BEFORE THE
FEDERAL ELECTION COMMISSION

Democracy 21
1825 I Street, NW, Suite 400
Washington, DC 20006
202-429-2008

Campaign Legal Center
1640 Rhode Island Ave. NW, Suite 650
Washington, DC 20036
202-736-2200

Center for Responsive Politics
1101 14th Street, NW, Suite 1030
Washington, DC 20005
202-857-0044

v. MUR No. _____

America Coming Together (ACT)
888 16th Street, NW
Washington, DC 20006
202-974-8360

COMPLAINT

1. This complaint alleges violations, including knowing and willful violations, of the federal campaign finance laws by America Coming Together (ACT), a registered federal political committee with a nonfederal account. These violations include ACT's improper calculation of its allocation ratio that has resulted in its illegal spending of nonfederal funds on generic voter mobilization activities and other expenses, ACT's illegal use of nonfederal funds to pay for expenditures required to be funded with federally permissible funds, and

ACT's improper solicitation of funds. To the extent that ACT has received any nonfederal funds in response to these solicitations, this would constitute the illegal receipt by ACT of nonfederal funds.

2. In its disclosure reports filed with the Commission, ACT has reported using an allocation ratio of 98-2 under existing FEC regulations – thus funding its generic voter mobilization activities, administrative overhead and other allocable activities using 98 percent nonfederal funds and two percent federal funds. ACT, however, has illegally calculated this ratio by failing to properly treat as federal "expenditures" the funds it has spent for direct mail solicitations attacking or opposing President Bush's reelection, contrary to the Federal Election Campaign Act (FECA), 2 U.S.C. § 431 *et seq.,* and Commission rulings. This failure has resulted in ACT spending more nonfederal funds than is permitted by law to fund its voter drive activities, its administrative overhead and its other allocable disbursements.

3. ACT also has illegally used nonfederal funds to pay for its fundraising solicitations attacking or opposing President Bush. Such solicitations are "expenditures" under the FECA and Commission rulings, and therefore must be paid for with federal funds.

4. Further, to the extent that ACT has received nonfederal funds in response to its solicitations that attack or oppose President Bush, this violates the FECA and Commission rulings. In addition, ACT has improperly solicited funds by making such fundraising solicitations without informing those being solicited that all contributions are subject to the contribution limits and source prohibitions of the FECA.

5. These illegal activities took place both before and after the Commission issued an advisory opinion on February 19, 2004 that affirms that these activities by ACT

have been, and are, violations of the FECA. The illegal activities by ACT which occurred after the date of the advisory opinion issued by the Commission constitute knowing and willful violations of the FECA and should be treated as such by the Commission.

Introduction

6. In March, 2002, Congress enacted the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub.L. No. 107-155, 116 Stat. 81, in order to prevent the use of soft money to influence federal elections. The relevant provisions of BCRA were upheld by the Supreme Court in *McConnell v. FEC,* 540 U.S. ___, 124 S.Ct. 619 (2003).

7. Since the enactment of BCRA, some party and political operatives have been engaged in efforts to circumvent BCRA and FECA by planning and implementing new schemes to use soft money to influence the 2004 presidential and congressional elections. These schemes, for the most part, involve the use of so-called "section 527 groups" – entities registered as "political organizations" under section 527 of the Internal Revenue Code, 26 U.S.C. § 527 – as vehicles to raise and spend soft money to influence the 2004 federal elections.

8. On January 15, 2004, these same complainants filed a complaint with the Commission that alleged that ACT and other similar groups were violating the FECA because these groups, including their purportedly "nonfederal" accounts, are in fact "political committees" under the federal campaign finance law but have failed to register as such, and have failed to comply with the contribution limits, source prohibitions and reporting requirements applicable to federal political committees.

9. The January 15 complaint remains pending before the FEC. This complaint and its allegations are separate and distinct from the claims set forth in the January 15 complaint, are not alleged in the January 15 complaint, and stand alone on their own terms.

10. The new and separate grounds of illegal activities by ACT set forth in this complaint are based on principles of law that the Commission specifically affirmed in Ad.Op. 2003-37 (Feb. 19, 2004). In that advisory opinion, the Commission discussed proposed transactions by Americans for a Better Country (ABC), which is described in the opinion as "an unincorporated, non-connected political committee organized under Section 527 of the Internal Revenue Code with Federal and non-Federal accounts…." Ad.Op. at 1.

