



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 13, 2006

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

Kenneth Gross, Esq.  
Lawrence M. Noble, 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  
League of Conservation Voters Action Fund

Dear Ms. Harmon and Messrs. Gross and Noble:

On December 8, 2006, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted by your clients, the League of Conservation Voters 527 and League of Conservation Voters 527 II in settlement of violations of 2 U.S.C. §§ 433, 434, and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter. Further, after considering the circumstances of the matter, the Commission determined on December 8, 2006 to take no further action with respect to your clients, League of Conservation Voters Action Fund and Barbara Gonzalez-McIntosh, in her official capacity as treasurer, and closed the file as it pertains to them.

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).

2604152397

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,



Peter G. Blumberg  
Attorney

Enclosure  
Conciliation Agreement

26044152398

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
League of Conservation Voters 527 ) MUR 5753  
 )  
League of Conservation Voters 527 II )  
 )

**CONCILIATION AGREEMENT**

This matter was initiated by a signed, sworn, and notarized complaint. The Federal Election Commission ("Commission") found reason to believe that League of Conservation Voters 527 and League of Conservation Voters 527 II (collectively, "the Respondents" or "LCV 527s") violated 2 U.S.C. §§ 433, 434, and 441a(f) of the Federal Election Campaign Act, as amended, ("the Act") by failing to register as a political committee, by failing to disclose its contributions and expenditures, and by knowingly accepting contributions in excess of \$5,000.

NOW, THEREFORE, the Commission and the Respondent, 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.
- 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:

2004152399

Applicable Law

1. The Federal Election Campaign Act of 1971, as amended ("the Act"), defines a political committee as "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)(A).

2. The Act defines the term "contribution" as including "anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); *see also FEC v. Survival Education Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995) (where a statement in a solicitation "leaves no doubt that the funds contributed would be used to advocate [a candidate's election or] defeat at the polls, not simply to criticize his policies during the election year," proceeds from that solicitation are contributions).

3. The Act defines the term "expenditure" as including "anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i).

4. 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 FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 249 (1986) ("[The publication] provides in effect

26044152400

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 include[s] 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 v. Valeo*, 424 U.S. 1, 44, n.52 (1976), included the word "support," in addition to "vote for" or "elect," on its list of examples of express advocacy communication).

5. 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 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("MCFL"). It is well-settled that an organization can satisfy *Buckley's* "major purpose" test through sufficient spending on campaign activity. *MCFL*, 479 U.S. at 262-264; *see also Richey v. Tyson*, 120 F. Supp. 2d 1298, 1310 n.11 (S.D. Ala. 2002). An organization's "major purpose" may also be established through public statements of purpose. *See, e.g., FEC v. Malemick*, 310 F. Supp. 2d 230, 234-36 (D.D.C. 2004); *FEC v. GOPAC*, 917 F. Supp. 851, 859 (D.D.C. 1996)

6. The Act requires all political committees to register with the Commission and file a statement of organization within ten days of becoming a political committee, including the name, address, and type of committee; the name, address, relationship, and type of any connected organization or affiliated committee; the name, address, and position of the custodian of books and accounts of the committee; the name and address of the treasurer of the committee;

26044152401

and a listing of all banks, safety deposit boxes, or other depositories used by the committee. See 2 U.S.C. § 433.

7. Each treasurer of a political committee shall file periodic reports of the committee's receipts and disbursements with the Commission. See 2 U.S.C. § 434(a)(1). In the case of committees that are not authorized committees of a candidate for Federal office, these reports shall include, *inter alia*, the amount of cash on hand at the beginning of the reporting period, see 2 U.S.C. § 434(b)(1); the total amounts of the committee's receipts for the reporting period and for the calendar year to date, see 2 U.S.C. § 434(b)(2); and the total amounts of the committee's disbursements for the reporting period and the calendar year to date. See 2 U.S.C. § 434(b)(4).

8. The Act states that no person shall make contributions to any political committee that, in the aggregate, exceed \$5,000 in any calendar year, with an exception for political committees established and maintained by a state or national political party. See 2 U.S.C. § 441a(a)(1)(C). Further, the Act states that no political committee shall knowingly accept any contribution in violation of the limitations imposed under this section. See 2 U.S.C. § 441a(f).

#### Factual Background

9. The LCV 527s claim an exemption from federal income tax under Section 527 of the Internal Revenue Code, and are associated with the League of Conservation Voters, Inc. ("LCV Inc.") - a Section 501(c)(4) organization based in Washington, D.C.

10. LCV 527 was formed in 1997, and following a change in the applicable law, filed a Notice of 527 Status with the Internal Revenue Service ("IRS") in 2000. LCV 527 II

26044152402

filed its Notice of 527 Status in 2004. The LCV 527s do not accept corporate or union funds, but do accept funds from individuals in amounts that exceed of \$5,000. The LCV 527s are not registered with the Commission as a political committee.

11. In 2004, the LCV 527s raised and spent approximately \$6.7 million. No corporations or labor unions contributed to the Respondents. Many of their fundraising 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, all of whom LCV characterized as having poor records on environmental issues; in other instances, some solicitations clearly indicated that the funds received would be used to support the election of John Kerry and other clearly identified Federal candidates whom LCV characterized as having good records on environmental issues. The LCV 527s spent over \$850,000 for expenses relating to the "Environmental Victory Project," a significant portion of which were related to door-to-door appeals and phone banks expressly advocating the election of John Kerry and defeat of George W. Bush. The LCV 527s also spent approximately \$3.9 million for television and radio advertisements and other printed materials, such as mailers and door-hangers, which referred to clearly identified Federal candidates, a limited portion of which contained express advocacy.

