



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 13 2006

Jason Torchinsky, Esq.
Holtzman Vogel PLLC
98 Alexandria Pike
Suite 53
Warrenton, VA 20186

RE: MUR 5588

Dear Mr. Torchinsky:

On September 20, 2006, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. §§ 434(b)(4)(H) and 434(g)(1)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Wanda D. Brown".

Wanda D. Brown
Attorney

Enclosure
Conciliation Agreement

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1 meanings of 2 U.S.C. § 431(2) and (3).

2 4. Bush-Cheney '04 was the authorized committee for President Bush during the
3 2004 election cycle, within the meaning of 2 U.S.C. § 431(6).

4 **The Law**

5 5. Under the Federal Election Campaign Act of 1971, as amended (the "Act"), an
6 independent expenditure means an expenditure by a person expressly advocating
7 the election or defeat of a clearly identified candidate; and that is not made in
8 concert or cooperation with or at the request or suggestion of such candidate, the
9 candidate's authorized political committee, or their agents, or a political party
10 committee or its agents. 2 U.S.C. § 431(17).

11 6. Clearly identified means that the name or image of the candidate is included in
12 the communication, or that the identity of the candidate is apparent by
13 unambiguous inferences drawn from the communication.

14 2 U.S.C. § 431(18).

15 7. A telephone bank is defined as more than 500 telephone calls of an identical or
16 substantially similar nature within any thirty (30) day period.

17 2 U.S.C. § 431(24).

18 8. The Commission's Regulations require that fifty percent of the cost of a phone
19 bank conducted by a national, State, district or local organization of a political
20 party be attributed to the clearly identified Federal candidate and must be paid
21 with Federal funds where the communication: (1) refers to a clearly identified
22 Federal Candidate; (2) does not refer to any other clearly identified Federal or

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1 non-Federal candidate; (3) includes another reference that generically refers to
2 other candidates of the Federal candidate's party without clearly identifying them;
3 (4) does not solicit a contribution, a donation, or any other funds from any person;
4 and (5) does not qualify as exempt activity under the specific exceptions for the
5 definitions of contributions and expenditure for voter registrations and get-out-
6 the-vote drives conducted on behalf of the party's Presidential and Vice
7 Presidential nominee. 11 C.F.R. § 106.8. Phone banks qualify as "exempt
8 activity" only if volunteer workers operate the phone banks.

9 11 C.F.R. §§ 100.89 and 100.149.

10 9. The Act requires a political committee to report independent expenditures that
11 exceed \$200, or one which when added to previous independent expenditures on
12 behalf of the same candidate aggregates over \$200, during the calendar year.

13 2 U.S.C. § 434(b)(4)(H)(iii). The committee is to report the expenditure on
14 Schedule E of FEC Form 3X at the end of the first reporting period following the
15 expenditure. 11 C.F.R. §§ 104.3(b)(3)(vii) and 104.4(a).

16 10. The Act requires any independent expenditure of \$1,000 or more, or
17 independent expenditures aggregating \$1,000 or more, contracted or made after
18 the twentieth day, but more than twenty-four hours, before the date of an election
19 to be reported within twenty-four hours after the expenditure is made. 2 U.S.C.
20 § 434(g)(1)(A).

21 **The Facts**

22 11. Telephone calls expressly advocating for the re-election of President

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1 George W. Bush were placed on or about October 22, 2004, after the twentieth
2 day, but more than twenty-four hours, before the election of November 2, 2004.

3 12. The Respondents admit to funding this communication.

4 13. The Respondents paid a commercial vendor to distribute the pre-recorded
5 message through the use of a telephone bank.

6 14. The communication clearly identifies President Bush, does not refer to any
7 other clearly identified Federal or non-Federal candidate, and generically refers to
8 other candidates of President Bush's party (the Republican Party) when it calls for
9 the election of "our Republican team." The communication transmitted by the
10 Respondents does not solicit a contribution, donation or any other funds.

11 15. The Respondents disclosed payments for the cost of the communication to the
12 Commission in the 2004 Post-General Election Report. The Report indicates that
13 Respondents paid FLS-DCI, LLC, of St. Paul, MN, a total of \$41,626.63 in the
14 following manner: \$13,613.55 for "party telemarketing" on October 21, 2004;
15 \$14,025.76 for "absentee ballot chas" [sic] on October 27, 2004; and \$13,987.32
16 for "absentee ballot chas" [sic] on November 10, 2004.

17 16. Respondents did not include a Schedule E reporting payments for the
18 communication as an independent expenditure with the 2004 Post-General
19 Election Report, and did not report this expenditure within twenty-four hours.

20 V. Respondents committed the following violations:

21 1. Respondents, the Arizona Republican Party and Kirk Adams, in his official
22 capacity as treasurer, made an independent expenditure on behalf of President George W.

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1 Bush and Bush-Cheney '04, and failed to correctly report the expenditure with the 2004
2 Post-General Report, in violation of 2 U.S.C. § 434(b)(4)(H).

3 2. Respondents, the Arizona Republican Party and Kirk Adams, in his official
4 capacity as treasurer, made an independent expenditure on behalf of President George W.
5 Bush and Bush-Cheney '04 after the twentieth day, but more than twenty-four hours,
6 before the day of an election and failed to report the expenditure within twenty-four
7 hours, in violation of 2 U.S.C. § 434(g)(1)(A).

8 VI. Respondents will take the following actions:

9 1. Respondents will pay a civil penalty to the Federal Election Commission in the
10 amount of Two Thousand Three Hundred Dollars (\$2,300), pursuant to 2 U.S.C.
11 § 437g(a)(5)(A).

12 2. Respondents will cease and desist from violating 2 U.S.C. § 434(b)(4)(H) and
13 2 U.S.C. § 434(g)(1)(A).

14 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
15 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
16 with this agreement. If the Commission believes that this agreement or any requirement thereof
17 has been violated, it may institute a civil action for relief in the United States District Court for
18 the District of Columbia.

19 VIII. This agreement shall become effective as of the date that all parties hereto have
20 executed same and the Commission has approved the entire agreement.

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1 X. Respondents shall have no more than 30 days from the date this agreement
2 becomes effective to comply with and implement the requirements contained in this agreement
3 and to so notify the Commission.

4 XI. This Conciliation Agreement constitutes the entire agreement between the parties
5 on the matters raised herein, and no other statement, promise, or agreement, either written or
6 oral, made by either party or by agents of either party, that is not contained in this written
7 agreement shall be enforceable.

8 FOR THE COMMISSION:

9 Lawrence H. Norton
10 General Counsel

11 BY:

12 
13 Rhonda J. Vosdingh
14 Associate General Counsel
for Enforcement

10/12/06
Date

15 FOR THE RESPONDENTS:

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18
19


(Name) Jason Tofchinsky
(Position) Attorney for Respondents

8/28/06
Date

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