



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 13 2003

Stanley Kalmon Schlein, Esq.
481 King Avenue
Bronx, NY 10464

RE: MUR 5363
Alfred C. Sharpton and Rev. Al Sharpton
Presidential Exploratory Committee (a/k/a
Sharpton 2004) and Luis A. Miranda, Jr.,
as treasurer

Dear Mr. Schlein:

On April 24, 2003, the Federal Election Commission notified your clients, Alfred C. Sharpton and the Rev. Al Sharpton Presidential Exploratory Committee (a/k/a Sharpton 2004) and Luis A. Miranda, Jr., as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on November 5, 2003, found that there is reason to believe that your client, Alfred C. Sharpton, violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a), and that your client, the Rev. Al Sharpton Presidential Exploratory Committee (a/k/a Sharpton 2004) and Luis A. Miranda, Jr., as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(3). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, 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.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable

cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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 your clients wish the matter to be made public. If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1598.

Sincerely,



Ellen L. Weintraub
Chair

Enclosures:

**Factual and Legal Analysis
Conciliation Agreement**

24-04-404-0470

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Alfred C. Sharpton MUR: 5363
Rev. Al Sharpton Presidential Exploratory
Committee (a/k/a Sharpton 2004) and
Luis A. Miranda, Jr., as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Kenneth F. Boehm, Chairman of the National Legal and Policy Center, *see* 2 U.S.C. § 437g(a)(1), and on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

II. LAW

Under the Act, an individual becomes a candidate for federal office (and thus triggers registration and reporting obligations under the Act) when his or her campaign exceeds \$5,000 in either contributions or expenditures. 2 U.S.C. § 431(2). There is, however, an exception to these thresholds for amounts raised and spent while an individual is "testing the waters" in order to decide whether to become a candidate. In such cases, the Commission's regulations provide that the terms "contribution" and "expenditure" do not include funds received or payments made solely to determine whether an individual should become a candidate. 11 C.F.R. §§ 100.72(a) and 100.131(a). Thus, an individual may raise or spend more than \$5,000 without becoming a candidate if his or her activities are permissible "testing the waters" activities, which include, but

1 are not limited to, conducting polls, making telephone calls, and travel.¹ *Id.* Only funds
2 permissible under the Act may be used for such activities. *Id.*

3 However, when an individual raises or spends more than \$5,000 and engages in activities
4 indicating that he or she has decided to run for a particular office, or in activities relevant to
5 conducting a campaign, the individual is deemed to have crossed the line from "testing the waters"
6 to "candidate" status under the Act. These activities include, but are not limited to: using general
7 public political advertising to publicize the individual's intention to campaign for Federal office;
8 raising funds in excess of what could reasonably be expected to be used for exploratory activities or
9 activities designed to amass funds to be spent after becoming a candidate; making or authorizing
10 written or oral statements that refer to the individual as a candidate for a particular office; or
11 conducting activities in close proximity to the election or over a protracted period of time.

12 11 C.F.R. §§ 100.72(b) and 100.131(b).

13 Achieving "candidate" status triggers registration and reporting requirements for the
14 candidate and for his or her principal campaign committee. Within 15 days of becoming a
15 candidate, the individual must file a statement of candidacy with the Commission that designates
16 the candidate's principal campaign committee. 2 U.S.C. § 432(e)(1); *see also* 11 C.F.R. § 101.1(a).
17 The principal campaign committee must file a statement of organization no later than ten days after
18 it has been designated by the candidate, 2 U.S.C. § 433(a), and must also, in the case of a principal
19 campaign committee for a presidential candidate, file timely financial disclosure reports as required
20 by 2 U.S.C. § 434(a)(3). All reportable amounts from the beginning of the "testing the waters"

¹ The Commission has emphasized the narrow scope of this exemption to the Act's disclosure requirements. *See* Explanation and Justification for Regulations on Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (1985) ("The Commission has, therefore, amended the rules to ensure that the 'testing the waters' exemptions will not be extended beyond their original purpose. Specifically, these provisions are intended to be limited exemptions from the reporting requirements of the Act . . .").

