

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

Brabender Cox Mihalke Political, Inc.

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MUR. 5344

**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities.

On January 7, 2003, the Commission found reason to believe that Brabender Cox Mihalke Political, Inc. ("Respondent"), violated 2 U.S.C. § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act").<sup>1</sup>

NOW, THEREFORE, the Commission and the Respondent, 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 Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

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

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

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

<sup>1</sup> The facts relevant to this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Unless specifically stated to the contrary, all citations to FECA, codified at 2 U.S.C. §§ 431 *et seq.*, the Commission's implementing regulations and all statements of applicable law herein, refer to FECA and the Commission's regulations as they existed prior to the effective date of BCRA.

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1. Respondent is a Pennsylvania for-profit corporation with its principal place of business in Pittsburgh, Pennsylvania.
2. John Brabender is the co-founder and President of the Respondent.
3. Santorum 2000 committee ("the Committee") is the principal campaign committee supporting the re-election of Richard J. Santorum to the U.S. Senate in the Pennsylvania General Election held on November 7, 2000.
4. At all times relevant herein, Mark Rogers was an employee of the Committee and an agent authorized to act on the Committee's behalf.
5. Respondent provided political consulting services to the Committee between 1995 and the 2000 General Election. These services, which totaled more than \$6.5 million, included video production, media buys, mailings, newsletters and other political advertisements.
6. In the beginning of the campaign, the Committee agreed to a budget plan that provided approximately \$6 million for the creation and broadcast of television advertisements supporting the re-election of Richard Santorum.
7. Pursuant to the budget plan, the Respondent created television advertisements in coordination with the Committee, some of which expressly advocated the re-election of Richard Santorum to the U.S. Senate in 2000 and all of which were created for the purpose of influencing a Federal election. The Committee authorized the Respondent to purchase media time on the Committee's behalf for the broadcast of these advertisements in various television markets throughout Pennsylvania.

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8. The Committee and Respondent agreed that the Respondent would advance the funds necessary to purchase the media time and invoice the Committee for reimbursement immediately following each purchase.

9. Prior to each media purchase, John Brabender contacted the Committee to obtain the Committee's final approval for the scheduled media buy.

10. During the weeks leading up to the 2000 General Election, Mr. Brabender and the Committee had regular and substantial communications concerning the details of the media purchases. Sometime near the end of October 2002, Mark Rogers instructed Mr. Brabender not to make certain media purchases that had been previously planned for the first week of November. Mr. Brabender failed to communicate this instruction to the individual responsible for carrying out the media purchases, which resulted in an unauthorized purchase of media time totaling \$197,000.

11. The television ads that comprised the \$197,000 media buy were created by the Respondent in coordination with the Committee for the purposes of influencing a Federal election, some of which expressly advocated the re-election of Richard Santorum to the U.S. Senate. The ads were broadcast during the last days before the 2000 General Election in various cities in Pennsylvania.

12. The television ads included disclaimers stating, "Paid for by Santorum 2000."

13. Respondent paid media vendors \$197,000 for the broadcasts from its own corporate funds and invoiced the Committee in the same amount on or about December 15, 2000.

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14. In early 2001, Mr. Rogers contacted Mr. Brabender and reminded him that the Committee gave instructions to cancel the \$197,000 media buy. Mr. Brabender acknowledged that a mistake had been made and agreed not to seek reimbursement from the Committee.

15. Corporations are prohibited from making contributions or expenditures in connection with any election of any candidate for Federal office. See 2 U.S.C. § 441b(a).

16. The financing of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees or their authorized agents shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities by the person making the expenditure but shall not be considered an expenditure by the candidate or his authorized committees unless the dissemination, distribution, or republication of campaign materials is a coordinated general public political communication under 11 C.F.R. 100.23. 11 C.F.R. § 109.1(d)(1).

17. Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such communication, if not authorized by a candidate, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. See 2 U.S.C. § 441d(a)(3).

V. (a) Respondent used corporate funds to make a \$197,000 in-kind contribution to Santorum 2000 committee in violation of 2 U.S.C. § 441b(a).

(b) Respondent paid \$197,000 for communications created for the purposes of influencing a federal election, some of which expressly advocated the re-election of Richard

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Santorum to the U.S. Senate, that did not correctly state the name of the person (or entity) who paid for the communication and did not clearly state that the communication was unauthorized, in violation of 2 U.S.C. § 441d(a)(3).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of thirty thousand dollars (\$30,000), pursuant to 2 U.S.C. § 437g(a)(5)(A). Respondent will cease and desist from violating 2 U.S.C. §§ 441b(a) and 441d(a)(3).

VII. 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.

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

IX. Respondent 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.

X. 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: Rhonda J. Vosdigh by UC 12/8/03  
Rhonda J. Vosdigh  
Associate General Counsel  
for Enforcement  
Date

## FOR THE RESPONDENT:

John Brabender  
John Brabender  
President, Brabender Cox Mihalke  
Political, Inc.  
Date

11/18/03  
Date

24-04-40-42