

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

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**SENSITIVE**

**CELA**

**FIRST GENERAL COUNSEL'S REPORT**

MUR 6746  
DATE COMPLAINT FILED: August 5, 2013  
DATE OF LAST RESPONSE: October 17, 2013  
DATE ACTIVATED: January 16, 2014  
  
EXPIRATION OF SOL: Aug. 28, 2014 –  
Feb. 1, 2018  
ELECTION CYCLE: 2012

**COMPLAINANT:** Citizens for Responsibility and Ethics in Washington

**RESPONDENTS:** Americans in Contact PAC and Gabriel S. Joseph, III  
in his individual and official capacity as treasurer  
FreeEats.com, Inc. d/b/a ccAdvertising

**RELEVANT STATUTES  
AND REGULATIONS:** 2 U.S.C. § 433(b)  
2 U.S.C. § 441b(b)(4)(A)(i)  
2 U.S.C. § 441d  
11 C.F.R. § 110.11

**INTERNAL REPORTS CHECKED:** Disclosure reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

Complainant alleges that Americans in Contact PAC ("AICPAC"), which is registered as a nonconnected PAC, is actually the separate segregated fund ("SSF") of FreeEats.com, Inc., d/b/a ccAdvertising ("ccAdvertising"), and thus, most of the \$750,000 that AICPAC raised was from sources outside of its restricted class in violation of 2 U.S.C. § 441b(b)(4)(A)(i).<sup>1</sup>

Complainant further alleges that Gabriel S. Joseph, III president of ccAdvertising and treasurer of AICPAC, knowingly made a false statement to the Commission when he filed a Statement of

<sup>1</sup> Compl. ¶¶ 24-33 (Aug. 5, 2013).

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1 Organization claiming that the PAC had no connected organization, in violation of 18 U.S.C.  
2 § 1001.<sup>2</sup> Separately, Complainant alleges that AICPAC and Joseph, in his individual and official  
3 capacity as treasurer of AICPAC, failed to include disclaimers on anonymous text messages  
4 AICPAC sent to mobile phones in October 2012 that expressly advocated the defeat of Barack  
5 Obama, in violation of 2 U.S.C. § 441d(a)(3) and 11 C.F.R. § 110.11(a)(3).<sup>3</sup>

6 In a joint response to the Complaint, Respondents assert that AICPAC is properly  
7 registered as a nonconnected political committee because it has paid its administrative,  
8 compliance, and fundraising costs from PAC funds as reflected on its FEC reports.<sup>4</sup> They also  
9 assert that their text messages qualify for the "small items" exemption to the disclaimer  
10 requirements due to the size limitations of text messages sent to wireless telephones.<sup>5</sup> Finally,  
11 Respondents request that the Commission dismiss the complaint as a matter of prosecutorial  
12 discretion, because there is no violation of the Act and because the total amount spent on the  
13 messages (\$9,506.17) is *de minimis*.<sup>6</sup>

14 Based upon the Complaint, Response, and available information, it appears that AICPAC  
15 is the SSF of ccAdvertising because the two entities are not organizationally independent. As an  
16 SSF, AICPAC is prohibited from soliciting funds from the general public. Based on the

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<sup>2</sup> *Id.* ¶¶ 32-33.

<sup>3</sup> *Id.* ¶¶ 10-12, 34-35.

<sup>4</sup> Resp. at 3, Ex. A, Gabriel S. Joseph, III Aff. ¶¶ 15- 16, Ex. B, Summary of Administrative Costs Paid By Americans in Contact PAC in 2012 (Oct. 17, 2013). Respondents also assert that the Complaint misidentified FreeEats.com, Inc., d/b/a ccAdvertising as a respondent in this matter, asserting that ccAdvertising is not operated by FreeEats.com, Inc. but operated by AIC Communications, LLC, which does business as ccAdvertising. *Id.* at 1. In his affidavit, Joseph asserts that FreeEats.com, Inc. is a holding company that owns preferred stock in AIC Communications, LLC, which does business as ccAdvertising. Joseph Aff. ¶¶ 3-4, 8. Joseph is president of AIC Communications, LLC, and FreeEats.com, Inc.

