



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

VIA FACSIMILE AND FIRST CLASS MAIL

March 9, 2005

Leslie Kerman, Esq.
6849 Old Dominion Drive
Suite 222
McLean, Virginia 22101
Facsimile: (571) 633-9746

RE: MUR 5158

Dear Ms. Kerman:

On February 25, 2005 the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of a violation of 2 U.S.C. §§ 441d, 441b, 434(c) provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 114.3(a). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Kathleen Guith".

Kathleen Guith
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Brady Campaign to Prevent Gun Violence
f/k/a/ Handgun Control, Inc.; Brady
Voter Education Fund f/k/a/ Handgun
Control Voter Education Fund and
Mark A. Ingram, as treasurer

MUR: 5158

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COUNSEL

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CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by the American Conservative Union. The Federal Election Commission ("Commission") found reason to believe that the Brady Campaign to Prevent Gun Violence ("Brady Campaign"), the Brady Voter Education Fund ("Brady Committee"), and Mark A. Ingram, as treasurer, (collectively "Respondents") violated provisions of the Federal Election Campaign Act, including 2 U.S.C. §§ 441d, 441b, 434(c) and 434(b), in connection with advertisements, websites, and press conferences that supported or opposed federal candidates in the 2000 election cycle.

NOW, THEREFORE, the Commission and the Respondents, 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 the Respondents 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. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

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III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:¹

Background

1. The Brady Campaign is a 501(c)(4) non-profit corporation chaired by Sarah Brady. Part of the Brady Campaign's mission is to work to enact and enforce gun control laws, regulations and public policies through grassroots activism, electing pro-gun control public officials and increasing public awareness of gun violence. Until June 13, 2001, the Brady Campaign was known as Handgun Control, Inc.

2. The Brady Committee is a separate segregated fund connected to the Brady Campaign. In its Statement of Organization, the Brady Committee describes the Brady Campaign as a membership organization. Until June 13, 2001, the Brady Committee was known as the Handgun Control Voter Education Fund.

3. Mark Ingram is the treasurer of the Brady Committee.

4. Sarah Brady is the Chair of the Brady Campaign. While Mrs. Brady is a paid employee of the Brady Campaign, she works predominantly from home, and does not maintain set or minimum work hours, or keep time records.

5. The Brady Committee has no paid staff. All activities undertaken by the Brady Committee in connection with federal elections is performed by employees of the Brady Campaign.

¹ All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder.

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Applicable Law

6. Corporations are prohibited from making contributions or expenditures in connection with federal elections.² See 2 U.S.C. § 441b.

7. The Act defines "contribution or expenditure" as "any direct or indirect payment, gift of money, services, or anything of value, to any candidate or campaign committee in connection with any federal election." 2 U.S.C. § 441b(b)(2). The phrase "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii).

8. Incorporated membership organizations are entitled to expressly advocate the election and defeat of candidates to their restricted class only. See 2 U.S.C. § 441b(b)(2)(A) and 11 C.F.R. § 114.3(a). The restricted class of an incorporated membership organization includes its members, its executive and administrative personnel, and the families of these groups. 11 C.F.R. § 114.1(j). The Commission determined that, because of the general availability of access to the Internet, the posting of an endorsement on an incorporated group's website would be considered a form of communication to the general public and thus a prohibited expenditure, unless access to such information were somehow restricted to the group's members.

AO 1997-16.

9. Whenever any person makes an expenditure for the purpose of financing a communication expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any type of general public political advertising, such communication, if not authorized by a candidate, an authorized political committee of a

² Although certain nonprofit corporations may make independent expenditures, the Brady Campaign has not claimed to be such a corporation. See 11 C.F.R. § 114.10.

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candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3).

10. The Commission has determined that Internet sites constitute general public political advertising for purposes of the Act's disclaimer provisions. *See Advisory Opinion 1995-9*; 2 U.S.C. § 441d.

1999-2000 Election Cycle Activities

11. In 2000, the Brady Campaign endorsed the election of approximately 98 federal candidates, and the defeat of each of their opponents. The Brady Campaign communicated some, but not all, of its endorsements and disapprovals to the general public through press releases and/or press conferences.

12. During the 1999-2000 election cycle, the Brady Committee reported over three million dollars of combined receipts and disbursements. Included among its disbursements are over one million dollars for independent expenditures, a number of which were made in connection with the Brady Campaign's activities to endorse or disapprove of federal candidates.

13. In 2000, James and Sarah Brady traveled out of town to attend at least one press conferences at which they announced their endorsement of a federal candidate. In addition, the Brady Campaign and/or the Brady Committee developed and paid for websites and television advertisement that contained communications expressly advocating defeat of federal candidates.

