



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

FEB 13 2004

Tom Blakely  
Fox Media Consulting  
18 Elm Road  
Caldwell, NJ 07006

RE: MUR 5026  
Tom Blakely  
Fox Media Consulting

Dear Mr. Blakely:

This correspondence is directed to you as an individual respondent in the above-referenced matter and as the registered agent for the respondent Fox Media Consulting. On June 15, 2000, the Federal Election Commission notified you and Fox Media Consulting of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on February 3, 2004, found that there is reason to believe that you, as an individual, violated 2 U.S.C. §§ 441a(a)(1), 441a(a)(3) and 441b, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding as to you, is enclosed for your information. On that same date, the Commission also found that there is reason to believe that Fox Media Consulting violated 2 U.S.C. §§ 441a(a)(1), 441a(a)(3) and 441b. The Factual and Legal Analysis, which formed a basis for the Commission's finding as to Fox Media Consulting is also enclosed.

You and Fox Media Consulting may submit any factual or legal materials that you and Fox Media Consulting believe are relevant to the Commission's consideration of this matter. Such materials must be submitted to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you and/or Fox Media Consulting are interested in pursuing pre-probable cause conciliation, such request(s) should be put in writing. See 11 C.F.R. § 111.18(d). Upon receipt of such request(s), the Office of the General Counsel will make recommendations to the

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Commission either proposing an agreement(s) in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

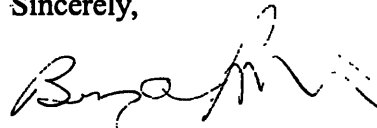
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you and/or Fox Media Consulting intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form(s) stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless the Commission is notified in writing that you or Fox Media Consulting wish the matter to be made public.

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

Sincerely,



Bradley A. Smith  
Chairman

Enclosures

Designation of Counsel Forms  
Factual and Legal Analysis for Tom Blakely  
Factual and Legal Analysis for Fox Media Consulting

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Tom Blakely

MUR: 5026

**I. GENERATION OF MATTER**

This matter was generated by a complaint submitted by David Plouffe, Executive Director of the Democratic Congressional Campaign Committee ("DCCC" or "complainant"). See 2 U.S.C. § 437g(a)(1). The DCCC allege that Tom Blakely ("respondent" or "Blakely"), violated provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

**II. BACKGROUND**

**A. Introduction**

Dick Zimmer ("Zimmer") was a candidate in the 2000 Republican primary for a seat in New Jersey's 12th Congressional District. Zimmer 2000, Inc. ("Zimmer 2000" or "Committee") was his authorized committee for that race.

Jamestown Associates ("Jamestown") reportedly served as Zimmer 2000's primary campaign consultant, providing a variety of services, including general campaign strategy, media, advertising and direct mail.<sup>1</sup> HOUSE RACE HOTLINE, *Recent Consultant Sign-ons and Staff Changes*, January 4, 2000; House Race Hotline, *Primary Preview – Consultant Watch*, June 6, 2000; HOUSE RACE HOTLINE, *Freshman (19R, 23D) – New Jersey 12: Six Degrees of Separation from Indie Ads?*, June 5, 2000 (hereinafter June 5, 2000 *HOTLINE* article); Aron Pilhofer, *Ex-aide*

<sup>1</sup> The FEC disclosure reports filed by Zimmer's previous campaign committees indicate that Jamestown and Weitzner also provided consulting services for the candidate's 1992 and 1994 congressional campaigns and his 1996 senate campaign

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of *Zimmer Linked to Ads*, HOME NEWS TRIBUNE, June 3, 2000 (hereinafter *TRIBUNE* article).

Jamestown, founded by Larry Weitzner ("Weitzner"), its President, operates as a full-service "political" consulting firm; one of its current Senior Vice Presidents is Tom Blakely. See [www.jamestownassociates.com](http://www.jamestownassociates.com).<sup>2</sup> Blakely is the registered agent for Fox Media Consulting ("Fox Media"), the advertising agency reportedly responsible for placing the advertisements at issue in this case.<sup>3</sup> *TRIBUNE* article; Susan Livio, *Pappas Calls Zimmer on Ad Linking Him to Klan*, THE STAR-LEDGER, June 2, 2000 (hereinafter June 2, 2000 *STAR-LEDGER* article). Fox Media's only available address--199 Nassau Street, Princeton, New Jersey--reportedly was shared with Jamestown. *TRIBUNE* article; June 2, 2000 *HOTLINE* article. Although Zimmer 2000 reportedly denied that Blakely worked on the campaign, Blakely reportedly issued statements on its behalf and was described by the press as Zimmer's "campaign consultant."<sup>4</sup> John Bresnahan and Rachel Van Dongen, *New Jersey Primary Splits House Leaders*, ROLL CALL, Dec. 2, 1999.

Megan Jencik ("Jencik") reportedly arranged with Fox Media to place the subject advertisements on behalf of Citizens for Tax Reform ("CTR"). *TRIBUNE* article; Susan Livio, *Democrats File Charges Against Zimmer Over Radio Ad Campaign*, THE STAR-LEDGER, June 9, 2000 (hereinafter June 9, 2000 *STAR-LEDGER* article). Disclosure reports show that Zimmer 2000 paid Jencik, presumably as a Jamestown employee, \$14,750 for consulting services provided

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<sup>2</sup> Information obtained from Dun & Bradstreet lists Weitzner as Jamestown's sole "member." The company was registered with New Jersey's Office of Secretary of State as a limited liability company in 1995.

