



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOV 16 2004

Timothy Beall, Treasurer
Bauer for President 2000, Inc.
P.O. Box 266
Kensington, MD 20895

Re: MUR 5396

Dear Mr. Beall:

On October 26, 2004, the Federal Election Commission accepted the signed conciliation agreement submitted in settlement of violations of 2 U.S.C. §§ 441a(f) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in the matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty amount of \$31,000 is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1618.

Sincerely,


Kimberly D. Hart
Attorney

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5396
Bauer for President 2000, Inc.)
and Francis P. Cannon, as Treasurer)
)

RECEIVED
FEC MAIL
OPERATIONS CENTER
2000 JUL 23 P 1:45

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Bauer for President 2000, Inc. and Francis P. Cannon as treasurer ("Respondents") violated 2 U.S.C. §§ 441a(f) and 441b(a).

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2000 JUL 23 P 3:01

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Bauer for President 2000, Inc. ("BFP") is a political committee within the meaning of 2 U.S.C. § 431(4). BFP is the authorized committee of Gary Bauer, a candidate for the Republican Party's nomination for the office of President in the 2000 election cycle.

2000 JUL 23 P 3:01

2. Francis P. Cannon is the treasurer of BFP.

3. Campaign for Working Families PAC ("CWF") is a multicandidate political committee associated with the candidate, Gary Bauer. CWF registered as a political committee with the Commission in November 1996 and qualified for multi-candidate status in August 1997.

4. The candidate formed CWF in 1996 and was listed on CWF letterhead in 2000 as the Chairman of CWF. The candidate is also listed as CWF's chairman on its web site.

5. The list exchange between the candidate's presidential campaign and his leadership PAC was not made at arm's length.

6. BFP and CWF made an oral agreement in early 1999 to exchange donor lists.

7. Although there was not a written agreement, the list exchange between CWF and BFP is delineated in a memorandum dated January 22, 1999 between the President of a BFP direct mail vendor, the Lukens Cook Company ("Lukens"), and the treasurer of CWF.

8. The memorandum stated that to "facilitate the exchange process and ensure as few delays as possible" BFP would receive a complete copy of the CWF donor and non-donor files for use during the exploratory process and any subsequent presidential campaign. In exchange, BFP was to provide CWF with a complete copy of its donor and non-donor files at the end of the campaign. CWF and BFP were to pay the cost of providing each other with copies of their donor lists. The CWF names would remain the sole property of CWF and the BFP names would remain the property of BFP.

9. The memorandum further stated that list exchanges between BFP and CWF would be coordinated through Pinnacle List Company ("Pinnacle"), a list broker, which would keep an "exchange balance history for both donors and non-donors" including sample copy, mail dates and quantities for each BFP usage of CWF files. The memorandum stated that BFP would

submit to Pinnacle a "Request to Mail Form" with proposed copy for each planned mailing. Upon CWF's approval, BFP would pull "selects" of groups of names from its copy of the CWF donor files, directly paying the cost of pulling these names, and provide an "output count" to Pinnacle. Likewise, the memorandum stated that when CWF received and used BFP's donor lists at the end of the campaign, it would pull its selects from BFP's files and directly pay the costs of doing so.

10. BFP provided an exchange balance to Pinnacle. Pinnacle stated through its President, Holly Ruble, that it did not have responsibility for or access to list usage communications between CWF and BFP during the campaign. It stated that it understood that a BFP staff member would track and record list exchanges between BFP and CWF. Pinnacle requested the "exchange balance and list usage records" between BFP and CWF at the end of BFP's campaign activity in March 2000 in "an effort to confirm and document the list exchange balances now owed" to CWF by BFP. Pinnacle provided a document it received from BFP listing information about each BFP use of the CWF donor file including the date and quantity and "shared this exchange transaction history with our client, CWF, by way of their list exchange log." Pinnacle asserted that it accepted BFP's record of these transactions as accurate. The exchange balance listed on the document provided by Pinnacle is a total of names used in the separate mailings and is larger than the total number of names on CWF's donor list; thus, some CWF names were used multiple times by BFP.

11. CWF provided its donor files to BFP soon after the agreement was made. CWF stated that on February 1, 1999 it made available to BFP the "Campaign for Working Families house list," containing 87,013 donors and 51,507 non-donors.

ES-04-410-1118

12. BFP used CWF's file 22 times during the period from February 5, 1999 through February 28, 2000, for an aggregate total of 957,338 names, and CWF used BFP's donor files 33 times from June 2000 through March 2004, for an aggregate total of 202,427 names. CWF and BFP did not use all the names in the respective files each time they used the files. Rather, they chose categories of names (selects) identifying segments or subgroups within a list from the complete list. As of June 2004, CWF contends that it continues to rent the BFP donor list on a regular basis.

13. According to information obtained from the SRDS Direct Marketing List Source (December 1998-December 1999), the CWF rents its mailing list for \$115 per 1000 names and BFP rents its list for \$130 per 1000 names.

14. The value of 957,338 CWF names was \$110,094 ($957,338/1000 \times \115) and the value of 202,427 BFP names was \$26,315 ($202,427/1000 \times \130). The difference in the value of the names was \$83,779 ($\$110,094 - \$26,315$).

