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SENSITIVE

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5155

DATE COMPLAINT FILED: November 16, 2000

DATE OF NOTIFICATION: November 27, 2000

DATE ACTIVATED: April 6, 2001

EXPIRATION OF STATUTE OF  
LIMITATIONS: October 18, 2005.

STAFF MEMBER: April J. Sands

COMPLAINANT:

Gore 2000, Inc. and  
Gary R. Gruver, Assistant Treasurer

RESPONDENTS:

Friends for a Democratic White House and  
Patricia Claucherty, as Treasurer<sup>1</sup>  
Jerome Dewald  
Swing States PAC and  
Marsha McCoy-Pfister, as Treasurer<sup>2</sup>  
TRKC, Inc.<sup>3</sup>

RELEVANT STATUTES:

2 U.S.C. § 438(a)(4)  
2 U.S.C. § 431(4)  
2 U.S.C. § 433  
2 U.S.C. § 434  
2 U.S.C. § 441h  
11 C.F.R. § 104.15

<sup>1</sup> Jeanette Hensler was the Treasurer of Friends for a Democratic White House at the time the complaint was filed. An amended Statement of Organization naming Patricia Claucherty as Treasurer was filed with the Commission on December 20, 2000. In accordance with standard practice, this Office makes its recommendations to the Commission regarding the current Treasurer.

<sup>2</sup> Jennifer Vavricka was the Treasurer of Swing States PAC at the time the complaint was filed. An amended Statement of Organization naming Marsha McCoy-Pfister as Treasurer was filed with the Commission on March 5, 2002. In accordance with standard practice, this Office makes its recommendations to the Commission regarding the current Treasurer.

<sup>3</sup> TRKC is an internally generated Respondent and, as such, has not responded to the Complaint.

INTERNAL REPORTS CHECKED: Disclosure reports; Commission indices

FEDERAL AGENCIES CHECKED: United States Postal Service

**I. GENERATION OF MATTER**

This matter was initiated by a Complaint filed with the Federal Election Commission (“the Commission”) by Gary R. Gruver, Assistant Treasurer of Gore 2000, Inc. In this Complaint, Gore 2000 Inc. alleges that Friends for a Democratic White House (“Friends”) and Jerome Dewald, its Chief of Staff, have stolen the list of contributors of Gore 2000, Inc. and solicited contributions from them through a mailing, failed to register with and report to the Commission, and engaged in fraudulent misrepresentation of Gore 2000 Inc. and Al Gore. The complainant has also filed an Amendment to the Complaint in which it alleges that an additional respondent, the treasurer of Friends, participated in the violations described in the original Complaint. Finally, the Complainant alleges that the violations are knowing and willful because a second mailing was sent since the date of the original Complaint. The Amendment attaches a newspaper article reporting that Jerome Dewald was also involved in a second group named Swing States PAC and that the Swing States PAC was involved in a common scheme with Friends to solicit monetary contributions.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. THE LAW**

Any information copied from reports filed with the Commission may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than

1 using the name and address of any political committee to solicit contributions from such  
2 committee. 2 U.S.C. § 438(a)(4). A political committee may submit 10 pseudonyms on each  
3 report filed in order to protect against the illegal use of names and addresses of contributors,  
4 provided such committee attaches a list of such pseudonyms to the appropriate report. *Id.* The  
5 Clerk, Secretary, or the Commission shall exclude these lists from the public record. *Id.*;  
6 11 C.F.R. § 104.15(a). For purposes of this provision, "soliciting contributions" includes  
7 soliciting any type of contribution or donation, such as political or charitable contributions.  
8 11 C.F.R. § 104.15(b). The identity of these "salted" or "seeded" names, as they are referred to,  
9 is excluded from the public record to provide a means of identifying and proving when names are  
10 copied from reports filed with the Commission.

