



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Gail Harmon, Esq.
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M Street, NW Suite 600
Washington, DC 20036

AUG - 9 2006

Kenneth Gross, Esq.
Skadden Arps Slate, Meagher & Flom, LLP
1440 New York Ave., N.W.
Washington, DC 20005

RE: MUR 5753
League of Conservation Voters 527
League of Conservation Voters 527 II

Dear Ms. Harmon and Mr. Gross:

On April 7, 2004, the Federal Election Commission (the "Commission") notified your clients of a complaint alleging that they violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your clients with a copy of the complaint.

After reviewing the allegations contained in the complaint, your clients' response, and publicly available information, the Commission, on September 28, 2004, found reason to believe that the League of Conservation Voters 527, League of Conservation Voters Action Fund, and Gwendolyn Sommer, as Treasurer, violated 2 U.S.C. §§ 434, 441a(f), 441b(a) and 11 C.F.R. §§ 102.5, 104.10, 106.1 and 106.6, provisions of the Act and its implementing regulations. A copy of the Factual and Legal Analysis that sets forth the basis for the Commission's determination was provided at that time.

Additionally, on July 19, 2006, the Commission found reason to believe that the League of Conservation Voters 527 and League of Conservation Voters 527 II violated 2 U.S.C. §§ 433, 434, and 441a(f), provisions of the Act, by failing to register as a political committee with the Commission; by failing to report its contributions and expenditures; and by knowingly accepting contributions in excess of \$5,000. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

26044151728

Gail Harmon
Kenneth Gross
Page 2

In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

Sincerely,



Michael E. Toner
Chairman

Enclosures
Factual and Legal Analysis

26044151729

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

**RESPONDENTS: League of Conservation Voters 527 and
League of Conservation Voters 527 II**

MUR 5753¹

I. INTRODUCTION

This matter was initiated by a complaint filed with the Federal Election Commission (“the Commission”). See 2 U.S.C. § 437g(a)(1). The complaint alleged that the League of Conservation Voters 527 violated federal campaign finance laws by spending funds raised outside the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (“the Act”), to influence the 2004 presidential election. The Commission previously found reason to believe that the League of Conservation Voters 527, which is organized under Section 527 of the Internal Revenue Code, and League of Conservation Voters Action Fund (“LCV PAC”), an associated federal political committee, violated 2 U.S.C. §§ 434, 441a(f), 441b(a) and 11 C.F.R. §§ 102.5, 104.10, 106.1 and 106.6 by failing to properly deposit and report federal contributions and by failing to properly allocate various expenses required to be paid with federal funds. The investigation also revealed a second Section 527 organization, called League of Conservation Voters 527 II that had been established by and was jointly operated by the same persons who established and operated the League of Conservation Voters 527. The two LCV 527s did not register with the Commission or file disclosure reports as one or more political committees during the 2004 election cycle.

The LCV 527s raised and spent over \$6.7 million in connection with the 2004 federal elections. Virtually all of their solicitations clearly indicated that the funds received would be used to pay for communications and other activities targeted to opposing the re-election of

George W. Bush or the defeat of other clearly identified Federal candidates whom LCV characterized as having poor records on environmental issues, and supporting the election of John Kerry or other clearly identified Federal candidates whom LCV characterized as having good records on environmental issues. As discussed below, such funds constituted contributions under the Act. The LCV 527s spent over \$850,000 for expenses relating to the "Environmental Victory Project" through which various members of the LCV family of organizations, including the LCV 527s, joined in expressly advocating the defeat of George W. Bush and the election of John Kerry in key presidential election swing states. The LCV 527s also spent approximately \$3.9 million for television and radio advertisements and other printed materials, such as mailers and door-hangers, supporting or opposing clearly identified Federal candidates, some of which contained express advocacy.

Based on these facts, there is reason to believe the LCV 527s violated 2 U.S.C. §§ 433, 434, and 441a(f), by failing to register as political committees with the Commission, by failing to report their contributions and expenditures, and by knowingly accepting contributions in excess of \$5,000.

