaign by Charles Halloran, has stated that
3 she was also paid a salary from NAN while she worked for the campaign, although her time was
4 fully devoted to the work of the campaign. *Id.*

5 **B. The Sharpton Campaign**

6 Sharpton began paving the way for a potential presidential candidacy as early as August
7 2001.⁵ In February 2002, Sharpton reportedly commenced a "Getting to Know You Tour," and
8 traveled to New Hampshire and Iowa, but Sharpton 2004 reported no disbursements in
9 connection with this trip. Sharpton became a candidate, within the meaning of the Act, no later
10 than October 2002. *See* MUR 5363 Conciliation Agreement ¶ IV.10.

11 It appears that Sharpton traveled extensively during the early days of his campaign,
12 although the Committee reported no expenditures for travel taken during 2002. In late 2003,
13 Sharpton began conferring with political consultant Roger Stone. Sharpton acknowledges that
14 Stone, an established professional political consultant, assisted Sharpton's campaign, particularly
15 with its anticipated application for federal matching funds. *See* Wayne Barrett, *Sleeping With the*
16 *GOP*, VILLAGE VOICE, Feb. 5, 2004. After Stone began consulting with Sharpton, Charles
17 Halloran became campaign manager for Sharpton 2004 and hired consultants Elizabeth Burke
18 and Archer Group, Inc. to provide assistance to the campaign. Burke and Archer Group, Inc.'s
19 consultants, who also received compensation from NAN, reportedly worked exclusively on the

⁵ On August 20, 2001 Sharpton announced that by November 2001 he would establish a presidential exploratory committee. In December 2001, Sharpton appeared at a conference in Atlanta entitled "The State of the Black World," during which he discussed his presidential aspirations and the formation of an exploratory committee for a possible campaign. Rob Borsellino, *Al Sharpton to Pay Political Visit*, DES MOINES REGISTER, Feb. 25, 2002.

1 campaign from Sharpton's New York headquarters. Archer Group, Inc. consultant Michael Pitts
2 has reportedly stated that these NAN trips were "commingled" with campaign trips. *Id.*

3 **III. ANALYSIS**

4 Complainant's central allegation is that "Sharpton ran an off-the-books campaign in
5 which campaign expenses were paid by parties without the proper disclosure to the Federal
6 Election Commission and at times in apparent violation of campaign contribution limits and the
7 legal restriction against corporate contributions." MUR 5408, Second Am. Compl. at 2. The
8 available information supports the allegation that Sharpton's campaign was subsidized by various
9 unreported, excessive, and impermissible in-kind contributions to Sharpton 2004. Accordingly,
10 as detailed below, the Commission finds reason to believe that Roger Stone violated the Act.

11 **A. Unreported In-Kind Contributions**

12 The First and Second Amended Complaints allege that political consultant Roger Stone
13 charged \$18,000 of Sharpton's campaign-related travel expenses to his personal credit card
14 without receiving reimbursement from Sharpton 2004.

15 Expenditures for travel relating to the campaign of a candidate seeking nomination for
16 election to the office of President by any individual, including a candidate, shall be qualified
17 campaign expenses and be reported by the candidate's authorized committee as an expenditure.
18 11 C.F.R. § 9034.7(a). If the trip is entirely campaign-related, the total cost of the trip shall be a

1 qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(b)(1).⁶

2 On April 29, 2003, Sharpton 2004 filed its first required disclosure report, the 2002 Year-
3 End Report, disclosing the Committee's receipts and disbursements from July 1, 2002 through
4 December 31, 2002. The report shows that the Committee made approximately \$24,000 in
5 expenditures during the reporting period, and that each of the disbursements was made in
6 connection with a single fundraising event held by Sharpton in Washington, D.C. However,
7 Sharpton 2004 reported no disbursements for travel expenses for the trip to Washington, D.C. for
8 the fundraiser.⁷

9 There is also information to suggest that Sharpton made additional expenditures for travel
10 during the time period covered by the Committee's 2002 Year End Report that was not contained
11 in the Committee's disclosure reports. Press accounts of Sharpton's activity indicate that he
12 traveled to numerous additional cities in connection with his exploratory presidential committee,
13 including trips to New Hampshire and Iowa in February 2002. *See supra* p. 6. Since it is
14 unlikely that Sharpton could have incurred no expenses related to this travel, significant

⁶ Pursuant to 11 C.F.R. § 9034.7(b)(2), "For a trip that includes campaign and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop to each subsequent campaign-related stop, back to point of origin. The calculation is based on commercial airfare rates at time of travel, and the committee is responsible for retaining documentation of these rates. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related. Campaign-related activity includes soliciting, making, or accepting contributions, and expressly advocating the election or defeat of the candidate. Other factors, including the setting, timing and statements or expressions of the purpose of an event and the substance of the remarks or speech made, will also be considered in determining whether a stop is campaign-related." Furthermore, "For each trip, an itinerary shall be prepared by the Committee and made available to the Commission for inspection. The itinerary shall show the time of arrival and departure and the type of event." 11 C.F.R. § 9034.7(b)(3).

