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May 20, 2004

Lawrence Norton, Esq.
General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2004 MAY 25 A 11: 09

Re: MUR 5440 and Respondent Mr. Peter B. Lewis

Dear Mr. Norton:

On behalf of Mr. Peter B. Lewis, this letter is submitted in response to a complaint filed with the Federal Election Commission (the "Commission" or "FEC") by Bush-Cheney '04, Inc. ("Bush/Cheney"). For the reasons set forth below, the Commission should dismiss this blatant attempt to deprive donors of their basic First Amendment rights, should find no reason to believe that Mr. Lewis violated the Federal Election Campaign Act of 1971, as amended, ("FECA") or the Commission's regulations, and should close this matter as it pertains to Mr. Lewis.

- 1. Individuals may make unlimited contributions to joint fundraising committees whose participants include a non-Federal 527 political organization.**

There is no limit on the amount that an individual may donate to a non-Federal 527 political organization or the non-Federal account of a Federal political committee. There is also no limit on the amount that an individual may donate to a joint fundraising committee if at least one of the participants can accept such a donation from the donor.

Victory Campaign 2004 ("VC2004") is a joint fundraising committee registered with the FEC and is acting in full compliance with the Commission's joint fundraising regulations. America Coming Together ("ACT"), a Federal political committee with federal and non-federal accounts, and The Media Fund ("TMF"), a 527 political organization registered with the Internal Revenue Service are the two participants in the joint fundraising effort.¹ The Commission's

¹ The Media Fund is not a Federal political committee and has not triggered the thresholds for becoming a Federal political committee.

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regulations specifically provide that political committees, such as ACT, "may engage in joint fundraising ... with unregistered committees or organizations," such as TMF. 11 C.F.R. §102.17(a)(1)(i). VC 2004 has no other purpose other than to serve as a joint fundraising committee for ACT and TMF.

Thus, Mr. Lewis was not limited under FECA or IRS regulations on the amount that he could contribute to a non-Federal 527 political organization, e.g., TMF or ACT's non-Federal account, or on the amount that he could contribute to a joint fundraising committee whose participants include a 527 political organization that may accept donations in unlimited amounts from individuals. Accordingly, all donations made by Mr. Lewis and at issue here are completely and unquestionably permissible.

2. The donors' beliefs have absolutely no bearing on whether a violation has occurred here.

The theory advanced in the complaint is that the donors to TMF, ACT and VC2004 somehow knew that Federal contribution limits applied to their donations and that such donations exceeded the contribution limits. This is simply untrue, and the Complainants provide no information in support of their outlandish theory.² Donors to these organizations were provided a memorandum explaining the legal status and organization of TMF and advising them that there is no limit on their donations to VC2004 and TMF. A copy of this memorandum is attached. The donors relied on this and donated in the correct belief that their donations are permissible.

More specifically, even suggesting that Mr. Lewis made statements indicating a belief that his donations were subject to the Federal limits is creating a fiction without an iota of support. The newspaper article cited by Complainants at page 18 of the complaint contains no statements at all by Mr. Lewis, let alone any that could be construed – even mistakenly – as indicative of his beliefs. That article clearly states "Lewis . . . could not be reached for comment", yet it is used disingenuously as support for Complainants' theories.

Moreover, Complainants, in their rendering, suggest that the donors were motivated by a desire to change the policies of the current Administration. See Complaint at pp. 19 and 37. Certainly, there is no law or precedent whereby the Commission may accept this as the legal standard for determining whether a contribution is permissible. If there were, than nearly any activity aimed at funding a policy change would be reason for applying the provisions of FECA – an admittedly absurd result. In short, the Complainants have spun a scenario, without support, to attribute political beliefs and desires to donors, when such subjective musings have no bearing on the objective legal standard by which the permissibility of a contribution is judged. Where, as here, funds are donated to an entity that is legally permitted to receive donations in unlimited amounts, then no violation of law can be considered to have occurred.