1 period must be filed with the first financial disclosure report filed by such committee, even if the
2 amounts were received or expended prior to the current reporting period. See 11 C.F.R.
3 §§ 104.3(a) and (b).

4 III. FACTS

5 Sharpton reportedly announced at a press conference on August 20, 2001 that by November
6 2001 he would establish a presidential exploratory committee. See CNN.COM, *Sharpton*
7 *Announces Presidential Bid Committee*, (Aug. 20, 2001), at [www.cnn.com/2001/](http://www.cnn.com/2001/ALLPOLITICS/08.20/sharpton)
8 [ALLPOLITICS/08.20/sharpton](http://www.cnn.com/2001/ALLPOLITICS/08.20/sharpton); see also *Sharpton Explores Run for Presidency in 2004*, NEWSDAY,
9 Aug. 21, 2001; *Sharpton Eyes Presidency [sic] Exploratory Committee in the Works*, CHICAGO
10 SUN-TIMES, Aug. 21, 2001.²

11 In December 2001, Sharpton reportedly appeared at a conference in Atlanta entitled "The
12 State of the Black World," during which he reportedly discussed his presidential aspirations and
13 the formation of an exploratory committee for a possible campaign. See Simon Crittle, *President*
14 *Sharpton' [sic] Has Ring for Al*, NEW YORK POST, Dec. 2, 2001; C-SPAN.ORG, *Forum: Sharpton*
15 *Campaign Event, State of the Black World Conference* (Dec. 1, 2001) at [http://www.c-](http://www.c-spanstore.com)
16 [spanstore.com](http://www.c-spanstore.com).

17 In February 2002, Sharpton reportedly commenced a "Getting to Know You Tour," and
18 traveled to New Hampshire and Iowa. See *The White House 2004 Sharpton: Taking Stump*
19 *Preach to NH and IA*, THE HOTLINE, Feb. 8, 2002; see also Evan Osnos, *NYC's Sharpton Tests*
20 *Iowa Clime: Activist Looks Carefully at Bid for Presidency*, CHICAGO TRIBUNE, Feb. 27, 2002.

21 ² At this time, no exploratory committee was registered with the Commission. See 11 C.F.R. § 104.1(b) (an individual seeking federal office who has not yet attained candidate status, or the committee of such individual, may voluntarily register with the Commission). The reference by various media in 2001 to an "exploratory committee" apparently referred to a group of individuals who would advise Sharpton on whether to run.

1 During his Iowa visit, Sharpton reportedly stated that he had not "officially" begun his race
2 for the Presidency, but he noted "I'm not trying to tell you that it's not on my mind. I'm very much
3 considering it and certainly leaning that way. I was in New Hampshire last week, now Iowa.
4 These are important states." Rob Borsellino. *Al Sharpton to Pay Political Visit*, DES MOINES
5 REGISTER, Feb. 25, 2002.

6 Disclosure reports filed with the Commission by Sharpton's Committee on April 29, 2003
7 include a 2002 Year End Report, which shows that the Committee had received in excess of
8 \$5,000 in contributions by August 2002. In September 2002, Sharpton's Committee held a
9 fundraiser in Washington, D.C. at the National Museum of Women in the Arts, and, according to
10 the Year End Report and the respondents' response to the complaint, spent approximately \$24,000
11 for the event.

12 In October 2002, *Al on America*, a book written by Sharpton "with Karen Hunter," was
13 published. See Reverend Al Sharpton, *Al on America* (Kensington Publishing Corp. ed.).
14 Sharpton's book contains statements that unequivocally refer to himself as a candidate for President.
15 The title of Chapter One is "Mr. President." On page 4, after listing his various roles in life and his
16 beliefs, Sharpton states: "It is on those qualities that I am seeking the Presidency of the United
17 States in 2004."³ On page 7, Sharpton states: "I am running for president to finally put the issues
18 concerning most Americans onto the front burner." On pages 17 and 18, Sharpton sets forth a
19 number of reasons that "I am running." See also page 20 ("At least with me, for progressives and
20 liberals, I'm the only one in the race who, if you support me, will win you something I am
21 running to bring the liberal wing back to the Democratic Party"), page 23 ("I'm running to build the

³ All page citations are to the trade paperback edition of *Al on America*.

