BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:	
The Reverend Jesse L. Jackson, The Rainbow/PUSH Coalition, Inc., The Citizenship Education Fund, Inc., and People United to Serve Humanity,	**Matter Under Review 5183**
Respondents	

RESPONSE TO THE COMPLAINT BY THE REVEREND JESSE L. JACKSON, THE RAINBOW/PUSH COALITION, CITIZENSHIP EDUCATION FUND AND PEOPLE UNITED TO SERVE HUMANITY

On behalf of the Reverend Jesse L. Jackson ("Rev. Jackson"), the Rainbow/PUSH Coalition, Inc. ("Rainbow/PUSH" or "RPC"), Citizenship Education Fund, Inc. ("CEF"), and People United to Serve Humanity ("People United") (collectively the "Respondents"), we respectfully submit the following joint response to the complaint filed in the above referenced matter under review ("MUR").

On March 13, 2001, the American Conservative Union ("ACU" or the "Complainant") filed the complaint that initiated this MUR. In its complaint, the ACU charged that the Rev. Jackson, Rainbow/PUSH, CEF, People United and "any other corporation, whether profit or not-for-profit, affiliated with Jackson. . ." violated 2 U.S.C. § 441b and 2 U.S.C. § 434 of the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA") in connection with allegedly partisan voter registration drives allegedly conducted by Rainbow/PUSH. *See* Complaint at 1, ¶ 3.

For the reasons set forth herein, the Respondents respectfully request that the Commission dismiss the Respondents from this matter under review.

In summary, the Complainant has failed to allege sufficient facts upon which the Commission could base a "reason to believe" finding against CEF, People United to Serve Humanity, Rainbow/PUSH or Rev. Jackson.

Specifically, the ACU provided no facts in support of its accusations against CEF or People United as required by Commission regulations, but merely identified these organizations as being affiliated with Rev. Jackson.

Rainbow/PUSH was similarly made a respondent without sufficient factual justification having been provided in the complaint. The ACU attached a series of news clips in support of its charge that Rainbow/PUSH made prohibited corporate contributions to the Democratic Party and the Gore/Lieberman 2000 presidential campaign ("Gore/Lieberman"). Close scrutiny of these clips, however, reveal that they track the activities of Rev. Jackson, a prominent religious and political figure, and *not* Rainbow/PUSH, an organization affiliated with Rev. Jackson.

Finally, the ACU alleged that Rev. Jackson impermissibly coordinated unspecified activities with the Democratic National Committee and Gore/Lieberman presidential campaign ("Gore/Lieberman") in violation of the Act or Commission regulations. Complaint at 3, ¶ 2. Again, however, the ACU failed to allege sufficient facts in support of these allegations.

For these reasons, we respectfully request that the Commission dismiss each of the respondents from this matter under review.

I. Citizenship Education Fund And People United To Serve Humanity Should Be Dismissed From Complaint

Citizenship Education Fund, a Title 26, Section 501(c)(3) educational organization that conducts research and organizes educational activities such as the National Reclaim Our Youth Crusade, and People United to Serve Humanity, a church founded by Rev. Jackson, were erroneously made respondents in this matter and should be promptly dismissed.

The ACU alleged in its complaint that Rev. Jackson, Rainbow/PUSH, CEF, People United and "any other corporation, whether profit or not-for-profit, affiliated with Jackson . . ." violated the Act by making prohibited corporate contributions and failing to properly report political activity to the FEC. Complaint at 1, ¶ 1. The Complainant, however, failed to satisfy the Commission's requirement that a complaint "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(3). Specifically, the Complainant failed to offer facts indicating that either CEF or People United engaged in impermissible activity. In fact, the ACU never specifically alleged that either organization violated the FECA, only that CEF and People United were affiliated with Rev. Jackson, and that the Commission should investigate "*any . . . corporation, whether profit or not-for-profit, affiliated with Jackson . . .*" *Id* (emphasis added). Merely naming an entity, alleging a FECA violation and requesting an investigation does not satisfy the Commission's unambiguous requirement that a complaint contain a "clear and concise recitation of the facts" describing a

violation of a statute or regulation over which the FEC has jurisdiction. 11 C.F.R. 114.4(d)(3).[1]

For these reasons, we respectfully request that the Commission dismiss CEF and People United from this matter and close the file as to these respondents.

