

MAR 19 2009

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

**MUR 6079**

**DATE COMPLAINT FILED: 9/25/08**

**DATE OF NOTIFICATION: 10/1/08**

**LAST RESPONSE RECEIVED: 11/19/08**

**DATE ACTIVATED: 12/16/08**

**EXPIRATION OF SOL: 1/1/12 (ongoing)**

**COMPLAINANTS:**

**Elizabeth N. Beacham,**  
**National Republican Congressional Committee**

**RESPONDENTS:**

**Democratic Freshmen PAC**  
**and James Smith, Treasurer**  
**Democrats Win Seats PAC**  
**and Lawrence Wasserman, Treasurer**  
**Victory in November Election PAC**  
**and Brian Kelly, Treasurer**  
**Representative Debbie Wasserman Schultz**  
**Representative Mike Thompson**

**RELEVANT STATUTES:**

**2 U.S.C. § 441a(a)(1)**  
**2 U.S.C. § 441a(a)(2)**  
**2 U.S.C. § 441a(a)(5)**  
**2 U.S.C. § 433(b)(2)**  
**11 C.F.R. § 100.5(g)**  
**11 C.F.R. § 110.1**  
**11 C.F.R. § 110.2**  
**11 C.F.R. § 110.3(a)**

**INTERNAL REPORTS CHECKED:**

**Commission Database**

**FEDERAL AGENCIES CHECKED:**

**None**

**I. INTRODUCTION**

**This matter involves the question of whether three political action committees**  
**("PACs") are affiliated and thus share a single contribution limit under the Federal**

1 Election Campaign Act of 1971, as amended ("the Act"). Complainant alleges that  
2 Democrats Win Seats Political Action Committee ("DWS PAC"), a "leadership PAC"<sup>1</sup>  
3 maintained by Representative Debbie Wasserman Schultz, and Victory in November  
4 Election Political Action Committee ("VINE PAC"), a leadership PAC maintained by  
5 Representative Mike Thompson, are affiliated with the Democratic Freshmen Political  
6 Action Committee ("Dem. Freshmen PAC"), a more recently formed PAC for which both  
7 Representatives serve as honorary co-chairs. Complainant alleges that the three PACs  
8 violated the Act by failing to report their affiliation and by making and receiving  
9 contributions in excess of the single contribution limit purportedly shared by the three  
10 committees.

11 The Respondent PACs deny that they are affiliated. While Reps. Wasserman  
12 Schultz and Thompson acknowledge their respective connections with DWS PAC and  
13 VINE PAC, both deny any connection between these two PACs, and they also deny  
14 having anything other than a purely symbolic title and position in Dem. Freshmen PAC.  
15 As discussed below, the available information does not support the conclusion that DWS  
16 PAC, VINE PAC, or Dem. Freshmen PAC are affiliated. Accordingly, we recommend  
17 that the Commission find no reason to believe that Respondents violated the Act.

---

<sup>1</sup> A "leadership PAC" is a term that refers to a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that "leadership PAC" does not include a political committee of a political party. 11 C.F.R. § 100.5(e)(6). See Explanation and Justification, Reporting Contributions Bundled by Lobbyists, Registrants, and the PACs of Lobbyists and Registrants, 68 Fed. Reg. 7285, 7302 (Feb. 17, 2009).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

Representative Debbie Wasserman Schultz and Representative Mike Thompson are both Democratic Members of Congress.

VINE PAC, a nonconnected multicandidate committee that registered with the Commission on June 12, 2002, is a "leadership PAC" for Representative Thompson. *See* VINE PAC Response. VINE PAC, whose treasurer is Brian Kelly, has never reported affiliation with another political committee. VINE PAC denies that it is affiliated with either DWS PAC or Dem. Freshmen PAC. *Id.*

DWS PAC, a nonconnected multicandidate committee that registered with the Commission on June 13, 2006, is a "leadership PAC" for Rep. Wasserman Schultz. *See* DWS PAC Response. DWS PAC, whose treasurer is Lawrence Wasserman, has never reported affiliation with another political committee. DWS PAC denies that it is affiliated with either VINE PAC or Dem. Freshmen PAC. *Id.*

