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

SECRET

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FIRST GENERAL COUNSEL'S REPORT

**SENSITIVE**

MUR: 5183

DATE COMPLAINT FILED: March 21, 2001

DATE OF NOTIFICATION: March 27, 2001

DATE ACTIVATED: March 25, 2003

EXPIRATION OF SOL: August 15, 2005

COMPLAINANT: American Conservative Union, through David A. Keene, Chairman

RESPONDENTS: Democratic National Committee and Andrew Tobias, as treasurer  
Gore-Lieberman, Inc., and Jose Villarreal, as treasurer  
Keep Hope Alive Political Action Committee and Steven B. Cobble, as  
treasurer  
Jesse L. Jackson, Sr  
Rainbow/PUSH Coalition, Inc.  
Citizenship Education Fund, Inc  
People United<sup>1</sup>

RELEVANT STATUTES

AND REGULATIONS: 2 U.S.C. § 431(17)  
2 U.S.C. § 434(b)(6)(B)(i)  
2 U.S.C. § 441a(a)(1)(A), (B), (C)  
2 U.S.C. § 441a(a)(2)(A)  
2 U.S.C. § 441a(a)(7)(B)(i)  
2 U.S.C. § 441a(d)(2)  
2 U.S.C. § 441a(f)  
2 U.S.C. § 441b  
26 U.S.C. § 9003(b)(2)  
26 U.S.C. § 9012(b)(1)  
11 C.F.R. § 102.5  
11 C.F.R. § 106.5  
11 C.F.R. § 109.1  
11 C.F.R. § 114.4(b)  
11 C.F.R. § 116.3

<sup>1</sup> The complaint alleges that the name of this Respondent is People United, but in response to the complaint, Respondents refer to themselves People United to Serve Humanity. In any event, People United is a distinct organization from Rainbow/PUSH Coalition, Inc.

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

**I. INTRODUCTION**

This matter originated with a complaint filed by the American Conservative Union alleging that Jesse L. Jackson, Sr. and certain non-profit corporations with which he is connected, the Rainbow/PUSH Coalition, Inc. ("Rainbow/PUSH"), Citizenship Education Fund, Inc. ("CEF"), and People United, violated the Federal Election Campaign Act of 1971, as amended ("the Act").<sup>2</sup> The claims relate to expenses incurred when Jackson traveled the country between September and November 2000 to conduct various activities in connection with the 2000 general election campaign. Specifically, the complaint alleges that Jackson's non-profit corporations incurred significant expenses during Jackson's travels, including his salary, travel costs, and related administrative costs. The primary theory of the complaint is that these expenditures constitute prohibited in-kind contributions to Democratic Party Presidential and Vice-Presidential candidates Al Gore and Joe Lieberman. The complaint also notes that the Democratic National Committee ("DNC") appears to have reimbursed the Jackson-related entities for some of the expenses, thus raising the question of whether the Jackson entities may have made advances for federal election expenditures to the DNC and whether the DNC has made an excessive contribution to Gore-Lieberman.<sup>3</sup> Finally, the complaint alleges that the

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<sup>2</sup> All of the facts in this matter 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 Act herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2000 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

<sup>3</sup> The complaint and its exhibits are not clear as to the source of funds used to pay for Jackson's travel expenses. There is, however, sufficient information in those documents (such as evidence of transfers from the DNC to Jackson's entities and Keep Hope Alive PAC) to infer that the DNC may have paid for and/or reimbursed

1 DNC failed to properly allocate contributions it made to a Jackson-related political action  
2 committee, the Keep Hope Alive Political Action Committee ("KHA PAC").