Press Conference

14. Bill Nelson was a candidate for the U.S. Senate in Florida in 2000. Nelson's principal campaign committee was the Bill Nelson for U.S. Senate Committee ("Nelson Committee").

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15. In 2000, the Nelson Committee contacted the Brady Campaign and requested that James and Sarah Brady attend a press conference in Miami for the purpose of announcing an endorsement of Nelson.

16. After some discussion among Brady Campaign employees, including the Campaign's Political Director and its Director of Congressional Relations, James and Sarah Brady agreed to travel to Florida to announce an endorsement of Nelson.

17. On October 15, 2000, James and Sarah Brady traveled to Miami, Florida with Ms. Brady's personal assistant, for the purpose of attending the Nelson press conference.

18. On October 16, 2000, Sarah Brady, Jim Brady, and Bill Nelson participated in the press conference in Miami, Florida at which they announced an endorsement of Nelson. A press release issued by the Nelson Committee stated that the Bradys endorsed Nelson on behalf of the Brady Campaign. Nonetheless, the Brady Campaign contends that the endorsement was a personal endorsement by James and Sarah Brady and was not made on behalf of the Brady Campaign. Respondents submitted to the Commission copies of James and Sarah Brady's prepared remarks from the press conference. Mr. Brady's remarks state "I am very honored to endorse Bill Nelson for the U.S. Senate." Mrs. Brady's remarks state "Jim and I are here to wholeheartedly endorse Bill Nelson as Florida's next United States Senator." There is no mention of the Brady Committee or the Brady Campaign in either set of prepared remarks.

19. The Brady Committee paid for the travel expenses for James and Sarah Brady. In its 2000 Post-General Report, the Brady Committee reported two expenditures totaling \$2,078.13 made in connection with the event, described as "in-kind travel/Nelson for Senate." These disbursements, dated November 21, 2000 to Grand Bay Hotel and American Airlines, covered the costs of airfare for James and Sarah Brady and hotel accommodation in Miami. These

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disbursements were reported as in-kind contributions to Nelson for Senate from the Brady Committee.

20. The Brady Committee did not reimburse or report the costs associated with the airfare and hotel accommodations for Sarah Brady's assistant. These costs totaled approximately \$1,650 and were paid by the Brady Campaign.

Television Advertisement

21. Senator John Ashcroft was a candidate for the U.S. Senate in Missouri in 2000.

22. During the 2000 election cycle, the Brady Committee made expenditures in connection with a television advertisement that expressly advocated the defeat of Senator John Ashcroft. In its 2000 Pre-General Report, the Brady Committee itemized a \$254,932 independent expenditure in its 2000 Pre-General Report for a "media placement" in opposition to John Ashcroft (\$125,156 of which was later refunded).

23. The advertisement shows Sarah and James Brady, with the words "Vote No on John Ashcroft," "www.AshcroftAndGuns.com" and a disclaimer that read: "Paid For By [the Brady Committee]." The audio portion of this advertisement stated:

Sarah Brady:	It happened so quickly. (Gun shots) In an instant President Reagan and Jim were shot.
Background:	Get the ambulance in here.
James Brady:	Our lives have never been the same.
Sarah Brady:	That's why we are so offended when John Ashcroft called Jim the leading enemy of gun owners. Last year John Ashcroft supported the Missouri referendum to allow carrying concealed handguns.
James Brady:	He even voted against child safety locks. It's time to vote NO on John Ashcroft.

While the advertisement contains a disclaimer stating who paid for it, it did not state whether it was authorized by any candidate.

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24. Respondents contend that they relied on the media consulting firm that the Committee paid to produce and run the advertisement to include a proper disclaimer in the advertisement, and that the firm inadvertently failed to include a full disclaimer stating that the commercial was not authorized by any candidate. Respondents submitted to the Commission a signed statement from the media consulting firm wherein the firm acknowledged that it had inadvertently failed to include the full disclaimer in the advertisement.

Internet Websites

Missouri

25. The Brady Respondents also made expenditures in connection with a website, www.ashcroftandguns.com, that expressly advocated the defeat of Senate candidate John Ashcroft during the 2000 election cycle.

26. The website reads, "What is John Ashcroft's Record on Guns?" followed by summaries of Ashcroft's position on gun laws. The text at the bottom of the page reads, "It's time to say NO to John Ashcroft" and "Vote against John Ashcroft on Tuesday, November 7th." A disclaimer at the bottom of the page states: "Paid for by the [Brady Committee]."