<sup>5</sup> Resp. at 2. Respondents also assert that the Complaint alleges no facts to support naming Joseph in his individual capacity with respect to the disclaimer violation.

<sup>6</sup> *Id.* at 4.

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1 significant amount of contributions received by AICPAC, there is reason to believe that it  
2 violated 2 U.S.C. § 441b(b) by soliciting funds from individuals outside of its restricted class.  
3 Accordingly, we recommend that the Commission find reason to believe that AICPAC and  
4 Gabriel S. Joseph, III in his official capacity as treasurer violated 2 U.S.C. § 441b(b), and that  
5 the Commission authorize a limited investigation to determine the scope of any potential  
6 violation.<sup>7</sup>

7 Although the Complaint alleges that Joseph knowingly made a false statement to the  
8 Commission in violation of 18 U.S.C. § 1001 when he stated that AICPAC had no connected  
9 organization, this criminal provision is not within the Commission's jurisdiction and thus we  
10 make no recommendation as to this allegation.<sup>8</sup> Section 433(b), however, which requires  
11 political committees to list any connected organization on its Statement of Organization, would  
12 apply.<sup>9</sup> Based on our conclusion that the AICPAC was not properly registered as a  
13 nonconnected political committee, we recommend that the Commission find reason to believe  
14 that AICPAC and Gabriel S. Joseph, III in his official capacity as treasurer violated 2 U.S.C.  
15 § 433(b) by failing to list ccAdvertising as a connected organization on AICPAC's Statement of  
16 Organization.

17 Finally, based on Commission precedent exempting text messages from the disclaimer  
18 requirements, we recommend that the Commission find no reason to believe that AICPAC and  
19 Gabriel S. Joseph, III in his individual and official capacity as treasurer violated 2 U.S.C.  
20 § 441d(a)(3) or 11 C.F.R. § 110.11(a)(3) by failing to include a disclaimer in the text messages.

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<sup>7</sup> During the investigation, we will try to confirm Respondents' assertion that ccAdvertising is operated by and is the d/b/a of AIC Communications, LLC, rather than of FreeEats.com, Inc. We note that publicly available information — ccAdvertising's own website and Dun & Bradstreet reports — links ccAdvertising to FreeEats.com, Inc.

<sup>8</sup> See MUR 5830 (U.S.-Cuba Democracy PAC).

<sup>9</sup> *Id.*

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. AICPAC's Registration as a Nonconnected Committee**

3  
4 AICPAC has been registered with the FEC as a nonconnected political committee since  
5 2008.<sup>10</sup> Gabriel S. Joseph, III established the PAC and is its treasurer and custodian of records.<sup>11</sup>  
6 Joseph is also president of ccAdvertising.<sup>12</sup> ccAdvertising is a communications firm providing  
7 telephone surveys, polling, and message delivery services to political and commercial clients and  
8 is a commercial vendor to AICPAC.<sup>13</sup>

9 The complaint alleges that AICPAC is not a nonconnected committee but is instead an  
10 SSF of ccAdvertising.<sup>14</sup> Specifically, the Complaint alleges that: 1) the same individual, Joseph,  
11 serves simultaneously as the treasurer of AICPAC and president of ccAdvertising; 2) Joseph was  
12 solely responsible for establishing AICPAC; 3) Joseph has day-to-day operational control of both  
13 organizations; and 4) Joseph personally administers AICPAC using the resources and facilities of  
14 ccAdvertising, citing to AICPAC's access to ccAdvertising proprietary databases, its use of a  
15 post office box as its official address, and its payment of rent to a provider of virtual office  
16 space.<sup>15</sup>

<sup>10</sup> See AICPAC, Statement of Organization at 1-3, October 1, 2008.

