



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

MAR 15 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
and FACSIMILE

Joseph E. Sandler
Sandler, Reiff & Young, P.C.
50 E Street, S.E. #300
Washington, D.C. 20003

RE: MUR 5183
Democratic National Committee

Dear Mr. Sandler:

On March 28, 2001, the Federal Election Commission notified your clients, the Democratic National Committee and its treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on March 9, 2004, found that there is reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated §§ 434(b)(6)(B)(i) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. §§ 102.5 and 106.5. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). The Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements

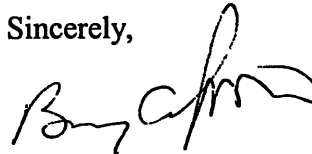
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should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Peter Blumberg or Brant Levine, the attorneys assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley A. Smith", written in a cursive style.

Bradley A. Smith
Chairman

Enclosure
Factual and Legal Analysis

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

FACTUAL AND LEGAL ANALYSIS

Respondents:

Democratic National Committee and Andrew Tobias,
as treasurer

MUR: 5183

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, including the Rainbow/PUSH Coalition, Inc. ("Rainbow/PUSH") and Citizenship Education Fund, Inc. ("CEF"), violated the Federal Election Campaign Act of 1971, as amended ("the Act") by making advances to the Democratic National Committee ("the DNC").¹ 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 complaint notes that the DNC appears to have reimbursed the Jackson-related entities for some of the expenses. The complaint also alleges that the DNC failed to properly allocate contributions it made to a Jackson-related political action committee, the Keep Hope Alive Political Action Committee ("KHA PAC").

¹ 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.

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II. BACKGROUND

A. Jesse L. Jackson, Sr. and related organizations

Jesse L. Jackson, Sr. has played a unique role in Democratic Party politics both as a candidate and a much sought-after speaker who is acknowledged to be a leader both nationally and within the Democratic Party who has spoken on a host of political, religious, social, and civic issues. He first gained prominence as an organizer for the Southern Christian Leadership Conference in the 1960s. In 1971, he founded Chicago-based Operation PUSH (People United to Serve Humanity), an organization devoted to expanding opportunities for the disadvantaged and African-Americans. Jackson achieved national reknown as a candidate for the Democratic presidential nomination in 1984 when he received over 3.5 million votes during the primaries. He ran again in 1988 and received over 7 million votes and finished first or second in 46 Democratic presidential primary elections.²

In 1984, Jackson founded the National Rainbow Coalition, a national organization involved with public policy issues.³ The National Rainbow Coalition merged with Operation PUSH in 1996, and is now known as Rainbow/PUSH Coalition, Inc, a 501(c)(4) corporation in Illinois.

The Citizenship Education Fund, a 501(c)(3) organization, was founded by Jackson. CEF, shares an address with Rainbow/PUSH. According to CEF's most recent tax return filed in

² 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>.

³ 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>.

April 2003 for the 2001 year, its president is Jonathan Jackson, a board member of Rainbow/PUSH, and the son of Jesse L. Jackson, Sr. CEF reports that in 2001 it paid Rainbow/PUSH \$881,316 for “management fees.”

Rainbow/PUSH and CEF are located at a property owned by People United, a religious organization affiliated with Jesse Jackson. See Complaint, Exhibit 1, (Financial Report to Donors of the Citizenship Education Fund, Inc. and the Rainbow Push Coalition, Inc.). On its 2001 tax return, CEF reports paying \$250,000 to People United for “occupancy costs.” People United pays Jesse Jackson’s annual salary of \$120,000, although it charges the costs of the salary to Rainbow/PUSH and CEF. See Complaint, Exhibit 1.

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

B. Jackson’s Travel in the Fall 2000

According to news reports attached to the complaint, Jackson traveled extensively and made numerous public speaking appearances across 15 states and at least 30 cities during the 2000 general election campaign. At many appearances his efforts appeared to be oriented toward voter registration and turnout. Press accounts indicate that on at least six occasions,

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Jackson appeared together at an event with either Al Gore or Joe Lieberman.⁴ On other occasions, Jackson appeared without the Democratic presidential candidates, but reportedly made statements that were supportive of their campaign.⁵ 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 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.”

at 5.

⁴ 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 Rainbow/PUSH’s website and it too contains the phrase “stay out of the Bushes.” <http://www.rainbowpush.org/speeches/2000/dnc081500.html>

⁵ 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.

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It is not clear what organization paid for Jackson's travel immediately prior to the 2000 election.⁶ 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 \$614,419 in 2000 for Jackson's travel. *Id.* This amount, however, appears to cover the entire year, and available records do not indicate what portion may have been used during the general election season.⁷ The complaint alleges that the DNC reimbursed Rainbow/PUSH \$450,000 for Jackson's travel expenses. *See* Complaint, at 2. This allegation is based on a news article quoting Billy Owens, the Chief Financial Officer of Rainbow/PUSH and CEF, as saying that \$450,000 of Jackson's travel expenses were "covered by Democratic Party committees as part of its 'get-out-the-vote' efforts in a campaign year." *See* Complaint, Exhibits 3, 4, and 5. Owens's statement referred to the 102-page report that he had prepared as part of an "internal financial study" the Jackson-related organizations had launched. *Id.*⁸

The DNC made substantial payments to both Rainbow/PUSH and KHA PAC in the period following Jackson's travels. The DNC acknowledges that it gave Rainbow/PUSH \$250,000 on December 6, 2000, which it allocated between its federal and non-federal accounts.⁹

⁶ The DNC acknowledges that it paid the costs related to Jackson's appearance at the Democratic National Convention. DNC Resp. at 2.