11. The statements of law made by the Commission in Ad.Op. 2003-37 fully apply to ACT, which is "indistinguishable in all its material aspects," 11 C.F.R. § 112.5(a)(2), from ABC. In an advisory opinion request dated January 13, 2004 submitted to the Commission by ACT (denominated AOR 2004-5, but subsequently withdrawn), ACT describes itself as follows:

> ACT operates and is registered with the Commission as a political committee that will raise and spend funds subject to the requirements of the Act to influence federal elections. ACT is an unincorporated, non-connected committee within the meaning of 11 C.F.R. § 106.6(a); it is not a party committee, nor a separate segregated fund, nor an authorized committee of a candidate. The committee also raises and spends funds to influence state and local elections, including corporate and union funds, and individuals funds raised without regard to the Act's dollar limitations on individual "contributions." In the management of its funds and conduct of its programs, ACT has established both federal and nonfederal accounts pursuant to 11 C.F.R. § 106.6, which provides that non-connected committees active in both federal and nonfederal elections "shall allocate" between federal and nonfederal accounts the costs of activities affecting both types of elections.
>
> AOR 2004-5 at 1 (emphasis added)

In Ad.Op. 2003-37, the Commission stated that the "fact that ABC is a political committee is particularly relevant" to the analysis of the law discussed therein. Ad.Op. at 1. Like ABC, ACT also describes itself "as a political committee that will raise and spend funds subject to the requirements of the Act to influence federal elections." AOR 2004-5, *supra*.

12. In Ad.Op. 2003-37, the Commission specifically noted that it was limiting its ruling to an entity, such as ABC, that is a political committee with a nonfederal account. ACT, like ABC, describes itself as a political committee, with federal and nonfederal accounts. ACT's structure is legally indistinguishable from ABC. Because ACT is structured in a way that is materially indistinguishable from ABC, Ad.Op. 2003-37 is fully applicable and particularly relevant to ACT's similar activities, both prior to and following the issuance of Ad.Op. 2003-37.

13. ACT had the opportunity to confirm the application of the law to its activities through a request for an advisory opinion which it submitted prior to the issuance of Ad.Op. 2003-37, *see* AOR 2004-5 (January 13, 2004). ACT voluntarily withdrew that request on February 27, 2004, stating it was doing so "in light of the Commission's issuance of Advisory Opinion 2003-37, which addresses principal issues raised in ACT's request." Letter of February 27, 2004 from Judith L. Corley and Laurence E. Gold to FEC General Counsel Lawrence H. Norton.

Count 1
(Improper Allocation of Expenditures)

14. The Commission's regulations provide that political committees with nonfederal accounts may allocate between their federal and nonfederal funds certain disbursements that affect both federal and nonfederal elections. The regulations for determining the allocation ratio for activities by "non-connected committees," such as ACT,

are at 11 C.F.R. § 106.6. Those rules provide that a non-connected committee which engages in certain activities that influence both federal and nonfederal elections shall allocate between its federal and nonfederal accounts payments for the committee's administrative expenses, and payments for "generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate." 11 C.F.R. § 106.6(b)(2)(iii).

15. ACT has made clear that its principal purpose is to conduct voter mobilization efforts within the meaning of the section 106.6 regulations. Thus, ACT claims that it can allocate between its federal and nonfederal accounts the costs of those voter drive activities. In its 2003 year end report, and in its first quarter 2004 report, ACT reported that it is using a 98-2 allocation ratio for these activities. (Copies of Schedule H-2 for both reports, reflecting ACT's allocation ratio, are attached as Exhibits A and B.) Based on this allocation ratio, ACT is paying 98 percent of the costs of its generic voter drives and administrative activities using funds from its nonfederal account, and 2 percent of the costs of its activities using funds from its federal account. Thus, ACT is funding its activities 98 percent with soft money.

16. If any allocation by ACT is legally permissible at all, it is lawful only if ACT has properly and lawfully determined the ratio that establishes the mixture of federal and nonfederal funds that it can spend for such allocated activities.