<sup>11</sup> *Id.*

<sup>12</sup> Resp. Ex. A, Gabriel S. Joseph III, Aff. ¶¶ 2-3.

<sup>13</sup> See <http://www.ccadvertising.com/capabilities.html>.

<sup>14</sup> Compl. ¶¶ 21-33; 11 C.F.R. §§ 100.5(g)(4)(i), (ii)(A)-(J), 110.3(a)(3)(i) and (ii)(A)-(J), 114.5(g). The Complaint points to the Commission's affiliation regulations in support of its allegation. The affiliation rules, however, apply in the context of two or more political committees and thus would not apply under the facts of this case, which involve a single political committee and a corporation. However, the analysis used by the Commission to determine whether a nonconnected PAC is financially and organizationally independent of a corporation is similar to the affiliation rules.

<sup>15</sup> Compl. ¶¶ 21-33. Complainant alleges that "Joseph has gone to elaborate lengths to portray AICPAC as a nonconnected committee, when, in fact, AICPAC is administered by Mr. Joseph using the resources and facilities of ccAdvertising located at Suite 302, 5900 Fort Drive, Centreville, Virginia." *Id.* ¶ 19. The complaint points out that AICPAC uses a post office box as its official address, which allegedly was rented by AICPAC's accounting firm

1 Under the Federal Election Campaign Act of 1971, as amended ("the Act"), a corporation  
2 that directly or indirectly establishes, administers, or financially supports a political committee is  
3 the connected organization of that committee.<sup>16</sup> The connected organization (*i.e.* the  
4 corporation) and its SSF may only solicit for contributions to the SSF from the corporation's  
5 restricted class.<sup>17</sup> An SSF may accept an unsolicited contribution that is otherwise lawful, but  
6 the committee may not inform individuals outside the restricted class that unsolicited  
7 contributions are acceptable.<sup>18</sup> All payments to the nonconnected committee from the  
8 organization for establishment, administration, and solicitation costs are contributions subject to  
9 the limits and prohibitions of the Act unless another exception applies.

10 The Commission has addressed the issue of whether individuals associated with a  
11 corporation may form a nonconnected committee in a number of advisory opinions. The  
12 Commission has permitted the formation of such a committee where: 1) the committee  
13 maintains organizational independence from any other incorporated entity; and 2) even with  
14 some overlap with a corporation as to personnel or facilities, the committee is not financially

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Koch & Hoos, LLC, "at the direction of Mr. Joseph and ccAdvertising in order to make it appear that ccAdvertising was not the connected organization of AICPAC." *Id.* Complainant further alleges that AICPAC's \$200 monthly payments to HQ Global Workplace for rent is designed to make it appear that ccAdvertising is not connected to AICPAC. *Id.* ¶ 20. Complainant notes that HQ Global Workplaces is a division of Regus USA, a provider of virtual office space, and the only service that HQ Global Workplaces provides at the rate of \$200 per month is a telephone answering and forwarding service, which Complainant alleges forwards phone calls to Joseph's offices at ccAdvertising. *Id.* Finally, Complainant points out that AICPAC claims on its website that it has access to proprietary databases of consumer information, but these databases are in fact owned by ccAdvertising. Complainant submitted screenshots of the AICPAC and ccAdvertising websites. *Id.* ¶¶ 17-18. The AICPAC website states that its goal is "to identify the political opinions and preferences of the 120,000,000 homes in America that are contained in proprietary databases to which AICPAC has access" and ccAdvertising's website states that it "maintains an extensive, two-week current database of 120,000,000 homes in America. This database is suitable for mailing lists and phone lists." *Id.*

<sup>16</sup> 2 U.S.C. § 431(7); 11 C.F.R. § 100.6(a).

<sup>17</sup> The restricted class of a corporation consists of the corporation's executive and administrative personnel, the stockholders, and the families of these two groups. 2 U.S.C. § 441b(b)(4)(A), (C); 11 C.F.R. §§ 114.5(g)(1), 114.7(a).

