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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of )

Progress for America Voter Fund )

MUR 5546

**SENSITIVE**

GENERAL COUNSEL'S REPORT # 2

**I. ACTIONS RECOMMENDED**

(1) Take no further action with respect to allegations that Progress for America Voter Fund made coordinated expenditures resulting in excessive in-kind contributions to Bush-Cheney '04, Inc. and the Republican National Committee ("RNC"); (2) take no further action and close the file with respect to all Respondents.<sup>1</sup>

**II. INTRODUCTION**

The Commission previously found reason to believe that Progress for America Voter Fund ("PFA-VF") violated 2 U.S.C. § 441a(a)(1)(A) by making illegal in-kind coordinated contributions to Bush-Cheney '04, Inc.. See Factual and Legal Analysis ("F&LA") for PFA-VF. The investigation revealed no credible evidence of coordination in this matter. Accordingly, we recommend that the Commission take no further action with respect to allegations that PFA-VF made in-kind contributions to Bush-Cheney '04, Inc. and the RNC, and close the file as to all Respondents.

<sup>1</sup> On June 21, 2005, the Commission found no reason to believe The Leadership Forum, Susan B Hirschmann, as President, L. William Paxon, as Vice President and Barbara Bonfiglio, as Treasurer violated any provision of the Act by making prohibited or excessive in-kind contributions in the form of coordinated expenditures to Bush-Cheney '04 or the Republican National Committee, found reason to believe Progress for America Voter Fund violated 2 U.S.C. § 441a(a)(1)(A); and took no action at this time as to Progress for America, Inc. or PFA-VF President Brian McCabe, PFA-VF Treasurer Mary Anne Carter, and PFA-VF Secretary Ralph R. Brown, Bush-Cheney '04, Inc., and David Herndon, in his official capacity as Treasurer, President George W. Bush, Vice President Richard B. Cheney, The Republican National Committee and Mike Retzer, in his official capacity as Treasurer.

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1 **III. ACTIVITIES BY THE COMMON VENDORS DID NOT**  
2 **RESULT IN COORDINATION BETWEEN PFA-VF**  
3 **AND BUSH-CHENEY '04, INC. OR THE RNC**  
4

5 PFA-VF is an unincorporated entity organized under Section 527 of the Internal Revenue  
6 Code and filed its Notice of 527 Status with the Internal Revenue Service on May 27, 2004.  
7 PFA-VF has not registered as a political committee with the Commission.<sup>2</sup> The Commission  
8 previously found reason to believe that PFA-VF made excessive contributions in the form of  
9 coordinated expenditures to Bush-Cheney '04, Inc. and the RNC. The determination to  
10 investigate coordination with Bush-Cheney '04, Inc. and the RNC was based on the  
11 Complainant's assertion that PFA-VF may have coordinated its expenditures by utilizing the  
12 services of a direct mail and phone bank specialist named Tom Synhorst whose company,  
13 Feather, Larson & Synhorst, was a major vendor to both Bush-Cheney '04 and the RNC.  
14 Following receipt of the Complaint, PFA-VF denied the coordination allegations, but failed to  
15 provide sufficient information to resolve the questions concerning the roles of various vendors  
16 and Mr. Synhorst. See Response to Complaint of PFA-VF. Our investigation revealed  
17 substantial information about the roles of Mr. Synhorst and the various vendors involved, but has  
18 produced no credible evidence that any coordination occurred.

19 Tom Synhorst, a direct-mail and phone-bank specialist, was a key strategic adviser to  
20 PFA-VF and was also partner in FLS-DCI, a firm that had major contracts with both  
21 Bush-Cheney '04, Inc. and the RNC. Publicly available information reveals that Bush-Cheney  
22 '04, Inc. and the RNC made several million dollars in disbursements to Feather, Larson &

<sup>2</sup> PFA-VF is also a Respondent in MUR 5487, in which the Commission has found reason to believe PFA-VF violated 2 U.S.C. §§ 433, 434, 441a(f), and 441b(a) by failing to register as a political committee with the Commission, by failing to report contributions and expenditures, by knowingly accepting contributions in excess of \$5,000, and by knowingly accepting corporate and/or union contributions

1 Synhorst (FLS) and FLS-DCI during 2004.<sup>3</sup> Public information also indicates that the RNC and  
2 PFA-VF made significant disbursements to DCI Group, a limited liability corporation registered  
3 in the State of Arizona under Synhorst's name. The fact that DCI Group was a vendor for the  
4 RNC and PFA-VF, in conjunction with the lack of a specific denial regarding alleged  
5 coordinated communications, raised the possibility that some of PFA-VF's communications  
6 could have been coordinated with the RNC based on the "common vendor" conduct standard.  
7 See 11 C.F.R. § 109.21(d)(4) (2004).