3 While Jackson apparently engaged in periodic express advocacy of Gore-Lieberman in  
4 his appearances, there is evidence that the overriding purpose of his travels was a partisan get-  
5 out-the-vote effort which appears similar to activities underlying violations of the Act committed  
6 by Jackson, the National Rainbow Coalition, and the DNC in connection with the 1992 election  
7 and conciliated in MUR 3673. It is unclear whether this 2000 election activity was primarily  
8 candidate-specific or primarily generic. Examining the potential violations by the various  
9 Jackson-related organizations, the DNC, and Gore-Lieberman, this Office concludes that  
10 Jackson, Rainbow/PUSH, CEF, and People United may have violated 2 U.S.C. § 441b in making  
11 prohibited contributions to the DNC through advances. Although a limited investigation is  
12 needed to determine the amounts involved in the apparent violation, it appears that this matter  
13 could proceed quickly into conciliation negotiations. For a variety of reasons, this Office  
14 recommends that the Commission exercise its prosecutorial discretion and take no action with  
15 regard to the broader question of whether Jackson's appearances were coordinated with Gore-  
16 Lieberman thus resulting in contributions to Gore-Lieberman.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. Background**

19 Jesse L. Jackson, Sr. has played a unique role in Democratic Party politics both as a  
20 candidate and a much sought-after speaker who is acknowledged to be a "leader both nationally  
21 and within the Democratic Party" who has spoken "on a host of political, religious, social, and  
22 civic issues." Response of Gore-Lieberman at 4. He first gained prominence as an organizer for

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Jackson for his travel expenses In fact, the DNC reported a \$250,000 expenditure to Rainbow/PUSH, which the DNC allocated between its federal and non-federal account

1 the Southern Christian Leadership Conference in the 1960s. In 1971, he founded Chicago-based  
2 Operation PUSH (People United to Serve Humanity), an organization devoted to expanding  
3 opportunities for the disadvantaged and African-Americans. Jackson achieved national reknown  
4 as a candidate for the Democratic presidential nomination in 1984 when he received over 3.5  
5 million votes during the primaries. He ran again in 1988 and received over 7 million votes and  
6 finished first or second in 46 Democratic presidential primary elections.<sup>4</sup>

7 In 1984, Jackson founded the National Rainbow Coalition, a national organization  
8 involved with public policy issues.<sup>5</sup> The National Rainbow Coalition merged with Operation  
9 PUSH in 1996, and is now known as Rainbow/PUSH Coalition, Inc, a 501(c)(4) corporation in  
10 Illinois.

11 The Citizenship Education Fund, a 501(c)(3) organization, was founded by Jackson.  
12 CEF, which is also a Respondent, shares an address with Rainbow/PUSH. According to CEF's  
13 most recent tax return filed in April 2003 for the 2001 year, its president is Jonathan Jackson, a  
14 board member of Rainbow/PUSH, and the son of Jesse L. Jackson, Sr. CEF reports that in 2001  
15 it paid Rainbow/PUSH \$881,316 for "management fees."

16 People United is a religious organization and the owner of the property in which  
17 Rainbow/PUSH and CEF are located in Chicago. See Complaint, Exhibit 1, (Financial Report to  
18 Donors of the Citizenship Education Fund, Inc. and the Rainbow Push Coalition, Inc.). On its

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<sup>4</sup> Jackson claims credit for registering over 3 million new voters during his 1984 and 1988 presidential campaigns. See <http://www.rainbowpush.org/founder/index.html>.

<sup>5</sup> In 1992, he participated in a joint program run by the DNC and the National Rainbow Coalition to engage in generic party voter registration, during which time he reportedly made statements supportive of Democratic candidates and derisive of Republicans. See MUR 3673. The 1992 program reportedly cost over \$1,000,000 and was funded by the DNC, in most part, although the National Rainbow Coalition absorbed some of the costs and also advanced certain other costs. *Id.* Portions of these expenditures were found to have violated FECA, and both the DNC and Rainbow Coalition signed conciliation agreements admitting violations and each paid a \$5,000 civil penalty. *Id.*

Although many reference sources are available for the biography of Jesse L. Jackson, Sr., a comprehensive online source is the Rainbow Coalition/PUSH's website. See <http://www.rainbowpush.org/founder/index.html>.

1 2001 tax return, CEF reports paying \$250,000 to People United for "occupancy costs." People  
2 United pays Jesse Jackson's annual salary of \$120,000, although it charges the costs of the salary  
3 to Rainbow/PUSH and CEF. See Complaint, Exhibit 1. Although the complaint alleges that  
4 People United is incorporated, and the response does not deny this, this Office has not been able  
5 to confirm the corporate status through public records.