<sup>18</sup> 11 C.F.R. § 114.5(j).

1 supported by that corporation.<sup>19</sup> For example, in Advisory Opinion 1997-26 (Association of  
2 Metropolitan Sewerage Industries), the requester asked whether a political committee organized  
3 by a group of individuals, including the Executive Director and others associated with a non-  
4 profit trade association, would be considered a nonconnected committee under the Act. The  
5 Commission concluded that persons associated with the association could establish a  
6 nonconnected committee provided that the PAC would not receive financial support from the  
7 association or engage in any joint fundraising, or otherwise receive fundraising support from the  
8 association, and a majority of the PAC's board of directors was not comprised of directors,  
9 officers, or other personnel of the association.

10 Similarly, in Advisory Opinion 1997-15 (Nickalo), the requester asked whether an  
11 individual who was the president and CEO of an incorporated membership organization could  
12 establish an independent, nonconnected PAC, or whether such a committee would be an SSF of  
13 the corporation. The Commission concluded that the individual could establish a nonconnected  
14 committee provided that the corporation did not financially support the PAC, and persons outside  
15 of the corporation were involved in the conduct and control of the PAC.

16 In MUR 5830 (U.S.-Cuba Democracy PAC), the Commission found that a nonconnected  
17 PAC was financially and organizationally independent from the corporation because there was  
18 no information indicating that the corporation had provided funds at any time to the PAC and the  
19 organizational structure of the PAC was "consistent with nonconnected committee status in that

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<sup>19</sup> See Campaign Guide for Corporations and Labor Organizations, at 7-8 (individuals associated with an incorporated entity may establish a nonconnected PAC if "their PAC is financially and organizationally independent of the incorporated entity."). With respect to the financial support component of the connectedness test, a corporation is not providing financial support to a committee when services or the use of facilities are provided in return for payment by the committee of the usual and normal charge within a commercially reasonable time. See, e.g., Advisory Opinion 1991-37 (Democratic Election Reporting Education Fund) (finding nonconnected status where a committee shares space and office facilities with an incorporated accounting/financial firm headed by the committee treasurer (who was also one of the committee's founders) and the committee pays for services and for the allocable portion of the expenses for rent and the use of such facilities within a commercially reasonable time).

1 a majority of the PAC's governing body did not appear to have been comprised of directors,  
2 officers or other personnel of the corporation."<sup>20</sup>

3 In this case, it appears that AICPAC and ccAdvertising are not organizationally  
4 independent. In determining whether a nonconnected PAC is organizationally independent from  
5 a corporation, the Commission has examined whether persons establishing and operating the  
6 committee included persons not associated with the corporation. In this matter, AICPAC has no  
7 board of directors and Joseph appears to be the only person in charge of the PAC. It is  
8 undisputed that Joseph established AICPAC and that he serves simultaneously as president of  
9 ccAdvertising and treasurer of AICPAC. Joseph is also custodian of records and appears to be  
10 the only officer of AICPAC. Respondents acknowledge the role of Joseph as both president of  
11 ccAdvertising and treasurer of AICPAC but do not address the Complaint's allegation that this  
12 overlap suggests that the entities are connected. In previous instances where the Commission  
13 considered this question, operational control of the nonconnected PAC was exercised by an  
14 executive committee and/or board of directors, the majority of whose members had no  
15 involvement or association with corporation.<sup>21</sup> Thus, based on the above, it appears that Joseph  
16 has operational control of both ccAdvertising and AICPAC and thus the entities are not  
17 organizationally independent.

18 At the same time, the current record does not suggest that AICPAC is financially  
19 supported by ccAdvertising. Complainant's assertion that AICPAC uses the resources and  
20 facilities of ccAdvertising is based on AICPAC's access to ccAdvertising proprietary databases,  
21 use of a post office box as its address, and its payment of rent to a provider of virtual office

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<sup>20</sup> Factual & Legal Analysis at 5, MUR 5830 (U.S.-Cuba Democracy PAC).

