BEFORE THE
FEDERAL ELECTION COMMISSION

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v. MUR No. _____

America Coming Together
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COMPLAINT

1. In March, 2002, Congress enacted the Bipartisan Campaign Reform Act of 2002 (BCRA) in order to stop the injection of soft money into federal elections. The relevant provisions of BCRA were upheld by the Supreme Court in *McConnell v. FEC,* 540 U.S. ___ (slip op. December 10, 2003).

2. Since the enactment of BCRA, a number of party and political operatives, and former soft money donors, have been engaged in efforts to circumvent BCRA 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. They were, as one published report noted, "created after McCain-Feingold to circumvent the ban on soft money."[1]

3. In pursuing these schemes, these section 527 groups are attempting to replace the political parties as new conduits for injecting soft money into federal campaigns. As one published report has noted, several pro-Democratic section 527 groups have "stepped in this year to attempt to fill the vacuum created by the soft money ban. These groups are accepting large contributions from labor unions that the parties are prohibited from accepting….In the process [these groups] are taking over many of the functions traditionally associated with the parties, including voter registration, canvassing [and] turnout."[2] Another report states that two of the respondents here, ACT and The Media Fund, are engaged in "an outreach to urge individuals,

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[1] C. Hayes, "Door by Door: Progressives hit the streets in massive voter outreach," *In These Times* (Jan. 5, 2004). (Exhibit A).

[2] T. Edsall, "Democratic 'Shadow' Groups Face Scrutiny," *The Washington Post* (Dec. 14, 2003). (Exhibit B).

unions and corporations that used to give their millions to the Democratic National Committee to send their largess instead to the so-called 527 committees…."[3] Another report similarly noted that "a growing roster" of section 527 groups is "gathering millions of dollars of unregulated soft money for the 2004 election, to be deployed in much the same way that the party used to use soft money."[4] And a fourth report called these pro-Democratic section 527 groups "the heart of the big-money movement to unseat George W. Bush…These groups are, in effect, taking over the function of the Democratic National Committee, now barred by law, that once took in the much-vilified and unrestrained contributions called soft money."[5]

4. These schemes to inject soft money into the 2004 federal elections are illegal. The Supreme Court in *McConnell* took specific note of "the hard lesson of circumvention" that is taught "by the entire history of campaign finance regulation." Slip op. at 57. The deployment of "section 527 groups" as the new vehicle for using soft money to conduct partisan activities to influence federal elections is simply the latest chapter in the long history of efforts to circumvent the federal campaign finance laws.

5. The section 527 groups named as respondents in this complaint – including their purported "nonfederal" accounts that have been established to raise and spend soft money to influence federal elections – are in fact federal "political committees." These section 527 groups are entities which have a "major purpose," indeed an overriding purpose, to influence candidate elections, and more specifically, federal candidate elections, and which have spent, or are planning

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[3] J. Neuman, "Clinton Loyalist Returns as a Go-to Man for Money," *The Los Angeles Times* (Dec. 26, 2003). (Exhibit C).

[4] L. Feldmann, "Now it's thunder from the left, too, in the ad war," *The Christian Science Monitor* (Dec. 5, 2003). (Exhibit D).

[5] J. Birnbaum, "The New Soft Money," *Fortune* (Nov. 10, 2003). (Exhibit E).

to spend, millions of dollars for the announced purpose of influencing the 2004 federal elections. These "political committees" are therefore required to register under the federal campaign finance laws, and are subject to the federal contribution limits and source prohibitions on the funds they receive. Accordingly, these "political committees" may not receive more than $5,000 per year from an individual donor, and may not receive any union or corporate treasury funds. 2 U.S.C. § § 441a(a)(1)(C), 441b(a). These limits and prohibitions apply to all "political committees," including those that engage in independent spending. 11 C.F.R. § 110.1(n).

6. As noted above, this is true not just for any "federal account" established by these respondents, but also for the purportedly "nonfederal," or soft money, accounts established by these groups. These purportedly "nonfederal" accounts themselves meet the legal definition of a federal "political committee," since their "major purpose," in fact, their overriding purpose, is to spend money to influence federal elections.

7. Further, at least one of these groups, America Coming Together, is operating, or intending to operate, as a conduit for indirect spending by unions of their treasury funds on partisan voter mobilization activities aimed at the general public to influence the 2004 presidential election. Since the law prohibits both the direct and indirect spending of union (and corporate) treasury funds in connection with a federal election, including spending on partisan voter mobilization efforts aimed at the general public, the use of any "section 527 group" as a conduit for such indirect spending is illegal.

8. The Supreme Court in *McConnell* took specific – and repeated – note of the central role of the Federal Election Commission in facilitating past efforts to circumvent the federal campaign finance laws. The massive flow of soft money through the political parties into federal elections was made possible by the Commission's allocation rules, which the Court described as

"FEC regulations [that] permitted more than Congress, in enacting FECA, had ever intended." Slip op. at 33, n.44. Indeed, the Court noted that the existing Federal Election Campaign Act (FECA), which had been upheld in *Buckley,* "was subverted by the creation of the FEC's allocation regime" which allowed the parties "to use vast amounts of soft money in their efforts to elect federal candidates." Slip op. at 32-33 (emphasis added). The Court flatly stated that the Commission's rules "invited widespread circumvention" of the law. Slip. op. at 35.