6 Keep Hope Alive Political Action Committee registered with the Commission on  
7 June 30, 1988. Its treasurer in 2000 was Dennis Rivera, who is a Rainbow/PUSH board member  
8 and the president of the Service Employees International Union Local 1199. In its 2000 post-  
9 election FEC disclosure report it reported receiving \$7,820 from the "National Rainbow  
10 Coalition" for a "reimbursement for rent, postage, books" and also reported a debt owed to the  
11 "National Rainbow Coalition" in the same amount. This same report discloses a payment on  
12 Schedule H4, allocated between federal and non-federal accounts, to Jesse Jackson for  
13 \$13,604.21 for travel expenses.

14 B. Jackson's Travel in Fall 2000

15 According to news reports attached to the complaint, Jackson traveled extensively and  
16 made numerous public speaking appearances across 15 states and at least 30 cities during the  
17 2000 general election campaign. At many appearances his efforts appeared to be oriented  
18 toward voter registration and turnout. Press accounts indicate that on at least six occasions,  
19 Jackson appeared together at an event with either Al Gore or Joe Lieberman.<sup>6</sup> On other

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<sup>6</sup> For instance, on September 3, 2000, Jackson reportedly met with Gore for about half an hour on board Air Force 2 outside of Pittsburgh, Pennsylvania and then reportedly marched in a parade together and addressed a rally downtown during which Jackson was reported to have "deliver[ed] a red meat attack on the Republican Party" and was quoted as telling voters to "[s]tay out of the Bushes." See Jonathan Weisman, *Gore Crisscrossing Battleground States, 'Believe,' He Exhorts Voters On 5-City Trip That Includes South*, THE BALTIMORE SUN, September 5, 2000 See Complaint, Exhibit 41, Glen Johnson, *Democrats' Dash 4 States, 27 Hours, The Words, Food, And Shirts Pile Up*, THE BOSTON GLOBE, September 5, 2000. See Complaint, Exhibit 43. According to news accounts attached to the Complaint, Jackson used the phrase "stay out of the Bushes" repeatedly during his travels. Further, the official text of Jackson's speech given at the Democratic National Convention on December 15, 2000 is available on

occasions, Jackson appeared without the Democratic presidential candidates, but reportedly made statements that were supportive of their campaign.<sup>7</sup> Nevertheless, Gore-Lieberman asserts that Jackson was not part of its surrogate speaker program, pursuant to which it “arranged for speakers to make appearances on its behalf – and paid the costs thereof.” Gore-Lieberman Resp. at 4. Gore-Lieberman states that “[a]s far as the Committee was concerned, Jackson was, instead, part of the party efforts on behalf of the whole ticket and all office seekers across the country. Consequently, the Committee deferred in utilizing Jackson to the national party.” *Id.* at 5.

It is not clear what organization paid for Jackson’s travel immediately prior to the 2000 election.<sup>8</sup> There is evidence presented in the complaint, and not refuted by the Respondents, that Jackson’s non-profit corporations expended funds for the travel costs associated with Jackson’s appearances. *See* Complaint, Exhibit 1. Rainbow/PUSH and CEF acknowledge spending

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Rainbow/PUSH’s website and it too contains the phrase “stay out of the Bushes.”  
<http://www.rainbowpush.org/speeches/2000/dnc081500.html>

