



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

Karl J. Sandstrom, Esq.  
Perkins Coie LLP  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

MAR 29 2007

RE: MUR 5752  
Environment2004, Inc.  
Environment2004 Action Fund  
Environment2004, Inc. PAC  
and Aimee Christensen, in her official  
capacity as treasurer

Dear Mr. Sandstrom:

On March 23, 2007, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted by your clients, Environment2004, Inc. and Environment2004 Action Fund, in settlement of violations of 2 U.S.C. §§ 433, 434 and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

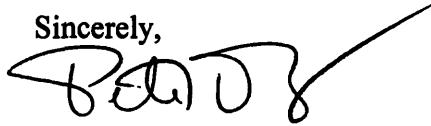
Further, after considering the circumstances of the matter, the Commission determined on March 23, 2007 to take no further action with respect to your clients, Environment2004, Inc. PAC and Aimee Christensen, in her official capacity as treasurer, and closed the file as it pertains to them. A Factual and Legal Analysis explaining this determination is attached.

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).

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Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Blumberg', with a long, sweeping horizontal line extending to the right.

Peter G. Blumberg  
Attorney

Enclosure  
Conciliation Agreement  
Factual and Legal Analysis

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Environment2004, Inc. ) MUR 5752  
 )  
Environment2004 Action Fund )  
 )

**CONCILIATION AGREEMENT**

This matter was initiated by a signed, sworn, and notarized complaint. The Federal Election Commission ("Commission") found reason to believe that Environment2004, Inc. ("E04") and Environment2004 Action Fund, Inc. ("E04 Action Fund") [collectively, "the Respondents"] violated 2 U.S.C. §§ 433, 434, and 441a(f) of the Federal Election Campaign Act, as amended ("the Act"), by failing to register as a political committee, by failing to disclose its contributions and expenditures, by accepting contributions in excess of \$5,000, and that E04 violated 2 U.S.C. § 441b(a), by accepting prohibited corporate contributions.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:

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Applicable Law

1. The Act defines a political committee as “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 2 U.S.C. § 431(4)(A).

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

3. The Act defines the term “expenditure” as including “anything of value made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(9)(A)(i).

4. Under the Commission’s regulations, a communication contains express advocacy when it uses phrases such as “vote for the President,” “re-elect your Congressman,” or “Smith for Congress,” or uses campaign slogans or words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, or advertisements that say, “Nixon’s the One,” “Carter ‘76,” “Reagan/Bush,” or “Mondale!” *See* 11 C.F.R. § 100.22(a); *see also FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 249 (1986) (“[The publication] provides in effect

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an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than "Vote for Smith" does not change its essential nature."). Courts have held that "express advocacy also include[s] verbs that exhort one to campaign for, or contribute to, a clearly identified candidate." *FEC v. Christian Coalition*, 52 F.Supp. 2d 45, 62 (D.D.C. 1999) (explaining why *Buckley v. Valeo*, 424 U.S. 1, 44, n.52 (1976), included the word "support," in addition to "vote for" or "elect," on its list of examples of express advocacy communication).

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

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

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

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

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

9. Pursuant to 2 U.S.C. § 441b(a), it is unlawful for any political committee to knowingly accept or receive, directly or indirectly, any contribution made in connection with a federal election from a corporation.

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Factual Background

10. The Environment2004 family of organizations consisted of three legally distinct organizations: (1) E04, an incorporated entity organized under Section 527 of the Internal Revenue Code; (2) Environment2004 PAC, a political committee registered with the Commission; and (3) E04 Action Fund, an unincorporated entity organized under Section 527 of the Internal Revenue Code. Each of the E04 organizations operated from offices located at 733 15<sup>th</sup> St, N.W., Suite 326, Washington, D.C. under the direction of their respective boards and officers. The board and officers of the E04 Action Fund constituted a subset of the board and officers of E04.

11. E04 incorporated in the District of Columbia on March 21, 2003. E04 filed a Notice of 527 Status with the Internal Revenue Service ("IRS") on April 9, 2003. During 2004, E04 raised and spent over \$1.2 million. E04 has not previously registered with the Commission as a political committee.

12. E04 Action Fund was organized as an association in the District of Columbia. E04 Action Fund filed a Notice of 527 Status with the IRS on August 6, 2004. During 2004, E04 Action raised and spent approximately \$500,000. E04 Action Fund has not previously registered with the Commission as a political committee.

Environment2004 - Contributions

13. E04's fundraising solicitations emphasized that it (a) "[would] make a difference on November 2<sup>nd</sup> – and help ensure that environmental leaders like John Kerry get elected; (b) "[was] dedicated to defeating George W. Bush and his allies in the next national election," and (c) "will focus on defeating Bush in November 2004." These fundraising

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solicitations clearly indicated that the funds received would be targeted for the election or defeat of specific federal candidates.