² Nothing in the Complainants' lengthy discussions of the "Law" or of "Coordination" at pages 7-12 or of the "Individual Participants" at pages 28-33 or of the "Legal Analysis of Coordination" at pages 51-61 of the complaint even mentions the donors.

3. This complaint provides no factual basis for finding reason to believe against donors.

This complaint is devoid of any facts that would give rise to a violation of FECA by Mr. Lewis. Other than noting that he is a donor on Attachment P, the complaint contains no information about his donation(s). No information whatsoever has been provided indicating that the circumstances of his giving was at all problematic. Thus, there is no basis upon which the Commission could find a reason to believe that Mr. Lewis violated FECA.

In fact, it is clear that complainants have named donors as respondents in this matter only for the purpose of intimidating them from engaging in lawful activity protected by the First Amendment. The lack of information provided and the misleading and slanted descriptions can lead to no other conclusion. We respectfully request that the Commission not allow itself to be used for the purpose of intimidating donors and close this matter as it pertains to Mr. Lewis.

In conclusion, for the reasons stated above, the Commission should find no reason to believe that Mr. Lewis violated FECA or the Commission's regulations and close this matter as it pertains to respondent Peter B. Lewis.

Respectfully submitted,



Eric F. Kleinfeld
Counsel

Enc.

Attachment A

27044180632

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To: Harold Ickes
Fr: Lyn Utrecht
Jim Lamb
Dt: February 12, 2004
Re: The Media Fund

The purpose of this memo is to provide a brief description of The Media Fund that you may distribute to current and potential supporters of your efforts. The Media Fund operates in full compliance with the new campaign finance laws and the recent Supreme Court decision. Your supporters can be confident that any donations they make to The Media Fund will only be used in a lawful manner.

1. The Media Fund is a §527 Political Organization.

The Media Fund is an unincorporated association registered with the Internal Revenue Service as a §527 political organization. The Internal Revenue Service defines a §527 political organization as an, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting donations or making disbursements, or both, for the exempt function purpose of influencing or attempting to influence the selection, nomination, election or appointment of an individual to a federal, state, or local public office or office in a political organization.

2. The Media Fund files disclosure reports with the IRS.

The Media Fund files periodic disclosure reports of receipts and disbursements with the IRS. The first report was filed on February 2, 2004 covering the period through December 31, 2003. Reports will be available to the public on the IRS's website at www.irs.gov.

3. The Media Fund may accept donations in unlimited amounts.

The Media Fund may legally accept donations from individuals, partnerships, labor organizations, limited liability companies, and corporations. There is no limit on the amount that these permissible sources may donate to The Media Fund.

The Media Fund may not accept donations from foreign nationals, national banks, or corporations organized by an act of Congress.

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4. Contributions to The Media Fund and other §527 Political Organizations are not subject to the federal gift tax

Contributions to §527 political organizations are not subject to the federal gift tax. Pursuant to 26 U.S.C. §2501(a)(5) of the Internal Revenue Code, the gift tax "shall not apply to the transfer of money or other property to a political organization (within the meaning of section 527(e)(1) for the use of such organization."

In addition, a person is not required to file an IRS Form 709 to report contributions to a political organization and should not list them on Schedule A of Form 709 if the person files a Form 709 for other purposes.

5. The Media Fund operates in full compliance with the law

The Media Fund was established in 2003 to comply with the provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) which restricted soft money contributions to the national party committees and limited what funds may be used for broadcast communications aired within 60 calendar days of a federal general election (communications that do not contain words of "express advocacy" that run 61 or more days before an election continue to be unregulated). Under BCRA, individuals, corporations, and labor unions are all permitted to make contributions in unlimited amounts to §527 political organizations, such as The Media Fund.

In December 2003, the U.S. Supreme Court upheld BCRA in *McConnell v. FEC*. Pursuant to this landmark decision, individuals, corporations, and labor unions may continue to make contributions in unlimited amounts to §527 political organizations.

In January 2004, some Republican leaning organizations hoping to silence the opposition and campaign finance reform groups that were not satisfied with the limited reach of BCRA attempted to raise questions about some political organizations. Attorneys for The Media Fund and other similarly situated organizations are mounting a strong defense against these over-reaching and politically-motivated challenges.