17. Under the Commission's regulations, a committee's ratio for allocation of the costs of its administrative expenses and the costs of its generic voter drives is determined

pursuant to the "funds expended method." 11 C.F.R § 106.6(c). The Commission's regulations describe this as follows:

> Under this method, expenses shall be allocated based on the ratio of federal expenditures to total federal and non-federal disbursements made by the committee during the two-year federal election cycle….In calculating its federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total federal and non-federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.
>
> *Id*. at § 106.6(c)(1) (emphasis added)

18. Under this rule, ACT must count in the federal portion of its allocation ratio, all federal "expenditures," including all funds spent "on behalf of specific federal candidates."

19. "Expenditures" are payments "for the purpose of influencing" a federal election, 2 U.S.C. § 431(9). For political committees, like ACT, which have a major purpose to influence federal elections, the "express advocacy" test does not limit the definition of what constitutes an "expenditure" by the political committee, including its nonfederal account.

20. In Ad.Op. 2003-37, the Commission affirmed that this is the law under FECA. In that opinion, the Commission affirmed that when a political committee with a nonfederal account, such as ABC (or ACT), makes a disbursement for a public communication that promotes, supports, attacks or opposes a federal candidate, the disbursement is an "expenditure" relative to the named candidate. Therefore, the Commission ruled, the public communication must be paid for with federal funds, whether or not it contains express advocacy, and must be treated as a federal "expenditure" for purposes of calculating the political committee's allocation ratio.

21. With regard to the "express advocacy" standard, the Commission specifically noted in the advisory opinion that "express advocacy" is not the proper test to determine whether spending by a political committee such as ABC (or ACT) is subject to FECA:

> In *McConnell,* the Supreme Court clarified that the express advocacy test is not a constitutional barrier establishing whether communications are "for the purpose of influencing any Federal election," which is the operative term used in the definition of "expenditure" in 2 U.S.C. 431(9). 124 S.Ct. at 688-689. In short, there is no statutory requirement and, in light of *McConnell,* no Constitutional requirement, that express advocacy be the basis for distinguishing which of a Federal political committee's proposed communications may be paid for with Federal funds and which may be paid for with non-Federal funds, i.e., funds that are not subject to the Act's limitations and source prohibitions.
>
> Ad.Op. 2003-37 at 2 (emphasis added)

Instead, the Commission found that "promote, support, attack or oppose" is the correct standard for determining when a political committee is making an "expenditure" within the meaning of the FECA:

> [T]he promote, support, attack, or oppose standard is equally appropriate as the benchmark for determining whether communications made by political committees that refer only to clearly identified Federal candidates are made for the purpose of influencing any Federal election and must be paid for with Federal funds. By their very nature, all Federal political committees, not just political parties, are focused on the influencing of Federal elections. As organizations whose "major purpose is the nomination or election of a candidate," political committees do not raise the same concerns about vagueness that may arise in other contexts when interpreting the definition of "expenditure." Expenditures of political committees "can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related." *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).
>
> *Id.* at 3 (emphasis added)

22. In response to a question posed in the ABC advisory opinion request about how a political committee with a nonfederal account, such as ABC (or ACT), must fund a communication that promotes or attacks a Federal candidate, the Commission said such a

communication "must be treated as an expenditure and paid for entirely from ABC's Federal account…." *Id.* at 9. (emphasis added) The Commission further said:

> The communication you intend to produce would promote or support candidates for Federal office by proclaiming that those candidates have "led the fight in Congress for a stronger defense and stronger economy." …[A] payment for a communication that promotes, supports, attacks or opposes a clearly identified Federal candidate is "for the purpose of influencing a Federal election" when made by a political committee and is therefore an "expenditure" within the meaning of 2 U.S.C. 431(9) that must be paid for entirely with Federal funds.
>
> *Id.* (emphasis added)

23. Commission regulations permit a political committee with a nonfederal account to allocate between its federal account and a nonfederal account any "payments involving both expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-Federal candidates." 11 C.F.R. § 106.1(a). The allocation is to be "based on the benefit reasonably expected to be derived." *Id.* However, this allocation is permitted only where the nonfederal candidates are "clearly identified," a term defined to mean that "the candidate's name, nickname, photograph, or drawing appears or the identity of the candidate is otherwise apparent through an unambiguous reference…." 11 C.F.R. § 100.17. Thus, allocation between federal and nonfederal candidates under section 106.1 is not permitted where there is only generic reference to the nonfederal candidates.