II. FACTUAL AND LEGAL ANALYSIS

A. FACTS

The LCV family of organizations includes: 1) LCV Inc., a section 501(c)(4) organization founded in 1970; 2) LCV PAC, a registered political committee established as a separate segregated fund of LCV in 1991; 3) LCV 527, a section 527 organization established in 1997 which began to make separate filings with the IRS after a change in disclosure requirements in 2000; 4) LCV 527 II, another section 527 organization established in October 2004; 5) League of

Conservation Voters Accountability Project, a second 501(c)(4) organization; and 6) League of Conservation Voters Education Fund, a section 501(c)(3) organization.²

LCV Inc.'s stated mission is to be "the political voice of the national environmental movement" and to be "devoted full-time to shaping a pro-environment Congress and White House." <http://www.lcv.org/about-lcv/>. It claims to have over 40,000 members and to communicate regularly with 200,000 individuals. The LCV 527s' stated mission, according to filings with the IRS, is "to inform voters on federal candidates' environmental votes and positions." Counsel for both LCV 527s has represented that despite their nominally separate filings with the Internal Revenue Service, both LCV 527s acted jointly and were regarded by LCV Inc. as separate accounts of a single organization. In 2004, the LCV 527s' combined income was \$6,319,500.³ The LCV 527s also disbursed \$6,745,713 in 2004, all of which appears to have been in connection with the 2004 federal elections.⁴

Notwithstanding their separate status, LCV Inc., the LCV 527s, and the LCV PAC frequently acted together in pursuit of common political goals.⁵ Funds were solicited jointly in the same mailing and donor contacts.⁶ The different LCV organizations also shared the cost of

² There also are various state chapters, which carry the LCV name, but appear to be autonomous.

³ The audited financial statements consolidate the LCV 527s' income. Based on IRS disclosure reports, however, it appears that LCV 527 II raised approximately \$650,000, all in October 2004. Thus, the first LCV 527's income in 2004 was approximately \$5,700,000.

⁴ Although the 2004 audited financial statements consolidated the LCV 527s' expenditure figures, internal organizational ledgers establish that LCV 527 I spent \$6.1 million dollars and LCV 527 II spent approximately \$630,000 in 2004. IRS disclosure reports confirm the LCV 527 II disbursements; the IRS reports for the first LCV 527 report fewer disbursements than reflected in internal documents.

⁵ The term "LCV" will refer to the statements, solicitations or activities jointly made by, or on behalf of, LCV organizations including the LCV 527s. LCV itself also used this convention in various communications to the public.

⁶ Although funds being solicited for LCV PAC required a specific designation, LCV did not require donors to specifically designate on their checks whether the money was intended for LCV Inc. or one of the LCV 527s. It appears that a check made payable to "LCV" could be deposited into either the LCV Inc. account or a 527 account.

various joint political activities, such as the Environmental Victory Project (“EVP”), a door-to-door canvass of swing voters in which paid workers used scripts and talking points expressly advocating the election of John Kerry and defeat of George W. Bush. The LCV 527s funded \$850,000, or slightly more than half the total cost, of the \$1.5 million EVP (with the balance being paid by LCV Inc. and LCV PAC). The canvass was focused on key Presidential election battleground states such as Florida, New Mexico, Oregon, and Wisconsin, where LCV polling suggested swing voters could be influenced. In addition to face-to-face advocacy, EVP canvassers distributed fliers and door hangers, produced with funds provided by LCV Inc. and LCV PAC, that also expressly advocated the election of John Kerry.

The LCV 527s also spent over \$3.9 million in connection with election-related advertising that was broadcast on television and radio or distributed in mailers and door-hangers. Many of these advertisements were targeted to states where the LCV 527s were actively canvassing with their Environmental Victory Project, and the messages of the ads were intended to “reinforce this personal communication.” In fact, a key strategic principle of the EVP was to “integrate” door-to-door canvasses with the broader reach of television. Additionally, the messages and geographic targeting of the ads were based on polling indicating that the ads would help elect Kerry. For instance, an ad about Yucca Mountain broadcast in Nevada was referenced in a fundraising letter where it was claimed, “John Kerry can win Nevada and all the polling and research shows [sic] the single issue that can deliver it is Yucca Mountain. ... We have scripts ready to go.”

