



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

March 29, 2006

Christopher Ray, Treasurer
Gay and Lesbian Victory Fund
1705 DeSales Street NW 5th Floor
Washington, DC 20036

Response Due Date:
April 28, 2006

Identification Number: C00251835

Reference: Year-End Report (7/01/05 – 12/31/05)

Dear Mr. Ray:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. **An adequate response must be received at the Commission by the response date noted above.** An itemization of the information needed follows:

-Schedule A of your report discloses one or more contributions totaling \$500 from "EQC Group, Inc.", which appears to be a corporation(s). 2 U.S.C. §441b(a) prohibits the receipt of contributions from corporations unless made from a separate segregated fund established by the corporation.

If any apparently prohibited contribution in question was incompletely or incorrectly disclosed, you should amend your original report with clarifying information.

If you have received a prohibited contribution(s), you may have to make a refund. If within 30 days of receipt you (1) transferred the prohibited amount to an account not used to influence federal elections, and (2) provided written notice to the person making the contribution of the option of receiving a refund, you may retain the contribution in an account not used to influence federal elections. Any request from a donor for a refund must be honored.

If the foregoing conditions for transfers to a non-federal account were not met within 30 days of receipt, the prohibited amount must be refunded. See 11 CFR §103.3(b)(1).

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Please inform the Commission of your corrective action immediately in writing and provide a photocopy of your check for any transfer-out or refund. In addition, any transfers-out or refunds should be disclosed on Schedule B supporting Line 22 or 28 of the report covering the period during which the transaction was made.

Although the Commission may take further legal action concerning the acceptance of a prohibited contribution, prompt action by your committee to transfer-out or refund the amount will be taken into consideration.

-Schedule A of your report discloses a receipt(s) of \$4,489.03 from the "Gay & Lesbian Victory Fund Nonfed Acct.". Please clarify whether this transfer(s) is from an account maintained by your committee for non-federal activity. If so, be advised that such a transfer is prohibited by 11 CFR §102.5(a)(1)(i) and the full amount of the transfer(s) should be returned to the non-federal account. Please inform the Commission of your corrective action immediately in writing and provide a photocopy of your check for the transfer-out. In addition, the transfer-out should be disclosed on Schedule B supporting Line 22 of your next report.

If this transaction represents an "internal transfer" of funds from one federal account to another, and the source(s) of such funds has been identified in previous reports of receipts and disbursements, please note that such transfers should not be itemized as doing so inflates total receipts and cash on hand. If this is the case, please amend your report accordingly.

Although the Commission may take further legal action regarding the acceptance of funds from a non-federal account, your prompt transfer-out of the impermissible funds or clarification of the transaction, will be taken into consideration.

-Schedule A of your report (see attached) discloses one or more contributions which appear to exceed the limits set forth in the Act. 2 U.S.C. §441a(f) and 11 CFR §§110.1(d) and 110.2(d) prohibit a committee and its affiliates from receiving any contribution from another political committee or person in excess of \$5,000 per calendar year.

If any apparently excessive contribution in question was incompletely or incorrectly disclosed, you must amend your original report with the clarifying information.

If any contribution you received exceeds the limits, you may have to refund the excessive amount. The funds can be retained if within 60 days of receipt, (1) the excessive amount was properly reattributed to another

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person, such as a joint account holder, by obtaining signed written authorizations from each person making the contribution pursuant to 11 CFR 110.1(k)(3), and (2) the treasurer informs the person making the contribution that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution. Any request from a donor for a refund must be honored.

Alternatively, the funds can be retained if within 60 days of receipt you (1) transferred the excessive amount to an account not used to influence federal elections, and (2) provided written notice to the person making the contribution of the option of receiving a refund. Any request from a donor for a refund must be honored.

If the foregoing conditions for reattributions or transfers to a non-federal account were not met within 60 days of receipt, the excessive amount must be refunded.

Please inform the Commission of your corrective action immediately in writing and provide a photocopy of your check for any transfer-out or refund. In addition, any reattributions should be reported as memo entries on Schedule A of the report covering the period during which the authorization for the reattribution is received. Any transfers-out or refunds should be disclosed on Schedule B supporting Line 22 or 28 of the report during which the transaction was made.

Although the Commission may take further legal action regarding the acceptance of an excessive contribution(s), prompt action by your committee to seek reattribution, transfer-out or refund the excessive amount will be taken into consideration.

