



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR - 1 2009

**Kathryn Biber Chen, Esquire
Audrey Perry, Esquire
Romney for President, Inc.
858 Commercial Street
Boston, MA 02109**

**RE: MUR 5918
Romney for President and
Darrell W. Crate, in his official
capacity as treasurer**

Dear Ms. Biber Chen and Ms. Perry:

On June 6, 2007, the Federal Election Commission notified your clients, Romney for President, Inc. and Darrell W. Crate, in his official capacity 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 supplied by you, the Commission, on March 18, 2009, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

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).

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan L. Lebeaux".

**Susan L. Lebeaux
Assistant General Counsel**

**Enclosure
Factual and Legal Analysis**

29044234766

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5
6
7 **RESPONDENTS: Romney for President and**
8 **Darrell W. Crate, in his official capacity as treasurer**

MUR 5918

9
10
11 **I. GENERATION OF MATTER**

12 This matter was generated by a complaint filed with the Federal Election Commission by
13 Francis X. Raskauskas. See 2 U.S.C. § 437g(a)(1).

14 **II. FACTUAL SUMMARY**

15 The complaint alleges that the Delaware State Republican Committee and Thomas J.
16 Shopa, in his official capacity as treasurer, ("DSRC"); Romney for President and Darrell W.
17 Crate in his official capacity as treasurer, ("Romney Committee"); Dave Burris, Republican
18 Committee Sussex County Delaware Chair; and Terry Strine, Republican State Committee of
19 Delaware Chair, (collectively "Respondents") may have violated the Federal Election Campaign
20 Act of 1971, as amended ("the Act"), in connection with a June 1, 2007 "meet and greet and/or
21 fund raiser for Mitt Romney" ("event"). Specifically, the complaint alleges the event raises the
22 following issues: 1) the invitations did not appear to include the proper notifications and/or
23 disclaimers, 2) the possible impropriety of groups other than the Romney campaign sending an
24 e-mail invitation for the event, 3) no reporting of apparent in-kind contributions to the Romney
25 Committee to promote and hold the event, 4) the apparent role of the DSRC as a sponsor/agent
26 of the Romney Committee and 5) possible co-mingling of campaign and party funds because the
27 invitations asked that checks be made payable to the DSRC. Complaint at 1. The complaint

29044234767

1 attached two e-mail invitations and accompanying electronic flyers publicizing and soliciting for
2 the event as support for the allegations.

3 The DSRC sponsored an event featuring presidential candidate Mitt Romney on the
4 grounds of Michele Rollins' private estate in Greenville, Delaware on the evening of June 1,
5 2007. The event was a barbeque and rally. Prior to the event, the DSRC sent two e-mail
6 invitations, which were attached to the complaint. Dave Burris, Republican Committee Sussex
7 County Delaware Chair, sent the first e-mail invitation on May 17, 2007, with an accompanying
8 electronic flyer invitation. See Attachment 1. The e-mail invited recipients to "Come meet my
9 friend Mitt Romney..." The e-mail invitation contained information about the event, including
10 the date, time, location and cost of \$15 a person or \$25 per couple. It requested an RSVP and
11 stated that checks should be made payable to the DSRC. Attached to the e-mail was an
12 electronic flyer entitled "DE ROMNEY FLYER with return.doc." See Attachment 2. This
13 document reads "Please join us for a special Rally and Barbecue with Governor Mitt Romney."
14 It features Romney's picture and name in large type across the center. It also states the date,
15 time, and location of the event, and cost of \$15 per person or \$25 per couple. The flyer
16 invitation asks for an RSVP and requests checks be made payable to the DSRC.

17 The bottom portion of the flyer invitation is a tear-off card to RSVP to the event. The
18 recipient has two options on the tear-off portion: 1) "I/We will attend this important event with
19 Governor Mitt Romney. Please Reserve ___ Tickets" and 2) "Unfortunately, I am unable to
20 attend but enclosed please find a contribution for _____." The tear-off portion also gives space
21 for the recipient's name, address, e-mail, work, home and cell phones, fax number, occupation
22 and employer. The bottom of the flyer states, "Paid for by the Republican State Committee of
23 Delaware" in a box.

29044234768

1 The second e-mail invitation was sent from the DSRC e-mail list serve, DE GOP
2 Communications, which is managed by Garrett Wozniak, the Executive Director of the DSRC,
3 on May 23, 2007. *See* Attachment 3. The subject of the e-mail was "Delaware GOP Update –
4 Gov. Mitt Romney to Visit Delaware." This e-mail described upcoming events for the DSRC
5 and highlighted the June 1, 2007 event, which was featured first in the e-mail and in its own
6 separate box. Romney's picture and name were in large, bold letters in the middle of the box.
7 The text stated "Please join us for a special rally and cookout with Presidential Candidate
8 Governor Mitt Romney." It gave the date, time, and location, the \$15 and \$25 ticket prices, and
9 directions for parking. It also directed RSVPs to the DSRC, with the option to either e-mail or
10 fax the completed form with credit card information, to garrett@delawaregop.com or to call
11 (302) 651-0270; checks were to be payable to the DSRC.

