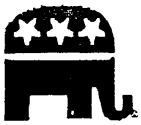

Republican
National
Committee

LATE COMMENT on AOR 2003-37

RECEIVED FEDERAL ELECTION COMMISSION SECRETARIAT
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January 13, 2004

Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

VIA FACSIMILE: (202) 219-3923

RE: AOR 2003-37
Americans for a Better Country

Dear Mr. Norton,

The following comments are submitted on behalf of the Republican National Committee ("RNC") regarding Opinion Request 2003-37 filed with the Federal Election Commission ("FEC" or "Commission") on November 18, 2003 by Americans for a Better Country ("ABC"), an unincorporated political committee organized under Section 527 of the Internal Revenue Code. ABC has requested that the Commission consider the "variety of fundraising and political activities" that it intends to engage in during the 2004 election cycle, with the publicly stated objective to "reelect President Bush and defeat the Democratic nominee." Although the RNC is, of course, sympathetic with ABC's desire to reelect President Bush and maintain Republican leadership in Washington, we nonetheless urge the Commission to carefully consider the implications of ABC's request.

Now that the American political process has experienced over a year of the Bipartisan Campaign Reform Act ("BCRA") in action, an apparent impact is the shifting of non-federally regulated money away from political parties, and instead to newly formed so-called "527 Organizations" such as ABC and a host of others on all sides of the political spectrum. As the Commission considers this detailed request from ABC in AOR 2003-37, it will be important that the same standard for what constitutes "federal election activity" under the BCRA be applied across the board, whether to political parties or 527 organizations. *See* 2 U.S.C. § 431(20) and 11 C.F.R § 100.24.

As has already been noted in Comments on AOR 2003-37 filed with the Commission by campaign finance "watchdog groups" The Campaign Legal Center and Democracy 21 (December 21, 2003) and the Center for Responsive Politics (December 21, 2003), the Advisory Opinion issued by the Commission in this matter will have broad

implications on the political activities of similarly situated "527 Organizations." Notwithstanding the strong First Amendment concerns of a wide variety of entities, including the RNC, the United States Supreme Court has now passed judgment and strongly upheld the BCRA, *McConnell v. FEC*, 540 U.S. ____ (2003)(slip op. Dec. 10, 2003). It is now incumbent upon the FEC to not sanction the undermining and evasion of the BCRA and longstanding provisions of the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 431 *et seq.* through the activities of newly formed 527 organizations dedicated to electing or defeating specific federal candidates.

The RNC agrees with ABC that "the Commission has a legal responsibility and an obligation to answer" the questions presented in AOR 2003-47 "now," but we also share many of the concerns with ABC's proposed structure and activities raised in the "watchdog group" comments. Our primary concern is as follows:

ABC states that it maintains a non-federal account (or accounts) that contains non-federal "soft dollars" from individuals, corporations, unions, and trade associations. ABC also states that their organizational purpose is to "form a group that will mobilize voters through voter registration and GOTV efforts" to not only "aid Republican candidates," but also specifically aid the election and defeat of identified federal candidates. In light of 2 U.S.C. § 441b(a)'s longstanding prohibition on corporations and labor organizations making a "contribution or expenditure in connection with any election" for federal office, the RNC respectfully suggests that the proposed activities of ABC appear to be problematic. The RNC agrees that, "corporations and labor organizations are not permitted to spend their treasury funds on partisan voter mobilization activities aimed at the general public. Nor are they permitted to evade that prohibition by donating those funds to an outside group which will use those funds to engage in the same activity. And section 527 groups are not permitted to receive and use corporate or labor union donations to fund partisan voter mobilization efforts aimed at the public." *See Comment on AOR 2003-37 by The Campaign Legal Center and Democracy 21* at 6 (December 21, 2003).

The comments from the above referenced "watchdog groups" neglected another important aspect of this issue, the use of unlimited personal "soft money." Even outside of Section 441b's restrictions on the use of corporate and labor funds, the use of unlimited personal funds (including the potential for multi-million dollar contributions to such entities) to fund GOTV and electioneering efforts with the express purpose of electing or defeating an identified federal candidate also appears to be legally problematic under provisions of the BCRA. We urge the Commission to consider the use of these soft money funds, which would clearly be outside of the federal contribution limitations, for ABC's proposed activities and the activities of all other similarly situated section 527 organizations.