<sup>3</sup> Fox Media was incorporated as a limited liability company in New Jersey on December 3, 1999. Fox Media's Certificate of Formation was executed and filed by Bruce Lubitz, Esq., who is also the registered agent for Jamestown.

<sup>4</sup> While the FEC disclosure reports for Zimmer 2000 record disbursements to Jamestown and Jencik, they do not show individual payments to either Weitzner or Blakely. It appears from disclosure reports filed in 1996 that Blakely provided consulting services to the 1996 Zimmer for Senate Committee.

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from August 1999 through April 20, 2000. See Zimmer 2000's 1999 Mid-Year, 1999 Year-End, 2000 April Quarterly and 2000 12-Day Pre-Primary Reports. According to press reports, Jencik left the Zimmer 2000 campaign at some point in April of 2000 "to be an independent media buyer." June 5, 2000 *HOTLINE* article.

CTR reportedly sponsored the advertisements in question. June 2, 2000 *STAR-LEDGER* article; *TRIBUNE* article; HOUSE RACE *HOTLINE*, *Freshman (19R, 23D) - New Jersey 12: Pappas Tries to Link KKK Ads to Zimmer*, June 2, 2000 (hereinafter June 2, 2000 *HOTLINE* Article); June 9, 2000 *STAR-LEDGER*.

**B. Factual Background**

Mike Pappas ("Pappas") opposed Zimmer for the 2000 Republican nomination in New Jersey's 12<sup>th</sup> Congressional District. The subject advertisements began running on at least two New York City radio stations, WOR Radio Network and WCBS-FM, in the week immediately prior to the June 6, 2000 primary election.<sup>5</sup> June 2, 2000 *HOTLINE* article; June 2, 2000 *STAR-LEDGER* article. According to the press, the advertisements in question stated "[t]here is no room in America for hatred and intolerance. Tell Mike Pappas to resign from the Pillar of Fire, and never work for that type of organization again."<sup>6</sup> June 2, 2000 *STAR-LEDGER* article.

<sup>5</sup> Although the complaint references only radio advertisements, the press mentioned a district-wide mailing that, like the radio advertisements, referred to Pappas' alleged connections with the Pillar of Fire's International Christian Church. Without elaboration, the article contended that Jamestown and CTR were responsible for the mailing. *TRIBUNE* article.

<sup>6</sup> The advertisements were reportedly a veiled attempt to link candidate Pappas and the Ku Klux Klan through the Pillar of Fire's International Christian Church. *TRIBUNE* article; June 2, 2000 *STAR-LEDGER*, June 2, 2000 *HOTLINE* article (the Pillar of Fire's International Christian Church's turn of the century founder reportedly was a supporter of the Ku Klux Klan. According to the press, the Church officially condemned such support in 1997. Pappas reportedly attended a high school affiliated with the institution and at one point worked as a fundraiser for the Church.)

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Press reports stated that CTR sponsored these advertisements; the press variously described CTR as a "stealth" pac, a "front group," and a "shadow organization." *TRIBUNE* article; June 2, 2000 *STAR-LEDGER* article; June 9, 2000 *STAR-LEDGER* article. CTR's purported spokesman, John Sheridan, reportedly refused to reveal how much the group spent on the advertising campaign or who was underwriting its costs. *TRIBUNE* article. He was, however, quoted in the press as saying that he hired Blakely to "buy the air time for the ad." June 5, 2000 *HOTLINE* article; *TRIBUNE* article. Jencik, reportedly identified on one New York radio station's billing statement as a "consultant" representing CTR, signed the purchase order dated May 31, 2000. June 9, 2000 *STAR-LEDGER* article, June 5, 2000 *HOTLINE* article. According to one press report, Jencik was then still listed as an employee on Jamestown's website, although the Zimmer campaign reportedly issued a statement saying that Jencik had "left the consulting firm" and the campaign by that time to become "an independent media buyer." June 5, 2000 *HOTLINE* article; June 9, 2000 *STAR-LEDGER* Article; *TRIBUNE* article.

Zimmer and Zimmer 2000 reportedly denounced the subject advertisements and "denied any knowledge of [them] and any contact with the [sponsoring] organization." June 2, 2000 *HOTLINE* article. John Sheridan, CTR's purported spokesman, reportedly stated that he didn't "know who bought the radio ad or whether there was a link to the Zimmer campaign." June 2, 2000 *STAR-LEDGER* article. Another press report, however, quoted Sheridan as saying that the advertisement was "produced and paid for by his organization without any involvement of the Zimmer campaign." June 5, 2000 *HOTLINE* article.

In addition to the alleged and reported associations among the individuals and entities discussed above, additional connections exist between and among them. For example, CTR's

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purported spokesman, John Sheridan, may have worked in the past with Zimmer and Weitzner.