8 Three elements must be present for a commercial vendor to be defined as a "common  
9 vendor" under 11 C.F.R. § 109.21(d)(4). First, the person paying for the communication must  
10 have employed or contracted with a commercial vendor to create, produce, or distribute the  
11 communication. 11 C.F.R. § 109.21(d)(4)(i). DCI Group, LLC is a lobby and public relations  
12 firm founded by Thomas Synhorst and engaged in the regular business of media consulting and  
13 advertising production; thus, it qualifies as a commercial vendor. 11 C.F.R. § 116.1(c).

14 Second, that commercial vendor must have provided any of certain enumerated services  
15 to the clearly identified candidate or his authorized committee during the current election cycle.  
16 11 C.F.R. § 109.21(d)(4)(ii). Given the publicly advertised nature of their services, DCI Group  
17 appears to have provided the type of services to Bush-Cheney '04, including development of  
18 media strategies, developing the content of public communications, producing public  
19 communications, identifying voters or developing voter lists, mailing lists or donor lists, and  
20 media consulting, that would qualify under the common vendor regulations. 11 C.F.R.  
21 §§ 109.21(d)(4)(ii)(A), (E), (F), (G) and (I).

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<sup>3</sup> Disclosure reports indicate that the RNC made disbursements both to Feather, Larson & Synhorst and also to FLS-DCI. It appears that these are two names for the same entity.

1 Finally, that commercial vendor must have used or conveyed to the person paying for the  
2 communication:

3 (A) Information about the clearly identified candidate's campaign plans, projects,  
4 activities or needs . . . and that information is material to the creation, production, or  
5 distribution of the communication; or (B) Information used previously by the commercial  
6 vendor in providing services to the candidate who is clearly identified in the  
7 communication, or his or her authorized committee, . . . , or an agent of the foregoing, and  
8 that information is material to the creation, production, or distribution of the  
9 communication.

10  
11 11 C.F.R. § 109.21(d)(4)(iii)(A). The applicable rules defining common vendors emphasize  
12 substance over form; where entities such as FLS-DCI and DCI Group appear to be closely  
13 related, including possible overlapping personnel (such as Mr. Synhorst), their particular  
14 organizational form will not prevent an investigation of whether the entities used information in  
15 the same manner as a common vendor. 11 C.F.R. § 109.21(d)(4).

16 In explaining its regulation, the Commission explicitly addressed situations such as  
17 Mr. Synhorst's apparent simultaneous involvement with the two vendors and their respective  
18 work for PFA-VF and the RNC in which "a commercial vendor may qualify as a common  
19 vendor under 11 C.F.R. § 109.21(d)(4) even after reorganizing or shifting personnel."  
20 Explanation & Justification ("E&J"), 68 Fed. Reg. 421, 435 (Jan. 3, 2003). The Commission  
21 stated that the regulation "focus[es] on the use or conveyance of information used by a vendor,  
22 including its owners, officers, and employees, in providing services to a candidate [or  
23 committee], rather than the particular structure of the vendor." *Id.* This would seem to describe  
24 Mr. Synhorst's simultaneous involvement with FLS-DCI and its work for Bush-Cheney '04, as  
25 well as his involvement with DCI Group and their work for PFA-VF and the RNC. *See* 11  
26 C.F.R. § 109.21(d)(4)(iii). Nevertheless, while it initially appeared that there may have been  
27 coordination between Bush-Cheney '04, Inc. and the RNC on the one hand and PFA-VF on the

1 other hand with DCI Group and/or FLS-DCI as the common vendor(s), the facts do not support  
2 such a determination.

3 First, Mr. Synhorst's resignation as an officer of FLS-DCI became effective on June 30,  
4 2004. *See* Affidavit of Thomas J. Synhorst, Paragraph 4. Although Mr. Synhorst was paid as an  
5 employee through December 31, 2004, he ceased participating in any client matters designing or  
6 implementing telemarketing or other services for any clients on June 18, 2004. Therefore, Mr.  
7 Synhorst was not a "common vendor" during the relevant time period.

