

BEFORE THE FEDERAL ELECTION COMMISSION

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COMMISSION
OFFICE OF GENERAL
COUNSEL

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In the Matter of:

**The Reverend Jesse L. Jackson,
The Rainbow/PUSH Coalition, Inc.,
and
The Citizenship Education Fund, Inc.,**

Matter Under Review 5183

Respondents

**RESPONSE OF THE REVEREND JESSE L. JACKSON, THE RAINBOW/PUSH
COALITION, AND CITIZENSHIP EDUCATION FUND TO THE COMMISSION'S
REASON TO BELIEVE FINDING**

I. INTRODUCTION

On behalf of Reverend Jesse L. Jackson ("Rev. Jackson"), the Rainbow/PUSH Coalition, Inc. ("Rainbow/PUSH"), and the Citizenship Education Fund, Inc. ("CEF") (collectively, the "Respondents"), we hereby respond to the FEC's letter of March 15, 2004, and the Factual and Legal Analysis supporting the Commission's reason to believe finding that the Respondents made prohibited contributions in violation of 2 U.S.C. § 441b.

During the fall of 2000, Rev. Jackson traveled across the country making appearances in his capacity as the founder and president of Rainbow/PUSH. During this same period, Rev. Jackson made several appearances at the request of the Democratic Party and the Keep Hope Alice PAC ("KHA PAC"). The Respondents do not dispute that Rev. Jackson may have made generic or partisan statements during the fall of 2000 when appearing on behalf of the D.N.C. or KHA PAC. However, no impermissible contribution or expenditure by Rainbow/PUSH or CEF resulted because any expenses incurred by Rev. Jackson for travel in connection with partisan or generic political activity were either permissibly reimbursed by the D.N.C. within a commercially reasonable time, in accordance with the Commission's regulations, or paid directly by KHA PAC to the travel service provider.

For these reasons, the Commission should find no probable cause to believe that the Respondents violated the Act or Commission regulations.

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II. BACKGROUND

In the fall of 2000, Rev. Jackson, in his capacity as founder and president of Rainbow/PUSH, began a speaking tour that included appearances at locations around the country, including many churches. Typically, Rev. Jackson would urge individuals to register to vote and to vote on Election Day. Rainbow/PUSH also produced non-partisan voter registration and GOTV materials and that were distributed at some of these events. *See* samples of Rainbow/PUSH non-partisan voter registration and GOTV materials, attached hereto as Exhibit 1.

As a leading figure in the Democratic Party and as founder and president of Rainbow/PUSH, Rev. Jackson had also been asked by the D.N.C. and KHA PAC to make appearances on behalf of the Democratic Party and KHA PAC during this period. At these appearances, Rev. Jackson may have engaged in generic voter registration and get-out-the-vote activities.

However, because of the lapse of almost four years between these appearances and the Commission's reason to believe notification, the Respondents have been unable to reconstruct the precise nature and purpose of each these appearances. However, Rev. Jackson's schedule, attached as an exhibit to this response, contains basic information relating to the nature of each appearance or event. *See* Rev. Jackson's Schedule, September 4, 2000 through November 7, 2000 (the "schedule"), attached hereto as Exhibit 2. While many of the events described on the schedule were clearly of a non-partisan or non-election related nature, others are more ambiguous, containing the notation, "DNC/Coordinated Campaign."

The Respondents do not dispute that Rev. Jackson may have made partisan statements when appearing on behalf of the D.N.C. and KHA PAC. However, no impermissible contribution or expenditure by Rainbow/PUSH or CEF resulted because any expenses incurred by Rev. Jackson for travel in connection with partisan or generic political activity were either permissibly reimbursed within a commercially reasonable time, in accordance with the Commission's regulations, by the D.N.C.'s \$250,000 payment to Rainbow/PUSH on December 6, 2000, or were paid by KHA PAC directly to Corporate Travel Council, a travel service provider.¹

To reconstruct the costs of the fall 2000 travel, Rainbow/PUSH examined its internal general ledger which separately lists travel related expenses, *see* general ledger for Rainbow/PUSH and CEF, attached hereto as Exhibit 3, and attempted to review invoices from the two companies that provided travel-related services to Rainbow/PUSH during that time: DMS Travel of New York for travel booking and airline ticket purchasing, and Corporate Travel Council of Maryland for air charter services.