Beginning in 1994, Sheridan reportedly served as a "key member," director and spokesman for an anti-tax group called Hands Across New Jersey ("HANJ"), which is registered with the New Jersey Election Law Enforcement Commission.<sup>7</sup> Joe Donohue, *Hands Across N.J. Official Denies Partisanship*, THE STAR-LEDGER, September 18, 1994; Laura Meckler, *Mysterious Group Raking Bradley on Campaign Finance*, ASSOCIATED PRESS, January 31, 2000; John Mintz, *Anti-Bradley Ad Said to Have Secret N.J. Backers*, THE RECORD, January 31, 2000. Press reports indicate that Zimmer worked with HANJ members on several anti-tax programs in the mid-1990's, including serving as a co-sponsor of a tax cut petition initiative launched by HANJ in February 1994; Zimmer reportedly also had interactions with HANJ through the Coalition for Lower Taxes ("CLT"), a group for which he served as chairman and Weitzner served as political coordinator.<sup>8</sup> Brett Pulley, *At One Office, Intricate Links in New Jersey's GOP Funds*, THE NEW YORK TIMES, July 8, 1996 (hereinafter *NEW YORK TIMES* article) article; Dunstan McNichol, *Whitman Endorses Campaign for Tax Cut*, THE RECORD, June 10, 1994; Lenny Melisurgo, *Hands Launching Petition Drive for Tax Cut*, THE STAR-LEDGER, February 13, 1994.

Moreover, it appears that Zimmer 2000 shared the same address as Fox Media and Jamestown. Zimmer provided 199 Nassau St., Princeton, N.J. as his address in his Statement of Candidacy dated March 10, 1999, and it is where his 2000 congressional committee, as well as

<sup>7</sup> Although some sources indicate that HANJ may have ceased formal operations at some point in 2000, it appears that the group, with Sheridan at the helm, may have been running anti-Bradley ads during the 2000 presidential election. Laura Meckler, *Mysterious Group Raking Bradley on Campaign Finance*, ASSOCIATED PRESS, January 31, 2000; John Mintz, *Anti-Bradley Ad Said to Have Secret N J Backers*, THE RECORD, January 31, 2000; <http://appenn.org/issueads/Hands%20Across%20New%20Jersey.html>.

<sup>8</sup> CLT appears to have shared space with Jamestown. Both the group and Jamestown were located at 741 Alexander Road, Princeton, New Jersey and then at 199 Nassau St, Princeton, New Jersey at around the same time. See MUR 4238, Designation of Counsel form for CLT dated February 2, 1997

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his 1996 senatorial committee, was located during the duration of the campaign. Although some press reports indicated that Jamestown may have moved from 199 Nassau St. at approximately the same time that the subject radio advertisements aired, Zimmer 2000 continued to identify 199 Nassau Street in its disclosure reports as Jamestown's address throughout the 2000 campaign.

Other than Fox Media's reported involvement in the subject radio advertisements, there is no indication that Fox Media has had any other clients other than CTR or that it worked on any other advertising campaigns. Very much like the sponsoring organization, CTR, Fox Media appears to have had little existence apart from the subject radio advertisements.

The complaint alleged that the advertisements "were a project of the Zimmer campaign," and indicated that the expenditures associated with them were coordinated in-kind contributions. Relying largely on the *TRIBUNE* article, the complaint contended that Jencik, who had ties to the campaign and Jamestown, placed the advertisements with Fox Media for CTR. The complaint further asserted that Fox Media appeared to be "an arm of Jamestown," because of Jencik's reported ties with Jamestown, because Fox Media's agent reportedly was Tom Blakely, a

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Jamestown partner, and because Fox Media and Jamestown shared the same address.<sup>9</sup>

C. Analysis

The Act provides that expenditures made “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate . . . .” 2 U.S.C.

§ 441a(a)(7)(B)(i). *See also Buckley v. Valeo*, 424 U.S. 1, 46 (1976) (“controlled or coordinated expenditures are treated as contributions”).<sup>10</sup> The Commission’s regulations during the applicable period provided that an expenditure made in coordination with a candidate’s campaign would be presumed to be an in-kind contribution to that campaign when it is “made by or through any person who is, or has been, authorized to raise or expend funds, who is or has been, an officer of an authorized committee, or who is, or has been receiving any form of compensation

<sup>9</sup> As additional support for its allegations, the complaint asserted that Zimmer used similar tactics during his 1996 campaign for the United State Senate, namely attacking an opponent using unregulated organizations. Allegations relating to these activities were the subject of MUR 4238. On May 14, 1996, the Commission found no reason to believe that certain respondents, including Zimmer, Zimmer for Senate and Weitzner, violated the Act in regard to these activities. The targets of these communications, including Zimmer’s then undeclared opponent, were all members of the New Jersey State Senate and the issues discussed in the advertisements were non-federal in nature. A newspaper article, which generally purported to describe the use of outside groups by Zimmer in 1996, was enclosed with the complaint in this matter. *NEW YORK TIMES* article.

The complaint also asserted that Zimmer 2000’s use of an unregulated organization to run the radio advertisements was barred by *FEC v. Cal Democratic Party*, 13 F. Supp. 2d 1031, 1034-35 (E.D. Calif. 1999) (court held that the California Democratic Party violated the Act by transferring non-federal funds to an initiative group to conduct voter registration and GOTV activities with knowledge that the group would use the funds to increase the number of voters who would vote for Democratic candidates, including Democratic candidates for federal office). This case has little relevance to the instant matter, given that only political committees which collect non-federal funds, such as political party committees, separate segregated funds and, in some cases, non-connected committees were required to adhere to the allocation regulations at issue in *FEC v Cal Democratic Party*.

