

BEFORE THE FEDERAL ELECTION COMMISSION

In re: Promoting Republicans
You Can Elect Project

MUR 5355

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COMMISSION
OFFICE OF GENERAL
COUNSEL

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**RESPONDENT PROMOTING REPUBLICANS YOU CAN
ELECT PROJECT'S INITIAL RESPONSE TO COMPLAINT**

By and through the undersigned counsel, the Promoting Republicans You Can Elect Project submits its initial response to the Complaint in this matter, and respectfully requests that the Complaint be dismissed.

The Complaint is designed simply to get headlines and score political points at the expense of the new Republican Conference Chair, Congresswoman Deborah Pryce.¹ The allegations are untrue; PRYCE Project and VIEW PAC are not affiliated under the Commission's current regulations, and there is no reason to believe a violation occurred.

I. FACTUAL BACKGROUND

A. Promoting Republicans You Can Elect Project

The Next American Century Political Action Committee filed its Statement of Organization on September 25, 1997. In February of 2000, it changed its name to the Next American Century PAC, and then changed its name again in August of 2001 to the

¹ As if this were not enough, the fact that Ms. Pryce has been singled-out is obvious in light of the "non-partisan" Center for Responsive Politics' failure to file a complaint against or otherwise publicly criticize Representative Nancy Pelosi, the new Democrat Leader in the House. According to news reports, Pelosi has established two PACs, and maintained control over both of them. When asked by the media, an agent of the PACs conceded that Pelosi did in fact control both PACs, and that the intent was to circumvent the contribution limits. But the "non-partisan" Center for Responsive Politics has yet to file a complaint.

Promoting Republicans You Can Elect Project. At no time did the PAC list any affiliated committees on its Statement of Organization.

The PAC employs a professional treasurer/attorney (Barbara Bonfiglio of Williams & Jensen), whose sole role is maintaining and filing reports with the Commission and related compliance and legal issues. This individual has no other function within the PAC – in fact, news reports indicate that Ms. Bonfiglio is the treasurer of at least twenty PACs, mostly Republican Leadership PACs, and her law firm's address is used by at least fourteen other federal PACs. *Lawmaker Set Up Two Leadership PACs, Political Finance, The Newsletter* (March 2003). Prior to the filing of the Complaint, no one had ever claimed that any of these PACs were affiliated.²

Essentially, the PAC is a garden-variety House "Leadership PAC." Ms. Pryce serves as the Chair of the PRYCE Project and raises funds, and then the money is given to competitive Republican House candidates. At no time has PRYCE Project supported or otherwise contributed to VIEW PAC, nor has VIEW PAC supported or otherwise contributed to PRYCE Project. No one on the board of VIEW PAC has any management or decision-making role within, or otherwise exercises any control over, PRYCE Project.

B. VIEW PAC

PRYCE Project's knowledge of VIEW PAC is limited, and is based on public information including reports filed with the Commission and media accounts.³ The Value in Electing Women Political Action Committee filed its Statement of Organization

² Although the complaint mentions that Ms. Bonfiglio serves as Treasurer to both PACs, it does not draw any legal conclusions from this fact. Instead, the Complaint relies solely on the allegation that "VIEW PAC and PRYCE Project were both established by Congresswoman Pryce, and are maintained and controlled by Congresswoman Pryce." Complaint, ¶ 40. Thus, even the Complainants implicitly concede that Ms. Bonfiglio's role as treasurer is irrelevant to the issue before the Commission.

³ Congresswoman Pryce was not named as a Respondent to the Complaint, and has not been served with a copy of the Complaint.

on April 23, 1997. It did not then, nor has it ever, claimed to have any affiliated committees. News reports indicate that VIEW PAC was founded to support women Republican candidates, without a so-called "litmus test" (unlike WISH List, which only supports women who are pro-choice).

News reports further indicate that VIEW PAC is governed by a twelve Member board, and in addition to the Board, has individual members that contribute to the PAC. News reports also indicate that Congresswoman Deborah Pryce serves as Honorary Chair of the PAC, but that she does not sit on the board, and does not vote. In fact, news reports establish the identities of others involved in the management VIEW PAC. A 1997 article reports that Maria Cino was the president of the PAC, and a 2002 article reports that Joyce Gates served as executive director. See And There's the House Gender Gap, National Journal (10/18/97) (attached to complaint as Exhibit A); People on the Move, Congressional Quarterly Daily Monitor (12/13/02).