¹ According to documents provided to the FEC by KHA PAC and made available to Rainbow/PUSH, KHA PAC made a single reimbursement to Rev. Jackson \$13,604.21 for his personal expenses for airfare, hotel and phone expenses on November 27, 2000.

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Rainbow/PUSH requested travel invoices from DMS Travel for the period September through December 2000 and was informed that those records were destroyed in a fire. See letter and Structural Fire Report from DMS Travel (now doing business as "Alpha International Travel"), attached hereto as Exhibit 4. However, Rainbow/PUSH's general ledger lists payments to DMS Travel for travel expenses paid during that period and these payments, therefore, can be confirmed using Rainbow/PUSH's internal records.

Rainbow/PUSH was able to obtain invoices for travel expenses for that period from Corporate Travel Council. See Corporate Travel Council invoices, attached hereto as Exhibit 5.

According to the general ledger, Rainbow/PUSH paid DMS Travel a total of \$34,709.89 for travel for the period September 1, 2000 through December 31, 2000. The general ledger also indicates other travel expenses incurred by Rev. Jackson and Rainbow/PUSH during that period, including travel-related payments of: \$15,000 to MBNA; \$804.84 to Atlanta Marriot; and \$495.96 to Holiday Inn Rockford. CEF made \$14,990.50 in payments to DMS Travel for travel during that period, plus additional travel-related payments of: \$2,596.39 to MBNA; \$337.49 to Embassy Suites; \$620.00 to Georgetown Suites; \$2,009.34 to the Regal U.N. Plaza Hotel; \$421.21 to the Renaissance Hotel; \$756.00 to the Windsor Court Hotel; \$120.00 to Glenda Gill; and \$622.78 to Marie Long for travel related expenses.

Based on the invoices from Corporate Travel Council from September 2000 through November 8, 2000, Rainbow/PUSH and CEF paid approximately \$402,346.22 for travel related expenses (Corporate Travel Council billed Rainbow/PUSH but the general ledger confirms that CEF made many of the payments). However, we stress that these payments were for all of Rainbow/PUSH's and CEF's travel for that period and not just those expenses related to Rev. Jackson's election-related travel during the fall of 2000. Many of these travel expenses related to non-partisan get-out-the-vote and voter registration events and to other non-election related activities.² For example, all of the following were apparently non-partisan voter registration, non-partisan get-out-the-vote appearances or events, or otherwise non-election related, but occurred during the same period of travel as the appearances on behalf of the D.N.C. and KHA PAC:

- September 4, 2000: New York, U.N. World Summit
- September 13, 2000: Alabama, non-election related trip

² The Respondent's acknowledge that the complaint cites media reports alleging that Rev. Jackson made partisan statements at certain appearances and events, including remarks allegedly made by Rev. Jackson to "Stay out the Bushes." If Rev. Jackson made such a statement, first, it is not clear that this amounts to express advocacy, and, second, such a statement should not alter the overwhelmingly non-partisan character of a particular event or appearance. Nevertheless, the Respondents urge the Commission not to view these reports as factual as they contain reporters' interpretations of what was said and the Respondents have no way to independently verify the accuracy of these reports.

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- September 19, 2000: Nevada, Private meeting with Teamsters and other labor union meetings
- September 24, 2000: Ohio, Meeting with Tornado Victims and the Southern Ohio Annual AME Church Convention
- September 27, 2000: Washington, D.C., non-partisan voter registration rally
- September 27, 2000: Michigan, Community Rally
- October 2, 2000: Washington, D.C., private meetings, including at the White House
- October 3, 2000: Washington, D.C. Americans with Disabilities March
- October 11, 2000: West Virginia and Kentucky, AFL-CIO Bus Tour
- October 15, 2000: California, Third Annual Rainbow/PUSH Coalition Awards Dinner
- October 18, 2000: Michigan, Detroit Bureau Event
- October 21, 2000: Ohio, 9th Street Project Conference
- October 22, 2000: Ohio, Church Services and other non-election related events
- October 23, 2000: New York, several non-election related events
- October 24, 2000: Minnesota, Meeting with Editorial Board, Star Tribune
- October 26, 2000: New York, Wall Street Project
- October 29, 2000: Florida, Civil Rights Event
- October 30, 2000: Florida, Rainbow/PUSH Coalition, private meeting
- October 30, 2000: Louisiana, Wall Street Project
- October 30, 2000: Louisiana, 2000 National Minority Supplier Development Council Conference
- October 31, 2000: California, "Politically Incorrect Show"
- November 2, 2000: Georgia, Rainbow/PUSH Coalition Events

See Rev. Jackson's Schedule, September 4, 2000 through November 7.