⁷ The disbursements included payments for caterers, stage and sound, event space and insurance, entertainment, and door workers. *See Sharpton 2004, 2002 Year-End Report, Schedule B, filed April 29, 2003.* Although the Committee's treasurer filed an amended version of the report on November 28, 2003, the amendments did not affect the reported disbursements.

1 questions exist as to whether the disclosure reports filed by the Committee include all of the
2 expenditures made by Sharpton in connection with his candidacy.

3 Furthermore, the available information suggests that at least a portion of any unreported
4 campaign-related travel expenses incurred by Sharpton may have been paid for by Roger Stone in
5 an amount in excess of the Act's contributions limit at 2 U.S.C. § 441a(a)(1)(A). One Sharpton
6 campaign worker reportedly stated that Stone informed him that Sharpton ran up \$18,000 on his
7 credit card last year to cover Sharpton's travel expenses for a trip to California for, among other
8 things, a NAN fundraiser. *See* Wayne Barrett, *Sleeping With the GOP*, VILLAGE VOICE, Feb. 5,
9 2004. Sharpton purportedly responded to this charge by arguing that the travel expenses charged
10 by Stone were for travel to "our annual event in California."⁸ *Id.* However, there are reported
11 statements by Archer consultant Michael Pitts acknowledging that campaign trips and NAN trips
12 were "commingled," and that he scheduled many events across the country that were part
13 campaign and part NAN. *Id.* Sharpton also acknowledges that he traveled extensively for NAN
14 while he was a presidential candidate.

15 Therefore, because there is credible evidence that Sharpton frequently commingled NAN
16 events with campaign activities, there is a sufficient basis to investigate whether Sharpton
17 engaged in any campaign-related travel that was paid for by Roger Stone, and not disclosed on
18

⁸ Stone's one page response to the complaint does not discuss the substance of the complaint in detail, but rather makes a general attack on the credibility of the *Village Voice* article cited in the complaint and categorically denies that he violated the Act in any way. *See* Stone Resp. at 1.

the Committee's reports.⁹

Based on the foregoing, the Commission finds reason to believe that Roger Stone violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to Sharpton 2004.

B. Loans from Stone to NAN

The First and Second Amended Complaints allege that Roger Stone subsidized Sharpton's campaign by loaning over \$200,000 to NAN, for the purpose of directing the money into Sharpton's campaign by paying for Sharpton's travel expenses and campaign consultants.

The Act provides that a contribution includes a loan made by a person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A). Furthermore, 11 C.F.R. § 100.52(b) provides that a loan that exceeds the contribution limits of 2 U.S.C. § 441a shall be unlawful whether or not it is repaid, and further, that a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. Therefore, if Stone made over \$200,000 in loans to Sharpton for the purpose of funding campaign expenses, Stone has exceeded the Act's contribution limit at 2 U.S.C. § 441(a)(1)(A). See 2 U.S.C. § 441a(a)(8).

The complaint's allegations are supported by purported quotes from a news article in which a Sharpton campaign employee, Elizabeth Burke, stated that Archer Group, Inc. campaign consultants Pitts and Coleman were told by Stone that Stone made "at least two loans in six figures to NAN, totaling well over \$200,000." Attach. 1 at 4. Furthermore, the article cites

⁹ To the extent that any expenses incurred by Stone were transportation costs, 11 C.F.R. § 100.79 states that any unreimbursed payment for transportation expenses incurred by any individual on behalf of any candidate or any political committee of a political party is not a contribution to the extent that: (1) the aggregate value of the payments made by such individual on behalf of a candidate does not exceed \$1,000 with respect to a single election; and (2) the aggregate value of the payment made by such individual on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year. However, because Stone purportedly spent \$18,000 on travel expenses in connection with Sharpton's campaign without receiving reimbursement, this exception would not eliminate the in-kind contribution from Stone. See also 11 C.F.R. § 100.139.

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1 another Sharpton campaign worker as stating that Stone told him that he took a \$270,000
2 promissory note from Sharpton. *Id.* The news article is purportedly based on first-hand
3 interviews with these individuals and provides sufficient detail on which to base an investigation
4 into whether Stone loaned funds to NAN for the purpose of allowing NAN to fund Sharpton's
5 campaign activities and whether such loans were excessive contributions pursuant to 2 U.S.C. §§
6 441a(a)(1)(A) and 441a(a)(8).

7 Therefore, the Commission finds reason to believe that Roger Stone violated 2 U.S.C. §
8 441a(a)(1)(A) by making excessive in-kind contributions to Sharpton 2004.