24. The Commission's allocation rules for generic voter drive activities further require that all funds spent by a committee for "expenditures" be included in the federal portion of the committee's allocation ratio under the formula set forth in section 106.6(c)(1).

25. In Ad.Op. 2003-37, the Commission confirmed this requirement. The Commission discussed the application of the allocation methodology under section 106.6(c)

to public communications by political committees with nonfederal accounts, such as ACT, and said:

> For the purposes of the ratio, the Federal expenditures shall include only amounts contributed to or otherwise spent on behalf of specific Federal candidates, including independent expenditures, and amounts spent on communications that promote, support, attack, or oppose a clearly identified Federal candidate.
>
> Ad.Op. 2003-37 at 4 n.5 (emphasis added)

26. Accordingly, the Commission specifically affirmed in Ad.Op. 2003-37 that any public communication by a political committee, such as ACT, that promotes, supports, attacks or opposes a specific federal candidate (1) is an "expenditure" (2) must be paid for entirely with federal funds if not otherwise allocable to any clearly identified nonfederal candidates, and (3) must be included in the "numerator" of the ratio in determining ACT's allocation ratio for purposes of setting the mixture of federal and nonfederal funds to be spent by ACT on its administrative overhead and generic voter mobilization activities.

27. ACT has widely distributed mass mailing fundraising solicitations that "oppose" and "attack" President Bush by name, and are thus "expenditures" to influence a federal election. A copy of a fundraising solicitation distributed by ACT in February, 2004 is attached as Exhibit C. A slightly modified version of this solicitation distributed by ACT in June, 2004 is attached as Exhibit D. Both versions of the solicitation were mailed in an envelope that states on the outside:

17 States

25,000 Organizers

200,000 Volunteers

10 Million Doors Knocked On

…and a one-way ticket back to Crawford, Texas

This is a clear reference to ACT's overriding purpose and goal of defeating President Bush. The February 2004 solicitation letter is focused on the presidential election and opposes and attacks President Bush:

> [I]f we can count on your personal support and active participation, 2004 will be a year of America Coming Together and George W. Bush going home.
>
> Exhibit C at 2.

Id. at 2-3

The June 2004 version of the solicitation letter, attached as Exhibit D, similarly is focused on the 2004 presidential election and attacks and opposes President Bush:

> In communities all across America, people are hurting because of the GOP's mindless devotion to tax cuts for the wealthy is making a shambles of our economy. With the President's support, the Republicans in Congress have turned record budget surpluses into record deficits in no time flat.
>
> He has worked hard to undermine a woman's right to choose. His reckless disregard for the environment has eroded decades of progress. He's set timber companies loose on our national forests – and he's set John Ashcroft loose on our civil liberties.
>
> But, wishing won't make Bush, Cheney, Ashcroft, DeLay and their extremist agenda go away. Wishing won't elect John Kerry. People-to-people organizing will – and organizing what ACT is all about.
>
> Exhibit D at 3

The June, 2004 version also specifically references the presidential campaign of Senator Kerry:

> We can't match them dollar-for-dollar. But, we can – and must – match them door-for-door. And in many critical states we'll be at work in places where the Kerry Campaign and the Democratic Party simply don't have the resources to operate.
>
> Exhibit D at 2.

The letter then states:

> And, when Election Day is over, we will have helped John Kerry defeat George W. Bush and elected progressive candidates all across the nation. The extraordinary effort we're undertaking is in response to the extraordinary damage Bush and his allies do, on a daily basis, to values we believe in and to people we care about.
>
> *Id.*

The solicitation letter contains a "Bold Action Plan" which confirms that ACT's focus is on influencing the 2004 presidential campaign. Indeed, the action plan is premised on ACT focusing all of its efforts in the seventeen "battleground" states that, in ACT's assessment, will determine the presidential election:

> As the 2004 elections approach, Democrats have a firm grasp on 168 electoral votes. They're in states that the Democratic candidate is almost guaranteed to win. President Bush, on the other hand, seems an almost certain winner in states that add up to 190 electoral votes.
>
> That leaves seventeen states with 180 electoral votes as the competitive battleground in this election….
>
> Our America Coming Together Action Plan will focus all of our attention in these key states – the ones that will decide in which direction America goes after the 2004 election.
>
> Exhs. C and D(Action Plan at 2)
> (emphasis added)

28. Each of the mass mail solicitations described above, and any similar mass mailing solicitations made by ACT since its inception, is a "public communication," a term defined by the Commission's regulations to include "a communication by means of any…mass mailing…to the general public…" 11 C.F.R. § 100.26. Each such "public communication" attacks or opposes President Bush's re-election and is for the purpose of influencing the 2004 presidential election, within the meaning of the FECA and Commission rulings.

29. The solicitation letters described above, and any similar mass mailing solicitations made by ACT since its inception, constitute public communications by a federal political committee that promote, support, attack or oppose a specifically named federal candidate. The FECA, as affirmed by the Commission in Ad.Op. 2003-37, requires that the costs of such public communications be treated as "expenditures." Any such expenditures "must be paid for entirely with Federal funds," Ad.Op. 2003-37 at 9, and cannot be allocated under section 106.6. Nor can they be allocated under section 106.1 since such solicitation mailings do not refer to any clearly identified nonfederal candidates.

30. An analysis of the campaign finance disclosure reports filed with the Commission by ACT for the period from July 17, 2003 to March 31, 2004 shows that ACT has reported total soft money spending of approximately $9,996,391 and total hard money spending of approximately $211,330 (See Detailed Summary Page of Disbursements attached as Exhibits E and F) – an overall ratio of 98 percent soft money and two percent hard money for all of its spending. In the same period, ACT has reported fundraising spending of approximately $1,297,000, including approximately $709,000 which it reported spending since Ad.Op. 2003-37 was issued on February 19, 2004. (This is based on compiling the reported disbursements by ACT of $500 or more). ACT's disclosure reports indicate that each fundraising disbursement was funded with 98 percent soft money and two percent hard money. (Pages from the FEC disclosure reports containing the fundraising expenditures by ACT through March 31, 2004 are attached as Exhibits G and H. The FEC should review any later filed reports filed by ACT to obtain information on additional fundraising expenditures made by ACT in connection with its direct mail solicitations.)

31. Upon information and belief, most of the fundraising disbursements reported by ACT were made in connection with the fundraising solicitation mailings described above, and were paid for with soft money. (The FEC should determine precisely how much of ACT's total fundraising expenditures were in connection with such solicitation mailings.)

32. The fundraising solicitations described above, however, are "expenditures," and "must be paid for with entirely Federal funds," Ad.Op. 2003-37 at 9. Therefore, to the extent that the direct mail solicitations described above were funded with nonfederal funds, this spending has been in violation of the FECA and Commission rulings. As set forth above, ACT has reported spending approximately six times as much on its fundraising expenses as it has reported spending in total hard money for all of its expenses.

33. Further, since the funds spent for the solicitations discussed above constitute "expenditures," the entire amount of that spending must be treated as federal "expenditures" for purposes of calculating ACT's allocation ratio under section 106.6(c) and must be assigned to the federal "numerator" in the calculation. In improperly funding its solicitations with nonfederal funds instead of federal funds, ACT has also failed to properly account for all "expenditures" in calculating its allocation ratio. The result is that ACT has failed to properly and lawfully comply with the FEC's allocation rules, and has been using more nonfederal funds and less federal funds to finance its activities than is legally permitted by the allocation rules.

34. Accordingly, the 98-2 ratio that ACT has reported and is applying to its administrative costs and generic voter drive activities significantly overstates the amount of nonfederal funds and understates the amount of federal funds that ACT can legally spend under the FEC allocation rules for its generic voter drive activities, administrative costs and

other allocable activity. In order to accurately apply the FEC allocation rules, ACT's allocation ratio must be re-calculated, taking into account as "expenditures" the funds that ACT has spent for its direct mail solicitations described above, and assigning those "expenditures" to the "numerator" of the allocation ratio. That re-calculated ratio must then be reapplied to each of the disbursements for generic voter mobilization activity and administrative overhead that ACT may permissibly allocate under section 106.6, if any. Each of the payments made by ACT pursuant to its erroneous and unlawful use of a 98-2 allocation ratio should be found to be a violation of the FECA. ACT should be prohibited from making any improper allocations and any improper expenditures of nonfederal funds in the future.