14. Various E04 solicitations clearly indicate that the funds received will be used to convince "swing voters" and "voters who can be moved by our [environmental] message" to oppose Bush in the 2004 presidential election. Accordingly, all funds received in response to these solicitations constituted contributions under the Act, and caused E04 to surpass the \$1,000 statutory threshold by April 2003. See 2 U.S.C. § 431(4)(A). E04 subsequently received more than \$460,480 from individuals in excess of \$5,000 limit for political committees and \$62,896 from prohibited corporate sources.

Environment2004 -Expenditures

15. E04 made more than \$1,000 in expenditures for fundraising communications which expressly advocate that recipients vote for, campaign for, or contribute funds in support of a specific candidate's election. In one letter, E04 insisted: "This may be our last opportunity to make a difference on November 2nd - and help ensure that environmental leaders like John Kerry get elected. There are only 15 days left and so I write to you today to ask for your help exposing the abysmal record ... Those of us concerned about our environment can and must make a difference in November." In another letter, E04 encourages the recipient "to expose the Bush Administration's anti-environment record and make a difference in the November 2004 elections." Another E04 letter expressly solicits contributions for John Kerry's presidential campaign. The costs of these communications include the direct cost of postage and indirect costs in the form of prorated salaries and office expenses.

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Environment2004 –Major Purpose

16. E04's mission statement declares "E04 is a membership organization dedicated to highlighting the environmental stakes in the next election, and, by shining a spotlight on the anti-environmental record of President George W. Bush and his allies, to assuring their defeat in 2004." E04's bylaws state: "It shall be the policy of E04 to support only Democratic Party candidates in all general elections." E04's activities included the maintenance of a separate segregated fund through which it directly supported candidates.

17. In solicitation letters, E04 referred repeatedly to assuring the defeat of "President George W. Bush and his allies" and to electing "leaders like John Kerry." Consistent with these statements, the funds donated to support E04 paid for an integrated political campaign – in addition to internal overhead devoted to fundraising activities, E04 hired research, polling and fundraising consultants to prepare its electoral message and used this message to influence the public through billboards, public events, "reports," press conferences, and other materials and activities relating to presidential candidates Kerry or Bush.

18. E04's activities in 2004 included making disbursements for polls to test the effectiveness of various environmental messages criticizing President George W. Bush. E04's pollsters would contact "undecided voters" or "weak supporters" of Bush or his opponent John Kerry located in battleground or swing states with regard to the upcoming presidential election (such as Florida, Wisconsin and Minnesota) to educate undecided voters on the environmental record of the Bush administration and provide reasons to vote against George W. Bush. E04 then used the polling information to formulate public communications featuring issues that voters

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could use to assess the environmental record of the candidates and provide reasons to vote against George W. Bush. These communications included billboards with messages such as:

- “Mercury. It’s What’s for Dinner. Served Up by the Bush Administration.”
- “Global Warming = Worse Hurricanes. George Bush Just Doesn’t Get It.”

E04 also published a “national report” and “state reports” in five presidential election battleground states where E04 electoral efforts were targeted. The reports contain numerous references to the upcoming election, Bush’s “four years” in office, the “next resident” of the White House, and exhortations that the best “choice” is the election of a Democratic President.

19. E04’s activities were focused on “battleground” states such as Florida, Minnesota, and New Hampshire and its efforts were linked to elections. E04 did not lobby federal, state or local officials for changes in specific laws or participate in administrative rulemakings. E04 did not sponsor any communication that mentioned a state or local candidate. E04 ceased operations immediately following the 2004 election.

20. E04 contends that it acted with a good faith belief that its activities in connection with the 2004 elections were in compliance with applicable laws and regulations.

#### E04 Action Fund - Contributions

21. E04 Action Fund’s fundraising solicitations stressed, “our messages have demonstrated their effectiveness [at moving “undecided target voters” from Bush to Kerry] and “the messages in our TV ads are right on and can move these voters [to Kerry] and that “an additional contribution ... [is needed] to enable us [to run more ads].” These fundraising

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solicitations clearly indicated that the funds received would be targeted for the election or defeat of specific federal candidates.

22. These solicitations clearly indicate that the funds will cause “persuadable voters” and “undecided target voters” to oppose Bush and vote for Kerry in the 2004 presidential election. As a result, all funds received in response to these solicitations constituted contributions under the Act, and caused E04 Action Fund to surpass the \$1,000 statutory threshold by July 2004. See 2 U.S.C. § 431(4)(A). E04 Action Fund subsequently received \$445,000 from individuals in excess of \$5,000 limit for political committees.

E04 Action Fund - Expenditures

23. E04 Action Fund expended more than \$1,000 for fundraising communications which expressly advocate that recipients vote for, campaign for, or contribute funds in support of a specific candidate’s election. E04 Action Fund stated in one letter that it sought “to make a difference November 2nd” and repeatedly claimed throughout its correspondence to donors that it would convince undecided voters to vote for Kerry. The letters routinely asked for donations to E04 Action Fund to pay for television advertising designed to elect Kerry.