II. ACU Provided No Evidence that the Rainbow/Push Coalition Was Engaged In Partisan Political Activity

The ACU alleges that Rainbow/PUSH conducted partisan voter registration activities in violation of the Act and Commission regulations. The ACU based this allegation on two purported pieces of evidence. The first was a series of news clips that detailed the activities of Rev. Jackson. *See* Complaint at 2 - 4. The second was the total amount of funds disbursed by Rainbow/PUSH for travel for the year 2000, as reported by CEF in a recent financial report. Complaint at 2, ¶ 3.

Without addressing the accuracy or veracity of the news clips, the Commission's policy is to require that a news clip used as a basis for a complaint be "substantive in its facts," and contain a "clear and concise statement of the acts which are alleged to constitute a violation of the Act . . ." Commission Agenda Document 79-299. The attached clips, however, recount in large measure only the activities of Rev. Jackson, a nationally known religious and political figure, and not Rainbow/PUSH. *See* Complaint Exhibits 7 - 73. The clips therefore constitute an insufficient basis upon which to conclude Rainbow/PUSH conducted partisan voter registration activities in violation of the Act or Commission regulations.

---

[1] It should be noted that whenever the Complainant made reference to a violation, it conveniently grouped all of the Respondents together, calling them, collectively, "the Corporate Respondents," without regard to the obvious and fundamental differences in organizational status or actual activity conducted by each organization.

In addition to these news clips, the ACU cites the total amount of funds disbursed by RPC for travel in 2000 as evidence of impermissible activity. *See* Complaint Exhibit 1. This "travel" figure was obtained from CEF's "Financial Report to Donors," several pages of which were included with the complaint. Significantly, though, this financial report contained only the *total* amounts disbursed for "travel" for 2000, and did not contain an itemization, categorization or other breakdown of the travel disbursements. It was therefore not possible for the Complainant to determine *when* travel had occurred, *who* had traveled or *how much* was disbursed for any particular trip. Without a more detailed factual showing, these unitemized totals cannot serve to buttress an argument that RPC paid for extensive travel in support of partisan political activity.

In sum, the information presented by ACU does not constitute sufficient facts upon which the Commission could base a "reason to believe" finding against Rainbow/PUSH, and for this reason, RPC should be dismissed as a respondent in this matter.

IV. The Complainant Has Failed to Allege Sufficient Facts Upon Which to Base a Reason To Believe Finding Against Rev. Jackson

The ACU alleged that Rev. Jackson impermissibly coordinated activities with the Democratic National Committee and the Gore/Lieberman presidential campaign committee. Complaint at 3, ¶ 2. Again, however, the ACU has failed to allege sufficient facts to support this allegation.

First, the allegations were very general. The Complainant did not provide precise dates on which the alleged coordination was to have taken place, and it is therefore not possible to directly refute any particular alleged contact between the Democratic Party, Rev. Jackson or the Gore campaign.

Further, the allegations appear to be based on an unconstitutional construction of the term "coordination."[2] During the period in which the impermissible "coordination" was alleged to have occurred in this case, the regulated community was essentially without guidance from the FEC as to what would constitute coordinated activity. The Commission had not previously promulgated applicable regulations (*see infra* note 2), and the legal approach that had been applied by the Commission was rejected by the United States District Court for the District of Columbia on August 2, 1999, in *Federal Election Commission v. Christian Coalition*, 52 F.Supp.2d 45 (D.D.C. Aug 2, 1999).

Following this decision, the Commission in practice adopted the standard as articulated by the court in *Christian Coalition* for cases involving coordinated activity occurring prior to May 9, 2001, the date the new "coordination" regulations took effect. 65 Fed. Reg. 76138. We therefore turn to that standard for guidance.