1 Democratic Party, to strengthen it") and page 24 ("I've gone all over this country over the last two
2 years . . . people are hurting. I'm running for them. I represent them.")⁴

3 The Associated Press reported that, on January 3, 2003, Sharpton announced that he would
4 form an exploratory committee and file papers with the Commission on January 21, 2003. The
5 article quoted Sharpton as again declaring "I am running for president to finally put the issues
6 concerning most Americans on the front burner." Will Lester, *Outgoing House Democratic Leader*
7 *Gephardt, Civil Rights Leader Sharpton Take Step Toward Presidential Run*, ASSOCIATED PRESS,
8 Jan. 4, 2003. On January 21, 2003, Sharpton filed papers with the Commission registering the Rev.
9 Al Sharpton Presidential Exploratory Committee.⁵ Sharpton did not file a statement of candidacy at
10 that time.

11 During that month and the next, Sharpton reportedly appeared at events that were billed as
12 candidate forums. Sharpton reportedly attended a dinner sponsored by NARAL Pro-Choice
13 America, appearing with five Democratic presidential candidates. See *White House 2004 The Field:*
14 *Start Your Over-Analysis Now!*, THE HOTLINE, Jan. 22, 2003. In February 2003, Sharpton was
15 quoted as reportedly asserting that he didn't "intend to sit out anything in any way. I think if you're
16 going to run, you run everywhere If you cannot do that, I don't think you're seriously running

17 ⁴ In some statements and appearances following his book's publication, Sharpton continued to characterize his efforts as exploratory. For example, when interviewed about his book, he reiterated that he was "seeking" the presidency, but also suggested that he had not yet made a firm decision to run. Sharpton reportedly stated, "I am not officially declared as a candidate . . . I am saying that I clearly want to run if we can put the campaign together" Clarence Page, *Is Sharpton Running? Well, Sort of, Maybe*, NEWSDAY, Oct. 18, 2002. Further, during an appearance on Fox News, Sharpton reportedly referred to being "in the race" but cautioned that he had "not decided finally" whether to run. *Presidential Hopeful Al Sharpton Comments on Gore Decision Not to Run*, FOX NEWS: YOUR WORLD, Dec. 16, 2002. On NBC's *Meet the Press* on January 13, 2003, Sharpton reportedly stated that "on January 21, 2003, [he] would be filing the exploratory committee" but that he intended to make his formal declaration later, in the early spring. *Interview: Reverend Al Sharpton Discusses 2004 Presidential Race*, NBC NEWS: MEET THE PRESS, January 12, 2003.

⁵ In the filing, the word "campaign" is crossed out in the phrase "principal campaign committee" and replaced with the word "exploratory."

1 for the president [sic] of the United States.” Kathie Obradovich, *Sharpton Will Campaign All Over*,
2 QUAD CITY TIMES NEWSPAPER ONLINE, Feb. 10, 2003, at <http://qctimes.com>. Also in February,
3 Sharpton reportedly attended the Democratic National Committee’s winter meeting, at which he was
4 invited to speak, along with six Democratic presidential candidates (see *White House 2004 The*
5 *Field: The Winter Meeting Of Dems’ Discontent*, THE HOTLINE, Feb. 19, 2003), and in early April
6 2003, he reportedly attended a Children’s Defense Fund event to which the “nine FEC recognized”
7 Democratic presidential candidates (including Sharpton) were invited. *White House 2004 CDF*
8 *Forum: Candidates Trying Hard Not to Make News?*, THE HOTLINE, April 10, 2003.