27. The Brady Campaign registered, created, and paid for the website. The Brady Campaign contends that the website was created for the purpose of issue advocacy, not express advocacy. Although only Brady Campaign employees and consultants had the access to the website necessary to change the content, Respondents contend that they have no knowledge at this time about the circumstances that caused the express advocacy communications regarding Senator Ashcroft to be added to the website.

28. In November 2000, the Brady Campaign instructed the Brady Committee to pay for the domain registration fee and the consultant fee for the website's design and maintenance. In

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its 2000 Post-General Report, the Committee itemized two independent expenditures for the website in opposition to Ashcroft for Senate: \$500 to Rob Letzler of McLean, Virginia, and \$40 to Network Solutions. However, the Brady Committee did not reimburse the Campaign for any allocable portion of the amounts that the Campaign had already expended for the website.

Florida

29. Bill McCollum was the candidate opposing Bill Nelson for the U.S. Senate in Florida in 2000.

30. During the 2000 election cycle, the Brady Campaign created a website, www.mccollumandguns.com, that expressly advocated the defeat of Bill McCollum.

31. The website states that Florida families voted "YES" for common-sense gun laws, while Bill McCollum voted "NO." The website then states, "Why vote for him, when he keeps voting against you?" At the bottom of the page is a notation that the Brady Committee paid for the website, but no indication is given of whether the website was authorized by a candidate. The website also allowed visitors to view the anti-McCollum television advertisement discussed in the previous section.

32. The Brady Campaign registered, created, and paid for the website. The Brady Campaign contends that the website was created for the purpose of issue advocacy, not express advocacy. Although only Brady Campaign employees and consultants had the access to the website necessary to change the content, Respondents contend that they have no knowledge at this time about the circumstances that caused the express advocacy communications regarding McCollum to be added to the website.

33. In November 2000, the Brady Campaign instructed the Brady Committee to pay for the domain registration fee and the consultant fee for the website's design and maintenance. In

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its 2000 Post-General Report, the Brady Committee itemized two independent expenditures for the website in opposition to Bill McCollum: \$2,529.95 to Net Politics Group and \$40.00 to Network Solutions. However, the Committee did not reimburse the Campaign for any allocable portion of the amounts that the Campaign had already expended for the website.

Presidential

34. The Brady Campaign maintains its own website, www.bradycampaign.org, that is paid for by the Brady Campaign.

35. During the 2000 election cycle, the website included a "pop-up" web page that contains a picture of Charlton Heston and quotes him as stating, "Now, [Al Gore is] saying 'I'm with you guys on guns.'" In any other time or place you'd be looking for a lynching mob..."

Following this quote, the following text appeared:

These are the people who are endorsing and supporting Governor Bush.

Do you want a man in the White House whose most ardent supporters publicly call for violence?"

NEITHER DO WE
(Click here to give)

36. In 2000, the Brady Campaign paid a \$700 a month hosting fee for the website, a \$35 one-time web domain fee; and \$2,750 consultant fee for the design and maintenance of the website. The Brady Committee reported no disbursements related to this website page.

37. The Brady Campaign's website was available for viewing by any member of the general public with a web browser installed on a computer with access to the Internet. Furthermore, the Brady Campaign took no steps to prevent access to the pop-up advertisement by persons outside its restricted class.

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38. The Brady Campaign registered, created, and paid for the website, which did not contain any disclaimer pursuant to 2 U.S.C. § 441d, at any during the 1999-2000 election cycle.

V. 1. Respondents violated 2 U.S.C. § 441d by failing to include proper disclaimers on websites expressly advocating the defeat of Presidential candidate, George Bush, and Senate candidates, John Ashcroft, and Bill McCollum; and by failing to include a proper disclaimer on a television advertisement expressly advocating the defeat of the Senate candidate John Ashcroft.

2. The Brady Campaign violated 2 U.S.C. § 441b by making corporate expenditures in connection with the travel of Sarah Brady's assistant to attend a press conference at which Sarah Brady endorsed the candidacy of Bill Nelson for the United States Senate.

3. The Brady Campaign violated 2 U.S.C. §§ 441b, 434(c) and 11 C.F.R. § 114.3(a) and (b) by making a prohibited express advocacy communication beyond the restricted class without reporting any expenditures related to the communications.

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of twelve thousand dollars (\$12,000), pursuant to 2 U.S.C. § 437g(a)(5)(A). Respondents will cease and desist from violating the statutes and regulations enumerated in section V.1. through V.3. above.

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.

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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. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify 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 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. Vosdigh
Rhonda J. Vosdigh
Associate General Counsel
for Enforcement

3/7/05
Date

FOR THE RESPONDENTS:

Mark Ingram
(Name)
(Position) Treasurer

2-14-05
Date

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