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December 23, 2004

**BY HAND DELIVERY**

Mr. Lawrence H. Norton  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**Re: MUR 5586**

Dear Mr. Norton:

On behalf of Kerry-Edwards 2004, Inc., Robert Farmer, as Treasurer, and Congressman Kendrick Meek<sup>1</sup> (collectively, "Respondents"), this letter is submitted in response to the complaint filed by the Republican Party of Florida (the "Complaint") and subsequently labeled MUR no. 5586.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation. *See* 11 C.F.R. §§ 111.4(a), (d) (2004). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. *See* Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

<sup>1</sup> There does not appear to be any allegation specific to Congressman Meek, thus we assume that he was named as a Respondent in his capacity as Florida chair of the Kerry-Edwards campaign only. Since the Committee and its Treasurer are also named, there does not appear to be any rationale for Congressman Meek to remain a respondent at all in this matter. Therefore he should be dismissed immediately.

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The Republican Party of Florida alleges that the document submitted in its Complaint "indicates serious violations" of the Federal Election Campaign Act, as amended (the "Act"). Complaint at 1. Although Respondents are unaware of any individual signing the document on behalf of the Kerry-Edwards campaign, there are no facts in the document which, if proven true, would constitute a violation by the Kerry-Edwards campaign or any of its agents. For this reason, the Complaint should be immediately dismissed.

First, the Republican Party of Florida attempts to build a case for illegal coordination by concluding that the first page of the document "demonstrates that the Democratic Party, Democratic candidates and non-federal entities are coordinating their efforts, plans, strategies and spending." Complaint at 1-2. However, it does not explain why the gathering of individuals from these organizations to discuss the listed goals -- identifying and turning out voters, tracking volunteers, training and recruiting precinct captains, and winning the state -- would necessarily be illegal, given what is permissible with respect to a restricted class, or through exempt activity, or through volunteer activity in general.

Next, the Republican Party of Florida refers to "paid and volunteer phone calls and paid mail (page 4), paid early voter motivation efforts that include mail and phone (page 5) and absentee programs (pages 7-8)," as well as a "Universes & Call Program," but provides no explanation as to why there would be reason to believe that the Florida Democratic Party conducted these activities in an illegal manner. Complaint at 2. Depending on the content of the message and the manner in which it is conveyed, there are a variety of different rules that apply to these activities when conducted by a state party. Party phone banks in particular have several different partial or complete exemptions from the coordination regulations, even when the message includes a reference to a clearly identified candidate. *See* 11 C.F.R. §§ 100.89 and 106.8(a) and (b). Party committees may also, of course, use their 441a(d) allowance for candidate-specific public communications that are not otherwise exempt. There is no reason for Respondents to believe that, in paying for these activities, the Florida Democratic Party was not familiar with, and did not comply with, the applicable regulations. Nor does there appear to be sufficient grounds for the Commission to embark on an investigation into the method of payment and the message conveyed in every phone bank or direct mailing conducted by the Florida

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Democratic Party, as much as the Republican Party of Florida might desire to see its rival mired in such an endeavor for the next few years.

The Republican Party of Florida then shifts its allegations in the Complaint to several unsuccessful attempts to identify a soft money violation. First, it focuses on a statement regarding the Florida Democratic Party's ability to use 100% non-federal funds to pay for media that urges people to vote, but does not reference a party or candidate. Complaint at 2. That statement is true under existing law. There is nothing illegal about discussing that fact, *see McConnell v. Federal Election Comm'n*, 540 U.S. 93, 160 (2003). Moreover, Respondents are aware of no effort to raise non-federal funds for the Florida Democratic Party in violation of 2 U.S.C. § 441i(e) or any other regulatory or statutory provision.

Second, the Republican Party of Florida notes that the document is "silent" as to the source of payment for a number of the Florida Democratic Party's tasks, as if this is evidence of wrongdoing. Complaint at 2. There is no requirement that a non-public document of a state party contain the level of detail that one finds on an FEC report.

Third, the Republican Party of Florida tries to make the case for a soft money violation by confusing a Democratic lawyer in Florida with Steve Rosenthal of ACT. This allegation is particularly frivolous, given that it seems highly unlikely that the Republican Party of Florida would be unaware of this lawyer's true identity.

Equally unconvincing is the Republican Party of Florida's attempt to provide evidence of prohibited soft money spending by manipulating FEC data. Taking a snapshot of Florida party spending in August, and then comparing it to the pre-general reports for the Ohio state parties, is not particularly persuasive. Complaint at 3. Even less compelling is the follow-up question: "Can the Florida Democratic Party really maintain that the Kerry-Edwards campaign and Democratic National Committee are not involved in its field plan to the extent permissible by law?" *Id.* Of course the Kerry-Edwards campaign was involved in the Florida Democratic Party's field plan "to the extent permissible by law."

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For the reasons stated above, the Commission should find there is no reason to believe that Respondents violated the Act or the Commission's regulations and should dismiss the Complaint.

Very truly yours,



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Marc E. Elias  
Counsel to Kerry-Edwards 2004, Inc. and  
Robert Farmer, as Treasurer, and  
Congressman Kendrick Meek

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