<sup>7</sup> For example, in appearances in Madison, Wisconsin, Jackson reportedly “pulled out all the stops to sell Gore and his running mate, Sen. Joe Lieberman, to the crowd” and was quoted as urging voters to “join to defeat” Bush and Cheney, as well as prominent Congressional Republicans because “[t]hey threaten our existence.” *See* Steven Elbow, *Nader Fans Urged To Switch To Gore, 3,000 Turn Out To Hear Jackson, Jesse Jackson Stumps Here For Gore*, CAPITAL TIMES, October 21, 2000. *See* Complaint, Exhibit 50. Jackson reportedly reminded his audience at the Mount Bethel Baptist Church in Ft. Lauderdale, Florida that there were 700,000 African Americans and 1,000,000 Hispanics who are unregistered to vote in Florida, and was quoted as telling voters: “Don’t register to vote for Gore. Register to vote for yourself, and choose Gore.” *See* Sandra Marquez Garcia and Griff Witte, *Jackson Touts Florida Democrats*, THE MIAMI HERALD, October 9, 2000. *See* Complaint, Exhibit 16. On Election Day, “the Democrats” reportedly “rushed” Jackson to Philadelphia to “drum up votes for Gore in the black community... to make turn out appeals on black radio and to rally workers headed home from work ” *See* Mary Leonard and Curtis Wilkie, *Neither Candidate Sets Early Trend*, THE BOSTON GLOBE, November 8, 2000; *see also* Jonathan Weisman, *Gore Gives His All In Sprint To Finish*, THE BALTIMORE SUN, November 8, 2000; *see also* Michael Kranish and Anne E Kornblut, *Late-Night Drama Battle in Key States Make Gore-Bush Race Too Close To Call*, THE BOSTON GLOBE, November 8, 2000; *see also* Mary Leonard, *Each Had His Strength in Key States*, THE BOSTON GLOBE, November 8, 2000; *see also* William Bunch, *Bush, Maybe*, PHILADELPHIA DAILY NEWS, November 8, 2000 (“... with exit polls suggesting that Pennsylvania was a dead heat, the Democrats flew the Rev. Jesse Jackson to Philadelphia’s Broad and Olney transit stop to buttonhole voters.”). *See* Complaint, Exhibits 33, 30, 31, 32, and 34, respectively.

<sup>8</sup> The DNC acknowledges that it paid the costs related to Jackson’s appearance at the Democratic National Convention DNC Resp. at 2.

1 did not say anything inconsistent with the Gore-Lieberman characterization of Jackson's travels  
2 as being part of the national party's efforts. *Id.*

3 The DNC also contributed \$110,000 of non-federal funds to Keep Hope Alive PAC.<sup>12</sup>  
4 The PAC did not report its receipt of the \$110,000 from the DNC on its FEC disclosure reports,  
5 but did report the transaction in its IRS filings,<sup>13</sup> suggesting that the funds were deposited into  
6 the PAC's non-federal account. From its federal account, Keep Hope Alive PAC paid \$168,880  
7 for travel expenses associated with get-out-the-vote activities, including a \$13,604.21 payment to  
8 Jackson.<sup>14</sup> A few weeks after the receipt of the DNC payment, Keep Hope Alive PAC  
9 transferred approximately \$188,000 from its non-federal account to its federal account for the  
10 apparent purpose of reimbursing allocable expenses.<sup>15</sup> See 11 C.F.R. § 102.6 (transfers of funds  
11 may be made without limit on amount between affiliated committees whether or not they are  
12 political committees under 11 C.F.R. § 100.5). The size and timing of the \$188,000 transfer  
13 suggests that it included the \$110,000 donation from the DNC.

14 A review of Gore-Lieberman disbursements did not identify any payments to Jackson or  
15 his associated entities. Gore-Lieberman acknowledges that it conducted a "surrogate speaker  
16 program" during the 2000 election campaign, but states that Jackson was not part of it. See

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<sup>12</sup> The contribution was paid in two installments: \$35,000 paid on August 21, 2000 and \$75,000 paid sometime between October 19, 2000 and November 27, 2000. See Complaint, Exhibits 74, 76, and 79; see also Keep Hope Alive PAC Resp. at 1 and DNC Resp. at 3

<sup>13</sup> See Complaint, Exhibits 76 and 79.

<sup>14</sup> Keep Hope Alive 2000 Post-General Report These get-out-the-vote travel disbursements included: \$1,519.63 for Robert Borosage's travel; \$143,713.29 to Corporate Travel Council; \$3,378.59 to DMS Travel/Airfare; \$1,453.08 for Gary Flowers' travel; \$4,306.40 for John Mitchell's travel; and \$546.50 for Billy Owens' travel. The named individuals all have at one time been affiliated with the Jackson entities.

<sup>15</sup> See Complaint, Exhibit 80 at 2. As we discuss later in this Report, the DNC may have known that the money would be used for Jackson-related travel expenses and that, rather than paying the travel costs directly, it made the contribution to KHA PAC to fund the travel costs in order to benefit from KHA PAC's more favorable allocation formula.