15. In Advisory Opinion ("AO") 2002-14, the Commission allowed a committee to "exchange its mailing lists or portions of its mailing lists... provided that the lists or the portions of the lists that are exchanged are of equal value." In AO 2002-14 the Commission concluded that the rental or exchange of mailing lists by the Libertarian National Committee ("LNC") would not result in a contribution if certain conditions were met. The Commission noted that the LNC list was developed by the LNC over a period of time, had a unique nature and did not constitute merely a list purchased from other sources. It further noted that the list was developed primarily for the LNC's use for its own political or campaign purposes, and not for sale or lease of the names on the list to others. The lease of the LNC list was only a small percentage of its use of the list. The Commission concluded that under these circumstances, the LNC could exchange its mailing lists or portions of its mailing lists with any organization, including a

political committee, provided that the lists or portions of the lists that were exchanged were of equal value without the exchange resulting in a contribution or transfer subject to the Act.

16. BFP reported that it received a \$4,000 contribution from CWF on January 29 1999. As a multi-candidate committee, CWF could not legally contribute more than \$5,000 to BFP. 2 U.S.C. § 441a(a)(2)(A). After CWF contributed \$4,000 to BFP in January 1999, it could contribute only an additional \$1,000 under the limit.

17. The exchange of donor lists between BFP and CWF was not an exchange of donor lists of equal value. CWF exchanged its mailing list for a BFP mailing list that was not of equal value: the difference in the value of the lists exchanged was \$83,779. Thus, the list exchange was a contribution from CWF to BFP in the amount of \$83,779, with an excessive portion of \$82,779.

18. Respondents received an excessive in-kind contribution from CWF in the form of the provision of CWF's donor list at less than the usual and normal charge. 2 U.S.C. §§ 441a(a)(2)(A), 441a(f); 11 C.F.R. § 100.7(a)(1)(iii).

19. Three direct mail vendors, America Direct, Inc. ("America Direct"); RST Marketing Associates, Inc. ("RST"); and Moore Response Marketing Services ("Moore") provided direct mail services to BFP for which they were not fully paid in a timely manner.

20. The extension of credit by any person is a contribution unless it is extended in the ordinary course of business and the terms are substantially similar to extensions of credit to nonpolitical debtors of similar risk and size of obligation. 11 C.F.R. § 100.7(a)(4). If a creditor fails to make a commercially reasonable attempt to collect the debt, a contribution will result. *Id.*; see 11 C.F.R. § 116.3 and 116.4.

21. Although corporate contributions are prohibited, 2 U.S.C. § 441b(a) and (b), an extension of credit by an incorporated commercial vendor to a candidate or political committee will not be considered a contribution provided the terms are substantially similar to its extensions of credit to nonpolitical debtors that are of similar risk and size of obligation, and the credit is extended in the ordinary course of the commercial vendor's business. 11 C.F.R. § 116.3(a) and (b), *see* § 116.1. To determine if credit was extended in the ordinary course of the commercial vendor's business, the Commission will consider: 1) whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit; 2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and 3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry. 11 C.F.R. § 116.3(c).

22. America Direct is a corporation that served as a direct mail vendor for BFP.

23. BFP received invoices from America Direct for the services it provided. The invoices noted that BFP's payments were "due on receipt" or "net 30."

24. Eight America Direct invoices to BFP remained outstanding for an excessive period. Five invoices totaling \$108,071, dated between February 17, 1999 and April 1, 1999, were paid by a single check on July 27, 1999. Prior to payment, the invoices were outstanding for 117 to 160 days. Two invoices in the amounts of \$62,579 and \$31,328 were dated December 6, 1999. BFP paid the first invoice (\$62,579) in two installments: a payment of \$33,000 on May 31, 2000, 177 days subsequent to the date of the invoice, and a payment of \$29,579 on July 24, 2000, 231 days after the date of the invoice. The second invoice (\$31,328) was paid on April 19, 2000, 135 days after the date of the invoice. The final invoice (\$57,884) was dated December 28, 1999 and was paid on June 30, 2000, 185 days after the date of the invoice.

25. America Direct did not send follow-up invoices to BFP. Rather, America Direct made oral attempts to collect the amounts due. These oral attempts to collect the amounts due presently continue as of June 2004.

26. BFP reported the amounts due to America Direct as debts. BFP's April 2004 Quarterly Report discloses a debt of \$32,289.49 owed to America Direct.

27. Respondents have not provided evidence that America Direct's extension of credit to BFP was in the ordinary course of business, on terms that were substantially similar to its extension of credit to nonpolitical debtors of similar risk and size of obligation. 11 C.F.R. §§ 100.7(a)(4), 116.3(b). Respondents have provided no evidence that America Direct followed its established procedures and past practice or that the extension of credit conformed to the usual and normal practice in the direct mail industry. 11 C.F.R. §§ 100.7(a)(4), 116.3(b). For example, there is no written evidence of collection efforts by this vendor or information about its collection policies and practices, advance payment policies, or billing cycles for nonpolitical debtors. Further, America Direct continued to extend credit to BFP despite not receiving prompt payment of prior extensions of credit. *Id.*

28. America Direct extended credit to BFP outside the ordinary course of business. This extension of credit constituted a prohibited contribution from America Direct to BFP in the amount of \$259,862. 2 U.S.C. § 441b(a).