In our opinion, there is no basis in BCRA to permit the FEC to change the rules governing The Media Fund through their advisory opinions or rule making that would limit the amount that individuals, corporations, and labor unions may contribute to it. We believe that any attempts to extend the reach of the Federal Election Campaign Act to limit contributions to The Media Fund may only be implemented by Congress. Even if the FEC were to attempt to make a change affecting The Media Fund's fundraising, such changes are typically prospective. The Media Fund is ready to challenge any attempts by the FEC to make new law without the express authority of Congress.

In the event that the Federal Election Commission or Congress changes the rules by which political organizations must operate, The Media Fund will take any and all necessary steps to ensure continued compliance with the law.

If any of your supporters would like to discuss these any of these matters in more detail, please feel free to have them call us directly at their convenience.

Attachment B

27044180635

TO: Ellen Malcolm
FROM: Judith L. Corley
RE: Legal Issues Related to ACT

This memorandum will summarize the legal issues relating to America Coming Together ("ACT") on which you often receive questions from donors and other supporters. As you know, ACT operates in full compliance with all campaign finance laws, including the Bipartisan Campaign Reform Act ("BCRA") and the Federal Election Commission ("FEC") rules and regulations implementing that Act.

General Campaign Finance Law Issues

America Coming Together is a political organization exempt from taxation under section 527 of the Internal Revenue Code. ACT is organized as a nonprofit unincorporated association under the laws of the District of Columbia.

ACT maintains a federal account that is registered with the Federal Election Commission. It also maintains a nonfederal account that is registered with the Internal Revenue Service. Both accounts file periodic reports of receipts and disbursements with the respective federal agency. The first reports filed by ACT were due on January 31, 2004 and covered the period since its inception through December 31, 2003. ACT will file reports during 2004 on a quarterly basis with pre- and post-general election reports, as well. ACT could also elect to file monthly. When filed, ACT's reports are available to the public on the FEC's and IRS's web sites.

ACT may accept up to \$5,000 per calendar year into its federal account from individuals, partnerships (or LLCs taxed as a partnership), and federally-registered political committees. ACT may accept unlimited funds from these sources into its nonfederal account, as well as unlimited funds from corporations, labor organizations and nonfederal political organizations. ACT may not accept into either account contributions from foreign nationals, national banks, or corporations organized by an act of Congress.

Contributions to ACT are not deductible for federal income tax purposes. Contributions to ACT are also not subject to the federal gift tax pursuant to Section 2501(a)(5) of the Internal Revenue Code (The gift tax "shall not apply to the transfer

of money or other property to a political organization (within the meaning of section 527(e)(1)) for the use of such organization.").

Specific Legal Issues

The media has reported on some of the political tactics that the Republicans and the reform community have taken to try to stop ACT from raising money and mobilizing voters in the 2004 elections. There have been Congressional hearings, FEC complaints, FEC Advisory Opinions and a pending FEC rulemaking – all of which attempt to put ACT out of business by alleging that the activities of the organizations are illegal under the current campaign finance laws.

Congress passed BCRA as a means to sever the connection between federal candidates and political parties and soft money (money that exceeds the limitations and source restrictions of the federal campaign laws.) In passing BCRA, Congress did not curb political organizations such as ACT from spending hard and soft money to influence elections or from discussing issues with voters.

ACT is mounting a strong defense to these over-reaching and politically motivated challenges and firmly believes it will be successful. Attempts to extend the reach of the federal campaign laws as requested by the groups challenging ACT are simply not supported in BCRA or the Supreme Court case interpreting it.

In the event that the rules by which political organizations such as ACT operate are changed, ACT will take any and all necessary steps to ensure continued compliance with the law.

Donors can be assured that in our view there would be no legally defensible basis on which the FEC could attempt to enforce any future changes in the law against current donors who contributed with the good faith and entirely reasonable understanding that they were supporting the legal operations of ACT.