March 5, 2004

VIA FACSIMILE

Mr. Lawrence H. Norton
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5403 – America Coming Together

Dear Mr. Norton:

On behalf of America Coming Together ("ACT"), this letter is submitted in response to the complaint filed by Democracy 21, Campaign Legal Center and Center for Responsive Politics.

For the reasons set forth below, the Federal Election Commission ("FEC") should find no reason to believe that ACT has violated the Federal Election Campaign Act of 1971, as amended ("FECA") or the Commission's regulations, and it should dismiss this matter.

1. ACT is Operating Lawfully under the FECA and FEC Regulations

ACT operates and is registered with the FEC as a political committee that conducts its activities in compliance with the requirements of the relevant FEC regulations. ACT is an unincorporated, non-connected committee within the meaning of 11 CFR § 106.6(a); it is not a party committee, a separate segregated fund, or an authorized committee of a candidate. ACT also raises and spends funds to influence state and local elections, including corporate and union funds, and individual funds raised without regard to the Act's dollar limitations.

In the management of its funds and the conduct of its programs, ACT has established federal and nonfederal accounts pursuant to 11 CFR § 102.5, and operates those funds in accordance with 11 CFR § 106.6, which provides that non-connected committees active in both federal and nonfederal elections "shall allocate" between federal and nonfederal accounts, the costs of activities affecting both types of elections.

In a recent advisory opinion, AO 2003-37, the Commission confirmed that committees such as ACT may operate in exactly this fashion. Specifically, the Commission stated on page 5:

> ...political committees may maintain Federal and non-Federal accounts, 11 CFR 102.5, and may allocate certain payments between Federal funds and non-Federal funds, *see, e.g.*, 11 CFR 106.6(b)(2)(iii) (allocation of expenses for generic voter drives by non-connected political committees).

2. The Complaint Provides No Factual Basis for Finding Reason to Believe

The complaint ignores all of these facts, and provides nothing other than Complainants own opinions of what Complainants believe ACT is doing and their own theories about the legal consequences of their speculation, as evidence of a violation of the FECA. This is woefully insufficient to warrant an investigation.

3. Since the Relevant Rules Governing Certain of ACT's Activities Have Recently Changed, and Since More Change Is Still Possible As a Result of the Pending Rulemaking, the Complainants are Simply Seeking to Exploit the State of Uncertainty to Suggest Wrongdoing by ACT and to Convince the Commission to Endorse Their Novel Legal Theories

The Commission, in Advisory Opinion 2003-37, applied for the first time a new definition of the term "expenditure" to certain communications made by organizations such as ACT. See AO 2003-37, pages 2-3. The Commission found that

> ...the promote, support, attack, or oppose standard is equally appropriate as a benchmark for determining whether communications made by political committees that refer only to clearly identified Federal candidates are made for the purpose of influencing any Federal election and must be paid for with Federal funds.

AO 2003-37 announced numerous other new interpretations of the law as well regarding fundraising and allocation rules.

The Commission also, just yesterday, approved a Notice of Proposed Rulemaking ("NPRM"), which will revisit these and other issues that could change current and longstanding regulations. If adopted, new regulations could alter prospectively the way ACT operates. In its discussion of the NPRM, the Commission acknowledged that the rulemaking would consider substantially different and new interpretations of the Act and existing regulations. See, e.g., OGC draft (Agenda Document 04-20), at pp. 3,5 and 11 (where the OGC refers to "amending" and "revisiting" the current rules, and also considering whether the Supreme Court's decision in McConnell v. FEC requires that the rules be "changed".) Indeed, the NPRM presents far-reaching alternative new regulatory language for comment and poses no fewer than 185 questions about how the Commission should interpret the law and adopt revised regulatory standards.

However the Commission decides these issues--leaving the current rules in place, as modified by Advisory Opinion 2003-37, or further changing them by rulemaking--ACT cannot be held in this proceeding to standards that do not now and may never apply.

Complainants do not set out any grounds for the contrary assertion that ACT has failed to achieve compliance to date. This is because Complainants have no basis whatsoever for any such allegation. In fact, in the current environment of uncertainty and controversy surrounding possible revisions of existing rules, Complainants seek to push the Commission to a reason to believe finding simply by insinuating possible wrongdoing where there is none, and by advancing interpretations of the Act and the regulations that the Commission has said it plans to consider in the rulemaking it formally initiated only yesterday.

The Commission should immediately reject this tactic and dismiss the complaint that has no basis in fact or existing rules.

Very truly yours,

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