<sup>10</sup> The facts relative to this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 (“BCRA”) Pub. L. No. 10-55, 116 Stat. 81. (2002) Unless specifically stated to the contrary, all citations to the FECA, codified at 2 U.S.C. §§ 432 *et seq* , and all statements of applicable law herein, refer to the FECA and its implementing regulations as they existed prior to the effective date of BCRA.

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or reimbursement from the candidate, the candidate's committee or agent." 11 C.F.R.

§ 109.1(b)(4)(i)(B).<sup>11</sup>

In the context of expenditures made by outside groups that were not political party committees during the time period applicable to this matter, the Commission considers the potential coordination under the standards set forth in *FEC v. Christian Coalition*, 52 F. Supp.2d 45 (D.D.C. 1999) ("*Christian Coalition*"). In that case, the district court discussed two general ways in which coordination could occur: first, "expressive coordinated expenditures made at the request or the suggestion of the candidate or an authorized agent" would be considered coordinated; and second,

absent a request or suggestion, an expressive expenditure becomes "coordinated" where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over, a communication's: (1) contents; (2) timing; (3) location, mode or intended audience (e.g., choice between newspaper or radio advertisement); or (4) "volume" (e.g., number of copies of printed materials or frequency of media spots).

*Id.* at 92. The court also found that coordination might be established if an individual had a certain level of decision-making authority for both the spender and the campaign and the spender

<sup>11</sup> On December 6, 2000, 11 C.F.R. § 109.1 was amended in part by revising certain paragraphs, including 11 C.F.R. § 109.1(b)(4), on which the Complainant relied. This particular regulation was revised to eliminate any presumption of coordination based on overbreadth concerns. See *Explanation and Justification for Regulations on General Public Political Communications Coordinated With Candidates and Party Committees; Independent Expenditures*, 65 Fed. Reg. 76138, 76145 (Dec. 6, 2000). Subsequently, the Commission approved new regulations regarding coordinated public communications codified at 11 C.F.R. § 100.23, which became effective on May 9, 2001. See 66 Fed. Reg. 23,537 (May 9, 2001). BCRA repealed 11 C.F.R. § 100.23 and on December 5, 2002, the Commission approved new coordination regulations. Newly promulgated 11 C.F.R. § 109.20(a) defines "coordinated" to mean "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, the candidate's authorized committee, a political party committee, or the agents of any of the foregoing."

made the expressive expenditures to assist the campaign.<sup>12</sup> *Id.* at 96-97.

As discussed above, the available information strongly indicates that there were significant connections between Zimmer, Jamestown, Fox Media, CTR and individuals connected with these entities. CTR's purported spokesman, Sheridan, has been quoted in the press as variously stating that he did not know who bought the radio advertisements, that he did not know whether there was a link to the Zimmer campaign, and that the advertisements were "purchased and paid for by his organization without any involvement of the Zimmer campaign." Compare June 2, 2000 *STAR-LEDGER* article with June 5, 2000 *HOTLINE* article; see *TRIBUNE* article. These reported statements are inconsistent and bear additional scrutiny. Moreover, even if there were no direct involvement by the candidate or staff of the Zimmer campaign, it appears that Zimmer 2000's agent, Jamestown, the campaign's primary political consultant, is linked with Fox Media, the entity reportedly placing the advertisements, through Blakely, a Jamestown partner and Fox Media's registered agent. In addition, Jencik previously served as a consultant

<sup>12</sup> As noted previously, the advertisements at issue do not appear to contain "express advocacy." Expenditures coordinated with campaigns are treated as contributions and can be constitutionally regulated even if, in the case of communications, they do not contain express advocacy. In *Buckley v Valeo*, 424 U.S. 1 (1976), the Supreme Court upheld contribution limits as constitutional, but struck down such limits on independent expenditures. However, the Court realized that the contribution limits could be evaded if spenders simply paid for "media advertisements or other portions of the candidate's campaign activities." *Id.* at 46. Therefore, in order to "prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions," the Court treated "coordinated expenditures . . . as contributions rather than expenditures." *Id.* at 46-47. Thus, the Court distinguished between expenditures made independently of the candidate and his campaign which could not be regulated constitutionally and "coordinated expenditures" which could be. The *Buckley* Court included in its definition of "contribution" "all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate." *Id.* at 78. The definition of "independent expenditure" at 2 U.S.C. § 431(17) is consistent with the *Buckley* Court's definition. Based in part on *Buckley*, the *Christian Coalition* court rejected the assertion that express advocacy was required for expenditures to be considered coordinated. *Christian Coalition*, 52 F. Supp. 2d at 87-93.

to the Zimmer campaign and reportedly was still listed as a Jamestown employee on its website at the time she reportedly arranged with Fox Media, on behalf of CTR, to place the advertisements. At the pertinent time, Zimmer 2000, Jamestown and Fox Media all shared the same address, and Fox Media has apparently engaged in no reported activity other than placing the advertisements in question. Finally, it appears that the candidate, Dick Zimmer, and Jamestown's President Weitzner, may have had prior dealings with CTR's purported spokesman Sheridan through their work on tax issues. If personnel of Jamestown, an agent of the Zimmer campaign, had substantial involvement in preparing and placing the subject advertisements, either directly or through "front organizations," as Fox Media and CTR may have been, the legal standards for establishing coordination under *Christian Coordination*, former 11 C.F.R. § 100.23 and current 11 C.F.R. §109.20(a) would all be met.