-Schedule A supporting Line 15 of your report discloses a payment(s) from an individual(s) for apparent goods and/or services provided by your committee. Pursuant to Advisory Opinion 1979-18, the sale/purchase price paid to a political committee could involve the receipt of a contribution from a purchaser if the purchase price exceeds the "usual and normal charge". The term "usual and normal charge" for goods is defined as the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. Examples of goods and services include equipment, supplies, personnel, advertising services, membership lists, and mailing lists. 11 CFR §100.52(d)(1)

Please clarify whether your committee assessed the usual and normal charge for the goods and/or services you provided and explain the steps

your committee took in determining the amount charged. If your committee provided the goods and/or services at more than the usual and normal charge, the difference between the two is considered to be contribution(s) received by your committee from an individual and may be prohibited subject to the limits set forth at 2 U.S.C. §§441a(f) and 441b or 11 CFR §110.1(d).

-Commission Regulations require that a committee disclose the identification of all individuals who contribute in excess of \$200 in a calendar year. (11 CFR §104.3(a)(4)(i)) Identification for an individual is defined as the full name, mailing address, occupation and name of employer. (11 CFR §100.12) Your report discloses contributions from individuals for which the identification is not complete.

You must provide the missing information, or if you are unable to do so, you must demonstrate that "best efforts" have been used to obtain the information. To establish "best efforts," you must provide the Commission with a detailed description of your procedures for requesting the information. Establishing "best efforts" is a three-fold process.

First, your original solicitation must include a clear and conspicuous request for the contributor information and must inform the contributor of the requirements of federal law for the reporting of such information. (11 CFR §104.7(b)(1))

Second, if the information is not provided, you must make one follow-up, stand alone effort to obtain this information, regardless of whether the contribution(s) was solicited or not. This effort must occur no later than 30 days after receipt of the contribution and may be in the form of a written request or an oral request documented in writing. (11 CFR § 104.7(b)(2)) The request must:

- clearly ask for the missing information, without soliciting a contribution;
- inform the contributor of the requirements of federal law for the reporting of such information, and
- if the request is written, include a pre-addressed post card or return envelope.

Third, if you receive contributor information after the contribution(s) has been reported, you shall either a) file with your next regularly scheduled report, an amended memo Schedule A listing all the contributions for which additional information was received; or b) file on or before your next regularly scheduled reporting date, amendments to the report(s) originally disclosing the contribution(s). (11 CFR §104.7(b)(4))

Please provide the missing information or a detailed description of your procedures for requesting the information. For more information on demonstrating "best efforts," please refer to the Campaign Guide.

-The identification of each contributor, including an adequate occupation and name of employer for each, must be provided if the person has contributed in excess of \$200 in the aggregate during the calendar year. Please amend Schedule A supporting Line 11(a)(i) for each entry inadequately identified as "Business/ Self-Employed", "Business Officer/ UCSD", "Chairman/ NYTW", "Communications/ Self-Employed", "Consultant/ Self-Employed", "Executive/ FBM", "Physicist/ LLNL", "Professional/ The Widmeyer-Baker Group, Inc.", "Public Policy/ BENS", "Self-Employed/ N/A", and "Unknown/ GMAC Mortgage".

-Itemized disbursements must include a brief statement or description of why the disbursements were made. Please amend Schedule(s) H4 of your report to clarify the following description(s): "Fundraising Expenses" and "Fundraising Fees". For further guidance regarding acceptable purposes of disbursements, please refer to 11 CFR §104.3(b)(3).

-Please amend your report by providing the complete address for each disbursement itemized on Schedule(s) B supporting Line(s) 21(b).

-Your report discloses apparent in-kind contributions ("donations") from the "Gay & Lesbian Leadership Institute, Inc." on Schedule A, supporting Line 15 of the Detailed Summary Page. Pursuant to Advisory Opinion 1992-33, the Commission concluded that a party committee may accept corporate in-kind donations in connection with fundraising activities as long as the federal share of goods or services is paid or transferred to the non-federal account upon receipt of or in advance of the acceptance of the corporate in-kind donations by the federal account.

Advisory Opinion 1992-33 also discloses a detailed method for reporting the receipt and use of in-kind contributions as follows:

1. The transfer of the in-kind corporate contribution from the non-federal account to the federal account should be disclosed on Schedule H3. The itemization on Schedule H3 should include the date the Committee received the in-kind contribution, the amount of the contribution and the fundraising event involved.

2. The use or expenditure of in-kind corporate contributions should be disclosed on Schedule H4 as non-federal share disbursements. The itemization should provide the same donor identification information required on a Schedule A for in-kind contributions for Federal elections.