The court in *Christian Coalition* held that, "in the absence of a request or suggestion from the campaign, an expressive expenditure becomes 'coordinated' where the candidate or

---

[2] The Commission was without a regulation governing coordinated activity prior to December 6, 2000, one full month *after* the activity alleged in the complaint was to have ceased. On that date, the Commission published for the first time final rules governing "General Public Political Communications Coordinated with Candidates and Party Committees," 65 Fed. Reg. 76138, and even these regulations were not to take effect until May 9, 2001, approximately 8 to 12 months following the alleged impermissible activity at issue in this matter. 66 Fed. Reg. 23537.

Previously, the Commission had borrowed from two statutory provisions and one of its regulations for support of its standard that any consultation between a potential spender and a federal candidate or committee about the candidate's or committees' plans, projects or needs would render any subsequent expenditures "coordinated" contributions. *See* 11 C.F.R. § 109.1(b)(4). This legal approach was at the heart of the coordination issues in *Federal Election Commission v. Christian Coalition*, 52 F.Supp.2d 45 (D.D.C. Aug 2, 1999), and was soundly rejected by the court. With the court's decision as a guide, the Commission drafted new rules that, in their own words, "largely follow" the courts ruling in *Christian Coalition*. 66 Fed. Reg. 23537.

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)." *Christian* Coalition, 52 F.Supp.2d at 91.

The court went on to clarify what it meant by "substantial discussion or negotiation":

> Substantial discussion or negotiation is such that the candidate and spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender need not be equal partners. This standard limits § 441b's contribution prohibition on expressive coordinated expenditures to those which the candidate has taken a sufficient interest to demonstrate that the expenditure is perceived as valuable for meeting the campaigns needs or wants.

Id.

Leaving aside that the court was not addressing the issue of coordination between a non-candidate (*i.e.*, Rev. Jackson) and a party committee,[3] the Complainant has failed to allege that Rev. Jackson financed either an "expressive expenditure," as contemplated in the *Christian Coalition* case, or a "general public political communication," as defined in Commission regulations. *See* 11 C.F.R. § 100.23.

In addition, the Complainant did not allege, let alone provide any supporting facts, that an expenditure was made at the request or suggestion of the Democratic Party or

---

[3] This implicates an entirely additional set of First Amendment considerations that the Complainant did not address, but should have. *See Federal Election Commission v. Colorado Republican Federal Campaign Committee,* 213 F.3d 1221 (10th Cir. May 5, 2000), *cert. granted,* 148 L.Ed.2d 238 (October 10, 2000). Nor does Complainant's theory provide protection to Rev. Jackson's First Amendment rights as a religious leader. *See e.g., McDaniel v. Paty*, 435 U.S. 618 (1978). Nevertheless, all of these First Amendment interests speak for more specificity than was alleged and for the complaint's dismissal as to Rev. Jackson.

Gore/Lieberman, or that "substantial negotiation or discussions" between Rev. Jackson, the Democratic Party or the Gore campaign had occurred.

For these reasons, Rev. Jackson should be dismissed from this matter under review.

V. Conclusion

Complaints before the Federal Election Commission must contain "a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction," particularly those complaints based almost entirely on unsubstantiated news clips.[4] *See* 11 C.F.R. § 111.4(d)(3) and Agenda Document 79-299.

The ACU simply did not satisfy that minimal threshold with respect to any of above named the respondents.

For these reasons, the Commission should dismiss the Respondents from this matter and close the file in this MUR as to Rev. Jackson, CEF, People United and Rainbow/PUSH.

Respectfully submitted this 14th day of May, 2001.

BRAND & FRULLA, P.C.
(A Professional Corporation)

Corey A. Rubin
D.C. Bar No. 460780
923 15th Street N.W.
Washington, DC 20005
Telephone: (202) 662-9700
Facsimile: (202) 737-7565

[4] The Commission should resume enforcing Agenda Document 79-299, particularly because courts will not accept news stories as evidence of a violation of federal campaign finance law and regulations. In *Federal Election Commission v. GOPAC, Inc.*, 917 F. Supp. 851 (D.D.C., Feb. 29, 1996), District Judge Oberdorfer confirmed that "a magazine article is not 'significantly probative' nor is it 'material' 'evidence on which [a trier of fact] could reasonably find'" a violation of federal campaign finance law and regulations had occurred. 917 F. Supp. at 864 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50, 252 (1986).