



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SEP 13 2007

Richard Pombo
6702 Inglewood Avenue, Suite K
Stockton, CA 95207

RE: MUR 5877
Richard Pombo

Dear Mr. Pombo:

On November 9, 2006, the Federal Election Commission (the "Commission") notified you of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). On September 11, 2007, the Commission found, on the basis of the information in the complaint, that there is no reason to believe you violated 2 U.S.C. § 441a(f), a provision of the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

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

Sincerely,

A handwritten signature in black ink, appearing to be "Julie McConnell", written over a horizontal line.

Julie McConnell
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: Richard Pombo for Congress and David Bauer, in his
official capacity as Treasurer
Richard Pombo
Rich PAC and Meredith G. Kelley, in her official capacity
as Treasurer

MUR: 5877

I. INTRODUCTION

The complaint filed by Michael McNerney and McNerney for Congress in this matter alleges violations of the Federal Election Campaign Act of 1971, as amended (the "Act") by Pombo for Congress (the "Committee"), the principal campaign committee for Richard Pombo's 2006 re-election bid to the U.S. House of Representatives in California's 11th Congressional District; and Rich Political Action Committee ("Rich PAC"), a leadership PAC associated with former Rep. Richard Pombo. Specifically, the complaint alleges that: (1) Rich PAC made, and the Committee knowingly accepted, excessive in-kind contributions consisting of payments for \$161,000 of the Committee's fundraising costs; and (2) the Committee violated the Act by failing to disclose the receipt of these in-kind contributions.

As more fully set forth below, based on the complaint, the responses, and other available information, the Commission: (1) finds no reason to believe that Rich PAC and Meredith G. Kelly, in her official capacity as Treasurer, violated 2 U.S.C. § 441a(a)(2)(A) by making excessive in-kind contributions to the Committee; (2) finds no reason to believe that Richard Pombo for Congress and David Bauer, in his official capacity as Treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b)(2)(D) by knowingly receiving, failing to refund, and failing to report excessive in-kind contributions from Rich PAC; (3) finds no reason to believe that Richard

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1 Pombo violated 2 U.S.C. § 441a(f) by knowingly receiving excessive in-kind contributions from
2 Rich PAC; and (4) closes the file.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 In 2006, Richard Pombo ran to retain his seat as the U.S. Representative for California's
5 11th Congressional District. During the 2006 election cycle, both Mr. Pombo's authorized
6 committee and his leadership PAC retained Carole Goeas and Associates ("CGA") as a
7 fundraising consultant.

8 The complaint alleges that between January 2006 and the 12 Day Pre-General reporting
9 period (October 18, 2006), the Committee paid CGA only \$23,759.21 while raising
10 \$2,416,588.12. *See* Complaint. Rich PAC, on the other hand, during the same time period paid
11 CGA \$161,000,¹ while raising only \$153,700. *See id.* Based on this information, the
12 complainant alleges that "RichPAC effectively circumvented the \$5,000 federal campaign
13 contribution limit, by making illegal in-kind contributions to Pombo for Congress greatly
14 exceeding the \$5,000 limit. Pombo for Congress thus received the benefits of [CGA's]
15 fundraising work without having to pay for it out of Pombo for Congress funds." *See id.* at 3-4.²

16 According to the response filed by David Bauer, Treasurer of the Committee, Rich PAC
17 did not make excessive in-kind contributions to the Committee through CGA. Mr. Bauer states
18 that the discrepancy in fundraising costs was a direct result of differences between the structure
19 and duration of each committee's respective contract with CGA. He states that Rich PAC's

¹ This figure, from the Complaint, includes a \$20,000 commission paid on October 12, 2006 that was unearned, and was refunded by CGA on November 28, 2006.

² Multicandidate political committees are prohibited from making contributions to any candidate and his authorized political committee for any election exceeding \$5,000. 2 U.S.C. § 441a(a)(2)(A). In addition, a candidate may not knowingly receive an excessive contribution from a political committee. 2 U.S.C. § 441a(f). The definition of contribution includes all in-kind contributions. *See* 11 C.F.R. § 100.52(d)(1).

