

NATIONAL VOTING RIGHTS INSTITUTE
working to fulfill the legal promise of American democracy

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March 7, 2001

MUR # 5181

SENSITIVE

Lois Lerner, Esq.
Acting General Counsel
999 E Street, NW
Washington, DC 20463

SENT BY FEDERAL EXPRESS

Dear Ms. Lerner:

Enclosed please find a complaint for filing before the Federal Election Commission against Ashcroft 2000 and the Spirit of America Political Action Committee. The Alliance for Democracy, Common Cause, the National Voting Rights Institute, Hedy Epstein, and Ben Kjelshus serve as the complainants.

Please feel free to call me at (617) 368-9100 if you have any questions. Thank you for your attention to this matter.

Sincerely,

John C. Bonifaz

John C. Bonifaz
Executive Director

Encl.

cc: Hedy Epstein
Ben Kjelshus
Scott Harshbarger
Nick Penniman
Donald Simon
Brenda Wright

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BEFORE THE FEDERAL ELECTION COMMISSION

Alliance for Democracy,
Common Cause,
National Voting Rights Institute,
Hedy Epstein, and
Ben Kjelshus

v.

MUR No. 5181

Ashcroft 2000
Spirit of America Political Action Committee

MAR 8 2 37 PM '01

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COMMISSION
OFFICE OF GENERAL
COUNSEL

COMPLAINT

1. The Alliance for Democracy, Common Cause, the National Voting Rights Institute, and Missouri voters, hereby bring this complaint before the Federal Election Commission seeking an immediate FEC investigation and enforcement action against Ashcroft 2000 and the Spirit of America Political Action Committee ("Spirit of America PAC") for direct and serious violations of federal campaign finance law which occurred during John D. Ashcroft's 2000 campaign for the United States Senate.

Complainants

2. The Alliance for Democracy is a non-profit, non-partisan grassroots organization advocating for full public funding of elections in the United States. The Alliance has activist chapters in twenty states, including Missouri.

3. Common Cause is a non-profit, non-partisan citizen lobby which has more than 200,000 members nationwide. Common Cause promotes its members' interests in open, honest and accountable government and political representation. Common Cause

seeks to achieve this objective by making government more responsive to citizens through government and election reform.

4. The National Voting Rights Institute is a non-profit, non-partisan organization dedicated to changing our nation's campaign finance system through litigation and public education across the country. The Institute challenges the current system on voting rights grounds and defends meaningful campaign finance reform laws.

5. Hedy Epstein and Ben Kjelshus are individual Missouri voters. Both of them voted in the 2000 election in Missouri for the U.S. Senate. Both of them believe that the current limits on campaign contributions in federal elections require strict enforcement to prevent corruption and the appearance of corruption in the political process. Both of them believe that the current reporting requirements on campaign contributions in federal elections require strict enforcement to allow voters, such as themselves, access to critical data on candidates' campaign finance records in order to be fully informed when they cast their votes on Election Day.

Respondents

6. Ashcroft 2000 served as the authorized federal campaign committee of John D. Ashcroft in his 2000 campaign for the U.S. Senate. The committee is registered with the FEC.

7. The Spirit of America PAC is a political action committee established by Mr. Ashcroft in 1996. The committee is registered with the FEC.

Factual Allegations

8. On February 1, 2001, *The Washington Post* reported that the Spirit of America PAC contributed a fundraising list of 100,000 donors to Ashcroft 2000. "Possible Ashcroft Campaign Violation," *The Washington Post*, February 1, 2001, A04.

9. According to the article, Ashcroft 2000, "in turn, made more than \$116,000 by renting out the list to other fundraisers." *Id.* The article cites FEC reports in 2000 showing that Ashcroft 2000 "received payments throughout the year – totaling \$116,922 – from Precision Marketing, Inc. for 'rental' of the list." *Id.* The article also states that the Spirit of America PAC developed the fundraising list between 1997 and 1999, "at a cost of more than \$2 million." *Id.*

10. The article reports that at the time of the contribution of the fundraising list to Ashcroft 2000, the Spirit of America PAC had already donated a combined total of \$10,000 to the campaign in the 2000 election cycle (\$5,000 for the primary election and \$5,000 for the general election). Federal law prohibits political action committees from contributing more than \$5,000 to a candidate and his or her authorized committees with respect to any election for federal office. 2 U.S.C. § 441a(a)(2)(A). According to this report, the Spirit of America PAC had reached the maximum contribution amount allowable under federal law for a political action committee in an election cycle (primary and general election combined) prior to the donation of the fundraising list.