9. Having been rebuked by the Supreme Court for its flawed administration of the law that allowed the use of soft money in federal elections, it is critically important that the Commission not repeat this history here. The Commission must take steps to ensure that it does not once again invite "widespread circumvention" of the law by licensing the injection of massive amounts of soft money into federal campaigns, this time through section 527 groups whose major, indeed overriding, purpose is to influence federal elections.

10. The Commission has the authority to take enforcement action based on a complaint where it finds reason to believe that a person "has committed, or is about to commit," a violation of the law. 2 U.S.C. §§ 437g(a)(2), 437g(a)(4)(A)(i), 437g(a)(6)(A); *see also* 11 C.F.R. 111.4(a) ("Any person who believes that a violation…has occurred or is about to occur may file a complaint…") (emphasis added). Based on published reports, the "section 527 groups" named as respondents in this complaint have either committed or are "about to commit" massive violations of the law by spending millions, or tens of millions, of dollars of soft money – including union and corporate treasury funds, and large individual contributions – to influence the 2004 presidential and congressional elections. Respondents are doing so without registering their purportedly "nonfederal" accounts as federal political committees and complying with the rules applicable to such political committees, and in the case of ACT, by impermissibly acting as conduits for

funneling illegal union treasury funds into federal elections. As the 2004 presidential and congressional campaigns begin in earnest, it is vitally important that the Commission act effectively and expeditiously to prevent the massive violations of the law threatened by the widely publicized activities of these section 527 groups.

America Coming Together

11. America Coming Together ("ACT") was established on July 17, 2003 as a "political organization" under section 527 of the Internal Revenue Code, 26 U.S.C. § 527.

12. ACT has made clear that its major, indeed overriding, purpose is to defeat President George W. Bush in the 2004 presidential election. In a press release issued on August 8, 2003, ACT president Ellen Malcolm states, "President Bush is taking this country in the wrong direction. ACT's creation is further evidence that mainstream America is coming together in response to President Bush's extremism…"[6] According to a report in *The Washington Post* about the formation of ACT, Malcolm said that ACT will conduct "a massive get-out-the-vote operation that we think will defeat George W. Bush in 2004."[7] A story in *The Washington Post* said that ACT (and other similarly situated section 527 organizations) "are explicitly opposed to President Bush."[8]

13. According to its release, ACT is launching "the largest field operation this country has ever seen." A press report quotes Steve Rosenthal, one of ACT's founders and its chief

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[6] A copy of this release is attached as Exhibit F. While this release also refers to electing "progressives officials at every level," statements by ACT's organizers and donors make clear that the overriding purpose of ACT is to defeat President Bush.

[7] T. Edsall, "Liberals Form Fund to Defeat President; Aim is to Spend $75 Million for 2004," *The Washington Post* (Aug. 8, 2003). (Exhibit G).

[8] T. Edsall, Dec. 14, 2003, *supra*. (Exhibit B).

executive officer, as stating that ACT will hire "hundreds of organizers, state political directors and others…"[9] Another press report states that ACT "already has get-out-the-vote specialists canvassing homes in Ohio to identify the most virulent opponents of" President Bush.[10] The object of this effort, according to the ACT director in Ohio, "is to register 200,000 new voters in all 88 counties and target each of them with the kind of information that will propel them to the polls on Election Day."[11]

14. George Soros, a key donor who pledged $10 million in soft money to ACT as "seed money," has made clear that this money is for the purpose of defeating President Bush. Mr. Soros, referring expressly to ACT, explained in an op-ed column in *The Washington Post* why he and others are, in his words, "contributing millions of dollars to grass-roots organizations engaged in the 2004 presidential election."[12] He said that he and the other donors "are deeply concerned with the direction in which the Bush administration is taking the United States and the world."[13] Another article describes Soros meeting "with half a dozen top Democratic political strategists" in an effort "to try to figure out how he could help bring down [President] Bush…."[14] Following this meeting, "he agreed to lead several other major donors in what Democrats hope will be $75 million in spending on a grass-roots get-out-the-vote effort in 17 battleground states. Called

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[9] T. Edsall, Aug. 8, 2003, *supra.* (Exhibit G).

[10] J. Birnbaum, *supra*. (Exhibit E).

[11] *Id.*

[12] G. Soros, "Why I Gave," *The Washington Post* (Dec. 5, 2003) (emphasis added). (Exhibit H).

[13] *Id.*

[14] M. Gimein, "George Soros Is Mad As Hell," *Fortune* (Oct. 27, 2003). (Exhibit I).

America Coming Together, it's directed by top Democratic fundraisers Steve Rosenthal and Ellen Malcolm. That makes Soros a key player in the huge 'soft money' push that the Democrats…hope will be one of the keys to matching Bush's formidable fundraising apparatus in the 2004 election."[15] According to a report in *The Washington Post,* Soros "has a new project: defeating President Bush. 'It is the central focus of my life,' Soros said, his blue eyes settled on an unseen target. The 2004 presidential race, he said in an interview, is 'a matter of life and death.'"[16] The same report provides an additional explanation from Soros: "'America, under Bush, is a danger to the world,' Soros said. Then he smiled: 'And I'm willing to put my money where my mouth is.'"[17] In an interview on public television, Soros also made clear his purpose in giving $10 million to ACT:

