

By Hand

January 22, 2003

Ellen Weintraub
Chair
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: MUR 5338

Dear Ms. Weintraub:

On November 21, 2002, the undersigned organizations filed a complaint with the Commission against the Leadership Forum and individuals associated with it, and against the National Republican Congressional Committee (NRCC), as well as against two Democratic party entities and individuals associated with them.

The complaint alleged, in part, that the Leadership Forum is an entity “directly or indirectly established, financed, maintained or controlled” by the NRCC and was therefore operating as an illegal scheme to raise and spend soft money for “Federal election activity” in the 2004 election, in violation of the Bipartisan Campaign Reform Act (BCRA).

The complaint cited published reports of multiple facts in support of this allegation, including a report that the heads of the Forum are individuals with close ties to House Majority Leader Tom DeLay and the NRCC, the statements of Republican party leaders and operatives backing the formation of the Forum, and the fact that the NRCC reportedly transferred \$1 million in soft money funds to the Forum shortly before the BCRA went into effect on November 6, 2002.

According to a recent published report, the Leadership Forum has returned the funds transferred to it by the NRCC. J. Bresnahan, “Leadership Forum Returns \$1 Million,” *Roll Call* (January 8, 2003)(copy attached).

We are writing to make clear that the return of the funds does not, in our view, vitiate the complaint or relieve the Leadership Forum, the NRCC or the other respondents of liability for their violations of the law. The Commission should continue its investigation of this matter and impose appropriate sanctions.

There are three bases for this position. First, the Forum's recent return of the funds to the NRCC does not cure the fact that the Forum violated the BCRA by possessing soft money funds after November 6, 2002, the effective date of the law. Because the Forum was "established, financed, maintained or controlled" by the NRCC, it was illegal for the Forum to have soft money funds on hand after the law's effective date, and it was illegal for the NRCC to be affiliated with an entity that had soft money funds at that time. The return of the funds (indeed, itself an illegal "transfer" under 2 U.S.C. 441i(a)(1)) does not cure the illegality, any more than a recipient's return of an illegal contribution absolves the donor or recipient of liability for the illegality of the contribution itself. In this matter, the Commission should find that a violation occurred, and impose sanctions for the violation.

Second, our complaint is predicated on facts other than the transfer of funds from the NRCC to the Leadership Forum. While that transfer of funds certainly established the factual predicate for affiliation under section 441i(a)(1), the complaint also alleged multiple other facts that independently show that the Forum was "established, financed, maintained and controlled" by the NRCC. As we allege in the complaint, the Forum was apparently set up with the active participation and support of Republican House members, including the chair of the NRCC, with the goal of using soft money to support Republican House candidates, and is being run by individuals with close and ongoing ties to the NRCC and House Republican leaders. As such, the Forum was directly or indirectly "established" and is directly or indirectly "controlled" by the NRCC. It thus continues to operate as an illegal scheme to raise and spend soft money in the 2004 elections.

Finally, because the Forum was and is affiliated with the NRCC under section 441i(a)(1), it cannot in the future raise or spend non-federal funds. Once affiliated, the Forum's return of the funds it received from the NRCC cannot serve to dis-affiliate it.

This matter, as we state in the complaint, is an important case for the Commission to establish that it will effectively enforce the BCRA, and not allow shadow entities to be established by the parties in order to evade the ban on soft money. We urge you to take action on this matter.

Respectfully submitted,

/s/ Fred Wertheimer

/s/ Donald J. Simon

Fred Wertheimer
Democracy 21

Donald J. Simon
Common Cause

/s/ Trevor Potter

/s/ Larry Noble

Trevor Potter
Campaign and Media Legal Center

Larry Noble
Center for Responsive Politics

Copy by Hand to:
Commissioner Bradley A. Smith
Commissioner Scott Thomas
Commission David Mason
Commissioner Danny McDonald
Commissioner Michael Toner
Lawrence Norton, General Counsel