



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

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10201 Wayzata Blvd., Suite 130  
Minneapolis, MN 55305

OCT 28 2008

RE: MUR 5637  
21<sup>st</sup> Century Democrats

Dear Mr. Trimble:

This is in reference to the complaint your client, the Republican Party of Minnesota, filed with the Federal Election Commission on January 10, 2005, concerning 21<sup>st</sup> Century Democrats and Michael Lux, in his official capacity as treasurer, and Matthew Entenza. Based on that complaint, on November 17, 2005, the Commission found that there was reason to believe 21<sup>st</sup> Century Democrats and Bill Combs, in his official capacity as treasurer, violated 2 U.S.C. §§ 434, 441a(f), and 441b(a) and 11 C.F.R. §§ 102.5, 104.10, and 106.6, and instituted an investigation of this matter. However, after considering the circumstances of this matter, the Commission determined to take no further action as to 21<sup>st</sup> Century Democrats and Bill Combs, in his official capacity as treasurer, and closed the file in this matter on October 21, 2008. At the same time, the Commission found no reason to believe that Matthew Entenza knowingly made excessive contributions to 21<sup>st</sup> Century Democrats. The Factual and Legal Analyses explaining the Commission's decision are enclosed.

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).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

  
Julie K. McConnell  
Assistant General Counsel

Enclosure  
Factual and Legal Analyses

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**Respondent: 21<sup>st</sup> Century Democrats and Bill Combs,  
in his official capacity as treasurer**

**MUR: 5637**

**1 I. INTRODUCTION**

2 This matter arises from a complaint alleging that 21<sup>st</sup> Century Democrats violated the  
3 Federal Election Campaign Act of 1971, as amended (the "Act"), by accepting excessive  
4 contributions and using insufficient Federal funds to pay for its activities during the 2004  
5 election cycle. The Commission previously found reason to believe that 21<sup>st</sup> Century Democrats,  
6 an unincorporated non-connected political committee with Federal and non-Federal accounts,  
7 and Michael Lux,<sup>1</sup> in his official capacity as treasurer, violated 2 U.S.C. §§ 434, 441a(f), and  
8 441b(a) and 11 C.F.R. §§ 102.5, 104.10, and 106.6. These findings were based on information  
9 indicating that 21<sup>st</sup> Century Democrats failed to properly allocate hundreds of thousands of  
10 dollars in Federal and non-Federal funds it received and disbursed and used insufficient Federal  
11 funds to pay for its predominantly Federal and mixed Federal/non-Federal activities in  
12 2003-2004.

**13 II. FACTUAL AND LEGAL ANALYSIS**

14 21<sup>st</sup> Century Democrats is a Washington, DC based unincorporated organization  
15 established in 1988 with Federal and non-Federal accounts. According to its website, 21<sup>st</sup>  
16 Century Democrats is committed to providing "progressive and populist candidates the support  
17 they need to win elections." <http://www.21stcenturydems.org/aboutus> (visited October 12,  
18 2007). Pursuant to 11 C.F.R. § 106.6(a), 21<sup>st</sup> Century Democrats registered its Federal account  
19 with the Commission as a non-connected political committee. 21<sup>st</sup> Century Democrats'

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<sup>1</sup> Bill Combs replaced Michael Lux, the treasurer at the time of the alleged violations, on April 20, 2006.

1 non-Federal account filed disclosure reports with the Internal Revenue Service under Section 527  
2 of the Internal Revenue Code. *See* 26 U.S.C. § 527. During the 2004 cycle, 21<sup>st</sup> Century  
3 Democrats' Federal account raised \$5.1 million, while its non-Federal account disclosed receipts  
4 totaling \$2.7 million.

5 **A. DISBURSEMENTS**

6 **1. Factual Background**

7 Prior to the 2004 election cycle, 21<sup>st</sup> Century Democrats focused on providing financial  
8 and logistical support directly to progressive candidates for State and Federal office.  
9 According to Kelly Young, the former president of 21<sup>st</sup> Century Democrats, 21<sup>st</sup> Century  
10 Democrats made monetary contributions to State and Federal candidates and also recruited and  
11 trained organizers and campaign staff and placed them with specific candidates. In some, but not  
12 all, instances, 21<sup>st</sup> Century Democrats paid the salary of the individual placed with a specific  
13 candidate and treated the cost as an in-kind contribution to the recipient committee. During the  
14 2004 election cycle, 21<sup>st</sup> Century Democrats provided \$31,718.18 in cash and in-kind  
15 contributions to candidates for Federal office and \$285,312.28 in non-Federal cash and in-kind  
16 contributions to candidates for State office.