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1 contract with CGA began May 2005, and included monthly retainers of \$4,500 for the period of
2 May 2005 through July 2006, and \$3,500 for the period of August 2006 through September 2006,
3 resulting in retainer payments totaling \$74,500. *See Response.* The contract also called for
4 bonuses of \$10,000 for raising \$500,000, \$20,000 for raising \$700,000, and \$20,000 for raising
5 \$900,000. *See id.* In addition, Rich PAC made two payments pursuant to the contract to
6 reimburse CGA for direct fundraising costs totaling \$59,068.88, which Rich PAC acknowledged
7 it had erroneously described in its reports.³ *See id.*

8 By contrast, the response states that CGA and the Committee entered into a fundraising
9 contract in April 2006. *See id.* The terms included no monthly retainers, but rather required
10 payment of a \$20,000 commission for every \$200,000 raised by CGA. *See id.* The Committee
11 stated that it received an invoice from CGA for a \$100,000 commission payment on \$1,062,574
12 raised, but to date, it has paid only \$40,000 of this commission.⁴ The contract also required the
13 Committee to pay “a retainer when designated [CGA] staff were assigned exclusively to Pombo
14 for onsite fundraising efforts.” *See id.* In 2006, the Committee paid CGA a total of \$7,000 for
15 dedicated staff retainers and \$34,341.23 in reimbursements for various other fundraising
16 expenses. *See id.*

³ The Response states the original 2006 October Monthly and 12 Day Pre-General Reports erroneously describe these expenditures as “fundraising commissions,” but the payments were in fact reimbursements for fundraising costs associated with specific events. The 2006 12 Day Pre-General Report was amended on March 19, 2007, to properly reflect the purpose of one of those expenditures made on October 12, 2006, for \$35,001.75. Similarly, it appears that several of the Committee’s payments to CGA were mislabeled as well. On the 2006 30 Day Post-General Report, the Committee describes disbursements to CGA for “fundraising expenses and consulting” and “expenses,” but the Response explains that these were staff retainers and reimbursements. Although this may have led to some confusion on the public record regarding the exact nature of the Committee’s and Rich PAC’s fundraising expenditures, the amounts and general nature of the expenditures were timely reported to the Commission. *See* 2 U.S.C. § 434(b)(5)(A).

⁴ The Committee identified this amount as a disputed debt in its 2006 Year End Report. *See infra* p. 7

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The complaint focuses on the apparent disparities between the payments made to CGA by Rich PAC and the Committee and the amount of funds raised by each organization from January 2006 through October 18, 2006, to support its allegation that Rich PAC subsidized the Committee's fundraising costs. An analysis of Rich PAC's reports over the entire reporting period, however, suggests a much smaller differential: namely, Rich PAC paid CGA \$163,568.88 to raise \$709,791.00 in twenty months, while the Committee paid \$141,341.23 to raise \$1,062,574.00 in nine months.

Pombo for Congress	Complaint Figures for 1/01/06-10/18/06	Total on Reports for 4/01/06-12/31/06
Money Raised	\$2,416,588.12	\$1,062,574.00
Payments to CGA	\$23,759.21	\$141,341.23
Rich PAC	Complaint Figures for 1/01/06-10/18/06	Total on Reports for 5/01/05-12/31/06
Money Raised	\$153,700.00	\$709,791.00
Payments to CGA	\$161,068.88	\$163,568.88

The timing and reporting of Rich PAC's payments to CGA may explain the difference between the Complaint's figures and the actual funds Rich PAC raised and disbursed to CGA:

- Rich PAC paid CGA monthly retainers, and often paid those retainers late and several months at a time.⁵ When viewed only during the 12 Day Pre-General reporting period, as the complaint did, it would therefore appear that Rich PAC paid \$11,500 in retainers in one month, when in reality the actual fee was \$3,500 and the remaining payments were retainer fees for prior months.
- A \$20,000 commission for exceeding the \$900,000 fundraising threshold was refunded by CGA on November 28, 2006, twenty-six days after the complaint was filed, reducing the total amount paid by Rich PAC to CGA. CGA refunded the Commission because it did not meet the \$900,000 threshold.

⁵ On August 31, 2005, Rich PAC paid four months of retainers (\$18,000 total); on February 14, 2006, Rich PAC paid four months of retainers (\$18,000 total); on May 22, 2006, Rich PAC paid another four months of retainers (\$18,000 total); on October 12, 2006, Rich PAC paid two months of retainers (\$8,000 total). In all, Rich PAC paid only two months of retainers individually: for September 2005 (\$4,500 total) and for September 2006 (\$3,500 total). There appears to be no payment of the October 2006 retainer.

- The other two bonuses paid by Rich PAC (\$10,000 on June 7, 2006, and \$20,000 on July 10, 2006) were for funds raised since May 2005, when Rich PAC's contract with CGA began, and were not exclusive to the 2006 calendar year. The complainant did not include the approximately \$500,000 in contributions raised by CGA for Rich PAC in 2005, thus underestimating the overall amount raised by CGA for Rich PAC.
- Two of Rich PAC's expenditures to CGA totaling \$59,068.88 were misreported as commissions and retainers although they were actually reimbursements for fundraising costs. This reduction in commissions paid by Rich PAC to CGA results in a fee structure that more closely approximates the contract between the Committee and CGA.

