



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

OCT 20 2004

**FIRST CLASS MAIL**

Judith L. Corley, Esq.  
Perkins Coie LLP  
607 14<sup>th</sup> Street, NW  
Suite 800  
Washington, DC 20005

Lyn Utrecht, Esq.  
Ryan, Phillips, Utrecht & Mackinnon  
1133 Connecticut Avenue, NW  
Suite 300  
Washington, DC 20036

Laurence E. Gold, Esq.  
Lichtman, Trister & Ross PLLC  
1666 Connecticut Avenue, NW  
Suite 500  
Washington, DC 20009

RE: MURs 5403, 5427, 5440  
Joint Victory Campaign 2004, and  
Janice Ann Enright, as Treasurer

Dear Counsel:

On January 23, 2004, March 17, 2004 and April 7, 2004, the Federal Election Commission notified your clients, Joint Victory Campaign 2004, and Janice Ann Enright, as Treasurer, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints were forwarded to your clients at that time.

Upon further review of the allegations contained in the complaints, the Commission, on September 14, 2004, found that there is reason to believe that Joint Victory Campaign 2004, and Janice Ann Enright, as Treasurer, violated 2 U.S.C. §§ 434, 441a(f), 441b(a) and 11 CFR §§102.5, 104.10, 106.1 and 106.6, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Please note that respondents have an obligation to preserve all documents, records and materials relating to the Commission's investigation.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office

within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may

27044180771

find probable cause to believe that a violation has occurred and proceed with conciliation.

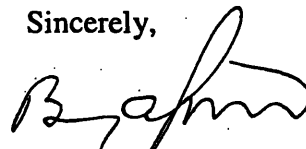
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Mark Goodin, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures

Factual and Legal Analysis

27044180772

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Joint Victory Campaign 2004 and  
Janice Ann Enright, as Treasurer

MUR: 5403, 5427, 5440

**I. INTRODUCTION**

These matters were generated by complaints filed with the Federal Election Commission ("the Commission") by the Center for Responsive Politics, the Campaign Legal Center, Democracy 21, and Bush-Cheney '04, Inc. *See* 2 U.S.C. § 437g(a)(1). The three complaints received by the Commission allege that Joint Victory Campaign 2004 and Janice Ann Enright, as Treasurer (collectively referred to as "JVC 2004"), are violating federal campaign finance laws by spending millions of dollars, raised outside of the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended ("the Act"), to influence the upcoming presidential election. The complaints also allege that JVC 2004 is failing to allocate its federal and nonfederal activities in accordance with applicable regulations or to report all of its federal receipts and disbursements to the Commission. In response to the complaints, JVC 2004 contends that it is a joint fundraising committee that is acting in compliance with the Commission's joint fundraising regulations.

JVC 2004 not only must comply with the Act's contribution limitations, source prohibitions, and reporting requirements, but it also must comply with applicable statutory and regulatory provisions as interpreted in Advisory Opinion 2003-37 ("the ABC AO"), which addresses the application of the Act and regulations to various campaign activities of a registered political committee. It appears that JVC 2004 may be violating the Act by financing some of its

27044180773

activity using nonfederal funds when those activities were required to be funded with at least some federal funds, and that JVC 2004 failed to report properly these activities.

## II. FACTUAL AND LEGAL ANALYSIS

### A. **FACTS**

JVC 2004 is the joint fundraising committee of: (1) America Coming Together ("ACT"), which is a nonconnected political committee with federal and nonfederal accounts; and (2) The Media Fund ("TMF"), which is not registered with the Commission as a political committee. The federal account of JVC 2004 is registered with the Commission as "Victory Campaign 2004," while the nonfederal account retains the name "Joint Victory Campaign 2004." JVC 2004's disclosure reports indicate that it uses a 99-1 ratio to allocate fundraising disbursements between its nonfederal and federal accounts.

JVC 2004's online contribution form states the following:

#### **Donate to the Victory Campaign 2004 Today!**

Yes! I want to help change the course of the country away from those who support the Bush Republican radical agenda and help deliver victories at the local, state, and federal level across the country. I am committed to Victory Campaign 2004's unprecedented national strategy to support an aggressive and innovative grassroots program combined with a sophisticated and powerful media to expose the real Bush Republicans and foster a discussion of the issues that are vital to this nation. I understand that Victory Campaign 2004 exclusively supports the work of America Coming Together and The Media Fund. Please use my contribution to communicate a strong message to define the issues for 2004 local, state, and national elections and create a wave of political change.

JVC 2004 transferred over \$12 million to TMF in the first quarter of 2004 and over \$9 million in the second quarter of 2004. JVC 2004 transferred over \$7 million to ACT in the first quarter of 2004 and over \$5 million in the second quarter of 2004. Much of these funds came from

27044180774

contributions that exceeded the applicable statutory limit or were contributions from corporations.