> BRANCACCIO**:** All this has led Soros to conclude the most important thing he can do is stop George Bush.
>
> SOROS: I think he's a man of good intentions. I don't doubt it. But I think he's leading us in the wrong direction.
>
> BRANCACCIO: So just last month, Soros put his money where his mouth is one more time. He gave $10 million to America Coming Together, a liberal coalition pledged to defeat the President in 2004.
>
> SOROS: By putting up $10 million and getting other people engaged, there's enough there to get the show going. In other words, to get the organizing going. Half of it still needs funding.
>
> BRANCACCIO: What is the show? It's a get out the vote effort.
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> SOROS: Get out the vote and get people engaged on issues.
> This is the same kind of grassroots organizing that we did or we helped in

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15 *Id.*

16 L. Blumenfeld, "Soros' Deep Pockets vs. Bush," *The Washington Post* (Nov. 11, 2003). (Exhibit J).

17 *Id.*

> Slovakia when Mechar was defeated, in Croatia when Tudjman was defeated and in Yugoslavia when Milosevic was defeated.[18]

15. A report in *The Seattle Times* states that two other major donors to ACT from the Seattle area said that ACT "will present a cogent, focused message to help defeat [President] Bush no matter who the Democratic nominee is."[19]

16. The organizers of ACT, and its executive committee members, have close ties to the Democratic Party. They include several prominent labor leaders, such as ACT chief executive officer Steve Rosenthal, former political director of the AFL-CIO, Andy Stern, president of the Service Employees International Union (SEIU), and Gina Glantz, assistant to the president of SEIU.[20] (Glantz has subsequently joined the campaign of Democrat Howard Dean as a "senior adviser."[21]) In his capacity as political director of the AFL-CIO, Rosenthal worked closely for many years with Democratic candidates for federal office and Democratic party officials. Another ACT organizer, ACT president Ellen Malcolm, is also the head of Emily's List, which has worked for many years to elect women Democratic candidates to federal office by raising funds for them. Minyon Moore, another member of ACT's executive committee, is a former White House political director under President Clinton. Cecile Richards, another member of ACT's executive

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18 "Transcript – David Brancaccio interviews George Soros," *NOW with Bill Moyers* (Sept. 12, 2003). (Exhibit K).

19 D. Postman, "Democrats worried by emerging liberal force" *The Seattle Times* (Dec. 6, 2003). (Exhibit L).

20 *See* ACT press release, *supra.* (Exhibit F).

21 L. Sidoti, "Dean hires Bradley manager, union assistant" *Associated Press* (Nov. 21, 2003). (Exhibit M).

committee, is the former deputy chief of staff to Rep. Nancy Pelosi (D-CA), the current Democratic leader in the House of Representatives.

17. ACT's headquarters is currently in the same building in downtown Washington, DC as the temporary headquarters of the Democratic National Committee. According to press reports, ACT is located on the fourth floor of this building, while the DNC is located on the seventh and eighth floors of the same building.[22]

18. The press release issued by ACT states that ACT's goal is to raise $75 million to "create and coordinate massive registration and get-out-the-vote efforts." According to press reports, ACT, to date, has raised about $30 million of its proposed budget. According to *The Washington Post,* ACT has received $8 million from labor unions, including SEIU, an additional $10 million from George Soros, and a total of $12 million from six other "philanthropists."[23] According to a story in *Roll Call,* ACT "is expected to be the primary conduit for huge soft-money donations from the labor movement…" in addition to the funds already pledged by SEIU.[24]

19. The evidence set forth above makes clear that the overriding purpose of ACT is to engage in partisan voter mobilization activities aimed at the general public for the purpose of promoting or supporting the election of the Democratic nominee for President and attacking or opposing the reelection of President Bush. The evidence also makes clear that the soft money being given to ACT and put into purportedly "nonfederal" accounts is being given and will be spent for the purpose of influencing the 2004 presidential election.

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22 "Soros, Lewis Push Campaign Law Limits to Counter Bush," *Bloomberg News Wire* (October 28, 2003). (Exhibit N).

23 T. Edsall, Aug. 8, 2003, *supra.* (Exhibit G).

24 C. Cillizza, "Soros, Labor Pooling Efforts," *Roll Call* (Sept. 18, 2003). (Exhibit O).

The Media Fund

20. The Media Fund was established on November 5, 2003 as a "political organization" under section 527 of the Internal Revenue Code, 26 U.S.C. § 527. The Media Fund has made clear that its major, indeed overriding, purpose is to defeat President George W. Bush in the 2004 election.

21. The purpose of The Media Fund is to run broadcast ads supporting the putative Democratic presidential nominee in the period beginning when the likely nominee emerges from the primary elections in March, 2004, through the Democratic convention in July, 2004. According to the *National Journal*, The Media Fund to date has raised $10 million, and would like to raise as much as $70 to $95 million, in order to broadcast television and radio ads in support of the Democratic presidential nominee, particularly in the period from March, 2004 through the Democratic convention in July, 2004.[25] According to this report, "The Media Fund is looking to run television and radio ads to help the Democratic candidate stay competitive from late March until the party convention in late July."[26] The Media Fund is taking on this role in recognition of the fact that the prospective Democratic nominee may, during that period, be unable to spend any funds to promote his or her campaign if that candidate has agreed to abide by the spending limits applicable in the presidential primary funding system and the candidate is at or near that spending ceiling by late March, or alternatively, if the Republican presidential nominee, President Bush, has much more money to spend than the prospective Democratic nominee during that period. The

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[25] E.N. Carney *et al*, "New Rules of the Game," *The National Journal* (Dec. 20, 2003) at 3803, 3805. (Exhibit P).