II. LEGAL ANALYSIS

A. The Complainants Oversimplify Current Law, Ignore the Current Rulemaking, and Instead Rely Upon Their Own Self-Proclaimed "Principles."

The Complaint comes as the Commission is in the midst of a rulemaking on the very subject of Leadership PACs. This Complaint is an attempt to achieve through the enforcement process what the Complainants, all of whom are vested in the rulemaking, cannot achieve through the rulemaking. As such, the Complaint sets forth a legal standard Complainants would like to see the Commission adopt. However, the Complaint is devoid of any meaningful legal analysis, merely concluding that the two

PACs are affiliated without referring to a single case, Commission Advisory Opinion, past MUR, scholarly writing, or anything of the sort.

The Complainants' comments on the proposed rulemaking advocated in no uncertain terms that the law ought to be changed. The Complaint is nothing more than an attempt to change current law through the Commission's enforcement process. See Two Pryce PACs Illegal, Watchdog Groups Say, Roll Call (3/17/03).

Thus, what is at issue here is the complaints' belief that the Commission ought to enforce a "principle" (as opposed to the statute or regulations), a "principle" that one of the Complainants tacitly conceded has not yet been adopted: "If it turns out that [Pryce's] level of control over VIEW PAC is not significant, and it turns out that in fact she did not establish this PAC, then they might not be affiliated,' Sanford said."

Campaign Finance Group Questions Connection of Leadership PACs, AP (3/14/03)
(quoting Paul Sanford) (emphasis added).

B. Current Law

Although one would never know it from reading the Complaint, the Commission has grappled with the meaning of "affiliation" for years. The advisory opinions on the subject are legion, and it has occasionally been the subject of MURs and litigation. Just a few days ago, the Commission dismissed another complaint filed by the Center for Responsive Politics, the central allegation of which concerned affiliation. Within the past few months, the Commission issued a Notice of Proposed Rule Making regarding the affiliation of so-called "Leadership PACs," an acknowledgement that the affiliation rules cited in the Complaint are, for now and at least in the minds of the Commission, in need of clarification.

1. *Because both PACs were independently established over five years ago, the Complaint is time-barred.*

As an initial matter, the Complainant's assertion regarding "affiliation" fails for temporal reasons. First, to the extent the complaint is based on the theory that the "establishment" of the PACs was in violation of the law, such a claim is barred by the statute of limitations. Similarly, it is simply impossible as a matter of law for VIEW PAC to have been "established" by PRYCE Project – VIEW PAC was established long before the other PAC was in existence. Finally, whether one looks to equity's doctrine of laches, or more esoteric yet established concepts of fundamental fairness and due process, the matter ought not go forward. The PACs have been in operation for over five years, and for that entire period the Commission has never once raised a question of affiliation – only when Ms. Pryce disagreed with the "reformers" and then became the fourth ranking Republican in the House did the Complainants elect to file a high-profile public complaint.⁴

2. *Affiliation is determined by an analysis of several factors.*

The Act and Commission regulations provide that committees established by the same corporation, person or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. 2 U.S.C. § 441a(a)(5); 11 C.F.R. §§ 100.5(g)(2) and 110.3(a)(1)(ii). In the absence of certain automatically affiliated relationships such as a parent corporation and its subsidiary, Commission regulations provide for an examination of various factors in the context of an overall relationship to determine whether committees are affiliated with each other. 11 C.F.R. §§ 105.(g)(4)(i) and (ii)(A)-(J), 11 C.F.R. §§ 110.3(a)(3)(i) & (ii)(A)-(J).

⁴ For a discussion of this, see Exhibit C to the Complaint, discussing the "battle royale" over the current law as it was making its way through the House.

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Over the years, the Commission has issued several advisory opinions, and occasionally initiated enforcement proceedings, regarding the issue of affiliation. Contrary to the theme of the Complaint, PACs do not need to be completely independent of one another. In fact, the Commission on several instances ruled that affiliation is not present even where PACs have significant ties. *See* AO 2000-28 (two corporate PACs not affiliated, even though: (1) an overlap of membership (14% of one PAC's membership and 5% of the other); (2) continued contacts and financial transactions between the PACs respective parents; (3) an ongoing license agreeing between the respective parents regarding the use of one's name and database of members; (4) a secured loan from one parent to the other; and (5) an agreement between the parents to cooperate with one another and (6) each parent had its own board, and thus were independent); AO 1996-42 (two corporate PACs not affiliated, despite a number of continuing agreements between the two, including: (1) a restriction on taking any action that would jeopardize the intended tax consequences of the pending distribution; (2) a commitment by one to purchase \$3 billion worth of products, licensed materials and services from the other; (3) other agreements regarding employee benefits, intellectual property, tax matters and real estate); *see also* AOs 1995-36, n. 3 and 1993-23 (no affiliation, despite ongoing relationship of customer-supplier); AO 1996-23 (no affiliation despite some continuity among boards).