11 The term "contribution" is defined to include any gift, subscription, loan, advance, or  
12 deposit of money or anything of value made by any person for the purpose of influencing any  
13 election for Federal office. 2 U.S.C. § 431(8)(A)(i). The term "person" is defined to include an  
14 individual, partnership, committee, association, corporation, labor organization, or any other  
15 organization or group of persons. 2 U.S.C. § 431(11).

16 Any group of persons that receives contributions aggregating in excess of \$1000 or makes  
17 expenditures aggregating in excess of \$1000 during a calendar year must register with the  
18 Commission and report its receipts and disbursements. 2 U.S.C. §§ 431(4), 433, and 434.

19 The Act provides that no person who is an agent of a candidate shall fraudulently  
20 misrepresent himself as speaking, writing or acting on behalf of another candidate or agent in a  
21 damaging manner. 2 U.S.C. § 441h.

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**B. THE ALLEGATIONS**

Gore 2000, Inc. (the "Gore Committee") makes several allegations in its Complaint and the Amendment thereto. First, the Gore Committee alleges that Friends for a Democratic White House ("Friends") had not registered with the Commission as required by the Act, despite receiving contributions or making expenditures aggregating in excess of \$1000. Because the very solicitation by Friends requests contributions of at least \$1000 and the magnitude of the direct mailing the Gore Committee envisions Friends to have undertaken, the Gore Committee alleges that Friends has violated several provisions of the Act.

Next, the Gore Committee alleges that Friends is holding itself out as an agent of Al Gore by offering in its direct mailing the opportunity to win tickets to the Gore Inaugural Ball. Because Friends is not, in fact, an agent of the Gore Committee or Al Gore, the Gore Committee alleges that Friends "is acting in a manner damaging to both Al Gore and his principal Campaign committee, since the latter could be accused of wrongdoing under the Act based on the fraud of" Friends.

Last, the Gore Committee alleges that Friends copied names from the Gore Committee's reports filed with the Commission and sent mailings to those names requesting contributions "to pay for activities in support of the Democratic candidate for President, Al Gore." The Gore Committee states that the names used on the direct mail solicitations by Friends indicate that the source of the names must have been the reports filed with the Commission by the Gore Committee. As purported evidence of this fact, the Gore Committee points to a letter sent to Carolyn Utrecht. Ms. Utrecht is most often referred to as Lyn, but her full first name, Carolyn,

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1 was submitted on the Gore Committee's disclosure report of contributors. Because the letter  
2 from Friends was addressed to Carolyn Utrecht, and not Lyn Utrecht, the Gore Committee  
3 concludes that Friends stole the report and illegally used the names when making its solicitations.

4 In its Amendment, the Gore Committee provides the name of Jeanette Hensler, who is  
5 listed as Treasurer on the Friends Statement of Organization filed with the Commission on  
6 November 6, 2000. The Gore Committee alleges that, as Treasurer of Friends, Ms. Hensler has  
7 "participated in the illegal scheme and committed the violations described in" the original  
8 Complaint.<sup>4</sup> The Gore Committee also states that a second mailing was sent since the filing of  
9 the Complaint. This subsequent mailing requests contributions to "respond to legal challenges"  
10 faced by Al Gore based on the election results in Florida, Iowa, Wisconsin, Oregon and New  
11 Mexico. Because the alleged violations are ongoing, the Gore Committee states that the  
12 violations by Friends are knowing and willful.

13 The Gore Committee also includes a newspaper article regarding the Swing States PAC  
14 in its Amendment to the Complaint. According to the article, this PAC is sending out letters to  
15 potential Republican contributors requesting contributions to assist in the legal challenges  
16 regarding the 2000 Presidential election. The newspaper article raises questions in that nearly  
17 identical letters were sent by Friends to potential Democratic contributors and *both* letters are  
18 signed by the same person, Jerome "J." Dewald.

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4 As set forth in Footnote 1, Ms. Hensler is no longer the Treasurer of Friends and, pursuant to standard practice, this Office's recommendations are being made with respect to the current Treasurer, Patricia Claucherty.