[26] *Id.* at 3805.

Media Fund, according to published reports, was created to fill this "gap" by spending money on ads to support the prospective Democratic nominee in this period and/or to attack President Bush.

22. According to the *National Journal,* The Media Fund will sponsor so-called "issue" advertising "to help boost the Democratic presidential nominee."[27] Another report states, "While ACT is the major 'ground war' vehicle for the Democratic groups, The Media Fund will finance radio and television commercials…Over the next 11 months leading up to the 2004 general election, the groups will be flooding 17 key states with campaign workers, mail, phone banks and radio and television commercials, all with the single goal of putting a Democrat in the White House."[28] Another report states that The Media Fund "will buy TV and radio commercials to promote the policies of whoever gets the Democratic nod for President."[29]

23. The Media Fund is headed by Harold Ickes, a current member of the executive committee of the Democratic National Committee and a former White House deputy chief of staff to President Bill Clinton.[30] Ickes has been quoted as saying of his fundraising effort for The Media Fund, "I've been heartened by the number of people who think George Bush should find other employment."[31] This report refers to Ickes as "a broker whose media money could make the difference in the 2004 election."[32]

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27 *Id.* at 3805.

28 T. Edsall, "Money, Votes Pursued for Democrats," *The Washington Post* (Dec. 7, 2003) (emphasis added). (Exhibit Q).

29 J. Birnbaum, *supra.* (Exhibit E).

30 E.N. Carney, *supra* at 3805. (Exhibit P).

31 J. Neuman, *supra*. (Exhibit C).

32 *Id.*

24. According to published reports, The Media Fund is "working in tandem" with ACT and other pro-Democratic section 527 groups.[33] The Media Fund and ACT are "collaborating on fundraising and strategy," according to published reports.[34] The two groups have established another section 527 group, "The Joint Victory Campaign," which one published report describes as "a partnership of two newly formed organizations that say they will raise more than $100 million for voter outreach and a media campaign."[35] The Media Fund will run its broadcast ads in the same 17 "battleground" states in which ACT will be conducting voter mobilization efforts in support of the Democratic nominee.[36] One published report states, "The Media Fund and America Coming Together plan separate but coordinated TV ads and a voter education/mobilization drive in as many as 17 battleground states next year."[37] According to one report, Ickes has "made a strategic judgment that the 2004 presidential election will turn on the vote in 17 battleground states," and quotes Ickes as saying that "those 17 states will decide the presidency."[38]

25. According to *The National Journal,* The Media Fund has located, or is intending to locate, its headquarters in the same building in downtown Washington, DC as the temporary headquarters of the Democratic National Committee.[39] According to press reports, ACT is already

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33 E.N. Carney, *supra* at 3804. (Exhibit P).

34 *Id.* at 3806.

35 D. Postman, *supra.* (Exhibit L).

36 E.N. Carney, *supra* at 3806. (Exhibit P).

37 E.N. Carney, *supra* at 3806. (Exhibit P).

38 J. Neuman, *supra.* (Exhibit C).

39 E.N. Carney, *supra* at 3804. (Exhibit P).

located on the fourth floor of this building, where The Media Fund will also locate,[40] while the DNC is located on the seventh and eighth floors of the same building.

26. The evidence set forth above makes clear that the overriding purpose of The Media Fund is to sponsor broadcast ads for the purpose of promoting or supporting the election of the Democratic nominee for President and attacking or opposing the reelection of President Bush. The evidence also makes clear that the soft money being given to The Media Fund and put into purportedly "nonfederal" accounts is being raised and spent for the purpose of influencing the 2004 presidential election.

The Leadership Forum

27. On October 23, 2002, a week before the effective date of the BCRA, Rep. Tom Davis, chairman of the National Republican Congressional Committee (NRCC), was quoted as saying, "We want to make sure there are adequate conduits for our supporters to help get our message out, so we can compete with what they're doing on the other side…We're having stuff set up right now. We're making sure there are appropriate routes so that issue advocacy continues."[41] The term "issue advocacy" in this context means the practice of running non-"express advocacy" candidate-specific broadcast ads supporting Republican House candidates or attacking Democratic House candidates, and paid for by soft money. Prior to BCRA, the NRCC spent millions of dollars of soft money on such candidate-specific ads. *The Washington Post* earlier had reported that

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40 *Id.*

41 A. Bolton, "Both Parties Race To Set Up New Soft-Money Mechanisms," *The Hill* (Oct. 23, 2002) (emphasis added). (Exhibit R).

Republican Party operatives, including former Representative and NRCC chairman Bill Paxon, were working to "build an organization to back GOP candidates."[42]

28. On October 28, 2002, the Leadership Forum was established as a "political organization" under section 527 of the Internal Revenue Code. 26 U.S.C. § 527.

29. The major, indeed overriding, purpose of the Leadership Forum is to run broadcast ads and conduct voter mobilization activities designed to elect Republican candidates to the House of Representatives, and to defeat Democratic House candidates. In this regard, the Forum was set up to continue the past role of the NRCC in spending soft money to elect Republican candidates in House races. The NRCC and its representatives, which established the Leadership Forum, had spent millions of dollars of soft money on such ads and voter mobilization activities in past elections.

