January 5, 2004

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OFFICE OF GENERAL
COUNSEL
2005 JAN 11 A 10: 04

By Facsimile and U.S. Mail

Lawrence H. Norton
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5612
America Coming Together

27044172260

Dear Mr. Norton:

America Coming Together (ACT), which the Office of General Counsel (OGC) added as a respondent in this matter on November 18, 2004, here responds to the November 10, 2004 complaint filed by Stefan Gleason, Vice President of the National Right to Work Legal Defense and Education Foundation, Inc. (NRWLDF) against the Service Employees International Union (SEIU), and to the November 16, 2004 letter to the Commission from NRWLDF attorney Bruce N. Cameron that the Commission has designated, at least in part, as a "supplement" to that complaint.

The thrust of the complaint is directed at its intended target, SEIU. We have not been informed what portion of that complaint OGC had in mind in advising ACT that the complaint "indicates" that ACT "may have violated" the Federal Election Campaign Act ("FECA" or "the Act"). If OGC believes that the complaint "indicates" possible violations by ACT that we do not address here, we request that we be so informed and afforded a further opportunity to respond to them. As best we can discern, the complaint arguably alleges that ACT has violated the Act in two ways. Neither allegation warrants a conclusion that there is reason to believe that ACT has violated the Act, or is about to do so, and the Commission accordingly should dismiss the complaint.

Both allegations derive from the factual assertion that SEIU has made contributions to ACT and concern ACT's alleged improper use of those contributions. The complaint reflects no personal knowledge and instead cites two other sources that discuss ACT's relationship with SEIU. The first is a July 2004 *Business Week* interview with SEIU President Andrew Stern, in which he describes an in-kind contribution to ACT of workers who will "spend full-time talking about issues, registering people to vote, and turning them out to vote." Exhibit A, p. 2. The second is a November 2004 SEIU website posting that states that SEIU made in-kind and monetary contributions to ACT. Its only description of ACT's use of these resources is "real voter contact with a wider universe of workers." Exhibit B, p. 2. The complaint and its exhibits are otherwise devoid of any information concerning SEIU's contributions to ACT or ACT's use of them.

The complaint does not satisfy the requirements of 11 C.F.R. Part 111 because it presents only conclusory allegations against ACT about unlawful use of resources provided by SEIU, but the actual facts alleged describe no such violation, or, indeed, any unlawful use of any resources by ACT. A complaint must "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(3).[1] Moreover, where, as here, a complaint is "not based upon personal knowledge," it "should be accompanied by an identification of the sources of information which gives rise to the complainant's belief in the truth of such statements," 11 C.F.R. § 111.4(d)(2), and any complaint "should be accompanied by any documentation supporting the facts alleged..." 11 C.F.R. § 111.4(d)(4).

The Part 111 regulations confer upon the Commission an important role as gatekeeper in enforcement matters, both to spare itself from wasting enforcement resources and to spare respondents from enduring costly and intrusive investigations prompted by political adversaries who present pure conjecture and secondhand information that, even if true, does not make out unlawful conduct. Both individuals and groups whose stock in trade is political activity, and those whose political activities are infrequent but no less meaningful to them, rely upon the Commission to prevent their engagement in politics from entailing unacceptable risks of legal embroilment at the whim of a hostile observer. The Commission should exercise that gatekeeper role here and dismiss the complaint due to its facial inadequacy.

Notwithstanding the complaint's complete failure to connect particular ACT activities to the resources provided by a particular donor, we respond to its two conjectural assertions.

First, the complaint asserts that ACT "raised more than $750,000 in donations to the Democratic National Committee" at a fundraiser at an art gallery in Cincinnati, so "compulsory dues and fees money...contributed" by SEIU to ACT were used for that activity. Complaint ¶¶ 6 and 7. The complaint's source is an art review published in a Cincinnati magazine named *City Beat* that does not mention the DNC and is, at best, vague as to where exactly the proceeds were to go. In fact, as set forth in the attached declaration by ACT Finance Director Diana Rogalle, this fundraiser raised funds exclusively for ACT itself, see ¶¶ 2-3, and ACT has never raised funds for the DNC or, for that matter, any other party committee or federal candidates. See *id.*, ¶¶ 4-7.