Regardless of the factual context, however, the Commission has consistently ruled that where there is a lack of overlap of directors, officers or employees, even where there are other ties, entities will not be considered affiliated. Equally true is that the Commission does not generally split hairs over the meaning of words such as "establish,"

“maintain” or “finance,” instead relying on a more generalized balancing of factors. See 11 C.F.R. § 300.2(c)(2). Today, the Commission generally looks to five factors: (1) was there a significant role by one entity in the formation of the other; (2) are there common employees, board members, etc.; (3) is there an on-going role or relationship; (4) have there been resources transferred from one entity to the other; and (5) have funds been directed from one entity to the other.

In this matter, an analysis of the factors establishes a lack of affiliation. First, VIEW PAC did not have any role in the formation of PRYCE Project. Simply because Ms. Pryce served as Honorary Chair of VIEW PAC (and not on its board, and without a vote or direct control over it), does not mean VIEW PAC had a role in the formation of PRYCE Project. The Complaint’s citation to superficial news reports misses the point – even assuming *arguendo* that Ms. Pryce did have some minor role in the formation of VIEW PAC (or that the press reports overstated Ms. Pryce’s role), this does not as a matter of law equate to “establishment.” After all, VIEW PAC is run by its own board, and Ms. Pryce does not have a vote.

Second, the two PACs lack common employees, board members, etc. VIEW PAC has its own board, separate and distinct from anything related to PRYCE Project. PRYCE Project does not participate in the governance of VIEW PAC, and VIEW PAC does not participate in the governance of PRYCE Project. Neither has any authority or ability to hire, appoint, demote or otherwise control the officers of the other PAC.

The Commission has time and time again emphasized the lack of common control when deciding affiliation issues, specifically a lack of overlap on the board as is the case

here: No one on the board of VIEW PAC controls PRYCE Project, and Ms. Pryce does not sit on the board of VIEW PAC. As the Commission's General Counsel recently said:

In this Office's opinion, something more than the mere fact of such informal, ongoing relationships between the personnel of a potentially sponsoring and potentially sponsored entity is necessary to support a conclusion of "establishment, financing, maintenance or control." Moreover, while former employees and colleagues may exercise influence, influence is not necessarily control.

MUR 5338, First General Counsel's Report at 18. Thus, merely because Ms. Pryce chairs PRYCE Project and serves as a non-voting Honorary Chair of the board-governed VIEW PAC, this does not in and of itself cause the PACs to be affiliated.

The remaining two factors also weigh in favor of no affiliation. Neither has supported the other financially, and the two PACs have separate fundraising events (and compete with one another for funds, not unlike the "competitive situation" relied upon in AO 1996-42). Nor do the Committees have similar patterns of contributions (and the Complaint does not make such a charge).⁵ As such, there is no reason to believe that a violation has occurred.

III. CONCLUSION

The issue before the Commission was best summarized by Complainant Paul Sanford: "If it turns out that [Pryce's] level of control over VIEW PAC is not significant, and it turns out that in fact she did not establish this PAC, then they might not be affiliated." *Associated Press* (3/14/03). The Complaint fails to set forth sufficient facts regarding the establishment of VIEW PAC, and because VIEW PAC has its own board, of which Ms. Pryce is not a member and does not vote, it must be seen as a separate

⁵ The contributions listed in the Complaint represent only a portion of total contributions made by each PAC. Although there are a few common recipients, this is to be expected, as every pundit and both political parties considered such campaigns to be close, competitive races. Of the contributions to the same candidates, there is no discernable pattern as to the timing of the giving.

entity beyond the control of Ms. Pryce and PRYCE Project. Accordingly, the Complaint ought to be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "F. McGahn II", written over a horizontal line.

Donald F. McGahn II

Counsel for PRYCE Project

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