Dem. Freshmen PAC is a nonconnected multicandidate committee that initially registered with the Commission on November 29, 2006. Dem. Freshmen PAC was formed by lobbyists, James Smith, the committee's treasurer, and William C. Oldaker, its custodian of records. *See* Eric Pfeiffer, *Freshman Democrats Work With 'Rainmaker,'* The Washington Times, May 31, 2007, at A01. Dem. Freshmen PAC states that Smith is the PAC's only officer, that he established and runs the PAC, and that he is solely responsible for raising its funds and for determining how the funds are spent. Dem. Freshmen PAC Response at 1-2. Dem. Freshmen PAC denies being affiliated with either VINE PAC or DWS PAC. *Id.*

10044263289

1 Dem. Freshmen PAC claims that it asked Reps. Thompson and Wasserman  
2 Schultz to serve as honorary co-chairs merely as a "show of support" to assist its  
3 fundraising efforts. *Id.* at 2. It asserts that the title and position did not signify any  
4 substantive responsibility in the operation, maintenance, or financing of the PAC. While  
5 complainant provided a snapshot of Dem. Freshmen PAC's website that appears to  
6 identify only Reps. Thompson and Wasserman Schultz as its honorary co-chairs, Dem.  
7 Freshmen PAC states that several other Representatives were also named as honorary  
8 vice-chairs on invitations to its fundraisers and events.<sup>2</sup> *Id.* Complaint at 8, 9. Since the  
9 filing of the complaint, the two Representatives are no longer listed on the website as  
10 honorary co-chairs. See <http://democraticfreshmen.org/about-dfp>. (last visited Feb. 26,  
11 2009).

12 **B. Analysis**

13 Although nonconnected multicandidate committees can accept and make  
14 contributions of up to \$5,000, affiliated political committees share a single contribution  
15 limit under the Federal Election Campaign Act of 1971, as amended ("the Act"). See  
16 2 U.S.C. §§ 441a(a), 441a(f), and 441a(a)(5). Committees are considered "affiliated"  
17 when they are established, financed, maintained, or controlled by the same person or  
18 group of persons.<sup>3</sup> 11 C.F.R. §§ 100.5(g) and 110.3(a). Contributions made to or by  
19 such committees shall be considered to have been made to or by a single committee.  
20 11 C.F.R. § 100.5(g).

---

<sup>2</sup> Freshman PAC identified the following Representatives as additional honorary co-chairs: Rahm Emanuel, Allen Boyd, Joe Crowley, Bart Stupak, Xavier Becerra, Paul Hodes, and Tim Walz.

<sup>3</sup> For example, in MUR 5328 (PAC to the Future), the Commission found affiliation where two leadership PACs were maintained by the same candidate, shared a common treasurer who admitted that the second PAC was formed to increase the candidate's donations, and made similar contributions. See FGCR dated August 18, 2003 and Commission Certification dated August 25, 2003.

1 In ascertaining whether committees are affiliated, the Commission considers a  
2 number of circumstantial factors in the context of the overall relationship of the  
3 committees, to determine if the presence of any factor or factors is evidence of affiliation.  
4 *See* 11 C.F.R. §100.5(g)(4)(ii).<sup>4</sup> Such factors include, but are not limited to:

- 5 • whether the allegedly affiliated committees have common overlapping  
6 officers or employees or common overlapping membership which indicates a  
7 formal or ongoing relationship;
- 8 • whether one committee participates in the governance of the other;
- 9 • whether one committee provides funds or goods in a significant amount or on  
10 an ongoing basis to another committee or whether a committee arranges for  
11 funds in a significant amount or on an ongoing basis to be provided to the  
12 allegedly affiliated committee;
- 13 • whether a committee or its agent had an active or significant role in the  
14 formation of the allegedly affiliated committee;
- 15 • whether the allegedly affiliated committees have similar patterns of  
16 contributions or contributors which indicate a formal or ongoing relationship;  
17 and
- 18 • whether other factors, when viewed in context of the overall relationship  
19 between the committees, evidences that one established, financed, maintained,  
20 or controlled the other.

