



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 6320
John Gomez for Congress and Denise Passero in her official capacity as Treasurer)	
)	
John Gomez)	
)	
Clear Channel Communications, Inc.)	
)	
Premiere Radio Networks, Inc.)	
)	
Sean Hannity)	

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STATEMENT OF REASONS
Chair Cynthia L. Bauerly and Commissioner Ellen L. Weintraub

This matter concerns an email sent on May 8, 2010 ("May 8 email") from *The Sean Hannity Show* to subscribers who signed up to receive "Hannity's Headlines" email updates from the show. The May 8 email forwards a solicitation signed by Mark Levin, a radio talk show host. During the course of the message, Mr. Levin expressly advocates the election of John Gomez to Congress, stating "I strongly encourage you to help me get [Mr. Gomez] elected to the House of Representatives in November."¹ Mr. Levin, who states that Mr. Gomez "needs your financial support," also requests that the reader "please consider supporting his candidacy."² The bottom of the email features a "Donate Now" button, which contains a hyperlink to the Gomez campaign website.³

The complaint in this matter made several allegations based on the Act's prohibition against corporate contributions. On December 14, 2010, a motion to find no reason to believe as to each Respondent failed by a vote of 3-2.⁴ In our view, there was reason to believe that the email constituted corporate facilitation of contributions in violation of Section 441b(a) of the

¹ MUR 6320 (John Gomez for Congress *et al.*), Complaint at Attachment F.

² *Id.*

³ *Id.*

⁴ MUR 6320 (Gomez), Certification dated December 16, 2010. Then-Chairman Petersen and Commissioners Hunter and McGulm supported the motion. Commissioners Walther and Weintraub opposed the motion. Then-Vice Chair Bauerly was unavoidably absent and did not vote, but had she been present, she would have joined Commissioners Walther and Weintraub in opposing the motion.

Federal Election Campaign Act of 1971, as amended.⁵ We write separately to explain why we do not believe that the email qualifies for the press exemption.

Plainly, Premier Radio Networks, Inc. ("Premier") and Clear Channel Communications, Inc. ("Clear Channel") are media entities, and there is nothing to suggest that they are owned or controlled by a political party, political committee, or candidate.⁶ But the press exemption involves a two-part analysis.⁷ It is not enough that Respondents Premier and Clear Channel qualify as press entities; they must also have been acting in their "legitimate press function" when they sent the email to Hannity's subscriber list.⁸ In determining whether the email in question was an exercise of Respondents' press function, the Commission must consider, among other things, whether the email is "comparable in form to those ordinarily issued by the entity."⁹

In making this determination, the Commission must be guided by the Supreme Court's decision in *Massachusetts Citizens for Life, Inc. v. FEC* ("MCFL"). In that case, the Court applied the press exemption to the "Special Edition" of a newsletter published by a nonprofit corporation. All of the newsletters published by the corporation other than the Special Edition bore a masthead reading "Massachusetts Citizens for Life Newsletter."¹⁰ Each newsletter also contained a distinct volume and issue number.¹¹ The Special Edition, by contrast, lacked both the MCFL masthead and a volume and issue number.¹² The Special Edition also differed from the corporation's other newsletters in terms of content. The standard newsletters contained information about the corporation's activities, appeals for volunteers and contributions, and news of relevance to the pro-life movement.¹³ The Special Edition, on the other hand, consisted of a voting guide in the form of a list of candidates for each federal and state office in Massachusetts.¹⁴ Each candidate was identified "as either supporting or opposing what MCFL regarded as the correct position on three issues" of relevance to the corporation.¹⁵ The Special Edition also differed from the standard newsletters in terms of the quantity of issues circulated and the identity of the personnel responsible for its production.

In the end, the Court concluded that "the 'Special Edition' cannot be considered comparable to any single issue of the newsletter."¹⁶ Applying the same analysis, we find the email solicitation in this matter to be dissimilar from the "Hannity's Headlines" feature that was usually sent to subscribers. First, the May 8 email differed in form from the standard emails.

⁵ The Commission's regulations provide a list of examples of corporate facilitation. See 11 CFR § 114.2(f)(2). Among these is "[u]sing a corporate or labor organization list of customers, clients, vendors or others who are not in the restricted class to solicit contributions." 11 CFR § 114.2(f)(2)(i)(C); see also *Explanation and Justification: Corporate and Labor Organization Activity*, 60 Fed. Reg. 64260, 64264 (Dec. 14, 1995).

⁶ See 11 CFR §§ 100.73 and 100.32.

⁷ See Advisory Opinions 2005-16 (Fired Up!) and 2000-13 (iNEXTV), as well as MUR 5928 (Kos Media, LLC).

⁸ *Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981).

⁹ Advisory Opinion 2005-16 (Fired Up!); see also *Massachusetts Citizens for Life ("MCFL") v. FEC*, 479 U.S. 238, 250-51 (1986).

¹⁰ *MCFL*, 479 U.S. at 243.

¹¹ *Id.*

¹² *Id.* at 250-51.

¹³ *Id.* at 243.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 250.

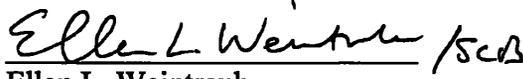
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Just as the MCFL "Special Edition" lacked the typical masthead and issue number, the usual "Hannity's Headlines" banner was absent from the May 8 email. Second, the May 8 email differed in content from other emails sent by Respondents. In particular, the May 8 email lacked the recap of Mr. Hannity's radio show and compilation of news and features that subscribers typically received. Rather, the email at issue consisted almost exclusively of a message from Mr. Levin, with only the briefest statement from Mr. Hannity himself.¹⁷ As the Supreme Court has emphasized, these are not merely "superficial considerations of form."¹⁸ Rather, such indicia are "essential" to determine whether a communication qualifies for the exemption.¹⁹ Because the May 8, 2010 email "cannot be considered comparable to any single issue of" Hannity's Headlines, the email does not appear to fall within the Respondents' legitimate press function. As a result, the press exemption is inapplicable to the email solicitation at issue.

1/21/2011
Date


Cynthia L. Bauerly
Chair

1/21/2011
Date


Ellen L. Weintraub
Commissioner

¹⁷ See MUR 6320 (Gomez), Response of Mr. Hannity at 2-3 and Exhibit 1.

¹⁸ MCFL, 479 U.S. at 251.

¹⁹ *Id.*

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