LCV has explained that it treated the 527s as being the equivalent of an LCV Inc. bank account; nevertheless, the 527s reported separately to the IRS and each maintained separate employer identification numbers with the IRS.

26044151733

The LCV 527s funded advertising attacking presidential candidate George W. Bush, Senate candidates Pete Coors and Richard Burr, and House candidates Phil Crane and Greg Walcher. They also produced advertising supporting Senate candidates Erskine Bowles and Ken Salazar. One ad, for example, identifies George W. Bush and accuses him of favoritism for oil and energy interests and firms such as Halliburton. It concludes, “America is going in the wrong direction ... And George Bush just listens to the special interests.” A second ad attacking Bush was targeted to Nevada voters and discussed the Yucca Mountain nuclear waste issue asking, “Did George Bush really try and stop Yucca Mountain? Or was he just playing politics?” Similarly, an advertisement attacking Richard Burr accuses him of ties to the oil and gas industry – it states that the candidate “put our kids and our health last. And the special interests first.”

Although all of the LCV organizations claim that their mission was to protect the environment, not all of their advertising focused on environmental issues. For instance, the LCV 527s funded advertising supporting Senate candidate Erskine Bowles in North Carolina which focused on job and tax issues: “A true son of North Carolina. A successful businessman who understands our economy ... Bowles will protect our jobs here ... and eliminate tax breaks for companies that ship jobs overseas.” The LCV 527s, which relied extensively on polling data, appear to have concluded that an economic message would be more likely to elect Bowles than an environmental message.

At least one of the mailers that the LCV 527s funded in connection with the Pete Coors Senate race in Colorado contained express advocacy.

26044151734

B. ANALYSIS

If, in fact, the LCV 527s are not the nonfederal account of LCV PAC but instead a separate entity, then they should have registered as a political committee, filed disclosure reports, and adhered to the Act's limits and prohibitions on contributions. *See* 2 U.S.C. §§ 431(4)(A), 433, 434, 441a, and 441b. The Act defines a "political committee" as any committee, club, association, or other group of persons that receives "contributions" or makes "expenditures" for the purpose of influencing a federal election which aggregate in excess of \$1,000 during a calendar year. *See* 2 U.S.C. § 431(4)(A). For the purpose of triggering political committee status, the Act defines the terms "contributions" and "expenditures" as including "anything of value made by any person for the purpose of influencing any election for Federal office." *See* 2 U.S.C. §§ 431(8)(A)(i), (9)(A)(i).

The LCV 527s exceeded the statutory threshold for political committee status in two separate ways. First, the LCV 527s received "contributions" exceeding \$1,000 in response to multiple fundraising solicitations clearly indicating that funds received would be used to help influence the election or defeat of a specific candidate in the 2004 presidential election. Second, the LCV 527s made more than \$1,000 in "expenditures" for the purpose of influencing the federal elections in 2004 through express advocacy contained in the door-to-door appeals and phone banks funded as part of the Environmental Victory Project and through payments for at least one express advocacy mailer. As a result of these contributions and expenditures, and because the LCV 527s have the major purpose of engaging in federal campaign activity, the LCV 527s should have registered as a political committee and disclosed their receipts and

disbursements to the public through reports filed with the Commission, and complied with the Act's contribution limits and prohibitions.

1. **E04 Exceeded the Statutory Threshold for Contributions by Receiving over \$1,000 in Response to Solicitations Clearly Indicating that Contributions would be Targeted to the Election or Defeat of a Clearly Identified Candidate for Federal Office**

Money received in response to fundraising solicitations clearly indicating that the funds being sought would be targeted to the election or defeat of specific federal candidates constitute contributions under the Act. 2 U.S.C. § 431(8)(A); *FEC v. Survival Education Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995) ("*Survival Education Fund*"); *see also* Complaint, *FEC v. Club for Growth, Inc.*, No. 1:05-cv-01851-RMU (D.D.C. filed Sept. 19, 2005).

In *Survival Education Fund*, the court considered whether proceeds received in response to a fundraising solicitation mailed to the general public by two 501(c)(4) organizations during the 1984 Presidential race constituted "contributions" under the Act. The cover letter to the solicitation included this language:

Funds are urgently needed to help defray the enormous cost of mounting, organizing, publicizing, and coordinating this nationwide effort. . . .