1 Gore-Lieberman Resp. at 4. The available information, which includes the results of a post-  
2 election audit of Gore-Lieberman, conducted pursuant to 26 U.S.C. § 9007, reveals no evidence  
3 that Jackson's travels were directed or controlled by Gore-Lieberman.

4 C. Legal Analysis

5 1. Contributions to the DNC from Jackson-related entities

6 The complaint alleges that Jackson's non-profit corporations made prohibited corporate  
7 contributions to the DNC by paying the costs of Jackson's travel or incurring associated office  
8 expenses and salary payments. For the reasons discussed below, this Office recommends that the  
9 Commission find reason to believe Jackson and his non-profit corporations violated 2 U.S.C.  
10 § 441b by making advances to the DNC, and the DNC corespondingly violated 2 U.S.C. § 441b  
11 by accepting these advances.

12 Corporations are prohibited from making contributions or expenditures in connection  
13 with any federal election. 2 U.S.C. § 441b. This prohibition is applicable to non-profit, tax-  
14 exempt corporations. *FEC v. Nat'l Right to Work Comm.*, 459 U.S. 197 (1982); *see also FEC v.*  
15 *Beaumont*, 537 U.S. 1027 (2002); *FEC v. Massachusetts Citizens For Life*, 479 U.S. 238 (1986).  
16 The terms "contribution" and "expenditure" are defined by 2 U.S.C. § 441b as including any  
17 direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services,  
18 or anything of value. An extension of credit is also a contribution, unless the credit is extended  
19 in the ordinary course of business and the terms are substantially similar to extensions of credit  
20 to nonpolitical debtors that are of similar risk and size of obligation. A corporation "in its  
21 capacity as a commercial vendor" may extend credit to a candidate or political on the above-  
22 stated conditions. 11 C.F.R. § 116.3(b)-(c).



1 A corporation is entitled to make disbursements for nonpartisan communications to the  
2 general public, including expenditures for voter registration and get-out-the-vote materials. 11  
3 C.F.R. § 114.4(b). The content of the communication and whether the expenditure was  
4 coordinated with a candidate or political party, is relevant to determining if a communication is  
5 permissible nonpartisan activity or a prohibited expenditure. *See* MUR 3673.<sup>16</sup>

6 Based on the lengthy record submitted with the complaint, it is apparent that Jesse  
7 Jackson traveled throughout the country on a speaking tour in connection with the 2000 general  
8 election. Further, there is significant evidence that his appearances were of a partisan nature.  
9 Numerous reports establish that he either appeared together with Democratic candidates or that  
10 he advocated the election of Democratic candidates, sometimes using express words of  
11 advocacy. Even when Jackson's appearances were related to voter registration or get-out-the-  
12 vote activities, his reported statements accompanying these efforts were of a partisan nature.  
13 Thus, the expenditures for his 2000 travel appear similar to those incurred in 1992, which  
14 Jackson, the Rainbow Coalition and the DNC acknowledged to constitute expenditures for, or  
15 contributions to, the DNC. *See* Conciliation Agreements in MUR 3673. Finally, many of the  
16 press reports regarding this activity assert that at least some of Jackson's activities were done at  
17 the request of the Democratic Party, and neither the DNC's nor Jackson's response refutes this  
18 contention. *See supra* fn. 7.

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<sup>16</sup> When the communications are paid for from the corporation's separate segregated fund or when the corporation qualifies for exemption to the application of 2 U.S.C. § 441b under *Massachusetts Citizens For Life, supra*, no contribution results. An MCFL corporation must: be formed for the express purpose of promoting political ideas and does not engage in business activity; have no shareholders or other persons affiliated with it who have a claim on its assets or earnings; not established by a business corporation or labor union and not accept contributions from such entities. *See Massachusetts Citizens For Life, supra*. None of Jackson's non-profit corporations is registered with the FEC to be a *Massachusetts Citizens for Life* corporation. Moreover, his non-profit corporations apparently receive grants from various business corporations; *see e.g.*, [www.rainbow/push.org](http://www.rainbow/push.org), which prevents his non-profit corporations from obtaining *Massachusetts Citizens For Life* status. *Id.*