30. The Leadership Forum is headed by several individuals with close ties to House Republican leaders. Susan Hirschmann is the director of the Forum and was, until August, 2002, the chief of staff to Rep. Tom DeLay. Former Rep. Bill Paxon is the vice president of the forum and is the former head of the NRCC. Julie Wadler, the former deputy finance director of the NRCC, is the secretary-treasurer of the Forum.

31. The NRCC transferred $1 million in non-federal funds to the Forum shortly before November 5, 2002.[43] The $1 million soft money transfer was made from the NRCC building fund account. According to published reports, the transfer was expressly approved by several Republican members of the House, including Rep. Tom Reynolds (who is the current chairman of

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[42] T. Edsall, "New Ways to Harness Soft Money in Works; Political Parties Poised to Take Huge Donations," *The Washington Post* (Aug. 25, 2002). (Exhibit S).

[43] MUR 5338, First General Counsel's Report (March 27, 2003) at 9; J. Bresnahan, "NRCC Quietly Gives $1 Million to New 527," *Roll Call* (Nov. 7, 2002). (Exhibit T).

the NRCC).[44] These funds were returned by the Leadership Forum to the NRCC after legal questions were raised about this transfer.[45]

32. *The Washington Post* described the Leadership Forum as "a new GOP committee to channel soft money to House campaigns…."[46] *The New York Times* reported that Scott Reed, a Republican strategist, said that the Leadership Forum would be "the House go-to operation."[47] According to this report, Reed added, "This is the way politics and campaigns will be run under the new law."[48] A story in *Roll Call* said the Leadership Forum "will raise funds to defend GOP lawmakers with issue ads during the 2004 elections."[49] A more recent story in *Roll Call* describes the Leadership Forum as "aimed at raising soft money for House campaigns."[50] Another recent *Roll Call* story says that the Leadership Forum "is seeking corporate contributions to support GOP candidates for Congress."[51]

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44 S. Crabtree, "GOP Leadership Races Heating Up," *Roll Call* (Nov. 11, 2002). (Exhibit U).

45 *See* First General Counsel's Report, MUR 5338 (March 27, 2003) at 9-10.

46 T. Edsall, "Campaign Money Finds New Conduits As Law Takes Effect," *The Washington Post* (Nov. 5, 2002) (Exhibit V).

47 D. Van Natta, "Parties Create Ways to Avoid Soft Money Ban," *The New York Times* (Nov. 2, 2002). (Exhibit W).

48 *Id.*

49 J. Bresnahan, "GOP Gets Generous With Soft Money," *Roll Call* (Nov. 14, 2002). (Exhibit X).

50 C. Cillizza, "GOP Group Joins Soft-Money Fray," *Roll Call* (Nov. 24, 2003). (Exhibit Y).

51 B. Mullins, "Amazon Putting Campaign Cash a Click Away," *Roll Call* (Jan. 12, 2004). (Exhibit Z).

33. The Leadership Forum has recently intensified its efforts for the 2004 elections. A recent story in *National Journal* said that the Leadership Forum "is planning issue-advocacy efforts to help House candidates in key races."[52] *Roll Call* has reported that the Leadership Forum has been "aggressively raising money over the past several months"[53] and is "now actively fundraising."[54]

34. The evidence set forth above makes clear that the overriding purpose of the Leadership Forum is to sponsor broadcast ads for the purpose of promoting or supporting the election of particular House Republican candidates or attacking or opposing the election of particular House Democratic candidates and/or to engage in partisan voter mobilization activities aimed at the general public. The evidence also makes clear that the soft money being given to the Leadership Forum and put into purportedly "nonfederal" accounts is being given and will be spent for the purpose of influencing the 2004 congressional elections.

Count 1
(Political Committee Status)

35. The section 527 group respondents – including the purportedly "nonfederal" accounts maintained by these respondents – are "political committees" under the federal campaign finance law. They are entities which (1) have a "major purpose" to influence candidate elections, and in particular, federal candidate elections, and (2) receive contributions or make expenditures of more than $1,000 in a calendar year. Because these respondents meet both parts of this test, they are federal "political committees," and are accordingly subject to the contribution limits, source

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52 E.N. Carney, *supra* at 3806. (Exhibit P).

53 C. Cillizza, "Democratic Senate Majority Fund Slows Activity As Group Awaits Decision in BCRA Court Case," *Roll Call* (Sept. 15, 2003). (Exhibit AA).

54 C. Cillizza, "Leaders Fill PAC Coffers," *Roll Call* (Oct. 27, 2003). (Exhibit BB).

prohibitions and reporting requirements that apply to all federal political committees. Because they have not complied with these rules applicable to federal political committees, they have been, and continue to be, in violation of the law.

36. Section 431(4) of Title 2 defines the term "political committee" to mean "any committee, club, association or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year." 2 U.S.C. § 431(4); *see also* 11 C.F.R. § 100.5(a). A "contribution," in turn, is defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office…." 2 U.S.C. § 431(8)(A). Similarly, an "expenditure" is defined as "any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office…" 2 U.S.C. § 431(9)(A).

37. Any entity which meets the definition of a "political committee" must file a "statement of organization" with the Federal Election Commission, 2 U.S.C. § 433, and periodic disclosure reports of its receipts and disbursements. 2 U.S.C. § 434. In addition, a "political committee" is subject to contribution limits, 2 U.S.C. § 441a(a)(1), §441a(a)(2), and source prohibitions, 2 U.S.C. § 441b(a), on the contributions it may receive and make. 2 U.S.C. § 441a(f). These rules apply even if the political committee is engaged only in independent spending. 11 C.F.R. § 110.1(n).