The respondent Blakely did submit a response in which he contended that the complaint had no legal basis, but did not affirmatively deny coordination or any of the factual allegations made in the complaint, other than to include a reference to John Sheridan's reported denial that the advertisements had "any connection to the Zimmer campaign." However, as noted, another press statement quotes Sheridan as saying that he did not know whether there was a link between the advertisements and the Zimmer campaign. June 2, 2000 STAR-LEDGER article.

Given the documented and reported multiple and overlapping relationships amongst several of the individuals associated with Blakely and entities connected with creating and broadcasting the subject advertisements, it appears that there is sufficient evidence of possible coordination to find reason to believe. If, during the relevant period, Jamestown was filing with the IRS as a corporation, then Blakely's activities as a corporate officer may have resulted in

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prohibited in-kind contributions being made to the Zimmer 2000 campaign in violation of

2 U.S.C. 441b.<sup>13</sup> If, however, Jamestown and Fox Media were filing with the IRS as a partnerships, then Blakely can, as a partner in either or both of these entities, be held responsible for activities resulting in resulting in excessive and prohibited in-kind contributions being made to the Zimmer 2000 campaign in violation of 2 U.S.C. § 441a(a)(1) and (3).

Therefore, there is reason to believe that Tom Blakely violated 2 U.S.C. §§ 441b and 2 U.S.C. § 441a(a)(1) and (3).

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<sup>13</sup> Pursuant to 2 U.S.C. § 441a(a)(1)(A), it is illegal for any person to make contributions to any candidate and his authorized political committee with respect to any Federal election that, in the aggregate, exceed \$1,000. Likewise, individuals are prohibited from making contributions that exceed more than \$25,000 in any calendar year. 2 U.S.C. § 441a(a)(3). The Act prohibits also corporations from making contributions or expenditures in connection with any Federal election, and prohibits any corporate officer or director from consenting to such contributions or expenditures. 2 U.S.C. § 441b(a). The also prohibits political committees from knowingly accepting contributions that are in violation of the Act. 2 U.S.C. §§ 441a(f), 441b.

As noted *supra*, Jamestown and Fox Media are registered with the state of New Jersey as a limited liability companies ("LLCs"). For purposes of the Act, an LLC is a business entity that is recognized as a limited liability company under the laws of the State in which it is established. 11 C.F.R. § 110.1(g). Whether or not a contribution made by an LLC is considered to be prohibited under the Act depends on how the firm elects to file with the Internal Revenue Service ("IRS"). *Id* An LLC filing with the IRS as a partnership pursuant to 26 C.F.R. § 301.7701-3, or not electing treatment as either a partnership or a corporation pursuant to that section, shall be treated as a contribution from a partnership pursuant to 11 C.F.R. § 110.1(e). An LLC electing to file with the IRS as a corporation is prohibited from making contributions pursuant to 2 U.S.C. § 441(b) and 11 C.F.R. § 110.1(g)(3). A contribution by an LLC with a single natural person member that does not elect to file with the IRS as a corporation shall be attributable to that single member. 11 C.F.R. § 110.1(g)(4).

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

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MUR: 5026

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This matter was generated by a complaint submitted by David Plouffe, Executive Director of the Democratic Congressional Campaign Committee ("DCCC" or "complainant"). See 2 U.S.C. § 437g(a)(1). The DCCC alleged that Fox Media Consulting ("Fox Media" or "respondent"), violated provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

**II. BACKGROUND**

**A. Introduction**

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from *Indie Ads?*, June 5, 2000 (hereinafter June 5, 2000 *HOTLINE* article); Aron Pilhofer, *Ex-aide of Zimmer Linked to Ads*, HOME NEWS TRIBUNE, June 3, 2000 (hereinafter *TRIBUNE* article).

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CTR reportedly sponsored the advertisements in question. June 2, 2000 *STAR-LEDGER* article; *TRIBUNE* article; HOUSE RACE HOTLINE, *Freshman (19R, 23D) – New Jersey 12: Pappas Tries to Link KKK Ads to Zimmer*, June 2, 2000 (hereinafter June 2, 2000 *HOTLINE* Article); June 9, 2000 *STAR-LEDGER*.

**B. Factual Background**

Mike Pappas ("Pappas") opposed Zimmer for the 2000 Republican nomination in New Jersey's 12<sup>th</sup> Congressional District. The subject advertisements began running on at least two New York City radio stations, WOR Radio Network and WCBS-FM, in the week immediately prior to the June 6, 2000 primary election.<sup>5</sup> June 2, 2000 *HOTLINE* article; June 2, 2000 *STAR-LEDGER* article. According to the press, the advertisements in question stated "[t]here is no room in America for hatred and intolerance. Tell Mike Pappas to resign from the Pillar of Fire, and

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<sup>5</sup> Although the complaint references only radio advertisements, the press mentioned a district-wide mailing that, like the radio advertisements, referred to Pappas' alleged connections with the Pillar of Fire's International Christian Church. Without elaboration, the article contended that Jamestown and CTR were responsible for the mailing. *TRIBUNE* article.



never work for that type of organization again.”<sup>6</sup> June 2, 2000 *STAR-LEDGER* article.