Your special election-year contribution will help us communicate your views to the hundreds of thousands of members of the voting public, letting them know why Ronald Reagan and his anti-people policies must be stopped. So, please, return your survey and your check immediately. Anything you can give at this time -- \$50, \$100, \$250, \$500, \$1,000, \$2,500 or more -- will help us reach more people, and increase the effectiveness of our election-year work.

Id. at 288-89. The Second Circuit considered whether the solicitation sought "contributions" and was therefore subject to the Act's disclaimer requirements under 2 U.S.C. § 441d(a). Stating that

it was unnecessary to consider whether the mailer constituted express advocacy, the court analyzed whether the mailer solicited “contributions” based on *Buckley*’s statement that contributions made to other organizations but earmarked for political purposes were contributions made “for the purpose of influencing elections” and, thus, were properly covered by the Act. *See id.* at 294 (quoting *Buckley v. Valeo*, 424 U.S. 1, 78 (1976)). The court interpreted the phrase “earmarked for political purposes,” stating,

The only contributions “earmarked for political purposes” with which the *Buckley* Court appears to have been concerned are those that will be converted to expenditures subject to regulation under FECA. Thus *Buckley*’s definition of independent expenditures that are properly within the purview of FECA provides a limiting principle for the definition of contributions in § 431(8)(A)(i), as applied to groups acting independently of any candidate or its agent and which are not “political committees” under FECA. . . . Accordingly, disclosure is only required under § 441d(a)(3) for solicitations of contributions that are earmarked for activities or “communications that expressly advocate the election or defeat of a clearly identified candidate for federal office.” *Even if a communication does not itself constitute express advocacy, it may still fall within the reach of § 441d(a) if it contains solicitations clearly indicating that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office. . . . Only if the solicitation makes plain that the contributions will be used to advocate the defeat or success of a clearly identified candidate at the polls are they obliged to disclose that the solicitation was authorized by a candidate or his committee.*

Id. at 295 (emphasis added). Based on this reasoning, the court held that the mailer was a solicitation for contributions within the meaning of § 441d, citing the mailer’s statement, “Your special election-year contribution will help us communicate your views to the hundreds of thousands of members of the voting public, letting them know why Ronald Reagan and his anti-people policies must be stopped.” *Id.* According to the court, this statement “leaves no

doubt that the funds contributed would be used to advocate Reagan's defeat at the polls, not simply to criticize his policies during the election year." *Id.*

Like the solicitations in *Survival Education Fund*, the language used in fundraising solicitations sent on behalf of the LCV 527s during the 2004 election cycle clearly indicated that the funds received would be targeted to the defeat of a specific federal candidate. Most solicitations simultaneously sought funds for both the 527s and/or LCV Inc. For instance, one solicitation encouraged contributions to "LCV's c4 or 527" for a "final push" in the "deadlocked" presidential race so that voters "break Kerry's way." The solicitation concludes: "In short, we need another \$1.2 million in c4 or 527 dollars ASAP to maximize our impact, but more importantly, to win."

The LCV solicitations clearly identified candidates and explained to contributors that their contributions to all of the LCV organizations would be targeted to the election or defeat of the named candidates. For example:

Thank you for everything you have already done to make [the campaign] the most ambitious one in LCV's history ... and for everything you can still do to *support LCV's Environmental Victory Project, our uniquely strategic plan with the capacity to persuade independents, moderate Republicans and Nader-folk to cast deciding votes for John Kerry in what's sure to be a breathtakingly close election.* ... [Your contribution will] make it a lot easier to look in the mirror on November 3rd ... and by that I mean, you'll know you did all you possibly could to win this fight. *If the news is good, you can take credit for defeating George Bush and electing John Kerry; if the news is bad, it will not be for lack of support or hard work from you and all of us at LCV. (emphasis added).*

The first seven names on our 2004 Dirty Dozen have just been made public, so I'm writing to ask for your immediate support *in defeating these anti-environment lawmakers on*

Election Day. ... That's why I'm counting on you to *help us defeat these anti-environment candidates by rushing a special contribution* to the League of Conservation Voters at this time. (emphasis added).

