

FEDERAL ELECTION COMMISSION

In the matter of : Clarissa Peterson, Treasurer
Nader for President 2004
Theresa Amato
Citizen Works

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COMMISSION
OFFICE OF GENERAL
COUNSEL

COMPLAINT

1. Citizens for Responsibility and Ethics in Washington hereby brings this complaint before the Federal Election Commission seeking an immediate FEC investigation and enforcement action against Nader for President 2004 and Citizen Works for direct and serious violations of federal campaign finance law.

Complainant

2. Citizens for Responsibility and Ethics in Washington is a non-profit, non-partisan organization dedicated to ensuring accountability in public officials.

Respondents

3. Nader for President 2004 is the principal campaign committee for the effort to elect Ralph Nader to the office of President of the United States. The committee is registered with the Federal Election Commission ("FEC"). Clarissa Peterson is the Treasurer of Nader for President 2004 and Theresa Amato is the Campaign Manager of Nader for President 2004.

4. Citizen Works is a non-profit corporation organized under section 501(c)(3) of the Internal Revenue Code. According to its web site, Citizen Works was founded by Ralph Nader in April 2001 to "advance justice by strengthening citizen participation in power."
www.citizenworks.org/admin/about.php.

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Factual Allegations

5. Federal campaign law defines "contribution" to include "any gift . . . or anything of value . . ." 2 U.S.C. §431(8)(A)(i). FEC regulations further define "contribution":

For purposes of this section, the term anything of value includes all in-kind contributions. Unless specifically exempted under 11 CFR part 100, subpart C, the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution.

11 C.F.R. 100.52(d)(1).

6. FEC regulations also state that "[f]or the purposes of paragraph (d)(1) of this section, usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. . . ." 11 C.F.R. 100.52(d)(2).

7. Citizen Works is currently subletting office space to Nader for President 2004. James V. Grimaldi, *Nader Had Campaign Office at Charity; Situation Raises Ethical Questions*, The Washington Post, June 13, 2004 (attached as Exhibit A). The office space Mr. Nader's campaign is using has a fair market value of approximately \$12,500 per month, but the Nader campaign paid only \$6,7000 per month from November 2003 through February 2004. Id.

8. In addition, Citizen Works and the campaign share a common receptionist; a cell phone telephone number for Citizen Works spokesman Lee Drutman is the same phone number used by a media staffer to Mr. Nader's 2000 presidential campaign; and a telephone number listed as belonging to Educational Allies, a sub-tenant of Citizen Works, has been answered as if belonging to the Nader campaign. Id.

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9. To avoid receiving prohibited corporate contributions, Nader for President 2004 should have reimbursed Citizen Works within a commercially reasonable time for the normal and usual charge of the rental space in the open market. 11 C.F.R. §114.9(d); Advisory Opinion 2000-20. Similarly, Nader for President 2004 also should have reimbursed Citizen Works, within a commercially reasonable time, the normal and usual rental charge for use of Citizen Works' telephones, computers, office furniture and other services. 11 C.F.R. §114.9(d).

10. On information and belief, neither Citizen Works nor Nader for President 2004 reported the contribution of subsidized rent nor any other goods or services provided by Citizen Works to the campaign to the FEC. Federal law requires candidates and their authorized committees in a federal election to report to the FEC, according to a defined schedule, all contributions made to candidates and their authorized committees in a federal election. 2 U.S.C. § 434(a)-(b).

COUNT I

11. By subsidizing the rent of Nader for President 2004, Citizen Works violated the prohibition on corporate contributions to federal candidates. 2 U.S.C. § 441b(a).

12. Contrary to the requirements set forth in FEC regulations, Nader for President 2004 expenses do not conform to the usual and normal charge the committee would have incurred for use of the space or administrative services elsewhere and they were not reimbursed in a commercially reasonable time. 11 C.F.R. §114.9(c)and (d)(4).

WHEREFORE, Citizens for Responsibility and Ethics in Washington requests that the Federal Election Commission conduct an investigation into these allegations, declare the respondents to have violated the federal campaign finance laws, impose sanctions appropriate to these violations and take such further action as may be appropriate.



