



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

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

FEB 03 2005

Re: MUR 5183

Dear Mr. Sandler:

On February 1, 2005, the Federal Election Commission accepted the signed conciliation agreement submitted by you on behalf of your clients, the Democratic National Committee and Andrew Tobias, as treasurer, in settlement of a violation of 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter as it pertains to your clients

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

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 effective date of the conciliation agreement. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Pet. G. Blumberg", written over a horizontal line.

Peter G. Blumberg
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Democratic National Committee)
and Andrew Tobias, as treasurer)

MUR 5183

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2004 DEC 17 P 4: 07

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by the American Conservative Union, through its Chairman David A. Keene. The Federal Election Commission ("Commission") found reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer (collectively, "Respondents"), violated 2 U.S.C. § 441b of the Federal Election Campaign Act, as amended, ("FECA") in connection with a get-out-the-vote and voter registration campaign conducted in the 2000 election cycle on Respondents' behalf by the Rainbow/PUSH Coalition, Inc., Citizenship Education Fund, Inc., and Reverend Jesse L. Jackson, Sr.

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 Democratic National Committee ("DNC") is a political committee pursuant to 2 U.S.C. § 431(4) and a national political party committee pursuant to 2 U.S.C. § 431(14).

2. The Democratic Senatorial Campaign Committee ("DSCC") and the Democratic Congressional Campaign Committee ("DCCC") are political committees pursuant to 2 U.S.C. § 431(4) and multi-candidate political committees pursuant to 2 U.S.C. § 441a(4). The DSCC and DCCC, along with the DNC, have as a primary goal the support of candidates from the Democratic Party. The DNC, DSCC, and DCCC have the ability to make unlimited transfers of funds between their accounts. See 2 U.S.C. § 441a(4).

3. Rainbow/PUSH Coalition, Inc. ("Rainbow") is a membership organization, registered as a non-profit corporation under section 501(c)(4) of Internal Revenue Code, which is involved in, among other things, political outreach. It was created in 1996 following the merger of National Rainbow Coalition and Operation PUSH.

4. The Citizenship Education Fund, Inc. ("CEF") is registered as a non-profit corporation under section 501(c)(3) of Internal Revenue Code and is involved in public policy initiatives primarily focused on youth advocacy. It is affiliated with Rainbow, sharing common leadership and offices.

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 FECA herein are to FECA 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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5. The Keep Hope Alive Political Action Committee is a political committee pursuant to 2 U.S.C. § 431(4).

6. Reverend Jesse L. Jackson, Sr. is a former presidential candidate and prominent figure in Democratic Party politics. He is the founder of Rainbow, CEF, and Keep Hope Alive PAC and continues to maintain close ties to all three organizations. He is the President of Rainbow, and his son, Jonathan Jackson, is President of CEF. Reverend Jackson is also the founder of Rainbow's two predecessor organizations, the National Rainbow Coalition and Operation PUSH.

Facts

7. In recent election cycles, Reverend Jackson has engaged in partisan get-out-the-vote ("GOTV") and voter registration ("VR") activities on behalf of Rainbow and various Democratic Party organizations. These activities involve nation-wide travel to various events at which Reverend Jackson frequently appears together with, and in support of, Democratic candidates. The tours take place in the fall, during the months immediately preceding the general election.

8. In 1992, Reverend Jackson traveled on a GOTV/VR tour operated as a joint program by the DNC and the National Rainbow Coalition, a predecessor to Rainbow. The 1992 program cost over \$1,000,000 and was funded primarily by the DNC, which was directly invoiced by vendors for the tour travel costs and paid these costs from DNC funds. To resolve allegations that the National Rainbow Coalition advanced certain expenses for the 1992 GOTV/VR effort, including some travel expenses, which constituted corporate contributions to the DNC, both the the DNC and National Rainbow Coalition entered into conciliation agreements, and paid civil penalties, stemming from violations of 2 U.S.C. § 441b. See MUR 3673.

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9. In 2000, Rainbow and Reverend Jackson planned to conduct another GOTV/VR campaign. In furtherance of the plan, in or around September 2000, Reverend Jackson and other Rainbow representatives reached an agreement with officials from the DNC that the Democratic Party would provide up to \$450,000 to Rainbow.

10. In September 2000, a DNC employee, who previously had worked for Rainbow, went to Rainbow's headquarters in Chicago, Illinois and acted as the coordinator of the tour. The DNC employee's duties included the preparation of daily itineraries listing where Reverend Jackson would travel, what events he would attend, and with whom he would appear. These itineraries described approximately 120 events on Reverend Jackson's trip schedule, which constituted over 80% of the scheduled appearances, as pertaining to the "DNC/Coordinated Campaign."

11. Between September 4, 2000 and election day, November 7, 2000, Reverend Jackson traveled extensively throughout the country, visiting over 50 cities in 39 days, including approximately ten cities that he visited two to five times each. In each city, he participated in the events described by his trip itineraries as "DNC/Coordinated Campaign" events. The costs for staging the events generally were assumed by the local or state Democratic parties. Many of these events involved a joint appearance with Democratic Party Senate and House candidates. On several occasions, Reverend Jackson appeared at events together with Democratic presidential candidate Al Gore or vice-presidential candidate Joe Lieberman. During these "DNC/Coordinated Campaign" events, Reverend Jackson engaged in partisan GOTV/VR activities. During some of the individual stops on a trip, Reverend Jackson would conduct a limited amount of non-election Rainbow activity, such as visiting with tornado victims in Ohio and participating in an Americans with Disabilities March in Washington, D.C.