1       The costs of specific trips are not known at this time. As explained in the factual  
2 background section of this Report, Rainbow/PUSH, CEF, and KHA PAC incurred travel  
3 expenses on behalf of Jackson in 2000. While some of these expenditures probably were not  
4 made in connection with a federal election, others were for partisan political activity, including  
5 GOTV and voter registration. *See, supra* pp. 6-7. To the extent that Rainbow/PUSH and CEF  
6 incurred expenditures in connection with an election, there is reason to believe that these  
7 corporations made prohibited contributions in violation of 2 U.S.C. § 441b. Further, as a  
8 corporate officer who incurred the expenditures, there is reason to believe that Jesse L. Jackson,  
9 Sr. also violated 2 U.S.C. § 441b. If these expenditures were reimbursed by the DNC or any  
10 other organization, then these expenditures may be considered advances of prohibited  
11 contributions or a prohibited extension of credit. Although People United does not appear to  
12 have made any disbursements for Jackson's travel, it does pay his salary. Given that news  
13 reports suggest that Jackson traveled to over 30 cities to make speeches during the general  
14 election campaign, it appears that he devoted significant amounts of time to the effort and  
15 therefore, it is reasonable to conclude that a pro-rated portion of his salary payment was made in  
16 connection with federal elections. Thus, there is reason to believe that People United made a  
17 prohibited contribution to the DNC in violation of 2 U.S.C. § 441b. Finally, there is reason to  
18 believe that the DNC violated 2 U.S.C. § 441b by accepting these contributions and violated 2  
19 U.S.C. § 434(b)(6)(B)(i) by failing to report them.

## 20               2. Contributions to Gore-Lieberman

21       The complaint also alleges that either the Jackson entities or the DNC may have made  
22 excessive contributions to Gore-Lieberman through the DNC- funded travel.<sup>17</sup> In order to

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<sup>17</sup> The Act prohibits any multi-candidate committee from making contributions to any candidate and his authorized political committees with respect to any election for Federal office, which, in the aggregate, exceed

1 conclude that the Jackson entities or the DNC made contributions to Gore-Lieberman, it would  
2 be necessary to demonstrate that the expenditures were made in cooperation, consultation, or  
3 concert, with, or at the request or suggestion of Gore-Lieberman. 2 U.S.C. § 441a(a)(7)(B)(i).<sup>18</sup>

4 The news articles attached to the complaint report six separate occasions where Jackson  
5 appeared together with either Gore or Lieberman during the general election campaign. These  
6 joint appearances provide some evidence that Jackson's travel may have been coordinated with  
7 Gore-Lieberman. Even when Jackson appeared without the two candidates, it is possible that he  
8 may have appeared at their campaign's request.<sup>19</sup> Based on the available record, it appears that  
9 at least a portion of the travel expenses may have constituted an in-kind contribution to Gore-  
10 Lieberman because it is likely that some unidentified amount of the expenditures may have been  
11 coordinated.

12 Nevertheless, for several reasons, this Office is not recommending that the Commission  
13 pursue this case on the theory that by coordinating expenditures, the Jackson organizations and  
14 the DNC made excessive contributions to Gore-Lieberman. As recounted in this Report,

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\$5,000. 2 U.S.C. § 441a(a)(2)(A). It is also a violation of the Act for candidates or political committees to knowingly accept excessive contributions. 2 U.S.C. § 441a(f). Publicly funded general election presidential candidates and their authorized committees are prohibited from receiving contributions. 26 U.S.C. §§ 9003(b)(2) and 9012(b)(1)

Pursuant to 2 U.S.C. § 441a(d)(2), the national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States. 11 C.F.R. § 110.7 For the 2000 presidential election cycle that amount was \$13,680,292. See FEC Record, March 2000 The DNC came within \$23,000 of its coordinated expenditure limit for Gore. The Title 26 audit of Gore-Lieberman revealed that the DNC made coordinated expenditures for Gore-Lieberman of \$13,657,717 Thus, if the DNC paid for Jackson's travel and the cost of that travel exceeded \$23,000 and Jackson's appearances were coordinated with Gore-Lieberman, the DNC would have made excessive coordinated expenditures for Gore-Lieberman

<sup>18</sup> Section 431(17) of the Act and 11 C.F.R. § 109.1(a) and (b)(4) each indirectly addresses what constitutes coordination by defining an independent expenditure as an expenditure that is not "made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate."