In a separate but important matter, it appears that some section 527 organizations are being used to collect foreign national contributions for use to support or defeat federal candidates. *See* Attachments A and B. We urge the Commission to consider that

apparent funneling of foreign money into the American political system in light of the ban on foreign national contributions found at 2 U.S. C. § 441e.

As RNC Chairman Ed Gillespie has made clear, it is important that groups wishing to participate in the election of the next President of the United States, as well as all other Federal elections, have a clear understanding of the intent and legal responsibilities of all Americans to comply with the BCRA. The FEC plays a vital role in clarifying what activities are legal under the law, and the RNC appreciates the opportunity to comment on this AOR and thanks the Commission in advance for your consideration of our concerns.

Respectfully,

Charles R. Spies
Election Law Counsel

Enclosure

ATTACHMENT A
(RNC Comment on AOR 2003-37)

The Washington Times
www.washingtontimes.com

Global elections

By Tony Blankley
Published January 7, 2004

Funding for American presidential elections is beginning to go global. From Sweden to Canada to Portugal, on international Web sites solicitations are popping up urging the citizens of the world to contribute to advertising campaigns intended to influence our November presidential election. Of course, they are not trying to re-elect George Bush. The candidacies of Howard Dean and Wesley Clark seem to be the inspiration for such efforts.

There is no evidence, yet, that either of those campaigns are directly running these operations. But the Clark campaign has inched dangerously close. Perceptive reporting by the Talon News and the Drudge Report over the last three weeks have begun to reveal this unprecedented fund-raising tactic.

According to Drudge, the official Web site for Wesley Clark is linked to CanadaForClark, which advises its readers that: "Non-Americans can't by law, give money to any particular candidate's campaign. But we can support pro-democracy, progressive American organizations like MoveOn.Org, which do their best to spread the ugly truth about Bush and publicize the Democratic message." Wink, wink. Nudge, nudge.

The Drudge Report goes on to report that the CanadaForClark Web site links to MoveOn.Org for the purpose of making contributions, and that the top referrer to that web site is the Official Clark for President Web site. It should be noted that the CanadaForClark web site asserts that : "This site is not affiliated in any way with the official Clark campaign." But, of course, the official campaign web site links to the "not affiliated" Web site.

Until this moment I am not aware of any major presidential campaign that has ever actually publicly assisted in raising foreign money to influence an American election. Of course, former President Clinton tried to raise illegal Chinese campaign money in his 1996 re-election campaign. But he had the practical political good sense to do it in secret, and to deny it when it was made public.

But retired four star Gen. Wesley Clark, the former Supreme Allied Commander of

NATO (and first in his class at West Point), apparently is blithe to be seen trying to taint an American presidential election with foreign money. Whatever the legality of these methods turns out to be, it is stunning that a major candidate for president would think nothing of being seen to raise foreign money. This lack of judgment is only compounded by the fact that we are at war, and the money is being solicited by the foreigners expressly to try to stop Mr. Bush from carrying out our war on terrorism.

Americans, of course, have the right to contribute to an election effort to defeat an American president during wartime. But if it is not yet against the law, then it should be made so soon to bar even a single foreign dollar from influencing an American presidential election -- whether directly or indirectly. Should Osama bin Laden be permitted to buy television advertising intended to defeat Mr. Bush in the election?

Just last month, the U.S. Supreme Court upheld Congress's authority to limit political contributions from American corporations on the grounds that there are "important governmental interests in preventing both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption."

If Congress can limit or bar Americans from contributing to presidential election campaigns, surely it has the authority to bar foreigners -- particularly supporters of the enemy in time of war. Keep in mind, last year's campaign finance law also barred issue advertising by Americans 60 days before an election. What would be an appropriate cut-off date for permitting terrorism supporting Saudi princes or multibillionaire international currency manipulators from buying advertising intended to manipulate American public opinion and bring down a president?

In an increasingly globalized world, with American influence (economic, military and cultural) inevitably affecting the rest of the world, it is predictable that the rest of the world will try to "have a vote" in our elections. Obviously, much of the world (particularly Europe) no longer believes in its own sovereignty. Why should they respect ours? The good citizens of France have a voice in Paris and a voice in Brussels. Why not a voice in Washington, D.C?

It is inevitable that, unstopped, foreigners will try to influence our elections by buying political advertising here. So, too, it is inevitable that ambitious American politicians will one way or the other decide to ally themselves with those foreigners and their money against the formerly sovereign American political system. Wesley Clark is only the first of the type.