17 In addition to these amounts, 21<sup>st</sup> Century Democrats spent approximately \$7.5 million  
18 total during the 2004 election cycle.<sup>2</sup> These expenditures included approximately \$3.6 million in  
19 Federal funds for telemarketing and direct mail expenses related to its fundraising efforts,<sup>3</sup> as  
20 well as funds spent on four programs established to help attract support for progressive issues  
21 such as unemployment, the war in Iraq, and abortion rights, which it allocated between its  
22 Federal and non-Federal accounts.

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<sup>2</sup> *See* 21<sup>st</sup> Century Democrats 2004 FEC Disclosure Reports; IRS Form 8872s.

<sup>3</sup> *See id.*

1           The largest program, on which 21<sup>st</sup> Century Democrats spent approximately \$1 million in  
2 allocated Federal/non-Federal disbursements, was the Youth Voter Project (“YVP”), whose  
3 purpose was to increase Democratic voter turnout by increasing the number of voters between  
4 the ages of eighteen and thirty-four in Ohio, Oregon, and Minnesota.<sup>4</sup> The program consisted of  
5 voter identification and registration efforts, a persuasive effort focused on helping get voters to  
6 focus on issues important to them, and a get-out-the-vote effort. Although Young, who spent  
7 approximately twenty percent of her time on YVP-related matters, had ultimate decision-making  
8 authority, Lilah Pomerance, a 21<sup>st</sup> Century Democrats employee working in Washington, DC  
9 office, was the Director of the YVP. Pomerance coordinated with each State director, who in  
10 turn had a staff of coordinators and canvassers to make contact with potential voters.

11                   **2. Allocation of Expenditures**

12           Under the rules in effect during the 2004 election cycle, non-connected political  
13 committees were required to pay administrative expenses attributable to clearly identified  
14 Federal candidates and voter drive expenses that mentioned specific Federal candidates entirely  
15 with Federal funds. *See* 11 C.F.R. §§ 106.1 and 106.6(b)(2)(i)-(iii) (2004); *see also* AO 2003-37  
16 at 11-13. In contrast, administrative expenses not attributable to clearly identified candidates, as  
17 well as the costs of generic voter drive communications that did not mention a specific Federal  
18 candidate, could be allocated according to the “funds expended” method, which compares the  
19 amount of direct candidate support for Federal candidates (*i.e.*, amounts contributed to or  
20 otherwise spent on behalf of specific Federal candidates) to the amount of direct candidate

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<sup>4</sup> The other programs were the Field Organizer Program discussed above, which recruited campaign workers and placed them with specific Federal, State and local candidates; the Democracy for America Project, which trained activists to discuss specific issues with potential voters; and Oregon Deep Blue, which was a get-out-the-vote effort aimed at increasing voter turnout in traditionally Democratic districts.

1 support for all Federal and non-Federal candidates. See 11 C.F.R. §§ 106.6(b)(2)(i)-(iii) and (c)  
2 (2004).

3 (a) **21<sup>st</sup> Century Democrats Only Considered Direct Contributions**  
4 **to Candidates in Calculating Its Allocation Ratio for the 2004**  
5 **Election Cycle**

6 At the start of the 2004 election cycle, 21<sup>st</sup> Century Democrats allocated the cost of  
7 administrative expenses and generic voter drives based on an allocation ratio of 25% Federal and  
8 75% non-Federal. In June 2004, 21<sup>st</sup> Century Democrats modified the ratio and began allocating  
9 administrative and generic voter drive expenses based on an allocation ratio of 10% Federal and  
10 90% non-Federal. According to its subpoena response, 21<sup>st</sup> Century Democrats calculated this  
11 ratio by taking the total amount spent on direct contributions to Federal candidates (\$31,718.18)  
12 and dividing it by direct contributions to Federal and non-Federal candidates (\$317,030.36).