This is it! This is our chance to get the pro-environment majority to the polls *to prevent four more years* of George W. Bush's destructive environmental policies. And thanks to the support of LCV members like you, we're in a strong position. We've educated, registered and energized hundreds of thousands of pro-environment Americans *in key battleground states for this election*. Our savvy strategy and the enormous enthusiasm of our dedicated staff and volunteers have laid the groundwork *for success in five critical states that could tip the entire election in favor of the environment*. But what we do now will make all the difference. *We have to go all-out to get environmentalists to the polls on November 2 to vote for a pro-environment future. So, I'm asking you to dig deeper than you ever have before and give the most generous contribution you can possibly afford. I know I'm asking a lot. But, I promise you this; Your investment in a new environmental leadership – in our strategic work to defeat George W. Bush and elect John Kerry and other environmental leaders – will pay huge dividends through cleaner air and water, greater protections for wildlife and increased respect for our wilderness and other natural wonders.* (emphasis added).

You can help today! **LCV is soliciting leadership gifts from \$2,500-\$50,000 targeted specifically to help elect Cathy Woolard to Congress.** If you have already contributed the legal limit to Cathy's campaign your contribution to this independent campaign will provide her with critical support. **Contributions DO NOT COUNT against individual federal contribution limits,** and your investment in Cathy's future can be made either through LCV's 501c4 or 527 accounts. (emphasis in original).

In addition to raising funds through mailed solicitations, LCV 527 contacted potential donors by telephone and through face-to-face meetings, informing them that their

26044151740

donations to the LCV 527s would be targeted to the defeat of Bush and election of Kerry in the upcoming presidential election, or to influencing the election or defeat of specific candidates in Congressional races. LCV Inc. President Deb Callahan explained in an affidavit that one of her primary responsibilities was “to solicit large-dollar donations (typically in excess of \$10,000) from individuals” and that her “oral communications with donors were similar to the solicitation letters [such as the ones cited above] in terms of the information conveyed and the reasons I was requesting a donation for LCV.” Talking points attached to Callahan’s affidavit indicated that solicitations for the LCV 527s emphasized that donors could make “the critical difference” in key Senate races involving Erskine Bowles and Ken Salazar and that LCV is running ads in Florida “to increase our visibility and expose Bush’s faults in favor of John Kerry.”

The LCV 527s raised over \$6,300,000, far surpassing the \$1,000 statutory threshold for political committee status. *See* 2 U.S.C. § 431(8)(A). Evidence linking the specific contributions to specific solicitations is not available. However, based on the LCV 527s’ total receipts of \$6,300,000, there can be no doubt that the funds received in response to the solicitations discussed in this Report far exceeded \$1,000. Accordingly, based on contributions received, the LCV 527s were required to register as political committees and commence filing disclosure reports with the Commission by no later than their initial receipt of contributions of more than \$1,000 in July 2003.⁷

⁷ LCV 527 II received its first contributions in October 2004. Thus, its reporting obligations would commence later.

2. E04 Exceeded the Statutory Threshold for Expenditures by Spending Over \$1,000 for Express Advocacy

Under the Commission's regulations, a communication contains express advocacy when it uses phrases such as "vote for the President," "re-elect your Congressman," or "Smith for Congress," or uses campaign slogans or words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, or advertisements that say, "Nixon's the One," "Carter '76," "Reagan/Bush," or "Mondale!" See 11 C.F.R. § 100.22(a); see also *MCFL*, 479 U.S. at 249 ("[The publication] provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than "Vote for Smith" does not change its essential nature."). Courts have held that "express advocacy also included verbs that exhort one to campaign for, or contribute to, a clearly identified candidate." *FEC v. Christian Coalition*, 52 F.Supp. 2d 45, 62 (D.D.C. 1999) (explaining why *Buckley*, 424 U.S. at 44, n.52, included the word "support," in addition to "vote for" or "elect," on its list of examples of express advocacy communication).