Count 2
(Raising Illegal Contributions)

35. A political committee that raises money through a fundraising solicitation that promotes, supports, attacks or opposes a specifically named federal candidate can only receive funds in response to the solicitation that are "contributions" subject to the contribution limits, source prohibitions and reporting requirements of federal law, even if the funds are to be used for generic voter mobilization drive activities. In the solicitation of such funds, the political committee must inform contributors that "all contributions are subject to the prohibitions and limitations of the Act." 11 C.F.R. 102.5(a)(2)(iii).

36. The Commission confirmed this rule in Ad. Op. 2003-37. There, the advisory opinion used the example of a solicitation that contains the language, "Give money to an effort that will help President Bush and Republican candidates." *See* Ad.Op. 2003-37 at 14. The Commission said:

> The fundraising messages [described above] indicate that the funds will be used to promote or support a clearly identified Federal candidate and do not identify any other Federal or non-Federal candidates or elections. Based on these facts, these funds are being raised to influence a Federal election. Therefore, the contributions raised will be subject to the contribution limits and source prohibitions of the Act, and ABC may not raise non-Federal funds using those fundraising messages. To avoid the receipt of contributions in violation of the Act, ABC should make clear in its solicitations that it may accept only contributions within the limitations and prohibitions of the Act or provide other information consistent with that. *See* 11 CFR 102.5(a)(2)(iii).
>
> Ad.Op. 2003-37 at 15 (emphasis added)

At another point in the advisory opinion, the Commission made the same ruling:

> If ABC, which is a political committee, solicits funds by using the names of specific Federal candidates in a manner that will convey ABC's plan to use those funds to support or oppose specific Federal candidates such as "Give to ABC so we can support President Bush's reelection," the funds raised will be contributions to ABC subject to the Act's contribution limits and source prohibitions.
>
> *Id.* at 20.

37. The ACT direct mail fundraising solicitations described above and attached as Exhibit C and Exhibit D are materially indistinguishable from the fundraising solicitations described in Ad.Op. 2003-37. The ACT solicitations mention Republican presidential candidate President Bush, in Exhibit C, and both President Bush and Democratic presidential candidate, Senator Kerry, in Exhibit D. Just as the ABC solicitation "promotes" or "supports" President Bush, the ACT solicitation "attacks" or "opposes" President Bush, as the excerpts quoted above clearly demonstrate. The ACT solicitations make clear that the funds solicited will be used to attack or oppose President Bush. They refer only to specifically identified federal candidates (including Senator Kerry), and not to any specifically identified nonfederal candidates. The solicitation card, for instance, states:

> I'm excited that progressives are getting organized in an unprecedented way. And I want to help American Coming Together defeat George W. Bush and

> elect progressive candidates at all levels by organizing an unprecedented, door-to-door campaign. To help advance this essential organizing effort, I am enclosing a special donation of [amount].
>
> Exhibit D (solicitation card).

38. The law, as affirmed in Ad.Op. 2003-37, requires that all funds raised in response to the ACT solicitation be "contributions" under the FECA, and be subject to the contribution limits, source prohibitions and reporting requirements of federal law. Because the ACT solicitation attacks or opposes only President Bush's reelection, ACT "may not raise non-Federal funds using those fundraising messages." Ad.Op. 2003-37 at 15.

39. Upon information and belief, to the extent that ACT received any nonfederal funds in response to the direct mail solicitations described above, such funds were illegal "contributions" to ACT.

40. Further, as the Commission stated in the advisory opinion, the solicitation must "make clear" that ACT can "accept only contributions within the limitations and prohibitions of the Act or provide other information consistent with that." *Id.* The ACT solicitation does not "make clear" that only federally permissible contributions can be accepted by ACT in response to the solicitation. For example, it does not state that all contributions received are subject to the prohibitions and limitations of the FECA. 11 C.F.R. § 102.5(a)(2)(ii).