29. RST is a corporation that provided direct mail services to BFP.

30. RST billed BFP a total of \$1,149,315. Terms noted on the invoices indicated that payment was "due in 30 days."

31. Twelve RST invoices to BFP, totaling \$342,613, were not paid timely. Seven invoices, in amounts ranging from \$1,500 to \$12,000, remained outstanding between 134 to 164

days. The remaining five invoices, in amounts between \$40,000 and \$93,000, remained outstanding between 103 and 195 days.

32. RST did not send subsequent invoices to BFP. Rather, RST made oral attempts to collect the amounts due. These oral attempts to collect the amounts due presently continue as of June 2004. BFP's April 2004 Quarterly Report discloses a debt of \$23,931.97 owed to RST.

33. Respondents have not provided evidence that RST's extension of credit to BFP was in the ordinary course of business, on terms that were substantially similar to its extension of credit to nonpolitical debtors of similar risk and size of obligation. 11 C.F.R. §§ 100.7(a)(4), 116.3(b). Respondents have provided no evidence that RST followed its established procedures and past practice or that the extension of credit conformed to the usual and normal practice in the direct mail industry. 11 C.F.R. §§ 100.7(a)(4), 116.3(b). For example, there is no *written* evidence of collection efforts by this vendor or information about its collection policies and practices, advance payment policies, or billing cycles for nonpolitical debtors. Further, RST continued to extend credit to BFP despite not receiving prompt payment of prior extensions of credit. *Id.*

34. RST extended credit to BFP outside the ordinary course of business. This extension of credit constituted a prohibited contribution from RST to BFP in the amount of \$342,613. 2 U.S.C. § 441b(a).

35. Moore is a corporate vendor of direct mail services.

36. BFP did not pay timely portions of two invoices totaling \$124,089 owed to Moore. The terms noted on both invoices were "payable on receipt."

37. The first invoice, for \$408,001, was dated November 11, 1999. BFP made four timely payments totaling \$293,956, leaving a balance of \$114,045. BFP subsequently paid

\$30,000 (May 23, 2000) and \$20,000 (July 3, 2000) on this invoice; however, these payments were made between 194 and 235 days subsequent to the date of the invoice. BFP reported a debt still owed to Moore on its 2003 July Quarterly Report in the amount of \$37,045.

38. The second invoice from Moore was dated August 4, 1999 in the amount of \$11,713. BFP's initial payment of \$1,669 was timely. However, BFP did not pay the remaining balance of \$10,044 until February 14, 2000, 194 days after the date of the invoice.

39. On September 7, 2000, Moore submitted an invoice and payment history to BFP that reflected a \$64,045 outstanding balance. Moore made additional oral attempts to collect on the amounts due and ultimately referred the matter to a collection agency in December 2001.

40. Respondents have not provided evidence that Moore's extension of credit to BFP was in the ordinary course of business, on terms that were substantially similar to its extension of credit to nonpolitical debtors of similar risk and size of obligation. 11 C.F.R. §§ 100.7(a)(4), 116.3(b). Respondents have provided no evidence that Moore followed its established procedures and past practice or that the extension of credit conformed to the usual and normal practice in the direct mail industry. 11 C.F.R. §§ 100.7(a)(4), 116.3(b). Other than one follow-up invoice, Respondents have not provided any written evidence of collection efforts by Moore or information about its collection policies and practices, advance payment policies, or billing cycles for nonpolitical debtors. In addition, BFP has still not paid Moore in full.

41. Moore extended credit to BFP outside the ordinary course of business. This extension of credit constituted a prohibited contribution from Moore to BFP in the amount of \$124,089. 2 U.S.C. § 441b(a).

V. 1. Respondents accepted excessive in-kind contributions from CWF in the form of the exchange of mailing lists of unequal value that exceeded the contribution limitation by \$82,779 in violation of 2 U.S.C. § 441a(f).

2. Respondents accepted prohibited contributions from America Direct Inc. in the amount of \$259,862 in violation of 2 U.S.C. § 441b(a).

3. Respondents accepted prohibited contributions from RST Marketing Associates, Inc. in the amount of \$342,613 in violation of 2 U.S.C. § 441b(a).

4. Respondents accepted prohibited contributions from Moore Response Marketing Services in the amount of \$124,089 in violation of 2 U.S.C. § 441b(a).

5. Respondents will cease and desist from violating 2 U.S.C. §§ 441a(f) and 441b(a).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of thirty-one thousand dollars (\$31,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

ES-04-443-1125

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY: *Rhonda J. Vording*
Rhonda J. Vording
Associate General Counsel
for Enforcement

10/10/04
Date

FOR THE RESPONDENTS:

Timothy Beall
Timothy Beall
Assistant Treasurer

7-23-04
Date

25.04.410.1105