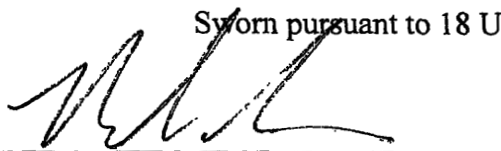
Melanie Sloan, Executive Director
Citizens for Responsibility and Ethics in
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2nd Floor
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Verification

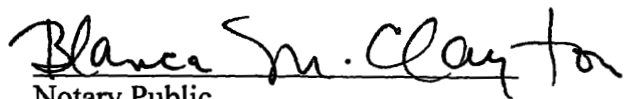
Citizens for Responsibility and Ethics in Washington, acting through Melanie Sloan, hereby verifies that the statements made in the attached Complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.



Melanie Sloan

Sworn to and subscribed before me this 24th day of June, 2004.



Notary Public

Blanca M. Clayton
Notary Public, District of Columbia
My Commission Expires 04-30-2007

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EXHIBIT A

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2004 WL 82762398

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Sunday, June 13, 2004

A Section

Nader Had Campaign Office at Charity; Situation Raises Ethical Questions

James V. Grimaldi
Washington Post Staff Writer

Since October, **Ralph Nader** has run his campaign for president out of the same downtown Washington offices that through April housed a public charity he created -- an overlap that campaign finance specialists said could run afoul of federal laws. Tax law explicitly forbids public charities from aiding political campaigns. Violations can result in a charity losing its tax-exempt status. In addition, campaign law requires candidates to account for all contributions -- including shared office space and resources, down to the use of copying machines, receptionists and telephones.

Records show many links between Nader's campaign and the charity Citizen Works. For example, the charity's listed president, Theresa Amato, is also Nader's campaign manager. The campaign said in an e-mail to The Washington Post that Amato resigned from the charity in 2003. But in the charity's most recent corporate filing with the District, in January, Amato listed herself as the charity's president and registered agent.

The office suite housing the campaign, the charity and other sub-tenants had a common receptionist for greeting visitors.

And Federal Election Commission records show the campaign paid rent to Citizen Works and Citizen Works' landlord. Nader said the campaign has taken over the charity's lease on its coveted location on 16th Street NW.

"There is nothing, no wrongdoing here," Nader said Friday.

The shared-space arrangement was vetted by an outside lawyer and is legal, Nader said, because his campaign has paid Citizen Works fair market value to rent office space and buy furniture.

"You can search until kingdom come," Nader said. "You'll find no cross-subsidies here."

In an e-mail, Citizen Works said it complied with the law. "Citizen Works has

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provided no assistance, direct or indirect, to the Nader for President Campaign," it said.

Campaign finance specialists criticized the arrangement for its appearance of commingling political and nonprofit activities.

"Candidates should not be running a campaign for public office out of a nonprofit organization," said campaign-finance expert and attorney Fred Wertheimer. "It makes a lot more sense to keep them separate and apart to avoid any sense of appearance of interrelationship or problem of intermingling."

Jan W. Baran, a veteran campaign finance lawyer who represented televangelist Pat Robertson when his presidential campaign was audited by the FEC, said Nader's arrangement was unusual for a presidential candidate. "Even Pat Robertson didn't have his campaign organization at the Christian Broadcasting Network," Baran said. "His campaign headquarters were down the street in Chesapeake."

While some areas of campaign finance law have been open to different interpretations, experts say the line between public charities and political campaigns is a bright one. Prominent politicians have been tripped up by coming too close to it. Robertson was ultimately cleared after an intensive investigation over whether charities had any role in his campaign. Then-House Speaker Newt Gingrich was reprimanded and fined by the House in 1997 after a special counsel found that he had used a nonprofit college course and a charity to further his political purposes.

On June 10, the Internal Revenue Service sent letters to political parties warning them that charities "are prohibited from directly or indirectly participating or intervening in any political campaign."

Some tax lawyers said that Nader's arrangement could pass legal muster so long as there is a detailed accounting and a rigorous separation of political and nonprofit finances

San Francisco tax attorney Greg Colvin said that both tax and campaign-finance laws require seemingly minor office tasks -- such as using a fax or copying machine or a common kitchen, answering the phone or sorting mail -- to be delineated between the political campaign and the charity. "It should be done on an arms-length basis with a written agreement," Colvin said.

'Tight' Rental Market

Others suggested the arrangement between the campaign and the charity crossed the line merely by providing office space that the Nader campaign could not have otherwise obtained.

"Because we cannot foresee a scenario where it [the office space] would have been available to the Bush or Kerry campaigns, it is the availability of space not on the open market that leads to the only conclusion that Citizen Works is providing support for the Nader campaign," said Frances R. Hill, a noted specialist who teaches tax and campaign finance law at the University of Miami School of Law.