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3. A second entry on Schedule H4 should then disclose the advance or contemporaneous payment of the federal account's share of the in-kind corporate contribution to the non-federal account.

Please amend your report to properly disclose the in-kind corporate contributions received by your committee. (see attached)

-Please clarify all expenditures made for "Catering", "Facility Rental", "Event Ticket", "Event Tickets", and "Seminar Facility Rental" on Schedule(s) B and H4. If a portion or all of these expenditures were made on behalf of specifically identified federal candidates, this amount should be disclosed on Schedules B or E supporting Lines 23 or 24 and include the amount, name, address and office sought by each candidate. 11 CFR §§104.3(b) and 106.1

Alternatively, if the payment(s) on Schedule H4 is associated with fundraising activity conducted for your committee's federal and non-federal accounts, it must be allocated according to the funds received method and the ratio reflected on Schedule H2. Further, it must be categorized as a fundraising activity on Schedule H4. Please provide clarifying information regarding the nature of this transaction(s) and amend your report(s) as appropriate.

-Schedule B discloses an expenditure(s) for "Printing", "Postage", "Printing & Postage", "Printing-Kinkos", and "Telemarketing". Please be advised that public communications (as defined by 11 CFR §100.26) and voter drive activity (under 11 CFR §106.6(b)(2)(i)) containing express advocacy as defined under 11 CFR §100.22, would constitute an in-kind contribution or an independent expenditure and should be properly disclosed on a Schedule B or E supporting Line 23 or 24 as appropriate. Public communications and voter drive activity that refer to a clearly identified Federal candidate, but that do not expressly advocate the election or defeat of that candidate should be reported on Schedule B for Line 21(b) of the Detailed Summary Page. Please clarify whether this activity contained express advocacy and amend your report to properly disclose this activity, if necessary.

-Schedule H4 discloses an expenditure(s) for "Publication" and "Publications". Please be advised that public communications (as defined by 11 CFR §100.26) and voter drive activity (under 11 CFR §106.6(b)(2)(i)) containing express advocacy as defined under 11 CFR §100.22, would constitute an in-kind contribution or an independent expenditure and should be properly disclosed on a Schedule B or E supporting Line 23 or 24 as appropriate. Public communications and voter

drive activity that refer to a clearly identified Federal candidate, but that do not expressly advocate the election or defeat of that candidate should be reported on Schedule B for Line 21(b) of the Detailed Summary Page.

Furthermore, the costs for public communications and voter drive activity that refer to one or more clearly identified Federal candidates must be paid for with 100% federal funds. It appears that you have allocated these costs between federal and non-federal funds. Any reimbursement from your committee's non-federal account for public communications and voter drive activity referencing a clearly identified Federal candidate is not permissible and must be returned. 11 CFR §106.6(f)

Please clarify this activity and amend your report, if necessary, to properly disclose this activity. In addition, please inform the Commission of any corrective action immediately. Although the Commission may take further legal action regarding this apparent prohibited activity, your prompt action will be taken into consideration.

-Schedule H4 of your report discloses a reimbursement(s) to an individual(s) for apparent travel and subsistence advances in which the total amount reimbursed exceeds \$500. When the reimbursement amount to staff for travel and subsistence advances exceeds \$500, the payments by committee staff that make up the reimbursement have to be itemized as memo entries regardless of the amount. Each memo entry must include the complete name and address of the original vendor, as well as the date, amount and an adequate purpose. Please amend your report to include the missing information and clearly identify on the Schedule H4, which reimbursement each memo entry relates to. 11 CFR §§104.10 and 104.17, and Advisory Opinion 1996-20, footnote 3

-Schedule H4 of your report discloses reimbursements to individuals for "Office Supplies", "Office Supplies & Meal", "Travel & Internet Exp.", and "Travel & Supplies". Please be advised that when itemizing reimbursements to individuals for goods or services, payment to the original vendors must be itemized as memo entries regardless of amount. Each memo entry must include the name and address of the original vendor, as well as the date, amount and purpose of the original purchase must be provided. Please amend your report to include the missing information and clearly identify on the Schedule H4, which reimbursement each memo entry relates to. 11 CFR §§104.10 and 104.17, and Advisory Opinions 1992-1 and 1996-20, footnote 3

Please note, you will not receive an additional notice from the Commission on this matter. Adequate responses received on or before this date will be taken into

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consideration in determining whether audit action will be initiated. **Requests for extensions of time in which to respond will not be considered.** Failure to provide an adequate response by this date may result in an audit of the committee. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action.