As the schedule clearly shows, Rev. Jackson made non-partisan or non-election related appearances at almost every stop during the fall of 2000. For example, Rainbow/PUSH paid Corporate Travel Council \$111,357.90 for travel October 30 through November 1, 2000, which included numerous non-partisan and non-election-related events and appearances. This payment, therefore, should not be considered in support of partisan efforts.

Furthermore, the above-listed events are merely the events that can be *confirmed* as non-partisan or not related to the 2000 election. Certainly, Rev. Jackson traveled to and participated in other non-partisan or non-election related events during this time period that were not made on behalf of the D.N.C. or KHA PAC and may not have been properly reflected on the schedule. However, as noted above, almost four years have passed since the fall of 2000 and the Respondents were not able to reconstruct the precise nature of each appearance. We respectfully request that the Commission take this four year lapse of time into consideration when making its determinations with regard to this MUR.

Again, the mere notation of "DNC/Coordinated Campaign" on the schedule is not dispositive of whether the activity was, in fact, generic, non-partisan or not election related.³ While the Respondents cannot determine the precise nature of each of Rev. Jackson's appearances during the fall of 2000, the \$250,000 reimbursement by the D.N.C. made on December 6, 2000 and the payments by KHA PAC more than covered any generic and/or partisan election related appearances.

III. RAINBOW/PUSH AND CEF DID NOT MAKE CONTRIBUTIONS OR EXPENDITURES IN VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT OR FEDERAL ELECTION COMMISSION REGULATIONS

The Factual and Legal analysis states that, "[t]o the extent that Rainbow/PUSH and CEF incurred expenditures in connection with an election, there is reason to believe that these corporation made prohibited contributions in violation of 2 U.S.C. § 441b." Under the Commission's regulations, however, a corporation such as Rainbow/PUSH does not need to be paid in advance for the use of facilities or resources. Advance payment is only required in the fundraising context and Rev. Jackson did not engage in any fundraising activities on behalf of the D.N.C. or any federal candidate or officeholder during the period in question. In this case, the D.N.C. reimbursed Rainbow/PUSH for travel expenses within a commercially reasonable time, as required by Commission regulations. See 11 C.F.R. § 114.9(d) and Advisory Opinion 1986-30 in which the Commission did not require advance payment but permitted reimbursement by federal candidates for a houseboat, the boat's pilot, and other expenses, used by the campaigns for political purposes.

³ Due to apparent errors in the preparation of the schedule, fewer appearances than were noted on the schedule as "DNC/Coordinated Campaign" were actually made on behalf of the D.N.C.

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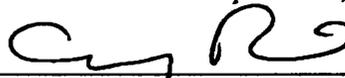
Rainbow/PUSH's and Rev. Jackson's travel on behalf of the D.N.C. occurred principally in the months of October and November 2000. The D.N.C.'s reimbursement of \$250,000 and KHA PAC's payments more than covered these travel expenses and any other expenses that may have been incurred, including, if necessary, Rev. Jackson's salary for those occasions Rev. Jackson appeared on behalf of the D.N.C. Furthermore, the D.N.C.'s December 6, 2000 \$250,000 reimbursement was made approximately 30 days after the completion of travel, and was, therefore, within a reasonable time, given that the D.N.C. was fully engaged in a presidential race during October and November of 2000. Moreover, the D.N.C. reimbursed Rainbow/PUSH in full for these travel expenses, and, thus, Rainbow/PUSH did not provide anything to the D.N.C. at less than the "usual and normal charge." See 11 C.F.R. § 100.52. Consequently, no impermissible contributions or expenditures were made by Rainbow/PUSH or CEF in violation of 2 U.S.C. § 441b.

IV. CONCLUSION

For the foregoing reasons, we respectfully request that the Commission find no probable cause to believe that the Respondents violated the Act or Commission regulations in this matter.

Respectfully submitted this 13th day of May, 2004.

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