21 *See* 11 C.F.R. § 100.5(g)(4)(ii). *See also* MUR 5355 (Pryce Project), First General  
22 Counsel's Report dated April 28, 2004 at 6. While the Commission has not set specific  
23 thresholds in determining what combination or degree of factors is sufficient to support  
24 an affiliation, the Explanation and Justification for its regulation indicates that the  
25 presence of more than one factor is required to establish affiliation. *See* 54 Fed. Reg.  
26 34,098, 34,099 (Aug. 17, 1989).

---

<sup>4</sup> The Commission may also consider other factors relevant to its inquiry. *See* 11 C.F.R. §100.5(g)(4)(ii) (stating "[s]uch factors include, *but are not limited to* ..." the enumerated factors) (emphasis added); see also AO 2000-28 ("The list of ten circumstantial factors set forth in 11 C.F.R. §100.3(a)(3)(ii) is not an exclusive list, and other factors may be considered.") (citing AOs 1999-39 and 1995-36).

1 Complainant alleges that the committees are affiliated based on four of the factors  
2 set forth in the Commission's regulations: 1) Reps. Wasserman Schultz and Thompson,  
3 and their respective leadership PACs, somehow direct or govern Freshman PAC; 2) the  
4 presence of common or overlapping officers or employees; 3) DWS PAC and VINE  
5 PAC had an active or significant role in the formation of Dem. Freshman PAC; and 4) the  
6 three PACs have similar patterns of contributions and contributors. *See* 11 C.F.R.  
7 § 100.5(g)(4)(ii)(B), (E), (I), and (J). Complaint at 1-2. Respondents, however, have  
8 presented information that refutes many of the premises relied on in the complaint. As  
9 detailed below, an application of the criteria to the various facts does not support finding  
10 affiliation in this matter.

11 **1. Ability or Authority to Direct or Govern Another Committee**

12 Among the factors the Commission considers in evaluating affiliation is whether  
13 one committee has the ability or authority to direct or participate in the governance of  
14 another committee. Complainant contends that DWS PAC and VINE PAC's principals  
15 (Reps. Wasserman Schultz and Thompson) "are in essence running three PACs" based on  
16 ties with their own PACs and their positions as honorary co-chairs of Dem. Freshmen  
17 PAC. Complaint at 1.

18 Respondents assert that the honorary co-chair positions were merely symbolic and  
19 did not give either Rep. Wasserman Schultz or Rep. Thompson the authority or ability to  
20 direct or participate in the governance of Dem. Freshmen PAC. *See* 11 C.F.R.  
21 § 100.5(g)(4)(ii)(B). There is no information showing that either Rep. Wasserman  
22 Schultz or Rep. Thompson was involved in the day-to-day operations of Dem. Freshmen

10044263292

1 PAC, or that DWS PAC and VINE PAC otherwise directed or participated in the  
2 governance of Dem. Freshman PAC.

3 The Commission previously determined that in the absence of any evidence of  
4 participation in the day-to-day operations of the committee, an honorary chairmanship by  
5 itself does not establish control of a committee for purpose of affiliation. See MUR 5355  
6 (VIEW PAC & Pryce Project), First General Counsel's Report dated April 28, 2004 at 9-  
7 10. In that matter, the Commission found that Rep. Deborah Pryce's simultaneous  
8 service as honorary chair of the unauthorized multicandidate committee and chair of her  
9 leadership PAC did not result in the affiliation of the two committees. See MUR 5355,  
10 Commission Certification dated June 8, 2004. The Commission came to a similar  
11 conclusion in MUR 5121(New Democratic Network) where it concluded that a  
12 multicandidate PAC was not affiliated with a candidate committee through a  
13 Representative (Cal Dooley), who served on an honorary executive committee of the  
14 PAC while simultaneously operating his own principal campaign committee. See  
15 Commission Certification dated November 19, 2003. Accordingly, the fact that Reps.  
16 Wasserman Schultz and Thompson are honorary co-chairs of Dem. Freshmen PAC,  
17 while leading their respective leadership PACs, does not by itself establish that Dem.  
18 Freshmen PAC is affiliated with either DWS PAC or VINE PAC.