11. Federal campaign finance law defines "contribution" to include "any gift...or anything of value..." 2 U.S.C. § 431(8)(A)(i). FEC regulations further define "contribution" as follows:

For purposes of 11 CFR 100.7(a)(1), the term *anything of value* includes all in-kind contributions. Unless specifically exempted under 11 CFR 100.7(b), the

provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution. Examples of such goods or services include, but are not limited to...mailing lists. 11 CFR 100.7(a)(1)(iii)(A)(emphasis in original).

FEC regulations also state that “[f]or the purposes of 11 CFR 100.7(a)(1)(iii)(A), *usual and normal charge* for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution...” 11 CFR 100.7(a)(1)(iii)(B)(emphasis in original). The Spirit of America PAC’s fundraising list of 100,000 donors constituted an in-kind contribution to Ashcroft 2000, a contribution which, on information and belief, had a substantial market value.

12. *The Washington Post* article states that neither the Spirit of America PAC nor Ashcroft 2000 reported the contribution of this list to the FEC. Federal law requires candidates and their authorized committees in a federal election to report to the FEC, according to a defined schedule, all contributions received for their campaigns.

2 U.S.C. § 434 (a)-(b). Federal law also requires political action committees to report to the FEC, according to a defined schedule, all contributions made to candidates and their authorized committees in a federal election. *Id.*

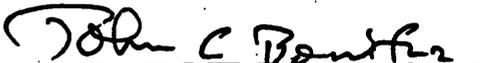
COUNT I

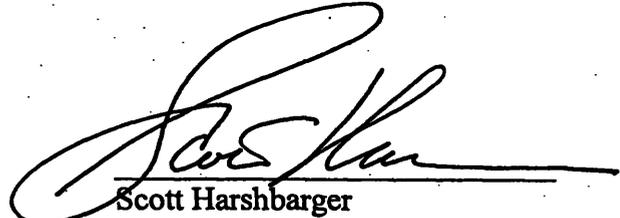
13. The Spirit of America PAC and Ashcroft 2000 violated federal law, 2 U.S.C. § 441a(a)(2)(A), by making and receiving, respectively, contributions of value in excess of the statutory limit for political action committees in a federal election.

COUNT II

14. The Spirit of America PAC and Ashcroft 2000 violated federal law, 2 U.S.C. § 434 (a)-(b), by failing to report to the FEC the fundraising list as a contribution made and received, respectively, in a federal election.

WHEREFORE, complainants request the Federal Election Commission to conduct an investigation into these allegations, declare that respondents have violated the federal campaign finance laws, impose sanctions appropriate to these violations and take such further action as may be appropriate.


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Of counsel:

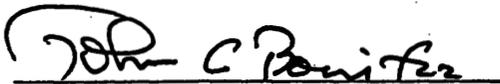
Donald Simon, Esq.
Sonosky, Chamber, Sachse & Endreson
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Verification

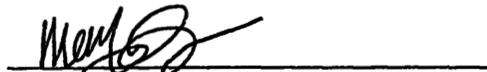
The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn to pursuant to 18 U.S.C. 1001.

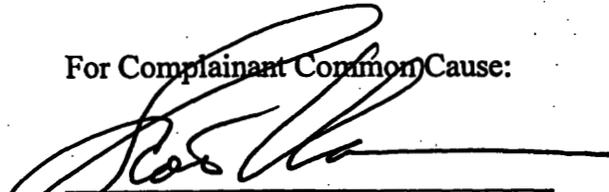
For Complainant National Voting Rights Institute:


John C. Bonifaz

Sworn to and subscribed before me
this 20th day of February, 2001


Notary Public My Commission Expires April 14, 2005

For Complainant Common Cause:


Scott Harshbarger

Sworn to and subscribed before me
this 1st day of February, 2001

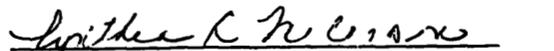
March

Notary Public My Commission Expires April 14, 2005

For Complainant Alliance for Democracy:


Nick Penniman

Sworn to and subscribed before me
this 27 day of February, 2001

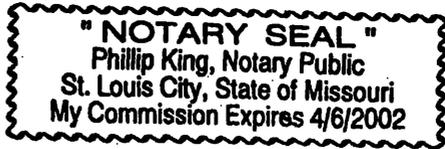

Notary Public CYNTHIA C. MELANSON
Notary Public, Massachusetts
My Commission Expires 9-21-01

For Complainant Hedy Epstein:

Hedy Epstein
Hedy Epstein

Sworn to and subscribed before me
this 26 day of February, 2001

Phillip King
Notary Public



For Complainant Ben Kjelshus:

Ben Kjelshus
Ben Kjelshus

Sworn to and subscribed before me
this 23 day of February, 2001

Sandy D. Ayler
Notary Public