Press reports stated that CTR sponsored these advertisements; the press variously described CTR as a “stealth” pac, a “front group,” and a “shadow organization.” *TRIBUNE* article; June 2, 2000 *STAR-LEDGER* article; June 9, 2000 *STAR-LEDGER* article. CTR’s purported spokesman, John Sheridan, reportedly refused to reveal how much the group spent on the advertising campaign or who was underwriting its costs. *TRIBUNE* article. He was, however, quoted in the press as saying that he hired Blakely to “buy the air time for the ad.” June 5, 2000 *HOTLINE* article; *TRIBUNE* article. Jencik, reportedly identified on one New York radio station’s billing statement as a “consultant” representing CTR, signed the purchase order dated May 31, 2000. June 9, 2000 *STAR-LEDGER* article, June 5, 2000 *HOTLINE* article. According to one press report, Jencik was then still listed as an employee on Jamestown’s website, although the Zimmer campaign reportedly issued a statement saying that Jencik had “left the consulting firm” and the campaign by that time to become “an independent media buyer.” June 5, 2000 *HOTLINE* article; June 9, 2000 *STAR-LEDGER* Article; *TRIBUNE* article.

Zimmer and Zimmer 2000 reportedly denounced the subject advertisements and “denied any knowledge of [them] and any contact with the [sponsoring] organization.” June 2, 2000 *HOTLINE* article. John Sheridan, CTR’s purported spokesman, reportedly stated that he didn’t “know who bought the radio ad or whether there was a link to the Zimmer campaign.” June 2, 2000 *STAR-LEDGER* article. Another press report, however, quoted Sheridan as saying that the

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<sup>6</sup> The advertisements were reportedly a veiled attempt to link candidate Pappas and the Ku Klux Klan through the Pillar of Fire’s International Christian Church. *TRIBUNE* article; June 2, 2000 *STAR-LEDGER*, June 2, 2000 *HOTLINE* article (the Pillar of Fire’s International Christian Church’s turn of the century founder reportedly was a supporter of the Ku Klux Klan. According to the press, the Church officially condemned such support in 1997. Pappas reportedly attended a high school affiliated with the institution and at one point worked as a fundraiser for the Church.)

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advertisement was "produced and paid for by his organization without any involvement of the Zimmer campaign." June 5, 2000 *HOTLINE* article.

In addition to the alleged and reported associations among the individuals and entities discussed above, additional connections exist between and among them. For example, CTR's purported spokesman, John Sheridan, may have worked in the past with Zimmer and Weitzner. Beginning in 1994, Sheridan reportedly served as a "key member," director and spokesman for an anti-tax group called Hands Across New Jersey ("HANJ"), which is registered with the New Jersey Election Law Enforcement Commission.<sup>7</sup> Joe Donohue, *Hands Across N.J. Official Denies Partisanship*, THE STAR-LEDGER, September 18, 1994; Laura Meckler, *Mysterious Group Raking Bradley on Campaign Finance*, ASSOCIATED PRESS, January 31, 2000; John Mintz, *Anti-Bradley Ad Said to Have Secret N.J. Backers*, THE RECORD, January 31, 2000. Press reports indicate that Zimmer worked with HANJ members on several anti-tax programs in the mid-1990's, including serving as a co-sponsor of a tax cut petition initiative launched by HANJ in February 1994; Zimmer reportedly also had interactions with HANJ through the Coalition for Lower Taxes ("CLT"), a group for which he served as chairman and Weitzner served as political coordinator.<sup>8</sup> Brett Pulley, *At One Office, Intricate Links in New Jersey's GOP Funds*, THE NEW YORK TIMES, July 8, 1996 (hereinafter *NEW YORK TIMES* article) article; Dunstan McNichol,

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<sup>7</sup> Although some sources indicate that HANJ may have ceased formal operations at some point in 2000, it appears that the group, with Sheridan at the helm, may have been running anti-Bradley ads during the 2000 presidential election. Laura Meckler, *Mysterious Group Raking Bradley on Campaign Finance*, ASSOCIATED PRESS, January 31, 2000; John Mintz, *Anti-Bradley Ad Said to Have Secret N.J. Backers*, THE RECORD, January 31, 2000; <http://appepenn.org/issueads/Hands%20Across%20New%20Jersey.html>.

<sup>8</sup> CLT appears to have shared space with Jamestown. Both the group and Jamestown were located at 741 Alexander Road, Princeton, New Jersey and then at 199 Nassau St, Princeton, New Jersey at around the same time. See MUR 4238, Designation of Counsel form for CLT dated February 2, 1997

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*Whitman Endorses Campaign for Tax Cut*, THE RECORD, June 10, 1994; Lenny Melisurgo, *Hands Launching Petition Drive for Tax Cut*, THE STAR-LEDGER, February 13, 1994.

Moreover, it appears that Zimmer 2000 shared the same address as Fox Media and Jamestown. Zimmer provided 199 Nassau St., Princeton, N.J. as his address in his Statement of Candidacy dated March 10, 1999, and it is where his 2000 congressional committee, as well as his 1996 senatorial committee, was located during the duration of the campaign. Although some press reports indicated that Jamestown may have moved from 199 Nassau St. at approximately the same time that the subject radio advertisements aired, Zimmer 2000 continued to identify 199 Nassau Street in its disclosure reports as Jamestown's address throughout the 2000 campaign.

Other than Fox Media's reported involvement in the subject radio advertisements, there is no indication that Fox Media has had any other clients other than CTR or that it worked on any other advertising campaigns. Very much like the sponsoring organization, CTR, Fox Media appears to have had little existence apart from the subject radio advertisements.