38. In *Buckley v. Valeo,* 424 U.S. 1 (1976), the Supreme Court construed the term "political committee" to "only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." 424 U.S. at 79 (emphasis added). Again, in *FEC v. Massachusetts Citizens for Life,* 479 U.S. 238 (1986), the

Court invoked the "major purpose" test and noted that if a group's independent spending activities "become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee." 479 U.S. at 262 (emphasis added). In that instance, the Court continued, it would become subject to the "obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns." *Id.* (emphasis added). The Court in *McConnell* restated the "major purpose" test for political committee status as iterated in *Buckley*. Slip op. at 62, n.64.

39. In *FEC v. GOPAC,* 917 F.Supp. 851 (D.D.C. 1996), a single federal district court further narrowed the "major purpose" test to encompass not just the nomination or election of any candidate, but only "the nomination or election of a particular candidate or candidates for federal office." 917 F.Supp. at 859. Thus, the court said that "an organization is a 'political committee' under the Act if it received and/or expended $1,000 or more and had as its major purpose the election of a particular candidate or candidates for federal office." *Id.* at 862. The court further said that an organization's purpose "may be evidenced by its public statements of its purpose or by other means, such as its expenditures in cash or in kind to or for the benefit of a particular candidate or candidates." *Id.*

40. The district court in *GOPAC* misinterpreted the law and incorrectly narrowed the test for a "political committee" as set forth by the Supreme Court in *Buckley.* The Commission, however, failed to appeal the district court decision in *GOPAC.* Nonetheless, even under the approach adopted in *GOPAC,* the respondents here are "political committees" and are required to file as such under federal law.

41. There is a two prong test for "political committee" status under the federal campaign finance laws: (1) whether an entity or other group of persons has a "major purpose" of

influencing the "nomination or election of a candidate," as stated by *Buckley,* or of influencing the "election of a particular candidate or candidates for federal office," as stated by *GOPAC,* and if so, (2) whether the entity or other group of persons receives "contributions" or makes "expenditures" of at least $1,000 or more in a calendar year.

42. Prong 1: The "major purpose" test. The section 527 respondent groups – including the "nonfederal" accounts they have established – all have a "major purpose" of influencing the election of a candidate, under *Buckley,* or of a "particular candidate or candidates for federal office," under *GOPAC.* The respondent groups thus meet the first prong of the test for "political committee" status, under either *Buckley* or *GOPAC.*

43. First, the respondents are all organized under section 527 of the Internal Revenue Code, 26 U.S.C. § 527, and are thus by definition "political organizations" that are operated "primarily" for the purpose of influencing candidate elections. Section 527 of the IRC provides tax exempt treatment for "exempt function" income received by any "political organization." The statute defines "political organization" to mean a "party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." 26 U.S.C. § 527(e)(1) (emphasis added). An "exempt function" is defined to mean the "function of influencing or attempting to influence the selection, nomination, election or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors…" 26 U.S.C. § 527(e)(2) (emphasis added). The Supreme Court said in *McConnell,* "Section 527 'political organizations' are, unlike § 501(c) groups, organized for the express purpose of engaging in partisan political activity." Slip op. at 66, n.67. The Court noted that they "by definition engage in partisan political

activity." *Id.* at 69. A "political organization" as defined in section 527 must register as such with the Secretary of the Treasury, and must file periodic disclosure reports with the Secretary as required by section 527(j). All of the respondents in this matter have registered with the Secretary as "political organizations" under section 527.[55]

44. Thus, by definition, any entity that registers with the Secretary as a "political organization" under section 527 is "organized and operated primarily" for the purpose of "influencing or attempting to influence the selection, nomination, election or appointment of" an individual to public office. The Commission has frequently cited the section 527 standard as identical to the "major purpose" prong of the test for "political committee" status. *See e.g.,* Advisory Opinions 1996-13, 1996-3, 1995-11. Accordingly, any group that chooses to register as a "section 527 group" – including each of the section 527 group respondents named in this complaint -- is by definition an entity "the major purpose of which is the nomination or election of a candidate…" Under the "major purpose" standard set forth in *Buckley*, this is sufficient to meet the first prong of the "political committee" test.

45. But even if that standard is further narrowed by *GOPAC,* each of the respondent section 527 groups in this matter has a "major purpose" of influencing the nomination or election of a "particular candidate or candidates for federal office…" 917 F.Supp. at 859. Multiple published reports, as discussed above, plainly indicate that ACT and The Media Fund each have as their "major purpose" the defeat of President Bush. The Leadership Forum has the "major purpose" of supporting the election of specific Republican candidates to the House of Representatives or defeating specific Democratic candidates to the House. All three groups have made clear that they intend to spend millions or tens of millions of dollars on partisan voter

[55] The Form 8871 registrations filed with the Internal Revenue Service by each of the respondents are attached as Exhibits CC, DD and EE.

mobilization activity aimed at the general public and/or broadcast ads that are intended to influence the 2004 presidential and congressional elections. In the case of The Media Fund, broadcast ads will in many, if not all, cases expressly refer to President Bush, and attack or oppose his reelection, and/or refer to the Democratic presidential nominee and support or promote his election. In the case of ACT, its leaders have made unambiguously clear that their overriding goal is to defeat President Bush and that they will engage in voter mobilization activities to accomplish this objective. In the case of the Leadership Forum, its leaders and Republican House members have made clear that their overriding goal is to help elect Republican candidates to the House and/or defeat Democratic candidates. In all three cases, the section 527 group respondents have a "major purpose" to support or oppose particular federal candidates, thus meeting even the most rigorous definition under *GOPAC* of the first prong of the test for "political committee."