Second, the complaint alleges that ACT "engages in partisan voter education and 'get-out-the-vote' drives which have the partisan goal of '[Giving President Bush] a one-way ticket back to Crawford, Texas,'" and SEIU "dues and fees" are being used for these activities, contrary to 2 U.S.C. §§ 441b(a) and 441b(b)(3)(A). Complaint ¶¶ 8-13. The complaint relies on an ACT publication that nowhere mentions SEIU. Complaint ¶ 8 and Exhibit D. This allegation provides no reason to believe that ACT violated the Act.

[1] For this reason the Commission should ignore the complaint's thread of ire concerning so-called "compulsory unionism," and any implicit suggestion that ACT's (or SEIU's) conduct violates the National Labor Relations Act, matters that NRWLDF exists to pursue in other fora. See www.nrtw.org.

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First, the complaint includes no facts whatsoever to suggest that ACT somehow participated in a violation of §§ 441b(a) or (b)(3)(A), or used SEIU resources for "partisan" activities, whatever the complaint means by that term.

Second, as the Commission knows but the complaint ignores, ACT has a federal account that lawfully could and did engage in all of the activities that this portion of the complaint describes, as best we can discern its meaning. If the complaint means to suggest that SEIU contributed union treasury funds to ACT's federal account, that is false and belied by ACT's Forms 3X, which the Commission has and which the complaint ignores despite their ready public availability on the Commission's website. In fact, all SEIU contributions to ACT, whether cash or in-kind, were treated as contributions to its nonfederal account.

Third, ACT did accept in-kind contributions of staff from SEIU, but did so in compliance with the Act. In accordance with the FEC's requirements, as ACT's Forms 3X also reflect, ACT made transfers throughout 2004 from its federal to its nonfederal account so that there would be no SEIU treasury contribution to the federal account. These were labeled "Nonfederal in-kind labor (SEIU)." ACT used these contributions for activities that ACT appropriately paid on a federal-nonfederal split, as also reported on its Forms 3X.

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In sum, the Commission should find no reason to believe that ACT has violated the Act, and it should be dismiss the complaint.

Thank you for your consideration.

Yours truly,

Laurence E. Gold
Lichtman, Trister & Ross, PLLC
1666 Connecticut Avenue, NW

Suite 500
Washington, DC 20009
Phone: (202) 328-1666

Judith L. Corley

Judith L. Corley
Perkins Coie LLP
607 14th Street, NW
Washington, DC 20005
Phone: (202) 434-1622

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of,

MUR No. 5612

DECLARATION OF DIANA ROGALLE

I, Diana Rogalle, have first-hand knowledge of the following matters, am competent to testify thereon, and attest to the following:

1. I am the Finance Director for America Coming Together ("ACT"). My responsibilities include, among other things, management of the fundraising staff and oversight of ali fundraising activities.

2. One of ACT's fundraising programs, titled "Artists Coming Together," raised funds for ACT by giving donors artwork as a premium for their contribution to ACT. All funds raised through the "Artists Coming Together" program were contributions to ACT.

3. ACT staged an "Artists Coming Together" fundraising reception at the Carol Solway Gallery in Cincinnati, Ohio.

4. I have read the Complaint, and accompanying Exhibits, filed by Stefan Gleason against the Service Employees International Union with the Federal Election Commission. Paragraph six of that complaint incorrectly states that ACT raised funds for the Democratic National Committee.

5. Paragraph seven of the above-referenced Complaint incorrectly states that ACT used funds "to create campaign contributions to the Democratic National Committee."

6. Exhibit C to the above-referenced Complaint is an article from the *Cincinnati CityBeat*. That article incorrectly states that the "Artists Coming Together" program raised funds for the Democratic Party. As stated above, all funds raised through the "Artists Coming Together" program were contributions to ACT.

7. At no time, and under no circumstances, did ACT raise funds for the Democratic National Committee or any other party committee or federal candidates.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 7, 2005.

Diana Rogalle

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