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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of  
The Media Fund

**SENSITIVE**  
MUR 5440

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

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GENERAL COUNSEL'S REPORT #8

**I. ACTIONS RECOMMENDED**

(1) Accept the Conciliation Agreement with The Media Fund ("TMF"); (2) take no further action and close the file as to the Joint Victory Campaign 2004 and Janice Enright, in her official capacity as treasurer; (3) dismiss various individual donors and an officer associated with TMF; (4) dismiss America Votes, Moving America Forward, Partnership for America's Families, Sierra Club (501(c)(4)), Sierra Club (527), Victory Campaign 2004, and Voices for Working Families; (5) dismiss various individual donors and officers of the Section 527 organizations previously severed from this MUR, or which are being dismissed; and (6) close the file as to these respondents.

**II. INTRODUCTION**

**A. TMF and Related Respondents**

Attached is a proposed conciliation agreement that has been signed by counsel for The Media Fund, ("TMF"), which would settle violations of 2 U.S.C. §§ 433, 434, 441a(f), and 441b(a) for TMF's failure to register with the Commission as a political committee and report its contributions and expenditures and by knowingly accepting excessive and corporate contributions. Attachment 1. TMF has agreed to pay a \$580,000 civil penalty,

This penalty will be the third largest

civil penalty paid by 527 organizations from the 2004 cycle, and will be among the highest civil penalties ever collected by the Commission.

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<sup>1</sup> The Commission has given more specific provisions precluding action against officers and donors in other agreements with 527 organizations. See Conciliation Agreements with League of Conservation Voters 527 (MUR 5753) and America Coming Together (MUR 5403).

we are recommending

that the Commission exercise prosecutorial discretion to take no further action as to TMF's joint fundraising committee and its treasurer who were the subject of prior reason to believe findings, and to dismiss TMF officers and donors as to which the Commission made no prior findings.

*See, e.g.,* General Counsel's Report #3 in MURs 5511 & 5525 (recommending similar exercise of prosecutorial discretion as to officer of and donors to Swift Boat Veterans and POWs for Truth). Accordingly, we recommend that the Commission take no further action as to the Joint Victory Campaign 2004 and Janice Enright, in her official capacity as treasurer ("JVC").<sup>2</sup>

Similarly, we recommend that the Commission dismiss former TMF President Harold Ickes and the following TMF donors as to which the Commission never made any findings: S. Daniel Abraham, Steven Bing, Paul Brainerd, Jeffrey Brotman, Nancy Burnett, Marcey Carsey, Laurie David, Anne G. Earhart, Fred Eychaner, Shari Foos, Peter Lewis, Susan Orr, Julie Packard, Linda Pritzker, G. James Roush, James D. Sinegal, George Soros, Sustainable World Corporation, John L. Tishman, and Agnes Varis.<sup>3</sup>

Additionally, certain individuals were named as respondents solely in connection with their alleged roles in coordinating expenditures by TMF and America Coming Together on behalf of John Kerry for President, Inc., the authorized committee for John Kerry's 2004 presidential candidacy. The Commission did not make any findings as to those individuals when

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<sup>2</sup> All of JVC's receipts were transferred to either TMF or America Coming Together, and both those organizations have now settled with the Commission on terms that preclude any further action as to JVC.

<sup>3</sup> These donors had been designated as respondents at the commencement of the MUR. Many of these donors contributed to TMF through contributions to JVC. Some of these donors also contributed to other 527 organizations and the dismissal would also apply to those other contributions.

1 it made reason-to-believe findings against TMF and America Coming Together. The  
2 Commission has since concluded that no coordinated expenditures were made. *See* Factual and  
3 Legal Analyses as to coordination allegations approved by the Commission in connection with  
4 General Counsel's Report #6 in MUR 5440 (TMF) and General Counsel's Report #5 in MURs  
5 5403 and 5466 (America Coming Together). Therefore, consistent with those determinations, we  
6 recommend the Commission dismiss John Kerry, Theresa Heinz Kerry, Jim Jordan, and Minyon  
7 Moore.

8 **B. Other Respondents**

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10 The complaint in MUR 5440 catalogued a broad array of activities by various 527  
11 organizations, their donors, and officers. Although the Commission made findings as to a  
12 number of Section 527 organizations (some of which were later severed and transferred to  
13 separate MURs), there were many respondents as to which the Commission took no action. We  
14 now recommend the Commission dismiss the remaining respondents for whom no findings were  
15 made in MUR 5440. These respondents fall into two categories: (1) 527 organizations as to  
16 which the Commission previously decided to take no action, and (2) officers of and donors to  
17 various 527 organizations as to which there has been no prior Commission action.<sup>4</sup>

18 **1. Organizations**

19 The Commission previously took no action as to four Section 527 organizations, America  
20 Votes, Partnership for America's Families, Sierra Club 527, and Voices for Working Families,