⁷ The same entities report spending \$410,856 in 1999 for Jackson's travels, and therefore \$203,563 more was spent for Jackson's travel in 2000 than in 1999. It is possible that the difference represents the amount spent during the 2000 general election campaign.

⁸ Neither the news article nor the complaint identified these "Democratic Party committees" and it is not clear which committees were involved, how much they contributed, or whether they funded the payment with federal, non-federal, national party, or local funds. Because several Jackson appearances occurred in Kentucky, Michigan, and West Virginia, the Commission reviewed disclosure reports for the state Democratic committees from those respective states in an effort to identify payments to Rainbow/PUSH or related entities, but did not discover any such payments.

⁹ The DNC paid 65% of the \$250,000 from federal funds and the remaining 35% from non-federal funds. *See* DNC Resp. at 3.

The DNC reported the payment as a “miscellaneous contribution” on its 2000 Year End Report and suggested in its complaint response that it was funding “nonpartisan GOTV” activity. *See* DNC Response at 3. While the DNC asserted that the complaint forwarded no evidence that “the DNC discussed or coordinated the use of the contributed funds by Rainbow/PUSH,” it did not deny that the funds were used to pay for Jackson’s travel. Further, it did not say anything inconsistent with the Gore-Lieberman characterization of Jackson’s travels as being part of the national party’s efforts. *Id.*

The DNC also contributed \$110,000 of non-federal funds to Keep Hope Alive PAC.¹⁰ The PAC did not report its receipt of the \$110,000 from the DNC on its FEC disclosure reports, but did report the transaction in its IRS filings,¹¹ suggesting that the funds were deposited into the PAC’s non-federal account. From its federal account, Keep Hope Alive PAC paid \$168,880 for travel expenses associated with get-out-the-vote activities, including a \$13,604.21 payment to Jackson.¹² A few weeks after the receipt of the DNC payment, Keep Hope Alive PAC transferred approximately \$188,000 from its non-federal account to its federal account for the apparent purpose of reimbursing allocable expenses.¹³ *See* 11 C.F.R. § 102.6 (transfers of funds may be made without limit on amount between affiliated committees whether or not they are

¹⁰ 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* DNC Resp. at 3.

¹¹ *See* Complaint, Exhibits 76 and 79.

¹² 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.

¹³ *See* Complaint, Exhibit 80 at 2. As discussed in the following sections, 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.

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political committees under 11 C.F.R. § 100.5). The size and timing of the \$188,000 transfer suggests that it included the \$110,000 donation from the DNC.

A review of Gore-Lieberman disbursements did not identify any payments to Jackson or his associated entities. Gore-Lieberman acknowledges that it conducted a “surrogate speaker program” during the 2000 election campaign, but states that Jackson was not part of it. The available information, which includes the results of a post-election audit of Gore-Lieberman, conducted pursuant to 26 U.S.C. § 9007, reveals no evidence that Jackson’s travels were directed or controlled by Gore-Lieberman.

III. Contribution from Jackson-related corporations

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

A corporation is entitled to make disbursements for nonpartisan communications to the general public, including expenditures for voter registration and get-out-the-vote materials. 11 C.F.R. § 114.4(b). The content of the communication and whether the expenditure was

coordinated with a candidate or political party, is relevant to determining if a communication is permissible nonpartisan activity or a prohibited expenditure. *See* MUR 3673.¹⁴

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

The costs of specific trips are not known at this time. As explained in the factual background section, Rainbow/PUSH, CEF, and KHA PAC incurred travel expenses on behalf of Jackson in 2000. While some of these expenditures probably were not made in connection with a federal election, others were for partisan political activity, including GOTV and voter registration. To the extent that Rainbow/PUSH and CEF incurred expenditures in connection with an election,

¹⁴ 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, which prevents his non-profit corporations from obtaining *Massachusetts Citizens For Life* status. *Id.*

these corporations, and their corporate officer, Jesse L. Jackson, Sr., may have made prohibited contributions. If these expenditures were reimbursed by the DNC or any other organization, then these expenditures may be considered advances of prohibited contributions or a prohibited extension of credit. Given that news reports suggest that Jackson traveled to over 30 cities to make speeches during the general election campaign, it appears that he devoted significant amounts of time to the effort and therefore, it is reasonable to conclude that a pro-rated portion of his salary payment was made in connection with federal elections. Thus, there is reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 441b by accepting contributions from Rainbow/PUSH Coalition, Inc., Citizenship Education Fund, Inc., and Jesse L. Jackson, Sr. Further, there is reason to believe the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434(b)(6)(B)(i) by failing to report the contributions.

IV. Allocation of Keep Hope Alive PAC Contribution

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

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

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

Accordingly, there is reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 11 C.F.R. §§ 102.5 and 106.5(d). Moreover, because this transaction may have led to the use of corporate funds in a federal election, there is reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 441b(a).