



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

SEP 04 2003

Judith L. Corley, Esq.
Perkins Coie LLP
607 14th St., NW, Suite 800
Washington, DC 20005

RE: MUR 5328
PAC to the Future and
Leo McCarthy, as treasurer
Team Majority and
Leo McCarthy, as treasurer

Dear Ms. Corley:

On November 1, 2002, the Federal Election Commission notified PAC to the Future and Leo McCarthy, as treasurer, and Team Majority and Leo McCarthy, as treasurer, your clients, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaint were forwarded at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on August 25, 2003, found that there is reason to believe PAC to the Future and Leo McCarthy, as treasurer, and Team Majority and Leo McCarthy, as treasurer, violated 2 U.S.C. §§ 433(b)(2), 441a(a)(2)(A) and 441a(f), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

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 receipt of this letter. Where appropriate, statements 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.

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. Enclosed is a conciliation agreement that the Commission has approved. If you are interested in expediting the resolution of this matter by pursuing pre-probable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the

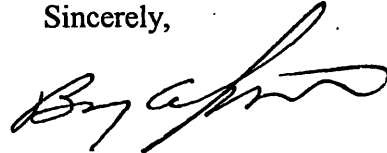
24-04-407-1897

Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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 matter to be made public. If you have any questions, please contact Thomas Andersen or Joshua Heller, the attorneys assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Vice Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

24-04-407-1898

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENTS: PAC to the Future and Leo McCarthy, as treasurer
6 Team Majority and Leo McCarthy, as treasurer

MUR 5328

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8 This matter was generated by a complaint filed with the Federal Election Commission by
9 Kenneth F. Boehm, Chairman of the National Legal and Policy Center. See 2 U.S.C.
10 § 437g(a)(1).

11 **I. APPLICABLE LAW**

12 **A. *Contribution Limits***

13 Pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"), a
14 multicandidate PAC is limited to receiving \$5,000 per calendar year from individual
15 contributors. 2 U.S.C. §§ 441a(a)(1)(C), 441a(f). Further, an authorized candidate committee
16 may accept \$5,000 from a multicandidate PAC during each election. 2 U.S.C. §§ 441a(a)(2)(A),
17 441a(f). If a committee accepts contributions that exceed these limits, its treasurer shall either
18 refund the excessive contributions or seek redesignation or reattribution within sixty (60) days.
19 See 11 C.F.R. § 103.3(b)(3).

20 **B. *Affiliation***

21 The Act states that for purposes of the limitations set forth in 2 U.S.C. §§ 441a(a)(1) and
22 441a(a)(2), all contributions made by political committees "established or financed or maintained
23 or controlled by any . . . person . . . or by any group of . . . persons, shall be considered to have
24 been made by a single political committee."¹ 2 U.S.C. § 441a(a)(5). Committees established,
25 financed, maintained or controlled by the same person or group of persons are "affiliated

¹ Section 441a(a)(5) provides specific exceptions, none of which is relevant here.

committees.” 11 C.F.R. § 100.5(g). Contributions made to or by such committees shall be considered to have been made to or by a single committee. 11 C.F.R. §§ 100.5(g) and 110.3(a)(1).

When registering with the Commission, a political committee must include in its Statement of Organization “the name, address, relationship, and type of any connected organization or affiliated committee.” 2 U.S.C. § 433(b)(2).

II. PAC TO THE FUTURE AND TEAM MAJORITY

A. *Facts*

PAC to the Future is an unauthorized multicandidate committee that has been registered with the Commission since March 24, 1999 and qualified for multicandidate committee status on September 28, 1999. PAC to the Future’s Statement of Organization lists former California Lieutenant Governor Leo McCarthy as its treasurer, and states that it is not affiliated with any other committee. Team Majority is an unauthorized multicandidate committee that initially registered with the Commission under the name “Team Pelosi” on April 1, 2002.² The committee amended its name to “Team Majority” on July 24, 2002, in response to a letter from the Commission reminding the committee that an unauthorized committee’s name may not include the name of a candidate. *See* 2 U.S.C. § 432(e)(4). Team Majority’s Statement of Organization also lists Leo McCarthy as its treasurer, and states that it is not affiliated with any other committee.

² Commission records indicate that, prior to April 1, 2002, Mr. McCarthy made an inquiry to the Commission regarding the creation of a second leadership PAC.

1 In their responses to the complaint, Team Majority and PAC to the Future do not deny
2 that both PACs operated as Representative Pelosi's "leadership PACs," and acknowledge that
3 Pelosi engaged in fundraising for the two PACs.

