



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DEC 10 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Fred Wertheimer
Democracy 21
1875 I Street, N W
Suite 500
Washington, D.C. 20006

RE MUR 5542

Dear Mr. Wertheimer.

This is in reference to the complaint you filed with the Federal Election Commission on September 24, 2004, concerning Texans for Truth. After conducting an investigation in this matter, the Commission found that there was probable cause to believe Texans for Truth violated 2 U S C §§ 433, 434 and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended. On November 30, 2007, a conciliation agreement signed by Texans for Truth was accepted by the Commission. Also on this date, the Commission determined to dismiss respondent Glenn W. Smith. Accordingly, the Commission closed the file in this matter on November 30, 2007.

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). A copy of the agreement is enclosed for your information.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Allen".

Mark Allen
Attorney

Enclosure
Conciliation Agreement

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of

Texans for Truth

)
) MUR 5542
)

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4 **CONCILIATION AGREEMENT**
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8 This matter was generated by a complaint filed with the Federal Election Commission
9 ("Commission"). See 2 U.S.C. § 437g(a)(1). An investigation was conducted, and the
10 Commission found probable cause to believe that Texans for Truth ("TFT" or "Respondent")
11 violated 2 U.S.C. §§ 433, 434, and 441a(f) of the Federal Election Campaign Act of 1971, as
12 amended ("the Act"), by failing to register as a political committee with the Commission, by
13 failing to disclose its contributions and expenditures, and by knowingly accepting contributions
14 in amounts exceeding \$5,000 from individuals.

15 NOW, THEREFORE, the Commission and the Respondent, having duly entered into
16 conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

17 I. The Commission has jurisdiction over the Respondent and the subject matter of
18 this proceeding.

19 II. Respondent has had a reasonable opportunity to demonstrate that no action should
20 be taken in this matter.

21 III. Respondent enters voluntarily into this agreement with the Commission.

22 IV. The pertinent facts in this matter are as follows:

23 Applicable Law

24 I. The Act defines a political committee as "any committee, club,
25 association, or other group of persons which receives contributions aggregating in excess of

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1 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
2 during a calendar year." 2 U.S.C. § 431(4)(A).

3 2. The Act defines the term "contribution" as including "anything of value
4 made by any person for the purpose of influencing any election for Federal office." 2 U.S.C.
5 § 431(8)(A)(i); *see also FEC v. Survival Education Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995)
6 (where a statement in a solicitation "leaves no doubt that the funds contributed would be used to
7 advocate [a candidate's election or] defeat at the polls, not simply to criticize his policies during
8 the election year," proceeds from that solicitation are contributions).

9 3. The Supreme Court has held that "[t]o fulfill the purposes of the Act" and
10 avoid "reach[ing] groups engaged purely in issue discussion," only organizations whose major
11 purpose is campaign activity can be considered political committees under the Act. *See, e.g.*,
12 *Buckley v. Valeo*, 424 U.S. 1, 79 (1975); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238,
13 262 (1986) ("MCFL"). It is well-settled that an organization can satisfy *Buckley's* "major
14 purpose" test through sufficient spending on campaign activity. *MCFL*, 479 U.S. at 262-264; *see*
15 *also Richey v. Tyson*, 120 F. Supp. 2d 1298, 1310 n.11 (S.D. Ala. 2002). An organization's
16 "major purpose" may also be established through public statements of purpose. *See, e.g.*, *FEC v.*
17 *Malenick*, 310 F. Supp. 2d 230, 234-36 (D.D.C. 2004); *FEC v. GOPAC*, 917 F. Supp. 851, 859
18 (D.D.C. 1996).

19 4. The Act requires all political committees to register with the Commission
20 and file a statement of organization within ten days of becoming a political committee, including
21 the name, address, and type of committee; the name, address, relationship, and type of any
22 connected organization or affiliated committee; the name, address, and position of the custodian
23 of books and accounts of the committee; the name and address of the treasurer of the committee;

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1 and a listing of all banks, safety deposit boxes, or other depositories used by the committee. *See*
2 2 U.S.C. § 433.

3 5. Each treasurer of a political committee shall file periodic reports of the
4 committee's receipts and disbursements with the Commission. *See* 2 U.S.C. § 434(a)(1). In the
5 case of committees that are not authorized committees of a candidate for Federal office, these
6 reports shall include, *inter alia*, the amount of cash on hand at the beginning of the reporting
7 period, *see* 2 U.S.C. § 434(b)(1); the total amounts of the committee's receipts for the reporting
8 period and for the calendar year to date, *see* 2 U.S.C. § 434(b)(2); and the total amounts of the
9 committee's disbursements for the reporting period and the calendar year to date. *See* 2 U.S.C.
10 § 434(b)(4).