LCV 527 Contributions

12. Fundraising solicitations sent on behalf of the LCV 527s clearly indicated that the funds received would be targeted for the election or defeat of specific federal candidates. Typical fundraising letters stressed:

26044152403

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 3<sup>rd</sup> ... 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,*

26044152404

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).**

13. In addition to raising funds through mailed solicitations, the LCV 527s contacted potential donors by telephone and through face-to-face meetings, informing them that their 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. One of the primary responsibilities of LCV Inc. President Deb Callahan was "to solicit large-dollar donations (typically in excess of \$10,000) from individuals" with "oral communications with donors [that] 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." 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."

14. Many of these solicitations clearly indicate that the funds received will be

26044152405

used to defeat George W. Bush and elect John Kerry in the 2004 general election. All funds received in response to these solicitations constituted contributions under the Act, and caused the LCV 527s to surpass the \$1,000 statutory threshold by April 2003. See 2 U.S.C. § 431(4)(A). The LCV 527s subsequently accepted more than \$6 million in individual contributions in excess of the \$5,000 individual limit.

#### LCV 527 Expenditures

15. The LCV 527s made more than \$1,000 in expenditures for the so-called Environmental Victory Project ("EVP"), a door-to-door canvass and phone bank project which included express advocacy for the election of John Kerry and the defeat of George W. Bush with both verbal and written messages. The EVP, funded jointly by the LCV 527s, LCV Inc. and LCV Inc.'s PAC, was 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." EVP canvasser scripts, talking points and training materials establish that LCV canvassers made express advocacy communications to the homes of undecided voters. A typical script stated: "we think it's dangerous to have George Bush in office 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." Similarly, the talking points provided to canvassers stated that the goal of the canvas was for "Kerry to win on November 2<sup>nd</sup>" and the "Do's and Don'ts" instructions to canvassers urged them "GIVE THEM A REASON TO VOTE FOR KERRY!" Materials relating to 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

26044152406

project in Orlando where they would "phone Orlando voters and persuade them to vote for Kerry." The LCV 527s spent approximately \$850,000 for the EVP campaign.

16. The LCV 527s made more than \$1,000 in expenditures for a mailer expressly advocating 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."

Major Purpose

17. The LCV 527s' activities and statements demonstrate that its major purpose was to elect John Kerry and other federal candidates and to defeat George W. Bush and other federal candidates.

18. Many of the solicitations of funds for the LCV 527s clearly indicated that the funds would be targeted for the election or defeat of specific federal candidates, including the defeat of Bush and the election of Kerry in the 2004 presidential election, or to elect or defeat specific candidates in Congressional races. Consistent with the solicitations, the LCV 527s spent funds it received to engage in political campaign activity. The LCV 527s made no disbursements in connection with state or local elections during the 2004 cycle.

19. Organizational planning documents and public statements also show that LCV 527s' major purpose was political 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

26044152407

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. LCV Inc. President Deb Callahan 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 planning document, which disclosed that 50-75% of the political budget for various LCV organizations was intended for the presidential election. Other solicitation materials state that LCV was “committing everything we’ve got to defeating George W. Bush” and that: “Simply put, LCV’s 2004 campaign will: Defeat the worst environmental president in American history” and “Elect John Kerry ... .”

20. Respondents contend that they acted with a good faith belief that their activities in connection with the 2004 elections were in compliance with applicable laws and regulations.

V. In order to settle this matter and avoid the cost and time of further proceedings, and without admitting or denying each specific basis for the findings, Respondents will no longer contest that:

1. While the League of Conservation Voters 527 and League of Conservation Voters 527 II filed reports with the Internal Revenue Service disclosing their contributions and expenditures pursuant to 26 U.S.C. § 527(j), they violated 2 U.S.C. §§ 433 and 434 by failing to register and report as political committees during the 2004 election cycle.

26044152408

2. League of Conservation Voters 527 and League of Conservation Voters 527 II violated 2 U.S.C. § 441a(f) by accepting contributions in excess of \$5,000 during the 2004 election cycle.

VI. Respondents agree to do the following:

1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of \$180,000 pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondents will cease and desist from violating 2 U.S.C. §§ 433 and 434 by failing to register and report as a political committee, and will cease and desist from violating 2 U.S.C. § 441a(f) by accepting any individual contributions in excess of the limits set forth in the Act. LCV 527 and LCV 527 II state that they have no present intention to accept contributions or make expenditures as defined by the Act, and will register with and report to the Commission if they should engage in activities that trigger federal political committee status in connection with future elections.

3. Respondents will submit to the FEC copies of their Form 8872 reports filed with the Internal Revenue Service for activities from January 1, 2003 until December 31, 2004, supplemented with the additional information that Federal political committees are required to include on page 2 of the Summary Page of Receipts and Disbursements of FEC Form 3X. Respondents will have no further filing obligations in connection with the activities at issue in this Matter.

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

2604152409

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 resolves all matters arising from MUR 5753 and, except as provided in Section VII of the agreement, no further inquiry or action will be taken by the FEC regarding the matters described herein as to possible violations of the Act by LCV, Inc. 501(c)(4), LCV Action Fund, LCV 527 or LCV 527 II in 2003-2004. Further, the FEC agrees that no action will be taken against any contributor to the LCV 527 or LCV 527 II for the 2003-2004 contributions that are the subject of this MUR.

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

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

XI. 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.

26044152410

FOR THE COMMISSION:

Lawrence H. Norton  
General Counsel

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

12/11/06  
Date

FOR THE RESPONDENT:

*Gene Karpinski*  
Gene Karpinski  
President  
League of Conservation Voters 527  
League of Conservation Voters 527 II

11/7/06  
Date

26044152411