46. Prong 2: "Expenditures" of $1,000. The second prong of the definition of "political committee" is met if an entity which meets the "major purpose" test also receives "contributions" or makes "expenditures" aggregating in excess of $1,000 in a calendar year. Both "contributions" and "expenditures" are defined to mean funds received or disbursements made "for the purpose of influencing" any federal election. 2 U.S.C. § 431(8), (9).

47. This second prong test of whether a group has made $1,000 in "expenditures" is not limited by the "express advocacy" standard when applied to a section 527 group, such as all of the respondents here. Rather, the test is the statutory standard of whether disbursements have been made "for the purpose of influencing" any federal election, regardless of whether the disbursements were for any "express advocacy" communication. The Supreme Court made clear in *Buckley* that the "express advocacy" standard does not apply to an entity, like a section 527 group, which has a major purpose to influence candidate elections and is thus not subject to

concerns of vagueness in drawing a line between issue discussion and electioneering activities. Groups such as section 527 "political organizations" are formed for the principal purpose of influencing candidate elections and, as explained by the Court in *Buckley,* their expenditures "can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related." *Id.* The Court affirmed this position in *McConnell.* Slip op. at 62, n.64. Thus, the "express advocacy" test is not relevant to the question of whether a section 527 organization is spending money to influence the election of federal candidates.

48. The respondent section 527 groups – including all of the federal and "nonfederal" accounts they have established – have all made, or are imminently planning to make, "expenditures" in amounts far in excess of the $1,000 threshold amount of the second prong of the test for "political committee" status. Each respondent has stated that it has made or intends to make large expenditures for the purpose of defeating President Bush, or (in the case of the Leadership Forum) supporting the election of Republican candidates for the House.

49. Some of these expenditures may be made for partisan voter mobilization activities aimed at the general public, and some may be made for broadcast advertisements that refer to President Bush or other federal candidates. In all cases, these disbursements will be made "for the purpose of influencing" federal elections, and thus constitute "expenditures" under the law.

50. Partisan voter mobilization activity is clearly intended to influence federal elections. The Supreme Court in *McConnell* said, "Common sense dictates…that a party's efforts to register voters sympathetic to that party directly assist the party's candidates for federal office. It is equally clear that federal candidates reap substantial rewards from any efforts that increase the number of like-minded registered voters who actually go to the polls." Slip op. at 59. The Court further noted that "voter registration, voter identification, GOTV and generic campaign activity all

confer substantial benefits on federal candidates…." Slip op. at 60. Indeed, to qualify as an "exempt function" under section 527 of the Internal Revenue Code, a voter mobilization expenditure by a section 527 group must be partisan in nature. *E.g.* IRS Priv.Ltr.Rul. 1999-25-051 (Mar. 29, 1999). Thus, this partisan voter mobilization activity to be conducted by one or more of the respondents is, by definition, "for the purpose of influencing" a federal election.

51. Broadcast ads run by a section 527 "political organization" that promote, support, attack or oppose federal candidates are also clearly for the purpose of influencing a federal election, even if such ads do not contain "express advocacy" or are not "electioneering communications," as defined in 2 U.S.C. § 434(f)(3)(A)(i). Because the "express advocacy" test does not apply to section 527 groups, and thus does not limit the statutory definition of "expenditures" made by such groups, all funds spent by the respondent section 527 groups to promote or support a Democratic nominee or attack or oppose President Bush, or various congressional candidates, are "expenditures" because they are being made "for the purpose of influencing" the 2004 presidential and congressional elections.

52. Two of the respondents – The Media Fund and the Leadership Forum – to date have not registered any federal account with the Commission. These two groups are presumably intending to make all of their disbursements regarding federal candidates from a purportedly "nonfederal" account funded with money raised for the purpose of influencing federal elections. For the reasons stated above, these purportedly "nonfederal" accounts are in fact federal "political committees" and should be registered as such with the Commission and should comply with federal contribution limits, source prohibitions and reporting requirements.

53. ACT has created a "federal" account – i.e., a federal "political committee" – as well as a "nonfederal" account. The analysis set forth above, however, makes clear that the "major

purpose," indeed the overriding purpose, of ACT's activities, including its purportedly "nonfederal" account, is to promote the election of the Democratic nominee for president, and to defeat President Bush. In fact, the soft money being given to the purportedly "nonfederal" account is clearly being donated explicitly for the purpose of defeating President Bush, as George Soros and other donors have made clear. Thus, the purportedly "nonfederal" account itself is a federal "political committee" and must comply with federal contribution limits, source prohibitions and reporting requirements. In other words, money being raised and spent for the purpose of influencing a federal election cannot evade federal law simply by being funneled through an account that is denominated as "nonfederal." The same is true of the "nonfederal" accounts created by the other respondents, whether or not they also have federal "political committee" accounts as well.