Nader said it was more convenient to rent from Citizen Works in an "extremely

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tight" rental market. "It can take a month-and-a-half to two months to find the right space with the right air transaction [ventilation system], with the right access to the building, the right location," he said. "That's Washington, D.C."

He refused to provide documents accounting for the campaign's use of office space and resources while it was co-located with Citizen Works. "If that's released to you, I'll have to release them to everyone," he said. "All of this is a matter between the campaign and the FEC. I'm not going to start saying we'll give The Post this, and then we'll have to give the L.A. Times that."

Nader campaign press secretary Kevin Zeese later said the campaign had signed two written agreements with the charity spelling out a sublease and a subsequent assignment of the lease, which were both required by the landlord.

Nader could not answer specific questions about the arrangement. He referred inquiries to Amato, the manager of both his 2000 and 2004 presidential bids. While Nader was available for at least a half-dozen interviews last week, repeated calls to Amato were not returned. Zeese said that she was too busy to talk to a reporter.

Nader emphasized that Amato made sure that all tax and election laws were followed.

"There's no bigger stickler than Theresa Amato," Nader said. "She's an attorney."

Zeese e-mailed a response to questions that he said was written by Nader and Amato. The response states that the campaign had its own employees, receptionist, office manager, fax, copier, phone and high-speed Internet lines.

"We shared no employees or a receptionist," the response states. "We bought our own coffee and used the coffee maker in Theresa's office. We admit -- we shared the toilets in the hall -- outside the suite." Nader said the staffer who sat at the receptionist's station by the door worked for Citizen Works, and the campaign receptionist sat in the back of the office and answered the phone and picked up mail.

Nader said Citizen Works, which is experiencing fundraising problems, is moving to a smaller office and shrinking to a single staff member by the end of this year. Nader and Amato founded Citizen Works, a nonprofit educational group set up in April 2001 to increase civic participation and serve as a corporate watchdog. Nader, the legendary consumer activist, has founded hundreds of citizen groups.

FEC reports show that Nader's 2000 campaign organization also used Citizen Works facilities, paying the charity about \$69,000 in 2001, 2002 and 2003. Also in December 2003, the campaign donated about \$5,800 to Citizen Works.

'I Think This Is Wrong'

Two foundations -- one in Chicago and one in Bellingham, Wash. -- that donated to Citizen Works in recent years were unaware of the arrangement between the campaign and Citizen Works. Anne K. Smith-Holmes, executive director of the Chicago-based Benjamin J. Rosenthal Foundation, which gave \$2,500 in 2002, said she was concerned about it.

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"It doesn't sound like it would be something we would have supported," Smith-Holmes said. "We do not get involved in political situations."

Legal specialists in nonprofit tax and campaign finance law also questioned the arrangement.

"I think this is wrong," said Hill, the tax and campaign finance law expert. "This suggests that Citizen Works is supporting Nader for president. It can't do this. It isn't just the rent. It is the things like the copiers, the telephones, the light bill, the heating, the furniture, the computers. At the hyper-technical level, all those questions matter."

The FEC can be expected to review these issues when it audits the Nader campaign, said Larry Noble, a former FEC general counsel who is executive director of the Center for Responsive Politics. All campaigns that receive federal financing are audited.

"One of the things the FEC is going to have to unravel is whether or not Citizen Works subsidized the campaign," said Noble, who worked for a Nader group in the 1970s. The arrangement suggests a closeness that makes it "hard to tell where the campaign begins and the nonprofit organization ends," he said. "It clearly presents problems -- tax problems and campaign finance problems."

There are other indications of overlap between Nader's campaign and the charitable groups operating in the same office. The cell phone number for Citizen Works spokesman Lee Drutman is the same phone number used by a media staffer for Nader's campaign in 2000. A call to a telephone number that previously was listed for Education Allies, a subtenant of Citizen Works that is still listed in the building directory, was answered last week with a cheery "Nader for president."

Nader said his campaign staff and Citizen Works are strict in avoiding overlap.

"Lee Drutman worked for Citizen Works, period," Nader said. "That could be a phone screw-up, which often happens when you have subleases."

Ban on Political Activity

Stanley M. Brand, a District lawyer who specializes in campaign-finance and political law, said, "The FEC wants bright-line distinctions between campaign-related and charitable activities. And so does the IRS. A 501(c)(3) [public charity] is not supposed to underwrite or engage in political activity. If it is lending or forgiving expenses for use of its facilities, it may be creating its own problems with the IRS."