19 **2. Common or Overlapping Officers**

20 Another factor the Commission considers in evaluating affiliation is the existence  
21 of common or overlapping officers or employees that indicates a formal or ongoing  
22 relationship between the committees. See 11 C.F.R. § 100.5(g)(4)(ii)(E). There is no  
23 allegation as to any common or overlapping officers between VINE PAC and DWS PAC.

10044263293

1 Further Dem. Freshmen PAC claims that its treasurer, James Smith, is the PAC's only  
2 officer or employee, and that he solely controls the PAC. Dem. Freshmen PAC Response  
3 at 1-2.

4 While Reps. Wasserman Schultz and Thompson both have a role with Dem.  
5 Freshman PAC, which satisfies a portion of the criteria, the responses indicate that these  
6 honorary roles apparently lacked the sort of duties, responsibilities, or authority over  
7 Dem. Freshman PAC's activities that would demonstrate a formal or ongoing relationship  
8 between the committees. Like the honorary positions held by Reps. Pryce and Dooley in  
9 MURs 5355 and 5121, these roles are not equivalent to the officer or employee status  
10 contemplated by the regulation for the purpose of determining affiliation.

11 **3. Committees' Role in Formation**

12 Another factor the Commission considers is whether a committee or its agent had  
13 an active or significant role in the formation of another committee. See 11 C.F.R.  
14 § 100.5(g)(4)(ii)(I). The available information does not show that any of the committees  
15 or their agents had a role in the formation of the other committees. VINE PAC was  
16 formed in 2002, long before DWS PAC or Dem. Freshman PAC were formed, and  
17 without the involvement of DWS PAC or Dem. Freshman PAC. Similarly, DWS PAC  
18 was formed before Dem. Freshman PAC was formed, and without the involvement of  
19 any VINE PAC or Dem. Freshmen PAC. Notwithstanding the Complainant's  
20 speculation, the responses establish that neither VINE PAC and Representative  
21 Thompson, nor DWS PAC and Representative Wasserman Schulz, were involved in the  
22 formation of Dem. Freshman PAC. Dem. Freshman PAC claims to have been

10044263294



1 established solely by its treasurer, Mr. Smith (who has no role in either of the other two  
2 PACs).

3 **4. Similar Patterns of Contributions or Contributors**

4 Another factor in evaluating affiliation is whether the committees is whether a  
5 formal or ongoing relationship between the committees can be inferred from extremely  
6 similar patterns of contributions or contributors. See 11 C.F.R. § 100.5(g)(4)(ii)(J). This  
7 factor, however, must be viewed with the understanding that committees with similar  
8 positions and objectives, such as supporting Democratic candidates for the House of  
9 Representatives, might be expected to attract support from some of the same donors, and  
10 to provide support to some of the same candidates. Indeed, the Commission recognizes  
11 that "committees with similar political viewpoints and objectives may tend to make  
12 contributions to the same candidates and receive contributions from the same donors even  
13 though the committees are completely independent." See Explanation and Justification,  
14 Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution  
15 Limitations, and F earmarked Contributions, 54 Fed. Reg. 34,098, 34,100 (Aug. 17, 1989).

16 Notwithstanding such natural correlations, examining patterns of contributions  
17 and contributors in the committees' disclosure reports could "provide objective evidence  
18 of affiliating conduct." 54 Fed. Reg. 34,100. An unusually high correlation in the source  
19 of receipts (donors) or the use of funds (contributions) could be an indication that the  
20 committees were being financed and controlled by same group of persons. As discussed  
21 below, however, given that each PAC supports Democratic candidates for the House of  
22 Representatives, the PACs do not have a surprisingly high correlation in terms of the  
23 identity of their donors. While there is a stronger correlation in terms of the candidates

10044263295

1 and committees to which they contributed, we do not conclude that this correlation alone  
2 is conclusive as to whether the PACs are affiliated.