8 Second, Mr. Synhorst had no direct involvement in PFA-VF's ad campaign. According  
9 to his Affidavit, FLS-DCI set up internal fire walls by assigning specific partners and employees  
10 to specific categories of clients such as federal candidates or political party committees or  
11 corporate and state/local clients. *See Id*, Paragraph 5. According to Mr. Synhorst, "the structure  
12 was designed to prevent the partners and employees assigned to federal clients such as Bush-  
13 Cheney '04, Inc. or the RNC from using information about those clients in connection with  
14 services provided to other clients or from conveying information about those clients to the  
15 owners and employees who were assigned to other clients in violation of FECA and the  
16 Commission's regulations." *Id*. Mr. Synhorst was in "the silo established to service state/local  
17 candidates and, in some instances, corporate clients engaged in corporate branding and  
18 legislative advocacy." *Id* at Paragraph 6. Beginning in 2003, Mr. Synhorst was not "involved in  
19 the silo that created the content timing, placement distribution or frequency of the telemarketing  
20 programs for any federal candidates or political party committees." *Id*. These "silos" also  
21 appear to have prevented the transmittal of information by other officers or employees from  
22 Bush-Cheney' 04, Inc. and the RNC to and from PFA-VF.

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1 Finally, based on a review of PFA-VF and FLS-DCI documents, there is no evidence that  
2 Mr. Synhorst had access to or transmitted to PFA-VF information about Bush-Cheney '04, Inc.  
3 or the RNC's plans, projects, activities, or needs that was material to the creation of any PFA-VF  
4 ads. Both his sworn statement and our review of documents revealed no evidence that any such  
5 transmittals occurred. While a few documents revealed instances where Mr. Synhorst expressed  
6 general knowledge of PFA-VF'S activities, none of these instances is connected to any PFA-VF  
7 communication.

8 In summary, our investigation reveals that Mr. Synhorst lacked relevant information  
9 about Bush-Cheney '04, Inc. or the RNC's plans, was not directly involved in PFA-VF's ad  
10 campaign, and does not appear to have conveyed any material information to PFA-VF regarding  
11 Bush-Cheney '04, Inc. or the RNC's plans, projects, activities, or needs. Further, it does not  
12 appear that any officer or employee of FLS-DCI or DCI Group provided information regarding  
13 Bush-Cheney '04, Inc. or the RNC's plans, projects, activities or needs to PFA-VF. Thus, the  
14 "common vendor" conduct standard is not satisfied, *see* 11 C.F.R. § 109.21(d)(5) (2004), and we  
15 cannot conclude that PFA-VF made coordinated communications with Bush-Cheney '04, Inc. or  
16 the RNC.

17 Accordingly, we recommend that the Commission take no further action with respect to  
18 PFA-VF and Bush-Cheney '04, Inc. or the RNC in connection with allegations that they made  
19 and received, respectively, coordinated in-kind contributions. In addition, because these three  
20 entities were the only Respondents with which there appeared to be merit to an investigation, we  
21 also recommend the Commission take no further action and close the file with respect to all  
22 Respondents in this case.

IV. RECOMMENDATIONS<sup>4</sup>

1. Take no further action with respect to allegations that PFA-VF made coordinated expenditures, resulting in excessive in-kind contributions to the Republican National Committee and Bob Kjellander, in his official capacity as Treasurer;

2. Take no further action with respect to allegations that PFA-VF made coordinated expenditures, resulting in excessive in-kind contributions to Bush-Cheney '04, Inc. and Salvatore Purpura, in his official capacity as Treasurer;

3. Take no further action with respect to allegations that the Republican National Committee and Bob Kjellander, in his official capacity as Treasurer, knowingly accepted excessive in-kind contributions in the form of coordinated expenditures.

4. Take no further action with respect to allegations that Bush-Cheney '04, Inc. and Salvatore Purpura, in his official capacity as Treasurer, knowingly accepted excessive in-kind contributions in the form of coordinated expenditures.

5. Approve the appropriate letters;

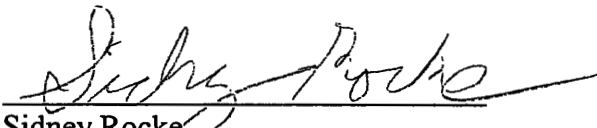
6. Take no further action and close the file as to all Respondents.


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General Counsel

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12/22/06  
Date

BY:

  
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Attorney

<sup>4</sup> At the time of the Complaint, David Herndon and Mike Retzer were the Treasurers of Bush-Cheney '04, Inc and the RNC. respectively As is customary, these recommendations are made as to the current Treasurers