4 In alleging that Representative Pelosi established two PACs which "had both the intent
5 and effect of circumventing the [Act's] contribution limits . . . ," the complaint relied on an
6 alleged statement to the press by Leo McCarthy, treasurer of both PACs, that the "main reason
7 for the creation of the second PAC, frankly, was to give twice as much [*sic*] hard dollars."³ In its
8 response, Team Majority did not disavow the press statement or the alleged circumvention
9 scheme. Rather, it simply stated that it "has chosen not to contest the politically motivated
10 concerns expressed in public." However, "to avoid any question about its activities, or the
11 activities of PAC to the Future, [Team Majority] has taken the following steps to suspend its
12 operations:"

- 13 • The PAC refunded all contributions from donors who had also given to
14 PAC to the Future, which, when aggregated, would have exceeded \$5,000
15
- 16 • The PAC has sought refunds from each candidate who received a
17 contribution from both Team Majority and PAC to the Future which, when
18 aggregated, exceeded \$5,000

19
20 (*Id.*)

21 Team Majority's response also stated its intention "to terminate, once the refund checks
22 have been negotiated and refunds are received from the candidates in question." In its response,
23 PAC to the Future acknowledges that the complaint alleged that it was affiliated with Team
24 Majority, then states that "[i]t is the understanding of PAC to the Future that, to avoid any

³ See Ethan Wallison, *Pelosi PAC Stirs Questions*, ROLL CALL (Oct. 24, 2002) available at <http://www.rollcall.com/pages/news/00/2002/10/news1024b.html>.

1 question about its activities, Team Majority” had taken the steps set forth above in Team
2 Majority’s response.

3 A review of PAC to the Future’s and Team Majority’s disclosure reports reveals that
4 there are numerous committees that received contributions from both PACs that, when
5 aggregated, exceeded the contribution limit for a multicandidate political committee. Disclosure
6 reports show that, of these committees, five campaign committees received, but did not timely
7 refund, such contributions. These five committees are (1) Julie Thomas for Congress Campaign
8 Committee, (2) Van Hollen for Congress, (3) Committee to Elect Charles Walker, (4) Chris
9 Kouri for Congress Committee and (5) Joe Turnham for Congress.

10 The PACs’ reports also show contributions from twenty individual contributors, which,
11 when aggregated, exceeded the \$5,000 contribution limit for individuals. A review of disclosure
12 reports indicates that Team Majority refunded the excessive portion of all but two of these
13 individual contributions within sixty (60) days.

14 **B. Legal Analysis**

15 **1. Affiliation**

16 PAC to the Future and Team Majority have all but acknowledged that they are affiliated.
17 They do not deny that Representative Pelosi raised funds for Democratic candidates through both
18 of them. They share a common treasurer who reportedly admitted to the press that the primary
19 reason for forming Team Majority “frankly, was to give twice as much [sic] hard dollars.” See
20 *supra* note 3. The Complaint alluded to and attached the press report containing this statement,
21 and the PACs did not disavow the quotation in their responses. Moreover, the inquiry by the
22 treasurer to the Commission regarding whether a candidate can have more than one leadership
23 PAC provides further support that his intention was to create a second committee with the same

1 purpose as the first. *See supra* note 2. Rather than assert the legality of its actions, Team
 2 Majority has sought to undo them. Stating that it will “not contest” the “concerns expressed in
 3 public,” Team Majority told the Commission it would seek refunds of all contributions that
 4 would be considered excessive if the PACs were affiliated and that it would suspend its
 5 operations. These facts are more than sufficient to support the reason to believe findings
 6 described below, which flow from the appearance that PAC to the Future and Team Majority are
 7 affiliated.

8 2. Excessive Contributions

9
 10 Under the Act and the Commission’s regulations, affiliated committees, such as PAC to
 11 the Future and Team Majority, share a single contribution limit. *See* 2 U.S.C. § 441a(a)(5);
 12 11 C.F.R. § 110.3(a). For the 2002 general election, both PACs made contributions to numerous
 13 committees, which, when aggregated, exceeded \$5,000 to each committee. Of those committees,
 14 *see supra* p. 4, five did not refund the \$5,000 excessive portion of the contributions within sixty
 15 days. *See* 11 C.F.R. § 103.3(b)(3). Accordingly, there is reason to believe that PAC to the
 16 Future and Leo McCarthy, as treasurer, and Team Majority and Leo McCarthy, as treasurer,
 17 violated 2 U.S.C. § 441a(a)(2)(A).

18 Additionally, twenty individual contributors made contributions to PAC to the Future and
 19 Team Majority, which, when aggregated, exceeded the \$5,000 contribution limit. 2 U.S.C.
 20 § 441a(a)(1)(C). A review of disclosure reports indicates that Team Majority refunded the
 21 excessive portion of all of these contributions within 60 days except for two: the contributions of
 22 George and Lorri Zimmer.⁴ *See* 11 C.F.R. § 103.3(b)(3). Since it appears that PAC to the Future

⁴ Both George and Lorri Zimmer made \$5,000 contributions to PAC to the Future on July 17, 2002. They then each made \$5,000 contributions to Team Majority on August 26, 2002. George and Lorri Zimmer’s \$5,000 contributions to Team Majority were refunded on October 29, 2002, sixty-four days after they were received.

24-04-407-1903

1 and Team Majority accepted these contributions, there is reason to believe that PAC to the Future
2 and Leo McCarthy, as treasurer, and Team Majority and Leo McCarthy, as treasurer, violated
3 2 U.S.C. § 441a(f).

4 Finally, neither PAC disclosed the other PAC as an affiliated committee on its Statement
5 of Organization. Therefore, there is reason to believe that PAC to the Future and Leo McCarthy,
6 as treasurer, and Team Majority and Leo McCarthy, as treasurer, violated 2 U.S.C. § 433(b)(2).

24-04-407-1904