Electronic filers must file amendments (to include statements, designations and reports) in an electronic format and must submit an amended report in its entirety, rather than just those portions of the report that are being amended. If you should have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1398.

Sincerely,



Michael H. Hartsock
Campaign Finance Analyst
Reports Analysis Division

GAY AND LESBIAN VICTORY FUND

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Contributor Name	Date	Amount	Report
Scott E. Eckas	5/19/05	\$5,000	2005 Mid-Year
Scott E. Eckas	10/19/05	\$250	2005 Year-End
Joseph Lee Falk	1/10/05	\$2,500	2005 Mid-Year
Joseph Lee Falk	12/07/05	\$5,000	2005 Year-End
Michael John Horne	5/13/05	\$5,000	2005 Mid-Year
Michael John Horne	10/24/05	\$1,000	2005 Year-End
Garry Clayton Kief	9/30/05	\$5,000	2005 Year-End
Garry Clayton Kief	10/11/05	\$1,000	2005 Year-End
Joe T. Porter	2/23/05	\$5,000	2005 Mid-Year
Joe T. Porter	10/20/05	\$1,200	2005 Year-End
Gregory G. Simoncini	2/22/05	\$200	2005 Mid-Year
Gregory G. Simoncini	3/01/05	\$200	2005 Mid-Year
Gregory G. Simoncini	4/18/05	\$300	2005 Mid-Year
Gregory G. Simoncini	5/16/05	\$300	2005 Mid-Year
Gregory G. Simoncini	5/25/05	\$1,200	2005 Mid-Year
Gregory G. Simoncini	6/20/05	\$300	2005 Mid-Year
Gregory G. Simoncini	7/18/05	\$300	2005 Year-End
Gregory G. Simoncini	8/15/05	\$300	2005 Year-End
Gregory G. Simoncini	9/19/05	\$300	2005 Year-End
Gregory G. Simoncini	10/17/05	\$300	2005 Year-End
Gregory G. Simoncini	11/21/05	\$300	2005 Year-End
Gregory G. Simoncini	12/09/05	\$2,500	2005 Year-End
Gregory G. Simoncini	12/19/05	\$300	2005 Year-End
James O. Stepp	7/21/05	\$5,000	2005 Year-End
James O. Stepp	12/04/05	\$5,000	2005 Year-End
Scott D. Widmeyer	2/22/05	\$600	2005 Mid-Year
Scott D. Widmeyer	2/24/05	\$500	2005 Mid-Year
Scott D. Widmeyer	3/21/05	\$600	2005 Mid-Year
Scott D. Widmeyer	4/18/05	\$600	2005 Mid-Year
Scott D. Widmeyer	5/16/05	\$600	2005 Mid-Year
Scott D. Widmeyer	5/19/05	\$1,000	2005 Mid-Year
Scott D. Widmeyer	6/20/05	\$600	2005 Mid-Year
Scott D. Widmeyer	7/18/05	\$600	2005 Year-End

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Line 15 of the Form 3X Detailed Summary Page. The committee uses Schedule H4 to disclose the federal account's \$256 transfer to the nonfederal account for the nonfederal share.

10. Prohibited In-Kind Donations for Allocable Activities

While contributions from corporations, labor organizations and federal government contractors are prohibited under federal law, they are permissible under some state laws. If that is the case, such donations may be accepted by a nonfederal account for strictly nonfederal activity. However, the situation is more complicated when donations of goods or services from such sources are made in connection with allocable activity, such as a fundraiser at which both federal and nonfederal funds are collected.

In AO 1992-33, the Commission explained how a committee can legally accept an in-kind donation from a prohibited source in connection with an allocable administrative or fundraising activity. Note that the Commission has not addressed the receipt of in-kind donations from prohibited sources for the other types of allocable expenses (i.e., generic voter drives and candidate support activity).

Advance Payment of Federal Share

To avoid the receipt of a prohibited contribution by the federal account, that account must pay the nonfederal account for the federal share of the in-kind donation. This payment—a transfer to the nonfederal account—must be made in advance or on the date the goods or services are received.

Per-Transaction Transfers

The federal transfer may be made on a per-transaction basis—that is, shortly before or on the same day the in-kind donation is received.

Escrow Transfers

Alternatively, the federal account may make bulk transfers to cover the federal share of anticipated in-kind donations. Under this "escrow" arrangement, a committee makes a good faith estimate of the amount of in-kind donations that it expects to receive and transfers sufficient funds from the federal account to cover the federal share.