13 If any of 21<sup>st</sup> Century Democrats' communications expressly advocated or were  
14 otherwise made on behalf of a Federal candidate, it would alter the allocation ratio and could  
15 result in the committee having paid for Federal activity with non-Federal funds. See 11 C.F.R.  
16 §§ 106.6(b)(2)(i)-(iii) and (c) (2004). However, as discussed below, the disbursements made in  
17 connection with the YVP did not contain express advocacy or other constitute spending on  
18 behalf of a federal candidate, and thus did not alter the 21<sup>st</sup> Century Democrats' allocation ratio.

19 (b) **Disbursements for the YVP Were Allocable and Did Not Alter**  
20 **the Funds Expended Ratio**

21 Information available at the reason to believe stage suggested that the focus of the YVP  
22 was on electing Senator John Kerry as President of the United States.<sup>5</sup> In addition, in response to

<sup>5</sup> For example, press articles quoted Ms. Young and other high-level YVP employees as stating "I am impressed by the dedication of hundreds of young volunteers – and the commitment of young voters – to electing John Kerry and the Democratic ticket" and that the YVP would "recruit[] thousands of activists to knock on doors, make phone calls and talk to voters about defeating Bush in 2004." Adam Ebbin, *New Campaign Offices Open in Minnesota, Ohio and Oregon*, available at <http://www.21stcenturydcms.org> (Aug. 17, 2004); Laila Hirschfeld, *21<sup>st</sup>*

1 our subpoena request, 21<sup>st</sup> Century Democrats provided documents describing the YVP and its  
2 operation that initially confirmed this interpretation. For example, a presentation titled "21<sup>st</sup>  
3 Century Democrats – On the ground for progressive candidates" stated that the YVP would "turn  
4 out an additional 2% of the youth vote in each state for John Kerry." Other documents appeared  
5 to be pro-Kerry or anti-Bush door scripts used by YVP canvassers in 2004 to "help get Bush out  
6 of office" or to "sway [voters] towards Kerry."<sup>6</sup>

7 Despite these documents, witness interviews and other materials provided by individuals  
8 no longer employed by 21<sup>st</sup> Century Democrats indicate that YVP staff did not engage in any  
9 direct candidate support for Federal candidates. Although many documents referenced specific  
10 candidates for Federal office, witness statements establish that these references were removed  
11 prior to any communication with the general public. In addition, information and documents  
12 produced by 21<sup>st</sup> Century Democrats and its employees, including a computer hard drive  
13 containing advice of counsel, demonstrate that 21<sup>st</sup> Century Democrats took steps to ensure that  
14 the canvassers contacting potential voters did not reference any candidate for Federal office.

15 In her interview, Young explained that references to specific candidates were not part of  
16 the YVP. For example, a 21<sup>st</sup> Century Democrats presentation regarding the YVP focused on the  
17 effect of the program on the Presidential race because donors "understand things in terms of the  
18 most important race." Young explained the references to specific Federal candidates in door and

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*Century Democrats Announce Hire of Oregon State Director, available at <http://www.21stcenturydema.org> (Dec. 12, 2003).*

<sup>6</sup> One draft door script asked the potential voter who they were likely to vote for for President. If the person responded Senator Kerry, then the canvasser would make sure they were registered to vote, gather contact information, and then inquire as to whether they could volunteer "to help get Bush out of office." If the person stated they intended to vote for President Bush, the canvasser simply thanked them and asked if there were any other 18-34 year olds living at the same address. A telephone script provided similar instructions but added that if a person stated he or she was undecided, "you will help sway them towards Kerry with the persuasion script." The persuasion script consisted of talking points such as "[i]n George Bush's America, 45 million Americans do not have health insurance" and "John Kerry has a health care plan to extend affordable health coverage to all Americans. He plans to fund this project by rolling back Bush's massive tax cut to the wealthy."

1 telephone scripts by stating that these were draft scripts that would not have been approved for  
2 use. She stated that, as the program grew, overeager staff members would draft materials that  
3 mentioned Federal candidates and had to be told that the YVP was a generic voter drive and  
4 could not refer to individual candidates for Federal office.

