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22 UNITED STATES DISTRICT COURT
23 CENTRAL DISTRICT OF CALIFORNIA

24 UNITED STATES OF AMERICA,

25 Plaintiff,

26 v.

27 PIERCE O'DONNELL,

28 Defendant.

No.: 2:08-CR-872 (SJO)

**DEFENDANT'S RESPONSE TO
GOVERNMENT'S SUPPLEMENT
TO OPPOSITION TO
DEFENDANT'S MOTION TO
DISMISS INDICTMENT**

29 Without authority and in apparent contravention to the Court's local rules,
30 *see* Standing Order ¶ 8(b), the Government filed a supplement to its opposition
31 brief after the Court heard argument on the motion to dismiss and took the matter
32 under advisement. This supplemental filing contains several erroneous contentions
33 that again misinform the Court about the statutory regime at issue.

34 First, the Government states that under the Federal Election Campaign Act

1 (“FECA”) “making a conduit contribution is always prohibited regardless of the
2 amount.” Gov’t Supp. to Opp. at 2. This statement is patently in error. The
3 Government yet again fails to recognize that the statute provides that there can be
4 an “original source” of funds, other than the contributor, for contributions made,
5 applies individual limits to such sources, and sets out specific reporting
6 requirements for the making of such contributions. 2 U.S.C. § 441a(a)(8) (Supp. II
7 2000) (allowing for an “original source” and assigning reporting obligations); §
8 441a(a)(1) (setting individual contribution limits); *see also* 11 C.F.R. § 110.6(d)
9 (2003) (setting forth the circumstances under which a conduit’s or intermediary’s
10 own contribution limits are affected by the conduit contribution).

11 Second, building on its initial error and failing to acknowledge that the
12 FECA must be interpreted so that all of its provisions have meaning, *see Lexecon*
13 *Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35-36, 118 S. Ct. 956,
14 140 L. Ed. 2d 62 (1998), the Government contends, incongruously, that conduit
15 contributions in amounts under individual limits do not violate that part of the
16 statute setting limits and establishing reporting requirements for such contributions
17 but, nevertheless, conduit contributions are not allowed “under any circumstances.”
18 Gov’t Supp. to Opp. at 1. This contention is both so obviously internally
19 inconsistent and wrong under the statute as to be absurd. As the Court observed at
20 the hearing, the Government’s interpretation of § 441f as imposing a categorical
21 ban on conduit contributions presents an irreconcilable conflict between §§
22 441a(a)(8) and 441f. That conflict, we respectfully submit, can be reconciled by
23 noting that the text of § 441f is devoid of reference to any conduit or other indirect
24 contribution and, thus, § 441f may be construed without disharmony with §
25 441a(a)(8). It is only the Government’s insistent contention that § 441f prohibits
26 conduit contributions that sets up a conflict, and that contention is utterly devoid of
27 supporting authority.

28 The Government’s contentions regarding § 441f in its supplemental pleading

1 also fail to address the inconsistency between its proffered interpretation of § 441f
 2 and several other provisions of the FECA that expressly apply to direct or indirect
 3 contributions, unlike § 441f. *See* 2 U.S.C. § 441b(b)(2) (prohibiting “any direct or
 4 indirect payment, distribution, loan, advance, deposit, or gift of money, or any
 5 services, or anything of value” from corporations, banks, and labor organizations to
 6 a campaign); § 441e(a)(1) (prohibiting foreign nationals from making contributions
 7 “directly or indirectly”); § 441c(a)(1) (prohibiting government contractors from
 8 “directly or indirectly . . . mak[ing] any contribution of money or other things of
 9 value” to political parties, committees, or candidates).

10 It has long been recognized, but perhaps too often overlooked in the heat of
 11 legal combat, that the United States Attorney’s interest “is not that it shall win a
 12 case, but that justice shall be done.” *Berger v. United States*, 295 U.S. 78, 88, 55 S.
 13 Ct. 629, 79 L. Ed. 1314 (1935). The Government’s position on the motion is
 14 devoid of controlling legal authority, not supported by the plain meaning of the text
 15 of the statute at issue, and contrary to established rules of statutory construction.
 16 For these reasons, its position is not well founded in law, and justice demands that
 17 the invitation to interpret the statute to the Government’s liking be declined.

18
 19 Dated: June 4, 2009

Respectfully Submitted,

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