The issue has also stirred controversy among Nader-aligned groups, where the arrangement has been common knowledge for months. Citizen Works board member Russell Mokhiber unexpectedly resigned a few months ago, and one person familiar with the situation who works for a consumer group and who declined to be identified for fear of retaliation said the campaign's arrangement was a factor. Mokhiber, whose Corporate Crime Reporter newsletter advocates increased corporate transparency and accountability, declined to comment last week. District records indicate Mokhiber withdrew from the group in December.

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Citizen Works spokesman Drutman said Amato resigned as executive director of Citizen Works to become manager of Nader's exploratory committee, which was formed in October. Drutman said Amato now "has no official capacity" with Citizen Works. Amato said in a statement faxed Thursday to The Post: "I do not speak for Citizen Works and I have not worked for Citizen Works since 2003. Questions about Citizen Works are appropriately directed to Citizen Works."

However, the group's latest annual report filed with the District, dated Jan. 13, 2004, states that Amato is the president and the registered agent for Citizen Works. She signed the corporate filing.

In the subsequent e-mailed response sent by Zeese, the campaign said Amato "took an unpaid leave of absence from Citizen Works in October and was terminated as an employee at the end of December. She resigned as president of the Board effective February 22." Nader said she remains on the charity's board.

The Nader campaign has reported paying about \$65,000 in rent for its Washington office space beginning in October. The offices take up about 5,000 square feet in an area where the market rate is about \$30 per square foot annually, real estate brokers said. That would mean that the entire space would rent for about \$12,500 a month. Nader's campaign paid about \$6,700 a month for rent for November through February, FEC reports state. Then, on April 6, the campaign wrote two checks for "rent and occupancy" totaling \$26,000.

Zeese, the campaign spokesman, said the campaign paid only a portion of the rent during the early months because it was in an exploratory stage and did not need all the space. "We gradually were taking over the office as we grew," he said. "We were tiny. We were growing."

The campaign has also changed how it made out rent checks over time, according to FEC reports. In November, December, February and March, FEC reports say that rent checks were made to Citizen Works/Resources Conservation Center. In October and January, Nader's expenditure filings state, the checks were made out to Resources Conservation Center, the building's owner and a limited liability corporation owned by another charity. Federal election law requires the filings to report precisely to whom disbursements are made.

In October and March, the campaign made two payments amounting to about \$6,000 to Citizen Works for "furniture & equipment."

Citizen Works's annual report lists its activities as holding news conferences, helping grass-roots groups, producing a newsletter and developing an e-mail list. It raised \$181,000 in 2001, but ran a \$15,000 deficit. The next year that deficit was recouped when the charity received a \$21,000 "subtenant" payment from the Nader 2000 presidential campaign and about \$580,000 in contributions, according to the tax return.

Coveted Location

The connections between Nader's political activities and the charity go back to the creation of Citizen Works. As late as 2003, Nader's 2000 campaign organization rented space from Citizen Works as the campaign closed out its books. On March 1, 2002, Amato received \$3,225 from the campaign for her services as a consultant,

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FEC reports state. On the same day, the campaign wrote a rent check to Citizen Works for \$4,000. At the time, Amato was the campaign's treasurer and Citizen Works's executive director and president, records show.

The offices in question are in a building north of Scott Circle favored by nonprofit groups such as the National Wildlife Federation. The Nader campaign's ability to use the offices is by itself an achievement because it is a coveted location, popular for its energy-saving features and one-acre park dotted with rosebushes.

A visit to the building reveals a lobby directory and hallway signs stating that Citizen Works is in Suite 225. The Nader campaign is not listed, and its presence is not commonly known; an employee in the building said her co-workers were surprised one day to see Nader in the elevator. Asked for the Nader campaign, a security guard directed visitors to Suite 225.

Inside the office suite, under a large photograph of Nader holding a protest sign, Nader took time from a strategy meeting to speak with a reporter recently. Asked about the rental arrangements, Nader said all rules were followed. "There's no story," Nader said.

Post researchers Alice Crites and Madonna A. Lebling contributed to this report.

----- INDEX REFERENCES -----

NEWS SUBJECT: (Political/General News (GCAT); Internal Revenue Service (USA) (GIRS); Page-One Story (NPAG); Politics/International Relations (GPIR); Domestic Politics (GPOL); Government Bodies (GVBOD); Executive Branch (GVEXE); Treasury Department (GVTRE); Content Types (NCAT))

REGION: (United States (USA); North American Countries (NAMZ))

Language: EN

OTHER INDEXING: NAT

EDITION: FINAL

Word Count: 2513

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