<sup>21</sup> See MUR 5830 and Advisory Opinions 1997-26 and 1997-15, *supra*.

1 space.<sup>22</sup> However, the information currently available does not indicate that AICPAC has used  
2 or failed to pay for any access to proprietary databases, resources, or facilities of ccAdvertising.  
3 Indeed, AICPAC's FEC disclosure reports show that since its establishment in 2008, it has paid  
4 its administrative, compliance, and fundraising costs from its own funds, including payments  
5 totaling \$496,659 in expenditures to ccAdvertising for administrative services, IE phone  
6 communications, and PAC surveys.<sup>23</sup>

7 In conclusion, the available information shows that although AICPAC is not financially  
8 supported by ccAdvertising, the two entities are not organizationally independent. Thus,  
9 ccAdvertising appears to be a connected organization of AICPAC and AICPAC is the SSF of  
10 ccAdvertising. Accordingly, both ccAdvertising and AICPAC may solicit only a restricted class  
11 of persons associated with ccAdvertising and may not solicit the general public.<sup>24</sup> AICPAC's  
12 disclosure reports show that since 2008, AICPAC has received nearly \$750,000 in contributions,  
13 some or all of which may have been solicited from the general public. Accordingly, we  
14 recommend that the Commission find reason to believe that AICPAC and Gabriel S. Joseph, III  
15 in his official capacity as treasurer violated 2 U.S.C. § 441b(b) by soliciting funds outside the  
16 restricted class. Since we do not know how many of AICPAC's contributions were the result of

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<sup>22</sup> Compl. ¶¶ 18-20.

<sup>23</sup> *See also* Resp., Ex. B. Complainant asserts that AICPAC was established to generate revenue for ccAdvertising, noting that since 2008, AICPAC has made \$496,659 in expenditures to ccAdvertising (68 percent of its expenditures) while contributing only \$43,750 directly to state and federal candidates (less than 6 percent of its expenditures); and, AICPAC contributions tend to go to committees that employ ccAdvertising as a vendor, citing a number of instances where AICPAC contributions to a political committee was followed shortly by a payment to ccAdvertising. Compl. ¶¶ 15-16. However, the Act and Commission regulations do not preclude a corporation that is owned or controlled by a person who is also an officer of, or closely associated with, a political committee from functioning as a vendor of goods and services to that committee providing that the committee pays the usual and normal charge within a commercially reasonable time. *See* Advisory Opinion 1995-38 (Washington Policy Associates) (concluding that a nonconnected political committee could receive services from a vendor whose chief executive officer also served as treasurer of the committee, so long as the committee paid the usual and normal charges for those services).

<sup>24</sup> *See* 2 U.S.C. § 441b(b)(4)(A)(i).







1 hyperlink to a landing page; the ads themselves did not contain disclaimers, but the landing  
2 pages did. The Commission concluded that the proposal “under the circumstances described . . .  
3 [was] not in violation of the Act or Commission regulations,” but the Commission did not  
4 approve by four affirmative votes a specific conclusion regarding whether AdWords qualified for  
5 the small items or impracticability exception. In Advisory Opinion Request 2011-09  
6 (Facebook), the Commission considered whether the small items or impracticability exception  
7 applied to size-limited Facebook advertisements that would have linked to web pages that might  
8 not have included disclaimers. The Commission was unable to render an opinion by the required  
9 four affirmative votes. Most recently in Advisory Opinion Request 2013-18 (Revolution  
10 Messaging, LLC), the Commission considered whether proposed mobile phone banner ads were  
11 exempt from the Act’s disclaimer requirements. The Commission was unable to render an  
12 opinion by the required four affirmative votes.