<sup>19</sup> For instance, news articles reported that "the Democrats" "dispatched" Jackson to Philadelphia on Election Day to rally support for Gore See *supra* footnote 8.

1 extremely little information pertaining to coordination has been found to date. Particularly  
2 informative is the Commission's statutorily-mandated audit of Gore-Lieberman, which included  
3 no finding that Gore-Lieberman accepted excessive in-kind contributions through coordination  
4 with Jackson, his organizations, or with the DNC. What little information there is about the  
5 allegations at issue in this matter comes largely from press accounts, and an extensive  
6 investigation would be required to verify the articles' contents, as well as to ascertain what  
7 Jackson may have said at any of his reported appearances. Given the likelihood that at least  
8 some part of the speeches at issue were unscripted, verifying the contents of his speeches – i.e.,  
9 assessing whether his appearances and related travel were for the purpose of advocating for  
10 Gore-Lieberman or were for some other purpose such as partisan GOTV – would be particularly  
11 intrusive and onerous.<sup>20</sup> Moreover, to verify coordination, an exhaustive investigation of  
12 numerous individual expenditures in a variety of locales would be required and witnesses would  
13 be asked to recollect events over three years old. While the prospect of an exhaustive  
14 investigation is not sufficient reason not to pursue potential theories of liability, we note that the  
15 basis of any coordination finding at this stage would simply be, essentially, that Jackson and the  
16 candidates reportedly appeared on stage together six times. For all these reasons, we do not  
17 believe there is sufficient justification for a complex and intrusive investigation in this matter.  
18 Therefore, this Office recommends that the Commission take no action with respect to the  
19 allegations relating to excessive contributions to Gore-Lieberman.

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<sup>20</sup> For similar reasons, we do not recommend that the Commission pursue an investigation based on the theory that any disbursements for Jackson's appearances constituted independent expenditures by the DNC or the Jackson-related entities, nor do we recommend pursuing a theory that the DNC improperly allocated expenses for any of the Jackson appearances except as described below in the context of the disbursements to KHA PAC.

3. Allocation Requirements

Political committees that use separate federal and non-federal accounts for activities connected with both federal and non-federal elections must ensure that all disbursements, contributions, expenditures and transfers for shared activities are allocated between the two accounts, and that the federal account pays its share of the costs associated with that activity. 11 C.F.R. § 102.5(a)(1)(i). Failure to allocate expenses when required results in a contribution by the non-federal account to the federal account. *Id.*

National party committees must allocate the administrative expenses and costs of generic voter drives. 11 C.F.R. § 106.5(a)(2). "Generic voter drives" include "voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate." 11 C.F.R. § 106.5(a)(2)(iv).

Furthermore, the Act prohibits corporations and labor organizations from making contributions in connection with Federal elections, and prohibits political committees from knowingly accepting such contributions. 2 U.S.C. § 441b(a). In the past, the Commission has found that where an organization with federal and non-federal accounts appears to have violated 11 C.F.R. § 102.5 by disbursing funds from its non-federal account in connection with a federal election, the organization, or at least its federal committee, may also have violated 2 U.S.C. § 441b(a) if the non-federal account contained corporate or labor organization funds at the time of the disbursement.

Any DNC expenditures for Jackson's travel expenses that were neither contributions to Gore-Lieberman nor independent expenditures may nevertheless have constituted costs of generic get-out-the-vote and/or voter registration drives. Such expenses should have been

1 allocated between the DNC's federal and non-federal accounts. The DNC's \$250,000 payment  
2 to Rainbow/PUSH was so allocated; however, its \$110,000 payment to Keep Hope Alive PAC  
3 was from entirely non-federal funds.