12 This e-mail contained a hyperlink entitled "Please RSVP using the attached form." The
13 complaint included a second electronic flyer invitation that appears to be the form attached to the
14 e-mail through this hyperlink. *See* Attachment 4. It reads "Please join us for a special Cookout
15 with Presidential Candidate Governor Mitt Romney." "Governor Mitt Romney" is in large, bold
16 type across the middle of the flyer. It lists the date, time, and location of the event, gives
17 information about where to park and shuttle service to the event, and states the \$15 or \$25 cost of
18 the tickets. The flyer also states that an RSVP and payment in advance are required, and gives
19 three ways to RSVP: by mail, e-mail or fax, and lists the phone number of the DSRC for
20 questions. Finally, the flyer invitation states that checks can be made payable to the DSRC.

21 A tear-off card on the bottom of the flyer invitation gives the recipient two options, either
22 "I/We will attend this important Event with Governor Mitt Romney. Please Reserve

29044234769

1 ___ Tickets." Or "Unfortunately, I am unable to attend but would like to make a contribution of
2 ___." Below this section is the statement:

3 *Not printed at government expense. Contributions are not deductible as
4 charitable donations for income tax purposes. Federal law requires political
5 committees and individuals to report the name, mailing address, occupation, and
6 name of employer. Contributions from corporations and foreign nationals are
7 prohibited.
8

9 After this statement is a form that asks for the contributor's name, address, e-mail, home
10 phone, occupation, employer, Visa or Master Card number, name and expiration date, and the
11 desired amount to charge on the card. At the bottom of the flyer invitation is a disclaimer, in a
12 box, that states, "Paid for by Republican State Committee of Delaware."

13 The Respondents assert that the event was a fundraiser for the DSRC's Federal fund only.
14 Romney Response at 1, DSRC Response at 1. They maintain the Complainant mistook the
15 purpose of the fundraiser and therefore his allegations should be dismissed.¹ *Id.* Mitt Romney
16 was a special guest at the fundraiser, but the Romney Committee did not receive any funds from
17 the event. *Id.* The proceeds from the event were deposited in the DSRC's Federal account, and
18 all contributions were within the limitations and prohibitions of Federal law. *Id.* Respondents
19 also maintain that the Romney Committee was not involved in the creation or distribution of the
20 invitations, and there were no in-kind contributions. *Id.* Finally, with respect to the issue of
21 whether proper notifications and/or disclosures were included, the DSRC's response states that

¹ According to publicly available information, later the same evening, the Romney Committee hosted a \$2,300 per person private reception fundraiser and a \$1,000 per person dinner fundraiser inside the home of Michele Rollins. Posting of Dave Burris to First State Politics blog. <http://firststatepolitics.wordpress.com/2007/05/30/cleaning-up-after-wrong-williams-again/>; <http://www.delawaregrapevine.com/5-07politicking.asp>. Neither the complaint nor the responses discussed either of these events, but these events may help explain why the complaint confuses the sponsor of the event in question.

29044234770

1 the e-mails and flyer invitations all disclosed that the event was paid for by the DSRC. DSRC
2 Response at 2.

3 Blog postings after the event provide the following additional information. The event
4 started at 6:00 p.m. and ended around 8:30 p.m. The official estimate of attendance was 325
5 people, but different blogs indicated attendance of anywhere between 200 to 350 people. The
6 food and drink at the event included hamburgers, hot dogs, sausage, cole slaw, and potato salad
7 along with water, soda, wine and beer.

8 **III. ANALYSIS**

9 **A. Pre-Event Publicity**

10 The Act provides that a candidate for Federal office shall not solicit funds in connection
11 with an election for Federal office, including funds for any Federal election activity, unless the
12 funds are subject to the limitations, prohibitions and reporting requirements of the Act.² 2 U.S.C.
13 § 441i(e)(1)(A), 11 C.F.R. § 300.61. Federal candidates also cannot solicit funds in connection
14 with any non-Federal election unless the funds are within the limits permitted by the Act and are
15 not from prohibited sources. 2 U.S.C. § 441i(e)(1)(B), 11 C.F.R. § 300.62. "Solicit" means to
16 ask, request or recommend, explicitly or implicitly, that another person make a contribution,
17 donation, transfer of funds or otherwise provide anything of value. 11 C.F.R. § 300.2(m). The
18 Commission's regulations give an example of solicitation as "providing a separate...reply device
19 that contains an address to which funds may be sent and allows contributors or donors to indicate

² No person can make contributions to a candidate exceeding \$2,300 and to a state political party committee exceeding \$10,000. 2 U.S.C. § 441a(a)(1)(A) and (D). Corporations, labor organizations, federal government contractors and foreign nationals are prohibited from contributing. 2 U.S.C. § 441b(a), 2 U.S.C. § 441c(a)(1); 2 U.S.C. § 441e(a).