54. ACT may attempt to claim that Commission regulations theoretically allow it to engage in an "allocation" of its expenditures between its federal and "nonfederal" accounts. This is not correct. The Commission's allocation regulations do not apply in the circumstances here, where an entity as a whole has a major, indeed overriding, purpose to influence federal elections.

55. The Supreme Court in *McConnell* specifically and repeatedly criticized the Commission's use of allocation methodology as failing to properly implement the FECA. *See* Slip op. at 32 (noting that the FECA "was subverted by the creation of the FEC's allocation regime…"), 33 (noting under "that allocation regime," national parties were able to use "vast amounts of soft money in their efforts to elect federal candidates…"), 35 (noting that "the FEC's allocation regime has invited widespread circumvention of FECA's limits on contributions…."), 58 (noting that "FECA's long-time statutory restriction" on contributions to state parties for the purpose of influencing federal elections was "eroded by the FEC's allocation regime…"). In light

of the Supreme Court's discussion of allocation, any use of an allocation regime in the case of ACT would be inconsistent with FECA, with BCRA, and with the *McConnell* decision, and would allow the respondents to, in the words of the Supreme Court, "subvert," "erode" and "circumvent" the contribution limits and source prohibitions of the law.

56. In theory, allocation formulae were created for organizations whose activities are undertaken to influence non-federal elections as well as federal elections. The overriding purpose of ACT, as well of The Media Fund and the Leadership Forum, is to influence federal elections – in the case of ACT and The Media Fund, the 2004 presidential races, and in the case of the Leadership Forum, individual 2004 House races. The evidence set forth above leaves no room for concluding otherwise. Under such circumstances, it would be absurd to apply Commission allocation regulations here, even if they may appropriately be applied in other circumstances. To allow allocation here would fundamentally undermine the BCRA soft money ban, which was intended precisely to stop soft money from being injected into federal elections. It would also make a mockery of the Supreme Court decision in *McConnell*, which explicitly labeled the allocation scheme created by the FEC as the means by which the federal campaign finance laws had been subverted. Slip op. at 32.

57. Because all three section 527 group respondents – including all of the "nonfederal" accounts they have established – have a "major purpose" to support or oppose the election of one or more particular federal candidates, and because all three respondents have spent or imminently intend to spend far in excess of the statutory $1,000 threshold amount on "expenditures" for this purpose, the Commission should find that all respondents, including all of their "nonfederal" accounts, are "political committees" under the Act. Because the respondents have not filed a statement of organization as a political committee, as required by 2 U.S.C. § 432,

and have not complied or do not intend to comply with reporting requirements of 2 U.S.C. § 434, and have not complied and do not intend to comply with the contribution limits and source prohibitions of 2 U.S.C. §§ 441a and 441b, the Commission should find respondents in violation of all of these provisions of law.

Count 2
(Conduit for corporate and union spending)

58. The evidence set forth above shows that labor organizations have donated or pledged treasury funds to ACT to be spent to conduct partisan voter mobilization activities aimed at the general public in connection with the 2004 federal elections. The facts also make clear that ACT's voter mobilization activities will be conducted with the intent of defeating President Bush by targeting Democratic voters.

59. The FECA prohibits a labor organization or corporation from making a "contribution" or "expenditure" "in connection with" a federal election. 2 U.S.C. § 441b(a). This includes any "direct or indirect payment…or gift of money…or anything of value…to…any…organization, in connection with any [federal] election…." *Id.* (emphasis added).

60. The definition of "expenditure" excludes "nonpartisan activity designed to encourage individuals to vote or to register to vote…" 2 U.S.C. 431(9)(B)(ii). Thus, partisan voter mobilization activity in connection with a federal election aimed at the general public is included in the definition of "expenditure" and covered by the ban on the direct or indirect spending of union or corporate treasury funds for these purposes. *C.f.* 11 C.F.R. § 114.4(d).[56]

[56] The FECA makes other exceptions to the prohibition on spending corporate or union funds "in connection with" a federal election, but these exceptions are not applicable here. These exceptions includes any communication "on any subject" by a corporation or labor union aimed at their respective restricted classes, *i.e.*, by a corporation to its stockholders and executive or

61. Thus, a union cannot use its treasury funds to pay for partisan voter mobilization in connection with a federal election activity aimed at the general public. Nor can a union give treasury funds to another group, such as a section 527 group, to be spent on partisan voter mobilization activities in connection with a federal election aimed at the general public. To do so would constitute "indirect" spending of union treasury funds for purposes that such funds cannot be spent directly. Such "indirect" spending of union treasury funds on prohibited activity is as illegal as the direct spending of such funds on the same activity.

62. The evidence set forth above demonstrates that labor unions have contributed or pledged contributions to ACT to be spent on partisan voter mobilization activities in connection with a federal election aimed at the general public. Such expenditures constitute a violation of the law.

Prayer for Relief

Wherefore, the Commission should conduct an immediate investigation under 2 U.S.C. §437g, should determine that the respondents have violated or are about to violate 2 U.S.C. §§ 432, 434, 441a and 441b(a), and 11 C.F.R. § 114.4, should impose appropriate sanctions for such 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.

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administrative personnel and their families, or by a labor organization to its members and their families. 2 U.S.C. § 441b(b)(2)(A). Another exception to the prohibition is for "nonpartisan registration and get-out-the-vote campaigns" by a corporation or by a labor organization aimed at their respective restricted classes. *Id.* at (B). Because the voter mobilization activities in this case are aimed at the general public, these statutory exceptions do not apply.