The complaint alleged that the advertisements "were a project of the Zimmer campaign," and indicated that the expenditures associated with them were coordinated in-kind contributions. Relying largely on the *TRIBUNE* article, the complaint contended that Jencik, who had ties to the campaign and Jamestown, placed the advertisements with Fox Media for CTR. The complaint further asserted that Fox Media appeared to be "an arm of Jamestown," because of Jencik's reported ties with Jamestown, because Fox Media's agent reportedly was Tom Blakely, a

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Jamestown partner, and because Fox Media and Jamestown shared the same address.<sup>9</sup>

C. Analysis

The Act provides that expenditures made “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate . . . .” 2 U.S.C.

§ 441a(a)(7)(B)(i). *See also Buckley v. Valeo*, 424 U.S. 1, 46 (1976) (“controlled or coordinated expenditures are treated as contributions”).<sup>10</sup> The Commission’s regulations during the applicable period provided that an expenditure made in coordination with a candidate’s campaign would be presumed to be an in-kind contribution to that campaign when it is “made by or through any person who is, or has been, authorized to raise or expend funds, who is or has been, an officer of an authorized committee, or who is, or has been receiving any form of compensation

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<sup>9</sup> As additional support for its allegations, the complaint asserted that Zimmer used similar tactics during his 1996 campaign for the United State Senate, namely attacking an opponent using unregulated organizations. Allegations relating to these activities were the subject of MUR 4238. On May 14, 1996, the Commission found no reason to believe that certain respondents, including Zimmer, Zimmer for Senate and Weitzner, violated the Act in regard to these activities. The targets of these communications, including Zimmer’s then undeclared opponent, were all members of the New Jersey State Senate and the issues discussed in the advertisements were non-federal in nature. A newspaper article, which generally purported to describe the use of outside groups by Zimmer in 1996, was enclosed with the complaint in this matter. *NEW YORK TIMES* article.

The complaint also asserted that Zimmer 2000’s use of an unregulated organization to run the radio advertisements was barred by *FEC v. Cal. Democratic Party*, 13 F. Supp. 2d 1031, 1034-35 (E.D. Calif. 1999) (court held that the California Democratic Party violated the Act by transferring non-federal funds to an initiative group to conduct voter registration and GOTV activities with knowledge that the group would use the funds to increase the number of voters who would vote for Democratic candidates, including Democratic candidates for federal office). This case has little relevance to the instant matter, given that only political committees which collect non-federal funds, such as political party committees, separate segregated funds and, in some cases, non-connected committees were required to adhere to the allocation regulations at issue in *FEC v. Cal. Democratic Party*.

<sup>10</sup> The facts relative to this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 (“BCRA”) Pub. L. No. 10-55, 116 Stat. 81. (2002). Unless specifically stated to the contrary, all citations to the FECA, codified at 2 U.S.C. §§ 432 *et seq* , and all statements of applicable law herein, refer to the FECA and its implementing regulations as they existed prior to the effective date of BCRA.

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or reimbursement from the candidate, the candidate's committee or agent." 11 C.F.R.

§ 109.1(b)(4)(i)(B).<sup>11</sup>

In the context of expenditures made by outside groups that were not political party committees during the time period applicable to this matter, the Commission considers the potential coordination under the standards set forth in *FEC v. Christian Coalition*, 52 F. Supp.2d 45 (D.D.C. 1999) ("*Christian Coalition*"). In that case, the district court discussed two general ways in which coordination could occur: first, "expressive coordinated expenditures made at the request or the suggestion of the candidate or an authorized agent" would be considered coordinated; and second,

absent a request or suggestion, an expressive expenditure becomes "coordinated" where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over, a communication's: (1) contents; (2) timing; (3) location, mode or intended audience (e.g., choice between newspaper or radio advertisement); or (4) "volume" (e.g., number of copies of printed materials or frequency of media spots).

*Id.* at 92. The court also found that coordination might be established if an individual had a certain level of decision-making authority for both the spender and the campaign and the spender

<sup>11</sup> On December 6, 2000, 11 C.F.R. § 109.1 was amended in part by revising certain paragraphs, including 11 C.F.R. § 109.1(b)(4), on which the Complainant relied. This particular regulation was revised to eliminate any presumption of coordination based on overbreadth concerns. See *Explanation and Justification for Regulations on General Public Political Communications Coordinated With Candidates and Party Committees, Independent Expenditures*, 65 Fed. Reg. 76138, 76145 (Dec. 6, 2000). Subsequently, the Commission approved new regulations regarding coordinated public communications codified at 11 C.F.R. § 100.23, which became effective on May 9, 2001. See 66 Fed. Reg. 23,537 (May 9, 2001). BCRA repealed 11 C.F.R. § 100.23 and on December 5, 2002, the Commission approved new coordination regulations. Newly promulgated 11 C.F.R. § 109.20(a) defines "coordinated" to mean "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, the candidate's authorized committee, a political party committee, or the agents of any of the foregoing."

made the expressive expenditures to assist the campaign.<sup>12</sup> *Id.* at 96-97.