ATTACHMENT B
(RNC Comment on AOR 2003-37)

Democracy Aid '04
www.democracyaid.net

Democracy aid to the US
One year from now, on November 2nd 2004, the next American Presidential elections will be held. For the first time ever, because of the Internet, it is possible for non-American private citizens to participate in the campaign process. Should the rest of the world interfere with the choice of the US President? We claim that support for such action can be found in current theories of democracy. What the world needs is an American President who favours multilateral solutions, and who actively supports the UN's Millennium goals.

Following the end of the cold war, many believed that a new era of democracy and international cooperation would prevail. In the fall of 2000, that same fall, George W. Bush was elected. At the time, the future looked rather bright. The UN had held its Millennium conference, and plans for an international criminal court, ICC, were advancing. Three years later the world looks very different. The US has taken on the roll of world policeman.

The founding principles of the American constitution are that all men are created equal, with the right to life, liberty, and the pursuit of happiness. That is why it is particularly disturbing that it is due to American policies that the world is in a state of emergency today. Although most people welcome the overthrow of the Taliban regime, as well as that of Saddam Hussein's, we believe that the cost of these military adventures has been too great.

The war against terrorism, begun after the attacks of 9-11, has led to the violation of human rights in many places around the world. The most obvious example is, of course, the suffering felt by the Iraqi war victims. In Europe, the prisoners held without trial in Guantanamo have received much deserved attention. The behaviour of the Bush administration has also had serious consequences for disarmament. An example is the way confrontations with North Korea have made them withdraw from the non-proliferation treaty.

All of these events have eroded the legitimacy of the Bush administration, particularly from a foreign perspective. Ever since the scandal surrounding the Florida election results, there has been a growing sense that a) the US needs democracy aid (remember how many countries immediately and not without pleasure offered to help), and b) that it is proper for the world to participate in the American national electoral process. This stance can be justified by the widespread, international fear of a paranoid President, who has a strikingly limited understanding of the outside world - the same world he feels he has the right to treat whatever way he pleases, as long as he can claim it to be in the US national interest. As we all know, large sums of money have been spent on questionable objectives in the war against terrorism. The US has, with threats and bribery, managed to

pull a few other countries into its questionable actions -- starting a full-scale war, legitimised by falsified intelligence information, is but the gravest example.

Soon there will be another election, and the campaigning has already started. An estimated 100 million Americans (half of those who are eligible) will cast their vote. As always, there is a vast amount of money involved. However, in our view the greatest scandal is not that American Presidents can be bought -- but rather that they are so cheap. One dollar per EU-citizen would suffice to raise more money than the entire Bush campaign budget for the elections in 2000.

Compare this price to the cost of having Bush in the White House. Not only do we have the cost of rebuilding Iraq, the rest of the world will also have to suffer the consequences of environmental decay due to the withdrawal from treaties like the Kyoto protocol. Some countries might even cease to exist as the amount of carbon dioxide increases.

Charity contributions to democracy enhancement are becoming more popular. Why not invest where it will really make a difference? Since all the citizens of the world are obviously affected by the choice of American president, shouldn't we all have the right to engage in cross-border opinion making? After all, the US has some experience of its own when it comes to attempts at overthrowing foreign regimes (although often done under false pretences, and using methods involving violence and arms deals)...

In the light of the above, we would like to bring attention to an organization that makes it possible for non-American citizens to contribute to Bush's defeat, and thereby indirectly support democratic values, in the US as well as globally - MoveOn.org. It is not tied to any particular political party. Due to the wide international breakthrough of their peace campaign, "9-11 peace.org", foreigners now constitute one third of their network of 2 million. It is illegal for American presidential candidates to receive contributions from other countries. However, all private citizens can make donations to MoveOn.org as an organization. Currently they are buying TV commercial time to criticise the Bush administration. There is also a petition that anyone can sign, that calls for the resignation of US Defense Secretary Donald Rumsfeld.

The world is becoming increasingly globalised. Many people rightly feel that this has as a consequence that the power is moved further away from them. This also increases the sense of frustration that the lack of possibilities of influence brings. Lately we have seen many examples of this feeling culminating in more or less anarchistic and violent anti-globalization movements. There is no perfect alternative available yet, due to the lack of structures for political world citizenship. However, some constructive action can be taken. That is why we have donated one dollar each to Move On.

Hanna Armelius
Kajsa Klein