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**C. THE RESPONSE TO THE COMPLAINT AND AMENDMENT**

On February 6, 2001, counsel on behalf of Friends responded to the Complaint and the subsequent Amendment.<sup>5</sup> Friends states that there is no reason to believe that there were any violations of the Act and requests that the Commission close the file.

Friends is a political committee registered with the Commission as of November 6, 2000. On its Statement of Organization, Friends registered as a committee which supports or opposes more than one federal candidate and is not a party committee. Therefore, Friends reasons, there is no basis for the Gore Committee's allegation that Friends is operating as a committee without properly registering with the Commission as required by the Act.

Second, Friends states that there is no basis to allege that it was holding itself out as an agent of either Al Gore or Gore 2000, Inc. when it offered inaugural ball tickets to selected contributors. Friends maintains that it is not an agent of the Gore Committee, and so the language of 2 U.S.C. § 441h is inapplicable. Friends asserts in its response that offering in its direct mailing the opportunity to win tickets to the Gore Inaugural Ball does not make it an agent of either the Gore Committee or Al Gore because the tickets are essentially available to the general public either by gift or purchase.

Third, Friends denies the Gore Committee's allegations that Friends stole the Gore Committee's disclosure reports and used the names on those reports to solicit contributions with a direct mailing. The Gore Committee alleged that the names of people solicited by Friends "can logically only have come from being copied directly from the Gore Committee's FEC report."

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<sup>5</sup> Although Swing States PAC was served with the Complaint, it did not file a response.

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1 To counter, Friends states that the fact that a letter was sent to an individual using a name which  
2 she rarely uses does not show that it came from an FEC Disclosure Report. Friends states that  
3 publicly available information accessible from the Internet site <http://www.tray.com> lists  
4 Ms. Utrecht's formal name, Carolyn, along with her address, employer, and past contributions.  
5 Friends argues that because there is no "warning or notice of any type that this information is  
6 precluded by the FECA from being utilized by those viewing it," there is no prohibition, and thus  
7 no violation, in using names gleaned from these lists.

#### 8 **D. ANALYSIS**

##### 9 **1. Registration and Reporting**

10 The contention that Friends violated 2 U.S.C. §§ 431(4), 433 and 434 because it failed to  
11 register with the Commission appears to be without merit. Although Friends sent direct mailings  
12 on or around October 18, 2000, it is the date that contributions are received or expenditures are  
13 made which triggers the Act. 2 U.S.C. § 431(4)(A). According to the disclosure reports on file  
14 with the Commission, Friends became a political committee on October 26, 2000, because it was  
15 on that date that it received contributions aggregating in excess of \$1000.<sup>6</sup> 2 U.S.C. § 431(4)(A).

16 From that date, Friends had 10 days to file a statement of organization, or until November 5,  
17 2000. 2 U.S.C. § 433(a). November 5, 2000 was a Sunday; the Statement of Organization from  
18 Friends was dated November 3, 2000 and was received by the Commission on Monday,  
19 November 6, 2000. Indeed, the Gore Committee attaches a copy of Friends' timely filed  
20 Statement of Organization to its Amendment to the Complaint. Thus, this Office recommends

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6 Friends --disbursed nearly \$7,000 for printing costs on the following day, October 27, 2000.

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1 the Commission find there is no reason to believe that Friends for a Democratic White House and  
2 Patricia Claucherty, as Treasurer, violated 2 U.S.C. §§ 433 and 434.

3 **2. Fraudulent Misrepresentation of Campaign Authority**

4 Similarly, the Gore Committee's contention that Friends is holding itself out as an agent  
5 of either the Gore Committee or Al Gore is not supported by the facts. The plain language of  
6 2 U.S.C. § 441h(1) renders it inapplicable to Friends on several fronts. Friends is not an agent of  
7 Al Gore or the Gore Committee, nor does it purport to be. The Friends Statement of  
8 Organization submitted with the Amendment to the Complaint by the Gore Committee indicates  
9 that Friends is a committee that supports more than one Federal candidate and is neither a  
10 principal campaign committee nor an authorized committee. Therefore, it cannot be considered  
11 an agent of Al Gore. Further, it does not hold itself out as an agent merely by offering  
12 contributors tickets to an inaugural ball. These tickets are essentially in the public domain in the  
13 sense that they can be attained by purchase or gift by nearly anyone.<sup>7</sup>