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<sup>4</sup> Assuming the recommendation in this Report are approved, the lone outstanding fact pattern in MUR 5440 will be one involving alleged coordinated expenditures made by the New Democrat Network Political Fund ("NDN") and the Democratic National Committee ("DNC"). A report recommending that the Commission take no further action as to NDN and the DNC, General Counsel's Report # 7 in MUR 5440, is on the Commission's agenda for November 20, 2007. Once the Commission closes the file on that allegation, then the entire file for MUR 5440 can close.

for which there was insufficient information to warrant an investigation into whether a violation of FECA may have occurred. *See* First General Counsel's Report in MUR 5403, 5427, 5440, and 5466. Two other organizations, the Sierra Club (501(c)(4)) and Victory Campaign 2004, were notified of the complaint and are considered respondents in this matter, but were determined to have been mistakenly notified. Accordingly, we now recommend the Commission dismiss America Votes, Partnership for America's Families, Sierra Club (501(c)(4)), Sierra Club (527), Victory Campaign 2004, and Voices for Working Families.<sup>5</sup>

The Commission also previously failed, by a vote of 3-2, to find that Moving America Forward violated the Act on a political committee theory. *See* Certification of Commission Vote in MUR 5440 on September 14, 2004. During the discussion at the Executive Session where this matter was considered, the dissenting Commissioners opined that they did not consider the available information outlined in the First General Counsel's Report to have provided a sufficient basis to warrant an investigation into whether this group had either received contributions or made expenditures. Accordingly, we now recommend that the Commission dismiss Moving America Forward.

## 2. Individuals

We recommend the Commission dismiss eight officers of various 527 organizations that were named in the complaint but for whom no findings were ever made. Since the Commission is closing the files for all of the 527 organizations originally named in MUR 5440 with either acceptable settlements or due to lack of sufficient basis to warrant investigation, we believe that this matter warrants an exercise of prosecutorial discretion to dismiss their officers who were

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<sup>5</sup> On December 13, 2004, the Commission voted to find no reason to believe that America Votes, Inc., Moving America Forward and Voices for Working Families violated the Act regarding allegations that they made coordinated expenditures on behalf of John Kerry for President, Inc. or the Democratic National Committee.

1 named as individual respondents. Therefore, we recommend that the Commission take no action  
2 and close the file with respect to Carol Browner, Linda Chavez-Thompson, Andrew Grossman,  
3 Ellen Malcolm, Michael Meehan, Cecile Richards, Bill Richardson, and Steve Rosenthal.

4 Finally, in addition to the TMF donors discussed above, there were six other respondents  
5 who were alleged to have made excessive contributions to 527 organizations. Since the  
6 Commission is closing the files for all of the 527 organizations originally named in MUR 5440  
7 with either acceptable settlements or due to lack of sufficient basis make any findings, we believe  
8 that this matter warrants an exercise of prosecutorial discretion to dismiss their donors who were  
9 named as respondents. Therefore, we recommend the Commission dismiss Anne Bartley, Bell  
10 South Corporation, Robert Glaser, Morton Goldfein, Rob McKay, and Sol Price.

11 **III. RECOMMENDATIONS**

- 12 1. Accept the attached conciliation agreement with The Media Fund;
- 13 2. Take no further action with respect to the Joint Victory Campaign 2004 and Janice  
14 Enright, in her official capacity as treasurer;
- 15 3. Dismiss the following individuals associated with The Media Fund: S. Daniel  
16 Abraham, Steven Bing, Paul Brainerd, Jeffrey Brotman, Nancy Burnett, Marcey  
17 Carsey, Laurie David, Anne G. Earhart, Fred Eychaner, Shari Foos, Harold Ickes,  
18 Peter Lewis, Susan Orr, Julie Packard, Linda Pritzker, G. James Roush, James D.  
19 Sinegal, George Soros, Sustainable World Corporation, John L. Tishman, and Agnes  
20 Varis;
- 21 4. Dismiss the following respondents associated solely with allegations of coordinated  
22 expenditures: John Kerry, Theresa Heinz Kerry, Jim Jordan, and Minyon Moore;
- 23 5. Dismiss America Votes, Moving America Forward, Partnership for America's  
24 Families, Sierra Club (501(c)(4)), Sierra Club (527), Victory Campaign 2004, and  
25 Voices for Working Families;
- 26 6. Dismiss Anne Bartley, Bell South Corporation, Carol Browner, Linda Chavez-  
27 Thompson, Robert Glaser, Morton Goldfein, Andrew Grossman, Ellen Malcolm, Rob  
28 McKay, Michael Meehan, Sol Price, Cecile Richards, Bill Richardson, and Steve  
29 Rosenthal;

7. Approve the appropriate letters; and


8. Close the file as to the above-named respondents.


Thomasenia P. Duncan  
General Counsel

11/2/07

Date:

  
Ann Marie Terzaken  
Associate General Counsel for Enforcement

  
Mark D. Shonkwiler  
Assistant General Counsel

  
Peter G. Blumberg  
Attorney

Attachments:

1 - The Media Fund Signed Conciliation Agreement

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