11 6. The Act states that no person shall make contributions to any political
12 committee that, in the aggregate, exceed \$5,000 in any calendar year, with an exception for
13 political committees established and maintained by a state or national political party. *See*
14 2 U.S.C. § 441a(a)(1)(C). Further, the Act states that no political committee shall knowingly
15 accept any contribution in violation of the limitations imposed under this section. *See* 2 U.S.C.
16 § 441a(f).

17 7. Certain organizations established under Section 527 of the Internal
18 Revenue Code may not qualify as political committees under the Act. Such organizations file
19 periodic reports with the Internal Revenue Service disclosing receipts and disbursements. There
20 is substantial overlap in the content of disclosures required of such organizations and the
21 disclosures required of political committees, though the Act has some additional requirements
22 for political committees that are not required under the Internal Revenue Code. Unlike a
23 political committee, a Section 527 may avoid disclosing certain receipts if it pays the highest

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1 corporate tax rate on such fund. In addition, an organization which does not trigger political
2 committee status may accept contributions larger than \$5,000 and accept (for limited purposes)
3 funds from corporate or union sources.

4 Factual Background

5 8. TFT is an entity organized under Section 527 of the Internal Revenue
6 Code. TFT is the Section 527 "arm" of DriveDemocracy, a non-profit Texas corporation
7 initially funded through a start-up grant from MoveOn.org.

8 9. TFT filed a Notice of Section 527 Status with the Internal Revenue
9 Service ("IRS") on August 31, 2004, as a political organization under 26 U.S.C. § 527. This
10 Notice identified Glenn W. Smith as TFT Treasurer, custodian of records and contact person, at
11 the following address: 5909 Sierra Grande, Austin, Texas, 78759.

12 10. TFT did not register as a political committee with the Federal Election
13 Commission. TFT filed periodic reports with the Internal Revenue Service and filed Form 9s
14 with the Commission disclosing receipts and disbursements associated with its electioneering
15 communications.

16 11. TFT accepted contributions from individuals in excess of \$5,000 During
17 the 2004 election cycle, TFT accepted \$101,000 in contributions in excess of \$5,000.

18 12. From September 13, 2004 through October 20, 2004, TFT spent \$303,000
19 on three television advertisements that were broadcast in the states of Ohio, Michigan,
20 Pennsylvania, Oregon, Arizona, New Mexico, Nevada, and in Washington, D.C. The
21 advertisements alleged that President Bush evaded his National Guard service while in Alabama.

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1 13 TFT intended these communications to influence the 2004 presidential
2 election. In e-mail solicitations, TFT states that it will run its advertisements in "key swing
3 states" so that "American voters" can see them.

4 Contributions

5 14. The Commission concludes that the language used in fundraising
6 solicitations sent on behalf of TFT in 2004 clearly indicated that the funds received would be
7 targeted to the defeat of a specific federal candidate. These solicitations were all sent by email
8 communication.

9 15. TFT's initial email solicitation asked for funds in order to respond to
10 attacks against John Kerry by President Bush, by the "Bush spin machine" and by President
11 Bush's "discredited henchmen." The solicitation makes clear that the funds received would be
12 used strategically to counter the attacks on Mr. Kerry by running advertisements "in key swing
13 states" criticizing President Bush's National Guard service. TFT's initial television
14 advertisement, which the solicitation describes in detail, alleged that President Bush evaded his
15 National Guard service while in Alabama and asked him to identify the persons with whom he
16 served.

17 16. Later TFT email solicitations also indicated that the funds received would
18 be targeted to the defeat of President Bush in the 2004 election. These solicitations, issued less
19 than a month before the November election, asked potential donors for funds to air a new TFT
20 advertisement so that "American voters" could hear "Stacy," the wife of a National Guardsman
21 serving in Iraq, tell her "sincere, emotional account of Bush's hypocrisy and lack of integrity."
22 These solicitations described advertisements that would criticize President Bush for "quit[ting]

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1 the National Guard early” and now “forbid[ding] Guardsmen in Iraq from leaving even after
2 fulfilling their commitments.”

3 17. Days after TFT issued the email solicitations described above in
4 Paragraph IV.16, TFT issued additional email solicitations even more explicitly advising
5 potential donors that their donations would be used to influence the election. This third round of
6 solicitations specified that “Stacy” would be telling her story in “key swing states” thanks to
7 donors’ support, and that TFT was raising money to double its advertisement buy so that “twice
8 as many American voters” could hear Stacy’s “sincere, emotional account of Bush’s hypocrisy
9 and lack of integrity.”