14 Even if one views Friends as an agent with apparent authority, 2 U.S.C. § 441h still does  
15 not apply. That Section applies to a person affiliated with one candidate or their campaign  
16 committee who misrepresents himself as acting for *another* candidate, not the same candidate  
17 whom the person presumably represents. In the allegations as presented by the Gore Committee,  
18 there is only one candidate involved, Al Gore. Thus, on its face, this contention cannot stand.

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7 Alleging that Friends is holding itself out as an agent of the Gore Committee or Al Gore because it offers tickets to a function in which Al Gore may play a role is tantamount to saying that a radio station holds itself out as an agent of a recording artist when that station gives away tickets to the artist's performance.

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1 Therefore, this Office recommends the Commission find no reason to believe Friends for a  
2 Democratic White House and Patricia Claucherty, as Treasurer, violated 2 U.S.C. § 441h.

3 **3. Soliciting Contributions from FEC Disclosure Reports**

4 In its response, Friends illustrates that it is possible to obtain information about Carolyn  
5 Utrecht sufficient for a direct mailing without directly referencing the Gore Committee's filed  
6 reports. TRKC Inc. operates a free Internet news site dedicated to the topic of political money.  
7 The Political Money Line (Political MoneyLine)<sup>8</sup> is the home page for several other Internet  
8 websites, including <http://www.tray.com> and <http://www.fecinfo.com>. Friends then  
9 demonstrates that it is relatively simple to obtain the information complained of by the Gore  
10 Committee from these websites. Although the steps necessary to obtain this information have  
11 changed somewhat since the Complaint was filed, this Office was able to obtain the full, formal  
12 name of Carolyn Utrecht, her mailing address, employer, and information regarding her  
13 contributions with little effort. This Office also notes that someone attempting to compile a list  
14 of potential contributors in preparation for a direct mailing would have several search criteria at  
15 their disposal, including a search by name, zip code, employer, occupation, or whether the donor  
16 lives in one state and has contributed to a candidate or committee of another state. "The  
17 § 438(a)(4) prohibition is . . . violated by a use of FEC data which could subject the 'public-  
18 spirited' citizens who contribute to political campaigns to 'all kinds of solicitations'." *Contrast*  
19 *Federal Election Comm'n v. Political Contributions Data, Inc.*, 943 F.2d 190, 197 (2d Cir. 1991)

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8 From the "What We Do" page found at <http://www.tray.com/cgi-win/indexhtml.exe?MBF=whatwedo>.  
"PoliticalMoneyLine seeks to facilitate the general public access to information from government [sic] and non-  
government sources on issues of vital relevance to the poeple [sic]. It also seeks to encourage and assist the  
dissemination of government information and documents."

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1 (allowing the sale of compilations of mandatory contributor reports after finding little risk that  
2 the contributor lists will result in solicitation or harassment of contributors because of the  
3 absence of mailing addresses, as well as the caveat on each page against solicitation and  
4 commercial use).

5 The webhost of the site where this information can be found, TRKC Inc., states that it  
6 "routinely collects paper and electronic information from numerous agencies, departments and  
7 offices in Washington, D.C. These offices include the Federal Election Commission . . . ."

8 Although the information was not extracted by Friends directly from either paper photocopies of  
9 the Gore Committee's reports, reviewing of microfiche in the Public Records Division, or  
10 accessing the Commission's website, it does appear that the information on the Political  
11 MoneyLine website run by TRKC, Inc. which was apparently used by Friends in its direct  
12 mailings, was copied by TRKC, Inc. from the Gore Committee's reports filed with the  
13 Commission.