Adjustments

Should the federal account pay more than its share of an in-kind donation, adjustment transfers from the nonfederal account are permissible.

Basic Reporting of In-Kind Donations: Example

On October 1, a state party committee receives a \$5,000 in-kind donation of flowers from a corporation for a federal/nonfederal fundraiser ("Chairman's Gala"). The estimated allocation ratio for the fundraiser is 50 percent federal and 50 percent nonfederal. That same day, the federal account transfers its share of the in-kind donation (\$2,500) to the nonfederal account.

Required Forms

- Schedule H2—Allocation Ratios
- Schedule H3—Transfers from Nonfederal Account
- Schedule H4—Payments for Allocable Expenses

RECEIPT OF IN-KIND DONATION (H3)

SCHEDULE H3 (FEC Form 3X) TRANSFERS FROM NON-FEDERAL ACCOUNTS FOR SHARED FEDERAL / NON-FEDERAL ACTIVITY			PAGE 1 OF 1 FOR LINE 16a OF FORM 32
NAME OF COMMITTEE (in full) Freedom Party State Committee			
NAME OF ACCOUNT Nonfederal Account	DATE OF RECEIPT 10 01 2004	TOTAL AMOUNT TRANSFERRED 5,000.00	
BREAKDOWN OF TRANSFER RECEIVED			
a) Total Administrative			
b) General Voter Drive			
c) Campaign Activities			
d) Direct Fundraising (List Activity or Event Identifier)			
e) Chairman's Gala - In Kind		5,000.00	

DISBURSEMENT OF IN-KIND DONATION; FEDERAL TRANSFER (H4)

SCHEDULE H4 (FEC Form 3X) DISBURSEMENT FOR SHARED FEDERAL/NON-FEDERAL ACTIVITY SCHEDULE			PAGE 1 OF 1 FOR LINE 16b OF FORM 32
NAME OF COMMITTEE (in full) Freedom Party State Committee			
A. Full Name (Last, First, Middle Initial) Pretty Flowers, Inc.		Associated Activity or Event: <input type="checkbox"/> Administrative <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Example	
Mailing Address 111 Primrose Path		<input type="checkbox"/> Voter Drive <input type="checkbox"/> Direct Candidate Support	
City	State	Zip Code	Allocated Activity or Event Year-To-Date 21,000.00
City	ST	01000	
Purpose of Disbursement: Flowers - In Kind		Category Type 003	Date 10 01 2004
Activity or Event Identifier: Chairman's Gala			
FEDERAL SHARE 0.00	NON-FEDERAL SHARE 5,000.00	TOTAL AMOUNT 5,000.00	
B. Full Name (Last, First, Middle Initial) Freedom Party State Committee			
Mailing Address 111 Politics St.		Associated Activity or Event: <input type="checkbox"/> Administrative <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Example	
City	State	Zip Code	<input type="checkbox"/> Voter Drive <input type="checkbox"/> Direct Candidate Support
City	ST	00000	
Purpose of Disbursement: Transfer of Federal Share of In Kind		Category Type 003	Date 10 01 2004
Activity or Event Identifier: Chairman's Gala			
FEDERAL SHARE 2,500.00	NON-FEDERAL SHARE 0.00	TOTAL AMOUNT 2,500.00	

Schedule H3—Receipt of In-Kind Donation

The committee reports the receipt of the in-kind donation as a transfer from the nonfederal account for the "Chairman's Gala" fundraiser. The date used here is the date the committee received the flowers.

"Disbursement" of In-Kind Donation (H4)

Like in-kind contributions, in-kind donations must be reported as both receipts and disbursements so as not to inflate the cash-on-hand balance. (The disbursement side reflects the use or "expenditure" of the resources.) Schedule H4 is used for the disbursement entry, which shows the \$5,000 in-kind donation as a 100 percent nonfederal disbursement. The donor's name and address is disclosed in the box generally used for payees.

Transfer from Federal Account (H4)

The second entry on Schedule H4 shows the contemporaneous transfer of \$2,500 (the federal share of the donation) from the federal account to the nonfederal account. The explanation of the transfer is described in the "Purpose" box, with a reference to the previous entry.

Alternative Reporting Method

To minimize entries and avoid duplication, a committee may use alternative methods to report transactions relating to in-kind donations.

The committee may use one entry on Schedule H3 to show the receipt of all in-kind donations made within the same reporting period for a particular fundraising program or event (or administrative activity).

The committee may also use one entry on Schedule H4 to show total federal payments (transfers) made on the same day for the federal share of in-kind donations.

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