

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

Centennial Spirit

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**CONCILIATION AGREEMENT**

This matter was initiated by a signed, sworn, and notarized complaint filed by Phil Perington, Chair of the Colorado Democratic Party. The Federal Election Commission ("Commission") found reason to believe that Centennial Spirit, Donald Bain and Natalie Meyer each violated 2 U.S.C. § 441b, and that Centennial Spirit also violated 2 U.S.C. §§ 434 and 441d.

NOW, THEREFORE, the Commission and Centennial Spirit, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Centennial Spirit and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Centennial Spirit has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Centennial Spirit enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Centennial Spirit, a corporation within the meaning of 2 U.S.C. § 441b(a), was incorporated as a Colorado non-profit corporation on July 28, 1998, and was administratively dissolved as of January 1, 2003.

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2. The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits a corporation from making any contribution or expenditure in connection with any federal election. 2 U.S.C. § 441b(a).

3. The term "contribution or expenditure" includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value ... to any candidate, campaign committee, or political party or organization, in connection with any" federal election. 2 U.S.C. § 441b(b)(2). The term "expenditure" does not include "nonpartisan activity designed to encourage individuals to vote or to register to vote." 2 U.S.C. § 431(9)(B)(ii).

4. An independent expenditure means an expenditure by a person, including a corporation, "expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. § 431(17).

5. Pursuant to the Commission's regulations at 11 C.F.R. § 100.22(a), "[e]xpressly advocating" means any communication that —

- (a) Uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life," or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters or bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush," or "Mondale!"

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See also *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("MCFL"), where the Supreme Court analyzed the focus and content of a newsletter to ascertain whether its overall "effect" was that of "discussion of issues" or "exhortations to vote for particular persons." The Court held that the newsletter "provide[d] in effect an explicit directive: vote for these (named) candidates)," and therefore contained express advocacy. *Id.* at 249.

6. Persons (including corporations) other than political committees must disclose to the Commission any "independent expenditure" activity in an aggregate amount or value in excess of \$250 during a calendar year. 2 U.S.C. § 434(c).

7. The Act provides that whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such communications shall, if not authorized by any candidate or candidate committee, state clearly who paid for the communication and state whether it was authorized by any candidate or candidate committee. 2 U.S.C. § 441d.

8. Prior to the November 3, 1998 general election, Centennial Spirit produced and distributed a mailer containing text and photographs, as described in Paragraphs 9 and 10 of this agreement.

9. When folded as a mailer, the outside cover page lists the return address of Centennial Spirit over the words, in bold print, "Time Sensitive Material-Open Immediately!" and, across the bottom, the phrase "COLORADO'S 1998 CANDIDATES." The back cover page states "VOTE EARLY NOW!" in large type and then, in smaller type, the words "DON'T LET EL NIÑO STOP YOU FROM VOTING ON NOVEMBER 3<sup>RD</sup>!" On the first interior page, are the words, again, "COLORADO'S 1998 CANDIDATES," under which appear the names and photographs of one U.S. senatorial candidate, six U.S. congressional candidates, and candidates for Governor, Lieutenant Governor, Secretary of State, Attorney General, Treasurer

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and, without a photograph, Colorado University Regent at Large. The thirteen individuals named in the mailer constituted all the state-wide Republican candidates running in the 1998 general election in Colorado.

10. On the facing interior page, in large bold print, are the words **"HERE IS WHAT THESE CANDIDATES STAND FOR:"** followed by seven listed phrases: "Smaller government; Local control of education; Protecting Social Security for our seniors; Reforming the Internal Revenue Service and our tax system; Responsible stewardship of natural resources; Increase resources to fight the influx of drug use in Colorado; [and] Equal opportunity for every individual." This list is followed by the words, in bold, **"Please make sure to Vote!"** A disclaimer appears at the bottom of this page which states, *"This mailer does not constitute an endorsement of any candidate,"* At the bottom of one of the pages of the insert appear the words, *"Paid for by Centennial Spirit, a Colorado non-profit corporation."*

11. Approximately 11% of Centennial Spirit's total budget was spent directly on the portion of the mailer referencing federal candidates.

12. This "independent expenditure," which cost in excess of \$250, was not reported to the Commission.

13. Although the disclaimer in the mailer stated that the mailer was paid for by Centennial Spirit, it did not state that the mailer was not authorized by any candidate or candidate's committee.

14. In 1999 and 2001, the Colorado Secretary of State's Office, the Colorado District Court, and the Colorado Court of Appeals each concluded that the Centennial Spirit mailer did not contain express advocacy. *See League of Women Voters of Colo. v. Davidson*, 23 P.3d 1266 (Colo. Ct. App. 2001).

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V. 1. Centennial Spirit made an expenditure for an express advocacy mailer with corporate funds, in violation of 2 U.S.C. § 441b. Centennial Spirit will cease and desist from violating 2 U.S.C. § 441b.

2. Centennial Spirit failed to disclose its independent expenditure for the mailer to the Commission, in violation of 2 U.S.C. § 434(c). Centennial Spirit will cease and desist from violating 2 U.S.C. § 434(c).

3. Centennial Spirit failed to include in the mailer a statement that the communication was not authorized by any candidate or candidate's committee, in violation of 2 U.S.C. § 441d. Centennial Spirit will cease and desist from violating 2 U.S.C. § 441d.

VI. Centennial Spirit will pay a civil penalty to the Federal Election Commission in the amount of Ten Thousand dollars (\$10,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Centennial Spirit has submitted a check for the entire amount of the civil penalty to the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

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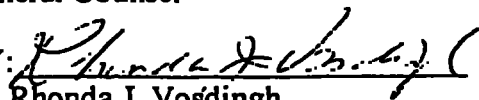
oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton

General Counsel

BY:

  
Rhonda J. Vosdinger

Associate General Counsel  
for Enforcement

5/23/03  
Date

FOR CENTENNIAL SPIRIT:

  
Natalie Meyer, as

President, Centennial Spirit

3-27-03  
Date

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