14 Friends appears to have attempted to circumvent the Act by relying on information on the  
15 Political MoneyLine website where there is no disclaimer that information gleaned from reports  
16 filed with the Commission cannot be used to solicit contributions. However, there is no  
17 requirement by the Act that the Political MoneyLine website furnish such a disclaimer. Just as  
18 this Office was able to determine that the information on the Political MoneyLine websites was  
19 culled from reports filed with the Commission, Friends also should have learned this  
20 information. The statute provides "that any information copied from such reports or statements  
21 may not be sold or used by any person for the purpose of soliciting contributions or for

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1 commercial purposes.” 2 U.S.C. § 438(a)(4). Because it appears that Friends’ response  
2 implicitly admits that it used the information from the Political MoneyLine website for the  
3 purpose of soliciting contributions and that the information from the Political MoneyLine  
4 website was copied from reports filed with the Commission, this Office recommends that the  
5 Commission find reason to believe that Friends for a Democratic White House, and Patricia  
6 Claucherty, as Treasurer, violated 2 U.S.C. § 438(a)(4).

7 In letters to Democratic and Republican contributors, Jerome Dewald holds himself out  
8 as Chief of Staff to both Friends and the Swing States PAC. Because it appears that Friends  
9 indirectly obtained its mailing lists from reports filed with the Commission, there is a reasonable  
10 basis on which to conclude that the Swing States PAC also may have indirectly obtained their  
11 mailing lists from reports filed with the Commission. Therefore, this Office recommends that  
12 the Commission find reason to believe that the Swing States PAC and Marsha McCoy-Pfister, as  
13 Treasurer, violated 2 U.S.C. § 438(a)(4).

14 Jerome Dewald appears to be inextricably intertwined with both Friends and Swing  
15 States. Given that Friends and Swing States appear to be politically opposed to one another, the  
16 true motivation for the solicitations signed in his name is currently unclear. Nevertheless, as the  
17 person who appears to be at the forefront of these two organizations, he appears to be responsible  
18 for improperly soliciting contributions using information obtained from the FEC.<sup>9</sup> Therefore,  
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9 The Commission has previously approved actions against individuals responsible for the illegal use of contributor lists, in addition to the organization for which the individuals worked. See MUR 4320.

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1 this Office also recommends that the Commission find reason to believe that Jerome Dewald  
2 violated 2 U.S.C. § 438(a)(4).

3 **4. Commercial Use of FEC Disclosure Reports**

4 TRKC Inc. operates a free Internet news site from which the general public can access  
5 political money information. However, there are also several commercial endeavors TRKC Inc.  
6 has in place which apparently use information compiled, at least in part, from reports filed with  
7 the Commission. The following are excerpts from the "What We Do" portion of the Political  
8 MoneyLine website:

9 *We contract with clients for specialized searches and collection efforts.*

10 *2. Data Storing – TRKC Inc. has a wealth of data stored in our computer servers in the office*  
11 *and secure off-site locations. We offer web-hosting services for those organizations that find it*  
12 *more convenient, efficient or cost effective to contract out data storage.*

13 *3. Data Transmission – TRKC Inc. has an expertise in web-based Electronic filing systems. We*  
14 *currently contract with the Secretary of the U.S. Senate for the development and implementation*  
15 *of their Electronic Filing System for Lobby Registration and Reporting. We contract with clients*  
16 *for specialized coding or new databases crafted from our overall collection of political*  
17 *information.*

18 *5. Data Analysis – TRKC Inc. has the expertise to analyze and summarize the movement of*  
19 *political money to and from the national level. We contract with organizations to prepare*  
20 *specialized reports for in-house or private use or public release.*

21 *7. Data Leasing – TRKC Inc. makes available links to certain political money databases and*  
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1 *search queries under lease arrangements. This data may be presented as a link from a client's*  
2 *web site or presented with the look and feel of the client's own web site. For example, the*  
3 *Washington Post and ABC News link to our donor databases and searches by zip code.*