3 Dem. Freshmen PAC claims that, consistent with its stated purpose, it contributed  
4 mainly to 2006 freshmen House candidates who were seeking reelection in 2008. It  
5 claims that VINE PAC's and DWS PAC's contribution patterns show a broader focus;  
6 less than half of VINE PAC's contributions went to some of the same 2008 freshmen  
7 candidates and only one-third of DWS PAC's contributions went to some of these same  
8 candidates. These figures are reflected in Table 1 below.

TABLE 1

Total PAC Contributions To Candidates During 2008 Cycle

| PAC                     | Total # of<br>Candidates | # of Candidates<br>or Committees<br>Receiving<br>Contributions<br>from two or more<br>PACs |
|-------------------------|--------------------------|--|
| Dem.<br>Freshmen<br>PAC | 29                       | 24 (85%)   |
| VINE PAC                | 59                       | 24 (40.7%)   |
| DWS PAC                 | 83                       | 28 (33.7 %)  |

9  
10 Similarly, Dem. Freshmen PAC asserts that less than one-third of its donors also  
11 contributed to VINE PAC or DWS PAC, that less than 10 percent of DWS PAC's donors  
12 also contributed to Dem. Freshmen PAC, and that less than 15 percent of VINE PAC's  
13 donors also contributed to Dem. Freshmen PAC. These figures are reflected in Table 2  
14 below. Further, only 5 donors contributed to all three PACs.

10044263296

TABLE 2

Total Contributions Received by PACs during 2008 Cycle

| PAC               | Total # of Contributors | # of Donors Making Contributions to two or more PACs |
|-------------------|-------------------------|--|
| Dem. Freshmen PAC | 43                      | 18 (41.8%) <sup>5</sup>                              |
| VINE PAC          | 79                      | 10 (12.6%)   |
| DWS PAC           | 134                     | 13 (9.7 %)   |

1 Our review of the PACs' disclosure reports show some correlation, but not a  
2 surprisingly high pattern in terms of receipts from donors who also contributed to at least  
3 one of the other two PACs. Dem. Freshmen PAC received 62% of its total contribution  
4 receipts from donors who gave to at least one of the other two PACs. VINE PAC  
5 received 28 percent of its receipts from donors who gave to at least one of the other two  
6 PACs. Finally, DWS PAC received 27 percent of its total contribution receipts from  
7 donors who gave to at least one of the other two PACs.

8 The disclosure reports show a much higher correlation in terms of each PAC's  
9 contributions to candidates or committees also receiving contributions from at least one  
10 of the other two PACs. Notably, 99 percent of Dem. Freshmen PAC's contributions went  
11 to candidates or committees receiving contributions from at least one of the other two  
12 PACs. DWS PAC made 77.7 percent of its contributions to candidates and committees  
13 receiving support from at least one of the other two PACs. Finally, VINE PAC made 94  
14 percent of its contributions to candidates or committees receiving support from at least  
15 one of the other two PACs. These figures are reflected in Table 3 below.

<sup>5</sup> The percentage is more than the figure ("less than one-third") claimed by Dem. Freshmen PAC.

10044263297

TABLE 3

Total 2008 Contribution Amounts

| PAC               | Total Receipts | Total Receipts From Donors Giving to at least one other PAC | Total Contributions | Total Contributions to Candidates or Committees supported by at least one other PAC |
|-------------------|----------------|---|---------------------|---|
| Dem. Freshmen PAC | \$168,130      | \$104,000 (62%)   | \$78,300            | \$77,300 (99%)  |
| VINE PAC          | \$332,668      | \$91,000 (28.2%)  | \$271,000           | \$255,000 (94%)   |
| DWS PAC           | \$555,052      | \$148,000 (26.6 %)  | \$485,679           | \$377,600 (77.7%)   |

1           While the table shows a significant correlation in the PACs' contributions,  
2 Respondents argue that their asserted contribution and contributor patterns are not such  
3 that would indicate the formal or ongoing relationship between the committees that is  
4 required under the Commission's regulations to find affiliation. *See* 11 C.F.R.  
5 § 100.5(g)(4)(ii)(J). Accordingly, the contribution and contributor patterns of the PACs  
6 can be explained by their similar objectives and goals, as opposed to being conclusive  
7 evidence of a formal relationship that amounts to affiliation. *See* Explanation and  
8 Justification, Affiliated Committees, Transfers, Prohibited Contributions, Annual  
9 Contribution Limitations, and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,100  
10 (Aug. 17, 1989).