9 The due date for filing an April Quarterly Report is April 15, 2003. According to the news
10 article attached to the complaint, during an appearance at George Washington University on April
11 17, 2003, Sharpton reportedly stated that he would not file a quarterly financial report with the
12 Commission until he made an official announcement of his intent to run later in the spring. See
13 Steve Miller, *Sharpton Won’t File With FEC*, WASHINGTON TIMES, April 18, 2003. The article
14 quotes Sharpton as reportedly saying “we are in the late stages of the exploratory phase. We will do
15 whatever is required when we make an official announcement . . . next we will get together our
16 campaign staff.” *Id.* The article also states that Sharpton’s aides reportedly said that because the
17 campaign was only exploratory, a quarterly report did not have to be filed, citing the advice of
18 Sharpton’s lawyers. *Id.*

19 The press reports of Sharpton’s comments on April 17, 2003 apparently spurred the
20 complaint in this matter. The complaint, filed April 18, 2003, alleged that Sharpton was already a
21 candidate and that his failure to file an April Quarterly Report was therefore illegal. On April 29,
22 2003, the Sharpton campaign electronically filed a 2002 Year End Report, a 2003 April

1 Quarterly Report, and Sharpton's statement of candidacy, which designated "Sharpton 2004" as his
2 principal campaign committee.⁶ By the end of the last quarter of 2002, according to the Sharpton
3 Committee's Year End Report, Sharpton had raised \$24,800 and spent \$24,076.35. The 2003
4 April Quarterly Report discloses that from January 1, 2003 through March 31, 2003, Sharpton's
5 Committee had raised an additional \$82,656 in contributions and expended an additional
6 \$7,170.39.

7 In response to the complaint, the respondents denied that Sharpton was a candidate at the
8 time the 2003 April Quarterly Report was due, claiming that it was not until April 29, 2003 that
9 Sharpton "determined that he was going to be a full-fledged candidate for the Democratic Party
10 nomination for President of the United States in 2004 In connection therewith, a statement of
11 candidacy was duly filed with the FEC and financial reports incorporating all monies raised and
12 expended from August 2002 through March 31st 2003 was electronically filed with the FEC."
13 According to the response, "no obligation to file was in existence prior to April 29, 2003." The
14 response specifically denied, without elaboration, that the Sharpton Committee had engaged in any
15 activities inconsistent with the "testing the waters" exemption.

16 IV. DISCUSSION

17 Sharpton crossed the line from "testing the waters" to candidate status no later than October
18 2002, with the publication of his book, *Al on America*, in which he made the statements quoted
19 *supra* referring to himself as a candidate for the 2004 Democratic nomination for President of the
20 United States. See 11 C.F.R. §§ 100.72(b)(3) and 100.131(b)(3). Even if Sharpton subjectively did
21 not irrevocably decide to run for President until April 29, 2003, the Commission's regulations look

22
⁶ The exploratory committee did not file an amended statement of organization renaming itself "Sharpton 2004" until July 10, 2003.

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1 objectively to candidate activities, not to the stage of an individual's subjective decisionmaking
2 process, in determining whether the "testing the waters" exemption applies. *See* 11 C.F.R.
3 §§ 100.72 and 100.131. Once an individual becomes a candidate, equivocal statements of intent or
4 a future "official announcement" do not eradicate the registration and reporting requirements that
5 have been triggered. If not already a candidate by that time, by choosing to make the statements
6 referring to himself as a presidential candidate in his book, Sharpton became a candidate for
7 purposes of the Act when his book was published. Accordingly, Sharpton should have filed his
8 statement of candidacy designating his principal campaign committee no later than 15 days after
9 the publication of his book, and Sharpton's Committee should have filed timely a statement of
10 organization, as well as filed timely its 2002 Year End and 2003 April Quarterly Reports.

11 Therefore, there is reason to believe that Alfred C. Sharpton violated 2 U.S.C. § 432(e)(1)
12 and 11 C.F.R. § 101.1(a) and that Rev. Al Sharpton Presidential Exploratory Committee (a/k/a
13 Sharpton 2004) and Luis A. Miranda, Jr., as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(3).