4 *FECInfo Enterprise is a data leasing plan for all or part of the information and searches that*  
5 *appear on the free portion of our web site. This includes our donor searches (by name, zip*  
6 *code, or employer), our candidate/campaign profiles, our candidate money leaders, our PAC*  
7 *money leaders and our politician PACs.*

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9 *FECInfo Enterprise Plus is a data leasing plan for our more specialized and enhanced*  
10 *proprietary data such as our databases and searches of soft money, lobby reports, executive*  
11 *summaries of corporate political activity, and breakouts of PAC money to committees of*  
12 *Congress. This data is available for use inside an organization or on an organization's web*  
13 *site that is for members only.*

14 *TRKC Inc. has developed and makes available on a subscription basis several Internet products*  
15 *for tracking political money in national politics.*

16 *FECInfoPro provides password-protected access to highly detailed reports, analysis, and*  
17 *information on virtually every major area of American political money. This includes*  
18 *information and specialized queries on Lobbying, Soft Money, PAC money, and committees of*  
19 *Congress. It includes twenty-year [sic] PAC activity graphs and a chart of party percentages. An*  
20 *Executive Summary for each PAC also provides cross- links to soft money and lobby figures.*

1 *PACtracker provides password-protected access to reports that track the PAC contributions of*  
2 *up to five groups or coalitions of federal PACs (each with an unlimited number of PACs).*  
3 *Summary figures and detailed breakouts of each coalition's contributions can be arranged by*  
4 *committees of Congress, party affiliation and by individual Member names. You select the PACs*  
5 *in the coalitions, and the contributions are updated automatically at the beginning of each*  
6 *month.*

7       Notwithstanding the fact that TRKC Inc. provides free access to a basic compilation of  
8 FEC Reports, the use of these Reports in connection with so many different types of leasing  
9 arrangements and subscription services leads this Office to believe that at least some of the  
10 services it provides result in information derived from FEC Disclosure Reports being used for  
11 commercial purposes in violation of the Act, and that TRKC, Inc. should be internally generated  
12 as a respondent in this matter. *See FEC v. Legi-Tech*, 967 F. Supp. 523 (D.D.C. 1997) (Sales of  
13 subscriptions to campaign contribution tracking system database were for commercial purpose,  
14 and thus violated 2 U.S.C. § 438(a)(4)). Therefore, this Office recommends the Commission  
15 find reason to believe that TRKC Inc. violated 2 U.S.C. § 438(a)(4).

16 **III. DISCUSSION OF CONCILIATION AND INVESTIGATION**

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IV. RECOMMENDATIONS

1. Find no reason to believe that Friends for a Democratic White House and Patricia Claucherty, as Treasurer, violated 2 U.S.C. §§ 433 and 434.
2. Find no reason to believe Friends for a Democratic White House and Patricia Claucherty, as Treasurer, violated 2 U.S.C. § 441h.
- 3.
- 4.
- 5.
6. Find reason to believe that TRKC Inc. violated 2 U.S.C. § 438(a)(4).

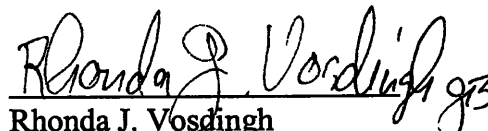
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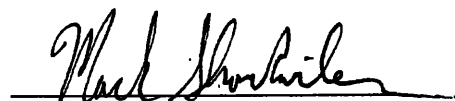
7. Approve the attached factual and legal analyses and appropriate letters.


8.

Lawrence H. Norton  
General Counsel

BY:

  
Rhonda J. Vosdingh  
Associate General Counsel

  
Mark D. Shonkwiler  
Acting Assistant General Counsel

  
April J. Sands  
Staff Attorney

Attachments:

1. Factual and Legal Analysis - Friends for a Democratic White House
- 2.
3. Factual and Legal Analysis - Swing States PAC
- 4.
5. Factual and Legal Analysis - TRKC Inc.
6. Factual and Legal Analysis - Jerome Dewald
- 7.

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