29044234771

1 the dollar amount of their contribution or donation to the...political committee." 11 C.F.R.

2 § 300.2(m)(1)(i).

3 A candidate for Federal office is permitted to attend, speak or be a featured guest at a

4 fundraising event for a state committee of a political party. 2 U.S.C. § 441i(e)(3), 11 C.F.R.

5 § 300.64. A state committee of a political party may advertise, announce or otherwise publicize

6 that a Federal candidate will be the featured guest at a fundraising event, including publicizing

7 the appearance in pre-event invitation materials and other party committee communications.

8 2 U.S.C. § 441i(e)(3), 11 C.F.R. § 300.64(a). Under the regulations in effect at the time, Federal

9 candidates could speak at such events without restriction or regulation.³ 11 C.F.R. § 300.64(b).

³ The Explanation and Justification for 11 C.F.R. § 300.64 in effect at the time the activity in this matter occurred states that the regulation

is carefully circumscribed and only extends to what Federal candidates and officeholders say at the State party fundraising events themselves. The regulation tracks the statutory language by explicitly allowing Federal candidates and officeholders to attend fundraising events and in no way applies to what Federal candidates and officeholders do outside of State party fundraising events. Specifically, the regulation does not affect the prohibition on Federal officeholders from soliciting non-Federal funds for State parties in fundraising letters, telephone calls or any other fundraising appeal made before or after the fundraising event. Unlike oral remarks that a Federal candidate or officeholder may deliver at a state party fundraising event, when a Federal candidate or officeholder signs a fundraising letter or makes any other written appeal for non-Federal funds, there is no question that a solicitation has taken place that is restricted by 2 U.S.C. § 441i(e)(1). Moreover, it is equally clear that such a solicitation is not within the statutory safe harbor at 2 U.S.C. § 441i(e)(3) that Congress established for Federal candidates and officeholders to attend and speak at State party fundraising events.

Revised Explanation and Justification for Candidate Solicitation at State, District, and Local Party Fundraising Events, 70 Fed. Reg. 37,649, 37,651 (June 30, 2005).

In June 2008, the U.S. Court of Appeals for the District of Columbia Circuit held that 11 C.F.R. § 300.64(b) failed step one of the *Chevron* analysis because it allowed federal candidates and officeholders to solicit soft money at state, district and local party fundraisers in a way that BCRA "directly prohibits." *Shays v. FEC*, 528 F.3d 914, 933 (D.C. Cir. June 13, 2008). The court remanded this regulation to the District Court "for further proceedings consistent with" the opinion. *Id.* at 934. Without vacating the state-party solicitation regulation, the District Court in-turn remanded the regulation to the Commission.

29044234772

1 The Commission need not resolve the issue of whether the electronic flyer invitations in
2 question are permissible under the Act to reach a decision in this matter. Based on the estimated
3 325 people attending the event in question and assuming that each attendee paid the suggested
4 individual ticket price, the maximum total amount received by the DSRC for this event would
5 have been \$4,875 (325 people x \$15 each). While it is possible that some contributors, in
6 response to the blank space, contributed more than \$15, it seems unlikely that they would have
7 taken the opportunity to contribute vastly higher sums, particularly to the DSRC, given the
8 nominal suggested price and the fact that higher ticket prices were required to attend the Romney
9 dinner and reception on the same night. *See* n.1, *supra*. Thus, the Commission dismisses this
10 case as a matter of prosecutorial discretion based upon the likely low dollar amount involved. In
11 addition, there is no evidence indicating that DRSC and the Romney Committee commingled
12 any funds or otherwise participated in joint fundraising activities relating to the event or that the
13 DSRC failed to report any in-kind contributions in connection with the event.

14 Accordingly, the Commission exercises its prosecutorial discretion and dismisses the
15 allegations in the complaint that Romney for President and Darrell W. Crate, in his official
16 capacity as treasurer, violated 2 U.S.C. § 441i(e). The Commission further dismisses the
17 allegations that Romney for President and Darrell W. Crate in his official capacity as treasurer,
18 violated the rules relating to joint fundraisers, as there is no evidence that the event was such a
19 fundraiser. *See* 11 C.F.R. §102.17.

29044234773