## B. ANALYSIS

In the ABC AO, the Commission analyzed numerous activities proposed by Americans for a Better Country ("ABC"), a registered political committee, including communications referring to a clearly identified federal candidate, voter identification and registration activities, get-out-the-vote ("GOTV") activities, and fundraising. The Commission determined that many of these activities were covered by the allocation regulations in 11 C.F.R. Part 106, and as for other activities not specifically covered by Part 106, the Commission identified the appropriate allocation ratio called for by the Act, as clarified by the recent ruling in *McConnell v. FEC*, 540 U.S. 93 (2003). AO 2003-37 at 2. Specifically, the Commission concluded that:

- Communications by a registered political committee, including fundraising communications, that promote, support, attack, or oppose ("PASO") a clearly identified federal candidate are "expenditures" that must be paid for with federal funds;
- Communications by a registered political committee for voter mobilization activities, even if they are not coordinated with a candidate and do not refer to any clearly identified federal candidate, must be funded at least partially with federal funds;<sup>1</sup>
- Funds received by a registered political committee from solicitations that promote, support, attack, or oppose federal candidates and "convey a plan" to promote, support, attack, or oppose federal candidates are treated as contributions; and

<sup>1</sup> We use the term "voter mobilization activity" to refer generally to voter identification, voter registration, and GOTV activities. See 11 C.F.R. § 106.6(b)(2)(iii). The expenses for voter mobilization activity must be allocated between the federal and nonfederal accounts of the committee based on the ratio of federal expenditures to total federal and nonfederal disbursements made by the committee during the two-year federal election cycle. AO 2003-37 at 4 (citing 11 C.F.R. § 106.6(c)). Communications made by a political committee for voter mobilization activities that refer to more than one clearly identified federal candidate—or to federal candidates and nonfederal candidates (or the entire ticket)—must be allocated to each such candidate according to the benefit reasonably expected to be derived. AO 2003-37 at 3 (citing 11 C.F.R. § 106.1).

27044180775

- Voter registration efforts of a registered political committee that target particular groups of voters must either be allocated or paid from federal funds.

See AO 2003-37 at 2-4, 9-10, 13, 15, and 20.

JVC 2004's activities "are indistinguishable in all ... material aspects" from the activities addressed in that advisory the ABC AO.<sup>2</sup> 2 U.S.C. § 437f(c)(1)(B). JVC 2004 appears to have financed some of its activities using nonfederal funds when those activities were required to be funded with at least some federal funds.

The online fundraising solicitation used by JVC 2004 indicates that the funds received will be used to attack or oppose the "Bush Republican radical agenda" and "expose the real Bush Republicans." Therefore, it appears that JVC 2004 raised funds in response to solicitations that conveyed a plan to use such funds to support or oppose specific federal candidates. These funds would qualify as federal contributions. See AO 2003-37 at 14-15, 19-20; see also *FEC v. Survival Educ. Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995). There is reason to believe that these funds were improperly deposited into JVC 2004's nonfederal accounts and not reported to the Commission.

Consequently, JVC 2004 would not be able to allocate fundraising expenses based on the ratio between the funds received and deposited in its federal and nonfederal accounts, as it has been doing, because all funds received from the solicitation described above would have been federal. In any event, JVC 2004's current 99-1 nonfederal to federal ratio to allocate fundraising expenses does not appear to reflect accurately its ratio between nonfederal and

<sup>2</sup> The interpretation of the Act "by the FEC through its regulations and advisory opinions is entitled to due deference and is to be accepted by the court unless demonstrably irrational or clearly contrary to the plain meaning of the statute." *FEC v. Ted Haley Cong. Comm.*, 852 F.2d 1111, 1115 (9<sup>th</sup> Cir. 1988). Moreover, ACT—one of the two participants in JVC 2004—not only commented on the ABC AO Request, but also submitted its own request for an advisory opinion (AOR 2004-5). Subsequently, less than two weeks after the Commission issued the ABC AO, ACT withdrew its own request "in light of the Commission's issuance of Advisory Opinion 2003-37, which addresses principal issues raised in ACT's request." Letter from Judith L. Corley and Laurence E. Gold (Counsel for ACT) to General Counsel (Feb. 27, 2004).

federal receipts, or the subsequent use of the funds for nonfederal and federal activities, assuming that its other solicitations, like the online solicitation, appear to mention only a single federal candidate, and convey a plan (or indicate that the funds will be used) to promote, support, attack, or oppose federal candidates. *See* AO 2003-37 at 9-10, 14-15, 19-20. Therefore, there is reason to believe that the allocation ratio used by JVC 2004 understates the appropriate share of federal funds.

### III. CONCLUSION

The Commission finds reason to believe that Joint Victory Campaign 2004 and Janice Ann Enright, as Treasurer, violated 2 U.S.C. §§ 434, 441a(f), 441b(a) and 11 C.F.R. §§ 102.5, 104.10, 106.1 and 106.6 by failing to attribute and report expenses between multiple federal candidates, by failing to allocate and report shared administrative and fundraising activities, and by using prohibited funds to pay for the federal share of those expenses, which may have resulted in prohibited and excessive contributions.

27044180777