The Commission's regulations further provide that express advocacy includes communications that contain an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and about which "reasonable minds could not differ as to whether it encourages actions to elect or defeat" a candidate when taken as a whole and with limited reference to external events, such as the proximity to the election. See 11 C.F.R. § 100.22(b). In its discussion of then-newly promulgated section 100.22, the Commission stated that "communications discussing or commenting on a candidate's character, qualifications or accomplishments are considered express advocacy under new section 100.22(b) if, in context,

they have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question.” See 60 Fed. Reg. 35292, 35295 July 6, 1995.

During the 2004 election cycle, the LCV 527s disbursed over \$1,000 for communications expressly advocating the election or defeat of specific federal candidates. In particular, funds were used to finance certain costs of the EVP and to distribute a mailer containing express advocacy.

a. *Environmental Victory Project*

The LCV 527s spent approximately \$850,000 to fund a portion of the LCV Environmental Victory Project, a canvass campaign using express advocacy communications. LCV’s internal planning documents describe the Environmental Victory Project as a project intended to “reach undecided voters ... by contacting them personally at their door three times” during the election campaign in order to “persuade them to vote against the President and for John Kerry.” It appears that LCV Inc. and the LCV PAC generally incurred costs for the EVP that included the printing of the materials to be distributed, while the LCV 527s incurred the “delivery” costs of the communication, such as fees to canvassing companies that provided labor and for canvassers’ travel expenses (hotels, rental cars, airfare).⁸

Canvasser scripts, talking points and training materials establish that LCV 527 canvassers expressly advocated the defeat of George Bush and the election of John Kerry in visits to the homes of undecided voters. For instance, one canvasser script stated: “We think

⁸ The Environmental Victory Project’s total costs were \$1,515,451. Of this amount, LCV 527 spent \$675,369, LCV 527 II spent \$174,692, LCV PAC spent \$378,528, and LCV Inc. spent \$286,862. As discussed below, the EVP canvass effort was integrated with a media campaign funded by the LCV 527s and LCV Inc.

26044151742

it's dangerous to have George Bush in office for another four years. So we encourage you to consider which candidate has the right priorities for health and safety of our families and vote for John Kerry in November."⁹ Similarly, the talking points provided to canvassers also made clear that the goal of the canvass was for "Kerry to win on November 2nd."¹⁰

The training materials and canvasser recruitment materials also make clear that canvassers would be engaging in express advocacy. The "Do's and Don'ts" instructions urged canvassers to "GIVE THEM A REASON TO VOTE FOR KERRY!" The cover sheet to the

⁹ Other scripts contained similar messages, such as "The EVP is going to be working between now and Election Day to talk with you and your neighbors about the issues in this November's Presidential Election, and to try to earn your vote for Senator Kerry" and "We're working hard to contact voters in your area and emphasize to them how important it is that they vote for John Kerry." One canvass script for Oregon stated: "We are running the largest grassroots operation here in the battleground state of Oregon focused on persuading swing voters to vote for John Kerry, and we really need your help. We are targeting 150,000 swing households throughout the state, and we want to count on your time to help defeat Bush." Another script stated: "Because the Bush administration has compiled the worst environmental record in our lifetime, we've launched a campaign to talk to voters about the issues in this November's Presidential Election, and to try to earn your vote for Senator Kerry." Another script said: "With so much at stake in this election, we hope that you please strongly consider voting for John Kerry. After this election there's no going back. Its our last chance to change our country for the better."

¹⁰ For instance, a document outlining talking points for an EVP "Canvass Orientation" for New Mexico provides an "overview of the campaign" including:

- i. What is the EVP?
 1. Kerry to win on November 2nd in New Mexico
 2. Educate voters about Kerry
- ii. Identify Kerry Supporters
- iii. Learn about Kerry and important environmental issues for this election cycle
- iv. Become Politically Active...Forever!