Knowing and Willful Violations

41. As set forth above, the Commission in Ad.Op. 2003-37 affirmed the rules of law applicable to political committees with nonfederal accounts, such as ACT, which is structured in a way that is materially and legally indistinguishable from the committee discussed in the advisory opinion. For purposes of determining whether knowing and willful

violations of the FECA have occurred, ACT was put on notice by the FEC as of February 19, 2004, the date of issuance of Ad.Op. 2003-37, that its activities did not comply with the FECA. ACT had the opportunity to confirm the application of the law to its activities through an advisory opinion request which it submitted prior to the issuance of Ad.Op. 2003-37, *see* AOR 2004-5 (January 13, 2004). ACT voluntarily withdrew that request for an advisory opinion on February 27, 2004, stating it was doing so "in light of the Commission's issuance of Advisory Opinion 2003-37, which addresses principal issues raised in ACT's request." Letter of February 27, 2004 from Judith L. Corley and Laurence E. Gold to FEC General Counsel Lawrence H. Norton.

42. Accordingly, the violations of law by ACT that occurred after February 19, 2004, the date of issuance of Ad.Op. 2003-37, and that are violations arising from the legal principles affirmed in that advisory opinion, are knowing and willful violations of the law by ACT and should be subject to the additional sanctions that apply to such violations.

Disclosure

43. Because of the violations of law set forth above, the Commission and the public, including the complainants, are not receiving full and accurate public disclosure of the funds raised and spent by ACT, as required by FECA. ACT is required under the FECA to accurately report its allocation ratio for federal and nonfederal funds spent on its administrative overhead and generic activities, and the unlawful calculation of that ratio deprives the Commission, the public and the complainants of the correct information that is required to be disclosed under the FECA. Further, since ACT is using an illegal allocation ratio, each allocated disbursement being reported to the FEC by ACT pursuant to that ratio represents an improper disclosure under the FECA of the amount of federal and the amount

of nonfederal funds that ACT is permitted to spend. Further, the funds received by ACT as "contributions" are subject to the mandatory federal reporting requirements of FECA and are required to be fully disclosed to the Commission and to the public, including complainants. The donations received by ACT in its nonfederal account are subject only to reporting to the Internal Revenue Service under 26 U.S.C. § 527 and such disclosure may be avoided if the recipient chooses to pay income tax on the donation. Thus, to the extent that ACT is wrongly treating contributions required to be reported under FECA as donations to its nonfederal account under section 527, the public, including complainants, and Commission have no assurance that all contributions required to be disclosed under FECA are properly being disclosed.

Prayer for Relief

Wherefore, the Commission should conduct an investigation under 2 U.S.C. § 437g, should determine that respondents have violated, are continuing to violate or are about to violate 2 U.S.C. § 432, 434, 441a and 441b(a), and 11 C.F.R. § 106.6, should determine that many of these violations have been knowing and willful violations, should require that ACT file new and accurate disclosure reports, should impose appropriate sanctions for all such violations, including the sanctions applicable to knowing and willful violations, should enjoin the respondent from all such violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with FECA and BCRA.

Respectfully submitted,

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Democracy 21, by
Fred Wertheimer

1825 I Street, NW, Suite 400
Washington, DC 20006
202-429-2008

_____
Campaign Legal Center, by
Trevor Potter
1640 Rhode Island Ave. NW, Suite 650
Washington, DC 20036
202-736-2200

_____
Center for Responsive Politics, by
Lawrence M. Noble
1101 14th Street, NW, Suite 1030
Washington, DC 20005
202-857-0044

Donald J. Simon
Sonosky, Chambers, Sachse
Endreson & Perry LLP
1425 K Street NW – Suite 600
Washington, DC 20005
202-682-0240

Counsel for Democracy 21

Verification

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.

For Complainant Democracy 21

_____
Fred Wertheimer

Sworn to and subscribed before me this ___ day of June, 2004

_____
Notary Public

For Complainant Campaign Legal Center

_____
Trevor Potter

Sworn to and subscribed before me this ___ day of June, 2004

_____
Notary Public

For Complainant Center for Responsive Politics

_____
Lawrence M. Noble.

Sworn to and subscribed before me this ___ day of June, 2004

_____
Notary Public