5 Similarly, Lilah Pomerance, the YVP Director, and each of the state directors, confirmed  
6 that they were given instructions not to refer to specific candidates by name. Emma Greenman,  
7 the Minnesota state director, explained that any script for voter contact was vetted by attorneys in  
8 Washington, DC. Greenman also explained that the advertisement for "Jobs to Defeat George  
9 Bush" was most likely a draft advertisement submitted by a campus director for approval.  
10 Greenman stated that the job listing was too long, and that she recalled using a shorter  
11 advertisement titled "Work for Change" instead.

12 In addition to these statements, additional documents from Evan Hutchison, the Ohio  
13 state director, confirm that the YVP did not reference specific federal candidates. Hutchison  
14 provided us with a computer that contained electronic files and mail messages related to the  
15 YVP. While the majority of the documents consisted of generic door and telephone scripts  
16 already produced by 21<sup>st</sup> Century Democrats, we obtained several additional documents that  
17 corroborate Young's depiction of the YVP as a generic project that did not advocate for the  
18 election or defeat of any candidate for Federal office. For example, we recovered an electronic  
19 mail message from Young to the state coordinators forwarding a memorandum drafted by legal  
20 counsel explicitly instructing canvassers not to mention the name of a Federal candidate,  
21 including references such as "this President," "your representatives in Congress," or "the  
22 Democratic nominee for Congress." Hutchison's electronic mail also contained messages  
23 reminding canvassers in Ohio that their efforts are on behalf of "ALL Democratic candidates"

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1 and that they should remove all references to President Bush and Senator Kerry from their  
2 scripts.

3 Finally, in an effort to confirm these instructions and statements made at witness  
4 interviews regarding the nature of the YVP as a non-candidate specific program, we also  
5 interviewed individual canvassers in different states to determine what YVP canvassers actually  
6 said to voters. According to some of the canvassers, they were given scripts that contained  
7 "voter education points" and identified President Bush and Senator Kerry's positions on  
8 numerous issues. However, they were explicitly told not to identify either candidate by name.  
9 Another canvasser stated that she may have used a script including the words Democrat and  
10 Republican, but does not recall any script including the name of a specific candidate. addition,  
11 the canvasser recalls being instructed not to use the name of a specific candidate in conversations  
12 with potential voters.

13 The witness statements, which were obtained from current and former 21<sup>st</sup> Century  
14 Democrat employees, are credible because of their consistency with each other and with the  
15 corroborating evidence located on the computer hard drive of a former YVP state director.  
16 Based on this evidence, it does not appear that YVP canvassers contacting potential voters  
17 expressly advocated or otherwise made disbursements on behalf of a candidate for Federal  
18 office. 21<sup>st</sup> Century Democrats therefore did not have to pay for the cost of the YVP exclusively  
19 with Federal funds, and the funds expended ratio used by the Committee during the 2004  
20 election cycle adequately reflected the Committee's Federal and non-Federal expenditures.

**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**Respondent: Matthew Entenza**

**MUR: 5637**

1           **This matter arises from a complaint alleging that Matthew Entenza, a Minnesota State**  
2 **Representative, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by**  
3 **knowingly contributing funds to 21<sup>st</sup> Century Democrats to influence Federal elections in**  
4 **amounts in excess of Federal contribution limits. 21<sup>st</sup> Century Democrats is a Washington, DC**  
5 **based unincorporated organization established in 1988 with Federal and non-Federal accounts.**

6           **According to Mr. Entenza, Kelly Young, the former president of 21<sup>st</sup> Century Democrats,**  
7 **personally sought a contribution from him to support a voter mobilization effort targeted at**  
8 **young voters. Entenza stated that Young told him that the program would not endorse any**  
9 **specific candidates for State or Federal office. In response to the solicitation, Entenza donated**  
10 **\$300,000 to 21<sup>st</sup> Century Democrats.**

11           **Because Entenza appears to have donated to 21<sup>st</sup> Century Democrats in an effort to fund a**  
12 **voter drive that did not target specific candidates, he did not make a "contribution" under the**  
13 **Act. See *FEC v. Survival Education Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995) (fundraising**  
14 **solicitation clearly indicating that the funds received would be targeted to the election or defeat**  
15 **of a clearly identified candidate for Federal office results in contributions under the Act).**  
16 **Accordingly, the Commission finds no reason to believe that Entenza knowingly made excessive**  
17 **contributions to 21<sup>st</sup> Century Democrats.**

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