The same outline also features more talking points concerning the presidential election:

- II. Evil Bush
 - a. Ask why Bush is evil and write on board
 - b. Give LCV specific reasons why Bush is evil due to his policies during his administration
- III. Kerry Biography
 - a. Accomplishments

canvassing tips for Orlando was entitled: "Elect Kerry-Edwards. Defeat Bush. Save Our Future."¹¹

In addition to communicating express advocacy via personal appeals at doorsteps, LCV canvassers distributed fliers and door-hangers containing express advocacy. The typical communication stated "League of Conservation Voters supports John Kerry for President" or "Defeat Bush. Elect Kerry/Edwards. Save our Future." As previously noted, LCV PAC paid for the costs of producing these materials; and the LCV 527s spent several hundred thousand dollars to deliver these materials to doorsteps.

The LCV 527s also funded phone banks as part of the Environmental Victory Project. Materials relating to these phone banks, including the scripts, make clear that callers expressly advocated the defeat of George Bush and the election of John Kerry. For instance, volunteers were invited to attend an event to "kick-off" a phone bank project in Orlando where they would "phone Orlando voters and persuade them to vote for Kerry." The invitation informs volunteers "you can help us beat Bush!" One phone script states, "My name is ____, and I'm calling with the League of Conservation Voters because ____ had signed up as a volunteer to help defeat Bush in Oregon. The ballots are dropping this weekend, so I wanted to see if we can count on you this weekend to make sure we can remind Kerry supporters to vote early and to pursue the still undecided voters before they vote."

¹¹ The Madison, Wisconsin cover sheet used the same title. Instructions for interviewing potential canvassers made clear that the applicants should be asked about why they wanted to defeat Bush and elect Kerry. The canvasser application form asked them to check a box next to the statement "Yes, I want to help the Environment Victory Project defeat George W. Bush and elect John Kerry." Canvassers were also instructed to "use Kerry Campaign vocabulary. Most people only have a few seconds to absorb the message, so we need to all be saying the same thing."

26044151744

By having spent approximately \$850,000 for these express advocacy communications, the LCV 527s' expenditures surpassed the \$1,000 statutory threshold, which provides a separate and independent basis for concluding the LCV 527s triggered political committee status. *See* 2 U.S.C. § 431(4)(A).

b. *Pete Coors advertising*

At least one LCV 527 mailer expressly advocated the defeat of Senate candidate Pete Coors in Colorado. The mailer depicts a beer can labeled "Pete Coors for Senate" along with the candidate's picture, accompanied by text intended to resemble the Surgeon General's warning label stating: "Warning: This candidate cares more about his bottom line than our kids' safety. *Elect at your own risk.*" (emphasis added). Because this mailer contains an explicit directive to vote against the clearly identified federal candidate, it constitutes express advocacy under 11 C.F.R. § 100.22(a). This communication also satisfies 11 C.F.R. § 100.22(b) because it contains an electoral portion that is unmistakable, unambiguous, and suggestive of only one meaning and about which reasonable minds could not differ as to whether it encourages actions to elect or defeat the named candidate or encourage some other kind of action.

Although the LCV 527s have not been able to identify exactly the precise amount spent on the "Elect at your own risk" mailer, the available records indicate that the LCV 527s spent at least \$710,000 for communications related to the Pete Coors campaign, and it is reasonable to infer that the costs of this mailer exceeded \$1,000. Thus, this mailer also provides a basis for concluding that the LCV 527s' expenditures exceeded the \$1,000 statutory threshold for political committee status. *See* 2 U.S.C. § 431(4)(A).

26044151745

3. The LCV 527s' Major Purpose Was Federal Campaign Activity

The Supreme Court has held that “[t]o fulfill the purposes of the Act” and avoid “reach[ing] groups engaged purely in issue discussion,” only organizations whose major purpose is campaign activity can be considered political committees under the Act. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79; *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) (“*MCFL*”). An organization can satisfy *Buckley*’s “major purpose” test through sufficient spending on campaign activity. *MCFL*, 479 U.S. at 262-264 (political committee status would be conferred on *MCFL* if its independent spending were to become so extensive that the group’s major purpose may be regarded as campaign activity); *see also Richey v. Tyson*, 120 F. Supp. 2d 1298, 1310, n.11 (S.D. Ala. 2002) (“As a threshold matter, the plaintiffs inaccurately describe the activity to which the major purpose inquiry relates. The plaintiffs describe the relevant major purpose as one to ‘expressly advocate’ a particular election result, while the Supreme Court has described the relevant major purpose (under FECA) as ‘the nomination or election of a candidate,’ or simply ‘campaign activity,’ terms that comfortably reach beyond explicit directions to vote a particular way”).