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12. Rainbow's ledgers and vendor invoices establish that the cost of Reverend Jackson's travel for the general election period was approximately \$750,000. Although the overwhelming majority of the travel was election-related, a limited portion related to other Rainbow activities.

13. The invoices were billed directly to Rainbow, CEF, or Keep Hope Alive PAC. The costs were incurred for charter airplanes, lodging, meals, and communications fees. Rainbow and CEF paid approximately \$550,000 of the costs. Keep Hope Alive PAC paid approximately \$200,000 of the costs.

14. To fulfill the DNC's agreement to contribute up to \$450,000 to Rainbow, the DNC arranged for the DSCC and DCCC to each pay \$100,000 to either Rainbow or CEF, while the DNC paid \$250,000 to Rainbow directly from its own accounts. As described below, these payments were not made prior to Rainbow or CEF incurring expenses for the partisan GOTV/VR campaign. As a result Rainbow and CEF used their own corporate funds to fund the GOTV/VR campaign.

15. Between September 1 and October 11, 2000, Rainbow and CEF, with the consent of Reverend Jackson as a corporate officer, used corporate funds to advance more than \$100,000 in travel expenses for the DNC/Coordinated Campaign GOTV/VR speaking tour. On October 11, 2000, the DSCC made an initial payment of \$40,000 that reimbursed less than half of the amount already advanced by Rainbow and CEF. Between October 11 and October 26, 2000, Rainbow and CEF used corporate funds to advance additional travel expenses totaling more than \$100,000. By the time the DSCC made a payment of \$60,000 to CEF on October 26, 2000, the aggregate of unreimbursed travel expenses totaled approximately \$185,000. Between October 26 and the November 8, 2000 election, Rainbow and CEF used corporate funds to advance additional travel expenses of over \$200,000. By the time the DCCC made a payment of \$100,000 to Rainbow on November 8, 2000, the aggregate of unreimbursed travel expenses totaled over \$350,000. On

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December 6, 2000 the DNC made a payment of \$250,000 to reimburse Rainbow for the balance of the agreed payments.

Time Periods	Rainbow/CEF Advances	Payment Received	Outstanding Balance at Time of Payment
9/1/00-10/11/00	\$115,477	\$40,000 (from DSCC on 10/11)	\$115,477
10/12/00 - 10/26/00	\$112,723	\$60,000 (from DSCC on 10/26)	\$188,200
10/27/00-11/8/00	\$229,217	\$100,000 (from DCCC on 11/8)	\$357,417
11/9/00-12/6/00	\$67,638	\$250,000 (from DNC on 12/6)	\$325,055
12/7/00-12/31/00	\$34,156		\$109,211 ²
TOTAL	\$559,211	\$450,000	

16. The payments from the party committees to Rainbow were not made prior to Rainbow's incurrence of the expenditures. As of election day, November 7, 2000, Rainbow had an outstanding advance to the DNC of approximately \$350,000.

17. Based on Reverend Jackson's advocacy of specific federal candidates and the fact that his activities were coordinated with the DNC, the purpose of the travel in 2000 was partisan activity conducted in connection with federal elections.

² The amount of travel expenses that were never reimbursed, \$109,211, represents the estimated cost for travel conducted exclusively for Rainbow's non-election activities.

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Corporate Advances

18. Political committees are prohibited from receiving contributions from corporations.

2 U.S.C. § 441b.

19. 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 commercial vendor is any person who provides goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services. 11 C.F.R. § 116.1(c).

20. By incurring travel expenses on behalf of the DNC, Rainbow and CEF made advances to the DNC. Rainbow and CEF, as corporations, were prohibited from making advances to political committees for federal elections. Rainbow and CEF were not acting in the capacity of a commercial vendor of goods or services because their usual and normal business does not involve the sale or provision of these services.

21. Through its funding of Reverend Jackson's travel expenses for the "DNC/Coordinated Campaign," Rainbow and CEF, as corporations, impermissibly advanced, and the Democratic National Committee accepted, a corporate contribution.

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V. Based on the foregoing, the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 441b by accepting prohibited contributions from the Rainbow/PUSH Coalition, Inc. and Citizenship Education Fund, Inc.

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of one hundred thousand dollars (\$100,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondents will cease and desist from violating 2 U.S.C. § 441b.

3. Respondents will revise the handbooks and guidance on compliance with election law that are used by DNC employees, contractors, and volunteers to reemphasize that incorporated non-profit organizations may not advance funds to perform partisan get-out-the-vote and voter registration activities that are coordinated with the DNC. The regular training that Respondents provide to DNC staff prior to the 2006 and 2008 elections will include instructions on avoiding the specific violations of law set forth in this agreement and call attention to the revised guidance described 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.

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. With the exception of the terms of section VI.3. of this agreement, Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to

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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. Vosdingh
Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

2/3/05
Date

FOR THE RESPONDENTS:

Joseph E. Sandler, Esq.
Joseph E. Sandler, Esq.
Counsel for Respondents

12/17/04
Date