E04 Action Fund – Major Purpose

24. E04 Action Fund’s statements, prepared by the same fundraisers who wrote E04’s materials, stressed the organization’s “basic premise” to motivate “persuadable voters” “to vote for Senator Kerry.” The E04 website describes E04 Action Fund’s purpose as “dedicated to educating voters about the importance of environmental protection in *this upcoming election*” and noting that E04 Action Fund intends “to expose the destructive environmental agenda of the

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Bush administration and its allies in *key swing states*.” E04 Action Fund utilized the same facilities, website, and donor base as E04, and the evidence demonstrating that E04’s major purpose was campaign activity can also be ascribed to the E04 Action Fund.

25. E04 Action Fund’s activities in 2004 included making disbursements for television advertisements broadcast in Florida, Minnesota, and Wisconsin and print advertising published in newspapers in Wisconsin and Florida. These advertisements, which were targeted on the basis of polling data suggesting which the message will be effective in convincing undecided voters to favor John Kerry over George Bush in the presidential election included messages such as:

- The television advertisement “Warning” states that 1/6 of American women of child-bearing age have unsafe mercury levels, linking this assertion to mercury-laden fish supplies caused by pollution from power plants. The advertisement states, “George Bush reversed efforts to cut more mercury pollution from power plants. Why does George Bush put polluters’ profits over people?”
- The television advertisement “Pay” cites the number of toxic waste sites in the relevant state (for instance, 38 in Wisconsin) and claims that George Bush has reversed a plan to make polluters pay for the cleanup of these sites, shifting the cost instead to taxpayers. The advertisement concludes by asking: “Why does George Bush put polluters’ profits over people?”
- The television advertisement “Interrupted Fishing Trip” depicts two fishermen reading a sign warning of mercury pollution. The advertisement’s audio portion asserts that 1/3 of American lakes are polluted, linking this assertion to mercury from coal-fired power plants. The advertisement concludes by stating, “John Kerry has fought for clean air and water. He said our commitment to the environment is a compact with our children, our grandchildren, and generations beyond.”

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- The print advertisement "Interrupted Fishing Trip" claims that 100% of all fish in Wisconsin's and Florida's lakes contain mercury, and that mercury causes birth defects and brain damage. It concludes: "George Bush says mercury should not be treated as hazardous. *Why does George Bush care more about polluters than you?*"

26. All E04 Action Fund's activities were focused on "battleground" states such as Florida, Minnesota, and Wisconsin and its efforts were inextricably linked to elections. E04 Action Fund did not attempt to address environmental concerns in any fashion other than expressing its support for John Kerry and opposition to George Bush in the context of the 2004 election. For example, E04 Action Fund did not lobby federal, state or local officials for changes in specific laws or participate in administrative rulemakings. E04 Action Fund did not sponsor any communication that mentioned a state or local candidate. E04 Action Fund did not engage in any activities after the 2004 election.

27. E04 Action Fund contends that it acted with a good faith belief that its activities in connection with the 2004 elections were in compliance with applicable laws and regulations.

V. For the purpose of settling this matter and avoiding litigation, and with no finding of probable cause, Respondents agree to no longer contest the Commission's conclusion that Environment2004 Inc. and Environment2004 Action Fund violated 2 U.S.C. §§ 433 and 434 by failing to register and report as one or more political committees and violated 2 U.S.C. § 441a(f) by knowingly accepting contributions from individuals in amounts exceeding \$5,000; and that Environment 2004, Inc. also violated 2 U.S.C. § 441b(a) by knowingly accepting corporate contributions.

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VI. Respondents, their officers, principals, agents, representatives, successors, and assigns, will cease and desist from violating 2 U.S.C. §§ 433 and 434 by failing to register and report as a political committee. Respondents, their officers, principals, agents, representatives, successors, and assigns, will cease and desist from violating 2 U.S.C. § 441a(f) by accepting contributions in excess of the limits set forth in the Act. E04, its officers, principals, agents, representatives, successors, and assigns, will cease and desist from violating 2 U.S.C. § 441b(a) by knowingly accepting corporate contributions. Respondents will provide an executed copy of this Agreement to each of its current and former officers, principals, agents, representatives, successors, and assigns, and certify in writing to the Commission that it has complied with this requirement, including identifying each individual that Respondents have provided with an executed copy of the Agreement.

VII. Respondents will pay a civil penalty to the Federal Election Commission in the amount of \$16,000, pursuant to 2 U.S.C. § 437g(a)(5)(A). The Commission is willing to accept a lower civil penalty than it otherwise would require, because Respondents ceased operations over two years ago and currently possess no funds or assets. Further, both organizations have no plans for future activities and intend to dissolve at the conclusion of this Matter. These circumstances prevent Respondents from paying a civil penalty of \$78,000, which represents the amount that the Commission otherwise would seek for the violations at issue.