4 The DNC's \$110,000 disbursement to Keep Hope Alive PAC was made in two  
5 installments: \$35,000 was paid sometime during the July 1 - September 30, 2000 reporting  
6 period, and \$75,000 was paid sometime during the October 19 - November 27, 2000 reporting  
7 period. *See* Complaint, Exhibits 76 and 79. Keep Hope Alive PAC deposited the \$110,000 into  
8 its non-federal account. *See* Complaint, Exhibit 79. Thereafter, Keep Hope Alive PAC  
9 transferred \$187,994.17 from its non-federal account to its federal account for joint activity. *See*  
10 Complaint, Exhibit 80. At some point in close proximity to these transfers, KHA PAC made  
11 disbursements for some travel-related expenses to support generic voter registration and get-out-  
12 the-vote activities of Jackson using a 90-10 ratio: 90% non-federal activity and 10% federal  
13 activity. *Id.*

14 Based on the timing of the disbursements with respect to Jackson's appearances, it  
15 appears possible that the funds donated by the DNC to Keep Hope Alive PAC may have been  
16 used for Jackson's travel expenses. It is possible that the DNC contributed its funds to Keep  
17 Hope Alive PAC knowing that the funds would be used by the PAC to reimburse or pay for  
18 Jackson's travel expenses, thereby allowing the DNC to take advantage of the PAC's more  
19 favorable allocation ratio. In that case, the \$110,000 donated in non-federal funds by the DNC to  
20 Keep Hope Alive PAC should have been allocated by the DNC between its federal and non-  
21 federal accounts by 65% and 35%, respectively. 11 C.F.R. § 106.5(b)(2)(i); *see also FEC v.*  
22 *California Democratic Party*, 13 F. Supp. 2d 1031 (1998)(costs of a targeted effort to register

1 Democrats to vote in a general election that included state and federal candidates must be  
2 allocated by the respondent political committee between its federal and non-federal accounts).

3 Accordingly, this Office recommends that the Commission find reason to believe that the  
4 DNC and its treasurer violated 11 C.F.R. §§ 102.5 and 106.5(d). Moreover, because this  
5 transaction may have led to the use of corporate funds in a federal election, this Office  
6 recommends that the Commission find that the DNC and its treasurer violated 2 U.S.C.  
7 § 441b(a).<sup>21</sup> Given the available information, this Office recommends that the Commission take  
8 no action against KHA PAC and its treasurer at this time.

9 **III. PROPOSED DISCOVERY**

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<sup>21</sup> Insofar as the \$250,000 paid by the DNC to Rainbow/PUSH was allocated, there is no violation relating to that payment. However, the complaint alleges that the DNC may have funded expenditures of up to \$440,000. The investigation will seek to determine whether other amounts related to Jackson travel required allocation.

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Therefore, we

recommend that the Commission enter into pre-probable cause conciliation with the Respondents.


**IV. RECOMMENDATIONS**


1. Find reason to believe that Jesse L. Jackson, Sr., Rainbow/PUSH Coalition, Inc., Citizenship Education Fund, Inc., and People United violated 2 U.S.C. § 441b.
2. Find reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. §§ 434(b)(6)(B)(i) and 441b and 11 C.F.R. §§ 102.5 and 106.5.
3. Take no action against Keep Hope Alive PAC and Steven Cobble, as treasurer, at this time
4. Take no action against Gore-Lieberman, Inc. and Jose Villarreal, as treasurer
5. Approve the appropriate Factual and Legal Analyses.
6. Authorize the use of compulsory process, including the issuance of appropriate subpoenas to Jesse L. Jackson, Sr., Citizenship Education Fund, Keep Hope Alive Political Action Committee, and Steven Cobble, as treasurer, Rainbow/PUSH Coalition, Inc., People United, and the Democratic National Committee, and the issuance of additional interrogatories, document subpoenas, and deposition subpoenas, as necessary.
7. Enter into pre-probable cause conciliation with Jesse L. Jackson, Sr., Citizenship Education Fund, Keep Hope Alive Political Action Committee, and Steven Cobble, as treasurer, Rainbow/PUSH Coalition, Inc., People United, and the Democratic National Committee, and Andrew Tobias, as treasurer.


8. Approve the appropriate letters.

2/27/04  
Date

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