13 In this matter, it appears that AICPAC’s text messages are materially equivalent to the  
14 messages at issue in AO 2002-09 — the available information indicates that they are similarly  
15 limited to 160 characters in length and that adding a disclaimer to the messages at issue would  
16 cause the message to exceed that character limit.<sup>41</sup> The Commission has issued no new opinion  
17 or regulation modifying its earlier conclusion concerning materially similar circumstances that

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<sup>41</sup> See AO 2002-09 at 4 (stating that SMS messages are “limited in [their] size and length” by external technological rules that restrict the “messages that they are able to contain.”). The websites of the most widely used cell phone carriers indicate that a single SMS message is still limited to 160 characters, and longer messages must be segmented into multiple separate messages or converted to a picture message. See, e.g., [http://support.verizonwireless.com/support/faqs/TXTmessaging\\_faq.html](http://support.verizonwireless.com/support/faqs/TXTmessaging_faq.html) (Verizon); [http://www.att.com/shop/wireless/services/messaging.html?fbid=c2\\_oPKzq5wu](http://www.att.com/shop/wireless/services/messaging.html?fbid=c2_oPKzq5wu) (AT&T); [http://support.sprint.com/support/article/Find\\_out\\_the\\_character\\_limits\\_of\\_text\\_messages?case=gb746811-20090622-110555](http://support.sprint.com/support/article/Find_out_the_character_limits_of_text_messages?case=gb746811-20090622-110555) (Sprint); <http://support.t-mobile.com/docs/DOC-3309> (T Mobile); see also <http://www.wisegeek.com/why-is-there-a-160-character-sms-limit.htm#didyouknowout>. Since AO 2002-09, text messaging options have expanded to include messaging services that provide larger character limits, e.g., Enhanced Messaging Service and Multimedia Messaging Service. <http://www.cellutips.com/text-messaging-the-difference-between-sms-ems-and-mms/>. These services are not supported by all mobile phones or carriers, however, and SMS messaging remains the most common type of text message and is supported by most mobile phones. See <http://www.pangolinsms.com/tech02-types-of-mobile-messages.htm>.

1 the small items exception applied to the disclaimer requirements for text messages limited in  
2 length to 160 characters. Thus, we recommend that the Commission find no reason to believe  
3 that AICPAC and Gabriel S. Joseph, III in his individual and official capacity as treasurer  
4 violated 2 U.S.C. § 441d(a)(3) or 11 C.F.R. § 110.11(a)(3).

5 **III. PROPOSED DISCOVERY**

6 Since an SSF may accept unsolicited contributions that are otherwise lawful from outside  
7 its restricted class,<sup>42</sup> we propose conducting a limited investigation to determine which, if any,  
8 contributions received by AICPAC were received in response to a solicitation by AICPAC. We  
9 will also seek to clarify whether ccAdvertising is the d/b/a of FreeEats.com, Inc., or AIC  
10 Communications, LLC, for purposes of determining which entity is the connected organization  
11 of AICPAC. We request that the Commission authorize the use of compulsory process in the  
12 event formal discovery is necessary to obtain this information.

13 **IV. RECOMMENDATIONS**

- 14 1. Find reason to believe that Americans in Contact PAC and Gabriel S. Joseph, III in his  
15 official capacity as treasurer violated 2 U.S.C. §§ 441b(b) and 433(b).  
16  
17 2. Find no reason to believe that Americans in Contact PAC and Gabriel S. Joseph, III in his  
18 individual and official capacity as treasurer violated 2 U.S.C. § 441d(a)(3) or 11 C.F.R.  
19 § 110.11(a)(3).  
20  
21 3. Authorize the use of compulsory process, including the issuance of appropriate  
22 interrogatories, document subpoenas, and depositions subpoenas, as necessary.  
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24 4. Approve the attached Factual and Legal Analysis.  
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<sup>42</sup> See 11 C.F.R. § 114.5(j)

5. Approve the appropriate letters.

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6 May 15, 2014  
7 Date

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