VIII. Respondents will file reports containing all information required to be disclosed by federal political committees for their activities from January 1, 2003 until December 31, 2004. The Commission agrees that Respondents may fulfill this obligation by submitting copies of reports filed with the Internal Revenue Service for activities during this period, if supplemented

with additional information required of federal political committees. Such supplementation would include, but not be limited to, the information contained on the summary pages of reports filed by political committees. Respondents agree to register and report to the Commission as a political committee within ten days of ever again receiving \$1,000 in contributions or making a \$1,000 in expenditures.

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

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

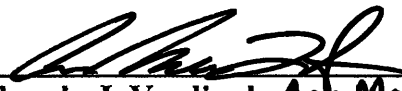
XI. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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

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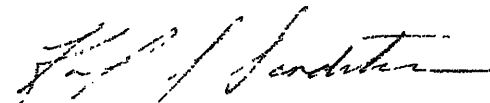
**FOR THE COMMISSION:**

**Lawrence H. Norton**  
**General Counsel**

BY:   
**Act5** ~~Rhonda J. Vosdinger~~ **Ann Marie Terzaken**  
**Associate General Counsel**  
**For Enforcement**

**Date** 7/20/07

**FOR THE RESPONDENTS:**

  
**Karl J. Sandstrom**  
**As Counsel and at the direction of**  
**Environmental2004, Inc.**  
**Environmental2004 Action Fund**

**Date** 2/27/07

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

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April 24, 2007

**TWO WAY MEMORANDUM**

TO: OGC Docket  
FROM: Rosa E. Swinton *RES*  
Accounting Technician  
SUBJECT: Account Determination for Funds Received

We recently received a check from **Environment2004 Inc/Environment2004 Action Fund** the check number is **2803**, dated **April 3, 2007**, in the amounts of **\$16,000.00**. A copy of the check and all correspondence are attached. Please indicate below which account the funds should be deposited and give the MUR/Case number and name associated with the deposit

=====

TO: Rosa E. Swinton  
Accounting Technician  
FROM: OGC Docket  
SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of \$ 16,000.00, the MUR/Case number is 5752 and in the name of Environment2004 Inc/Environment2004 Action Fund  
Place this deposit in the account indicated below:

☒ Budget Clearing Account (OGC), 95F3875.16  
☐ Civil Penalties Account, 95-1099.160  
☐ Other: \_\_\_\_\_

*Kim Collins*  
\_\_\_\_\_  
Signature

4-24-07  
\_\_\_\_\_  
Date

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**Respondents:**

Environment2004 PAC and Aimee Christensen, in her  
official capacity as treasurer

**MUR: 5752**

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2       This matter was generated by a complaint filed with the Federal Election Commission  
3 (“the Commission”) by Bush-Cheney ’04, Inc. *See* 2 U.S.C. § 437g(a)(1).

4       The Commission previously found reason to believe that Environment2004 Inc. PAC  
5 (“E04 PAC”), a separate segregated fund of Environment2004, Inc. (“E04”), which is organized  
6 under Section 527 of the Internal Revenue Code, violated 2 U.S.C. §§ 434, 441a(f), 441b(a) and  
7 11 C.F.R. §§ 102.5, 104.10, 106.1, and 106.6 by failing to properly deposit and report federal  
8 contributions and by failing to properly allocate various expenses required to be paid with federal  
9 funds. The basis for these findings was information that federal contributions may have been  
10 into the bank account of E04, rather than the bank account of E04 PAC, an entity which was  
11 registered with the Commission, and that federal expenditures were made from E04’s account,  
12 rather than from E04 PAC’s account. Because E04 PAC was a registered political committee,  
13 the Commission found reason to believe as to E04 and E04 PAC on an allocation theory.

14       The ensuing investigation suggested that the more appropriate characterization of this  
15 activity was that E04 operated as a political committee within the meaning of the Federal  
16 Election Campaign Act of 1971, as amended (“the Act”). As such, it failed to register with the  
17 Commission, disclose to the public its contributions and expenditures in reports filed with the  
18 Commission, and comply with the Act’s contribution limitations and prohibitions. Subsequently,

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1 E04 entered into a conciliation agreement with the Commission to resolve violations of 2 U.S.C.  
2 §§ 433 and 434 by failing to register and report as one or more political committees.

3         Given that E04's activities were those of a political committee, the allocation violations  
4 found against both E04 and E04 PAC were no longer viable or necessary given the resolution of  
5 the underlying violations under an alternative legal theory. Thus, the Commission determined to  
6 take no further action with respect to E04 PAC and its treasurer.

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