11           In MUR 5355 (VIEW PAC & Pryce Project), the Commission found that a  
12 significant percentage (75.6%) of contributions to common committees did not  
13 necessarily indicate affiliation. *See* First General Counsel's Report dated April 28, 2004  
14 at 14. The significant correlation between the PACs' contribution patterns in this case  
15 may be similarly explained by Dem. Freshmen PAC's limited focus on supporting the

10044263298

1 same types of candidates already being supported, to a larger extent, by VINE PAC and  
2 DWS PAC. Thus, while the high correlation could be viewed as a possible indication of  
3 affiliation, it is not as persuasive when viewed in the context of all the other factors.

4 **5. Other Affiliation Factors**

5 The available information also does not show that other relevant affiliation factors  
6 are satisfied in this instance. For example, the available information does not show that  
7 any of the PACs provides significant funds or support to each other on an ongoing basis.  
8 *See* 11 C.F.R. § 100.5(g)(4)(ii)(H). In fact, the PACs did not contribute to each other.

9 **6. Conclusion**

10 As a single affiliation factor is not a sufficient basis to find affiliation, the  
11 acknowledged presence of a similar pattern of contributions or contributors is not  
12 decisive in this matter. In prior enforcement matters, the Commission has not found  
13 affiliation even though more than one affiliation factors were present. *See* MUR 5355,  
14 First General Counsel's Report dated April 28, 2004 at 15 and Commission Certification  
15 dated June 8, 2004. (No affiliation where common treasurer and address, and overlap in  
16 contribution patterns); MUR 5121, First General Counsel's Report dated October 3, 2003  
17 at 18 and Commission Certification dated November 19, 2003. (No affiliation where  
18 same person was candidate for his own principal campaign committee and also co-  
19 chairman of another committee's honorary executive committee, and some overlap in  
20 contribution patterns).

21 Accordingly, we recommend that the Commission find no reason to believe  
22 Democratic Dem. Freshmen PAC and James Smith, in his official capacity as treasurer;  
23 Democrats Win Seats PAC and Lawrence Wasserman, in his official capacity as

10044263299

1 treasurer; Victory in November Election PAC and Brian Kelly, in his official capacity as  
2 treasurer; Representative Debbie Wasserman Schultz; and Representative Mike  
3 Thompson violated the Act.

4 **III. RECOMMENDATIONS**

- 5 1. Find no reason to believe Democratic Freshmen PAC and James Smith, in his  
6 official capacity as treasurer, violated the Act.  
7  
8 2. Find no reason to believe Democrats Win Seats PAC and Lawrence Wasserman,  
9 in his official capacity as treasurer violated the Act.  
10  
11 3. Find no reason to believe Victory in November Election PAC and Brian Kelly, in  
12 his official capacity as treasurer, violated the Act.  
13  
14 4. Find no reason to believe Representative Debbie Wasserman Schultz violated the  
15 Act.  
16  
17 5. Find no reason to believe Representative Mike Thompson violated the Act.  
18  
19 6. Approve the attached joint Factual and Legal Analysis.  
20  
21 7. Approve the appropriate letters.  
22

10044263300


8. Close the file.


Thomasenia P. Duncan  
General Counsel

Ann Marie Terzaken  
Associate General Counsel  
for Enforcement

3/19/09  
Date

BY:

  
Stephen Gura  
Deputy Associate General Counsel

  
Mark Shonkwiler  
Assistant General Counsel

  
Kamau Philbert  
Attorney

10044263301