10 18. The Commission concludes that contributions received in response to
11 TFT’s email solicitations that clearly indicated the funds received would be used to defeat
12 George W. Bush in the 2004 general election caused TFT to surpass the \$1,000 statutory
13 threshold. *See* 2 U.S.C. § 431(4)(A). TFT received its first \$1,000 in response to its solicitations
14 in September 2004.

15 19. Accordingly, contributions received in response to these solicitations
16 caused TFT to surpass the \$1,000 statutory threshold. *See* 2 U.S.C. § 431(4)(A).

17 TFT’s Major Purpose

18 20. The Commission concludes that TFT’s statements and activities
19 demonstrate that its major purpose was to defeat George W. Bush. TFT Treasurer Glenn W.
20 Smith stated after the 2004 election that he founded TFT “in hopes of correcting misperceptions
21 on the Democratic presidential nominee advanced by the swift boaters and to tell simple truths
22 about President George Bush’s own military past.”

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21. In its Notice of 527 Status filed with the IRS, TFT asserted that its purpose is “[t]o educate voters on the records and views of candidates for public office and to promote interest in political issues and participation in elections.”

22. TFT’s own website, however, described the organization much more narrowly, in terms of its belief that “time has come for America to learn the truth about” the “shadowy past” of a single candidate, George W. Bush, whose status as a candidate is emphasized by the timing of TFT’s activity solely in the two months before the 2004 election. TFT’s actual activities manifest this narrow, election-related focus, such as solicitations that told prospective donors that with their funds television ads – aimed solely at criticizing President Bush – would be shown to “voters” and/or in “key swing states.”

23. TFT made no disbursements in connection with state or local elections during the 2004 election cycle.

24. Since the 2004 election, TFT has effectively ceased active operations

25. TFT contends that it engaged in the activities described herein for the purpose of raising awareness of the issue of military service against the backdrop of the Iraqi war and chose the states for airing its advertisements based upon where residents had lost a substantial number of servicemen and women in Iraq. TFT further contends that it engaged in these activities with the good faith belief that they did not trigger political committee status under the Act and that it had fulfilled all applicable disclosure requirements by filing reports with the I.R.S. and by filing Form 9s with the Commission. The Commission has made no findings or conclusions that TFT committed knowing and willful violations of the law.

V. Respondent committed the following violations:

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1 1. TFT violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a
2 political committee as of September 2004.

3 2. TFT violated 2 U.S.C. § 441a(f) by knowingly accepting contributions in
4 amounts exceeding \$5,000 from individuals.

5 VI. Respondent will cease and desist from violating 2 U.S.C. §§ 433 and 434 by
6 failing to register and report as a political committee. Respondent will cease and desist from
7 violating 2 U.S.C. § 441a(f) by accepting contributions in excess of the limits set forth in the
8 Act. Respondent will provide an executed copy of this agreement to each of its current and
9 former officers, principals, agents, representatives, successors, and assigns, and certify in writing
10 to the Commission that it has complied with this requirement, including identifying each
11 individual that Respondent has provided with an executed copy of the Agreement.

12 VII. Respondent will pay a civil penalty to the Federal Election Commission in the
13 amount of Five Thousand Dollars (\$5,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

14 VIII. Respondent will register with the Commission as a political committee and file
15 reports for 2004 and comply with any and all applicable provisions of the Act and Commission
16 regulations. Respondent will file a termination report with the Commission, which will be
17 processed in accordance with the applicable provisions of the Act and Commission regulations.
18 Respondent filed a 2006 Year End Report with the Internal Revenue Service identified as its
19 final report to the I.R.S.

20 IX. The Commission, on request of anyone filing a complaint under 2 U.S.C.
21 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
22 with this agreement. If the Commission believes that this agreement or any requirement thereof

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1 has been violated, it may institute a civil action for relief in the United States District Court for
2 the District of Columbia.

3 X. This agreement shall become effective as of the date that all parties hereto have
4 executed same and the Commission has approved the entire agreement.


5 XI. Respondent shall have no more than 30 days from the date this agreement
6 becomes effective to comply with and implement the requirements contained in this agreement
7 and to so notify the Commission.

8 XII. This Conciliation Agreement constitutes the entire agreement between the parties
9 on the matters raised herein, and no other statement, promise, or agreement, either written or
10 oral, made by either party or by agents of either party, that is not contained in this written
11 agreement shall be enforceable.

12 FOR THE COMMISSION:


13
14 Thomasenia P. Duncan
15 General Counsel
16
17

18
19 BY:

20 
21 Ann Marie Terzaken
22 Associate General Counsel
23 for Enforcement
24

25 12/10/07
26 Date

27
28 FOR TEXANS FOR TRUTH:

29 
30 Eric Kleinfeld
31 Counsel for Texans for Truth
32

33 11/8/07
Date