As discussed above, the available information strongly indicates that there were significant connections between Zimmer, Jamestown, Fox Media, CTR and individuals connected with these entities. CTR's purported spokesman, Sheridan, has been quoted in the press as variously stating that he did not know who bought the radio advertisements, that he did not know whether there was a link to the Zimmer campaign, and that the advertisements were "purchased and paid for by his organization without any involvement of the Zimmer campaign." Compare June 2, 2000 *STAR-LEDGER* article with June 5, 2000 *HOTLINE* article; see *TRIBUNE* article. These reported statements are inconsistent and bear additional scrutiny. Moreover, even if there were no direct involvement by the candidate or staff of the Zimmer campaign, it appears that Zimmer 2000's agent, Jamestown, the campaign's primary political consultant, is linked with Fox Media, the entity reportedly placing the advertisements, through Blakely, a Jamestown partner and Fox Media's registered agent. In addition, Jencik previously served as a consultant to the Zimmer campaign and reportedly was still listed as a Jamestown employee on its website at the time she reportedly arranged with Fox Media, on behalf of CTR, to place the

<sup>12</sup> As noted previously, the advertisements at issue do not appear to contain "express advocacy." Expenditures coordinated with campaigns are treated as contributions and can be constitutionally regulated even if, in the case of communications, they do not contain express advocacy. In *Buckley v Valeo*, 424 U.S. 1 (1976), the Supreme Court upheld contribution limits as constitutional, but struck down such limits on independent expenditures. However, the Court realized that the contribution limits could be evaded if spenders simply paid for "media advertisements or other portions of the candidate's campaign activities." *Id.* at 46. Therefore, in order to "prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions," the Court treated "coordinated expenditures . . . as contributions rather than expenditures." *Id.* at 46-47. Thus, the Court distinguished between expenditures made independently of the candidate and his campaign which could not be regulated constitutionally and "coordinated expenditures" which could be. The *Buckley* Court included in its definition of "contribution" "all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate." *Id.* at 78. The definition of "independent expenditure" at 2 U.S.C. § 431(17) is consistent with the *Buckley* Court's definition. Based in part on *Buckley*, the *Christian Coalition* court rejected the assertion that express advocacy was required for expenditures to be considered coordinated. *Christian Coalition*, 52 F. Supp. 2d. at 87-93.

advertisements. At the pertinent time, Zimmer 2000, Jamestown and Fox Media all shared the same address, and Fox Media has apparently engaged in no reported activity other than placing the advertisements in question. Finally, it appears that the candidate, Dick Zimmer, and Jamestown's President Weitzner, may have had prior dealings with CTR's purported spokesman Sheridan through their work on tax issues. If personnel of Jamestown, an agent of the Zimmer campaign, had substantial involvement in preparing and placing the subject advertisements, either directly or through "front organizations," as Fox Media and CTR may have been, the legal standards for establishing coordination under *Christian Coordination*, former 11 C.F.R. § 100.23 and current 11 C.F.R. §109.20(a) would all be met.

The respondent, Fox Media, did not submit a response. Therefore, despite being the given the opportunity to do so, the respondent did not deny coordination or any of the factual allegations made in the complaint.

Given the documented and reported multiple and overlapping relationships amongst several of the individuals associated with Fox Media and entities connected with creating and broadcasting the subject advertisements, it appears that there is sufficient evidence of possible coordination to find reason to believe. If Fox Media is shown to have coordinated the subject advertisements, the respondent would, as a consequence, have variously violated the Act's prohibitions against making excessive and prohibited in-kind contributions to the Zimmer 2000

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campaign, in violation of 2 U.S.C. §§ 441a(a)(1) and (3).<sup>13</sup> If, during the relevant period, Fox Media was filing with the IRS as a corporation, then its activities resulting in the subject advertisements being created, produced, and distributed, may have constituted prohibited in-kind contributions to the Zimmer 2000 campaign in violation of 2 U.S.C. 441b.

Therefore, there is reason to believe that Fox Media Consulting violated 2 U.S.C. §§ 441a(a)(1) and (3) or in the alternative §441b.

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<sup>13</sup> Pursuant to 2 U.S.C. § 441a(a)(1)(A), it is illegal for any person to make contributions to any candidate and his authorized political committee with respect to any Federal election that, in the aggregate, exceed \$1,000. Likewise, individuals are prohibited from making contributions that exceed more than \$25,000 in any calendar year. 2 U.S.C. § 441a(a)(3). The Act prohibits also corporations from making contributions or expenditures in connection with any Federal election, and prohibits any corporate officer or director from consenting to such contributions or expenditures. 2 U.S.C. § 441b(a). The also prohibits political committees from knowingly accepting contributions that are in violation of the Act. 2 U.S.C. §§ 441a(f), 441b.

As noted *supra*, Fox Media registered with the state of New Jersey as a limited liability company ("LLC"). For purposes of the Act, an LLC is a business entity that is recognized as a limited liability company under the laws of the State in which it is established. 11 C.F.R. § 110.1(g). Whether or not a contribution made by an LLC is considered to be prohibited under the Act depends on how the firm elects to file with the Internal Revenue Service ("IRS"). *Id* An LLC filing with the IRS as a partnership pursuant to 26 C.F.R. § 301.7701-3, or not electing treatment as either a partnership or a corporation pursuant to that section, shall be treated as a contribution from a partnership pursuant to 11 C.F.R. § 110.1(e). An LLC electing to file with the IRS as a corporation is prohibited from making contributions pursuant to 2 U.S.C. § 441(b) and 11 C.F.R. § 110.1(g)(3). A contribution by an LLC with a single natural person member that does not elect to file with the IRS as a corporation shall be attributable to that single member. 11 C.F.R. § 110.1(g)(4)

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