An organization’s “major purpose” may also be established through public statements of purpose. *See, e.g., FEC v. Malenick*, 310 F.Supp. 2d 230, 234-36 (D.D.C. 2004) (court found organization evidenced its “major purpose” through its own materials which stated the organization’s goal of supporting the election of Republican Party candidates for federal office and through efforts to get prospective donors to consider supporting federal candidates); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996) (“organization’s [major] purpose may be evidenced by its public statements of its purpose or by other means. . .”).

26044151747

The LCV 527s' activities and statements demonstrate that their major purpose was to defeat George W. Bush and other federal candidates, and the LCV 527s spent virtually all of their money on federal campaign activity. Specifically, the LCV 527s spent nearly \$5 million of their \$6.7 million budget on the EVP canvass expressly advocating the election of John Kerry and for television and radio advertising, mailers, and door-hangers attacking or promoting federal candidates for the office of President and for Senate and House seats. Available information suggests that, during the entire 2004 election cycle, the only other disbursements made by the LCV 527s were for certain administrative costs and for consulting/professional fees. The LCV 527s made no disbursements in connection with state or local elections during the 2004 election cycle. This spending followed LCV's plans. LCV President Deb Callahan, who also controlled the LCV 527s and LCV PAC, wrote in one fundraising letter that the LCV Inc. "board has elected to devote up to 70% of our campaign resources to the defeat of George W. Bush." The budget figures were reiterated in an internal memorandum, which disclosed that 50-75% of the political budget for various LCV organizations was intended for the presidential election.

Organizational planning documents and public statements also show that LCV 527s' major purpose was campaign activity. LCV's "National Electoral Strategic Plan 2004" identified its "two electoral goals in the 2004 elections: Elect a pro-environment president and strengthen the position of pro-environment forces in Congress, especially the United States Senate" and noted that achieving these goals "will require new strategies at every level of our program." One of the strategies was "to identify the best targets to impact a shrinking number of swing states" and to engage a grassroots "field operation" that is "focused, disciplined, and

targeted in execution to our battleground states.” Further, the LCV organizations issued their “earliest presidential endorsement in its history” by endorsing John Kerry in February 2004 before the New Hampshire primary.

The LCV 527s’ solicitation materials, which simultaneously sought funds for all LCV organizations, also clearly demonstrate that the organization’s major purpose was campaign activity. For instance, a typical solicitation states that LCV is “*committing everything we’ve got to defeating George W. Bush*” and will “*Defeat the worst environmental president in American history*” and “*Elect John Kerry ...*”

Thus, the LCV 527s satisfy *Buckley*’s major purpose test.

4. **The LCV 527s Triggered Political Committee Status and had a Duty to Disclose their Receipts and Disbursements and to Comply with the Act’s Contribution Limits and Source Prohibitions**

Based upon the foregoing, the LCV 527s exceeded the \$1,000 threshold for political committee status set forth in 2 U.S.C. § 431(4) by receiving over \$1,000 in contributions in response to fundraising solicitations clearly indicating that the funds received would be targeted to the election or defeat of a clearly identified federal candidate and by making over \$1,000 in expenditures for express advocacy communications. As a result, and because they had the major purpose of federal campaign activity, the LCV 527s had a duty to register as a political committee with the Commission and disclose their receipts and disbursements to the public through reports filed with the Commission. Because they have not, the Commission finds reason to believe that the League of Conservation Voters 527 and League of Conservation Voters 527 II violated 2 U.S.C. §§ 433 and 434 by failing to register as a political committee with the Commission and file the required disclosure reports.

26044151748

As a political committee, the LCV 527s must comply with the Act's contribution limits. The LCV 527s, however, accepted individual contributions in excess of \$5,000. Accordingly, Commission finds reason to believe that the League of Conservation Voters 527 and League of Conservation Voters 527 II violated 2 U.S.C. § 441a(f) by knowingly accepting contributions in excess of \$5,000.

26044151749