Similarly, because of the Committee's contract terms and payment dates, the figures referenced in the complaint do not provide a complete and accurate listing of all payments made by the Committee to CGA:

- Although the complaint and the Committee's reports state the Committee raised a total of \$2,886,596 during this period, the response explains that CGA raised only \$1,062,574 of this amount for the Committee. *See Response.*
- Although the Committee only paid CGA \$23,759 in reimbursements for fundraising expenses prior to the election, by December 2006 CGA billed the Committee an additional \$117,582 for reimbursements and commissions associated with its fundraising efforts.⁶

When these factors are considered, the differences between the amount raised by CGA for each committee and the payments to CGA by each committee are not as large as those alleged in the complaint.⁷

⁶ As of June 2007, the Committee has paid CGA a total of \$101,341.23. The remaining \$60,000, which is described on the Committee's debt schedule as "disputed," derives from the \$100,000 commission owed on funds raised of \$1,062,574.

⁷ In addition, it appears that CGA billed Rich PAC and the Committee for earned commissions on different schedules. Although CGA passed the \$500,000 mark in funds raised for Rich PAC during the 2005 Year End reporting period, Rich PAC did not pay CGA the \$10,000 bonus for raising \$500,000 until June 7, 2006. On the other hand, the \$20,000 bonus for raising \$700,000 was paid on July 10, 2006, but CGA did not raise \$700,000 until the 2006 30 Day Post-General reporting period. CGA did not bill the Committee for its commission, however, until after the end of the election cycle.

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1 Although a discrepancy still exists between the amounts Rich PAC and the Committee
2 paid, *see supra* p. 4, the terms of the different contracts appear to sufficiently explain the
3 discrepancy. Rich PAC's lengthier contract terms, eleven months longer than the Committee's,
4 and respective funds raised, \$709,791 in twenty months for Rich PAC versus \$1,062,574 in nine
5 months for the Committee, suggest more effort may have been required by CGA to raise funds
6 for Rich PAC than for the Committee, and that a higher fee may have been reasonable under the
7 circumstances. Moreover, both committees appear to have bargained for and entered into the
8 contracts freely, and we have no information suggesting that CGA designed the contracts to
9 allow Rich PAC to subsidize the Committee's fundraising.

10 Nevertheless, there appears to be an inconsistency between the response and the
11 Committee's reports regarding fundraising commissions due to CGA. Although the response
12 stated that the Committee had received, but not yet paid, an invoice for \$100,000 in commission
13 for \$1,062,574 raised, the Committee's 2006 Year End Report listed the \$100,000 commission as
14 a "disputed" debt. The Committee paid \$40,000 of this debt, listing the debt payment as being
15 "disputed." If it does not pay the remaining \$60,000,⁸ a far greater disparity in payments to CGA
16 than represented in the response would exist, as the Committee would have paid CGA
17 \$81,341.23 for raising \$1,062,574, while Rich PAC paid CGA \$163,568.88 for raising \$709,791.
18 This issue alone, however, does not suggest that Rich PAC was subsidizing the Committee's
19 fees. If the "dispute" is based on the amount of funds raised by CGA for the Committee, then the
20 \$1,062,574 figure would be reduced, making the Committee's ratio of contributions raised by
21 CGA compared to payments made to CGA more in line with that of Rich PAC.

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On balance, given that the allegation in the complaint appears to have been based on inaccurate information regarding the total payments made by Rich PAC and the Committee to CGA, the overall discrepancy in disbursements made by Rich PAC and the Committee to CGA was relatively small, and the complaint contains no specific information to suggest that Rich PAC's payments to CGA subsidized CGA's fundraising efforts on behalf of the Committee, the Commission finds no reason to believe Rich PAC and Meredith G. Kelley, in her official capacity as Treasurer, violated 2 U.S.C. § 441a(a)(2)(A) by making an excessive in-kind contribution, and Richard Pombo, or Pombo for Congress and David Bauer, in his official capacity as Treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive in-kind contribution. Similarly, because Rich PAC did not make excessive contributions to Pombo for Congress, the Commission also finds no reason to believe that Pombo for Congress and David Bauer, in his official capacity as Treasurer, violated 2 U.S.C. § 434(b)(2)(D), which requires that a candidate's authorized committee file reports disclosing all contributions from political committees.

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