



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 6371
Friends of Christine O'Donnell, et al.)

**STATEMENT OF REASONS
CHAIR CYNTHIA L. BAUERLY AND
COMMISSIONERS STEVEN T. WALTHER AND ELLEN L. WEINTRAUB**

The complaint in this matter alleged that Our Country Deserves Battes PAC – TeaPartyExpress.org (“TPAC”), a federal non-connected political action committee, made and failed to report excessive contributions to Delaware Republican Senate primary candidate Christine O’Donnell (“O’Donnell”) and Friends of Christine O’Donnell, her principal campaign committee (“the Committee”), in violation of Sections 441a(a)(2), 441a(a)(8) and 434(b) of the Federal Election Campaign Act of 1971, as amended (“the Act”). The complaint also alleged that O’Donnell and the Committee knowingly accepted and failed to report excessive contributions in violation of Sections 441a(f) and 434(b) of the Act. The complaint alleged that the excessive and unreported contributions resulted from coordinated expenditures between TPAC and the Committee, as well as TPAC’s exercise of direction and control over contributions earmarked for supporting O’Donnell’s candidacy. We supported the recommendations of the Office of General Counsel (“OGC”) to find reason to believe that TPAC violated 2 U.S.C. 441a(a)(2) and 434(b) and that O’Donnell and the Committee violated 2 U.S.C. 441a(f) and 434(b) by coordinating expenditures. The motion to approve OGC’s recommendations failed by a vote of 3-3.¹

In this case, the complaint included information that supported finding reason to believe that O’Donnell or members of her campaign staff may have coordinated expenditures with TPAC. The Respondents have failed to provide information sufficient to rebut the complaint. The Commission should therefore take the next step and complete a limited investigation into whether O’Donnell, the Committee, and TPAC coordinated expenditures. If the investigation did not establish probable cause, the Commission would close the matter.

The complaint alleged and included a video showing that O’Donnell appeared at apparent TPAC events on September 1, 2010 and September 7, 2010. The complaint also alleges that O’Donnell participated in TPAC’s “Radiothon for Christine O’Donnell” on September 9, 2010.

¹ Chair Bauerly and Commissioners Walther and Weintraub voted affirmatively. Vice Chair Hunter and Commissioners McGahn and Petersen dissented. Thereafter, the Commission closed the file in this matter. Certification in MUR 6371, dated May 27, 2011. For the reasons set out by OGC, we also supported the recommendations to find no reason to believe that TPAC made excessive and undisclosed earmarked contributions or that O’Donnell or the Committee accepted excessive and undisclosed earmarked contributions. See First General Counsel’s Report at 13-16.

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According to the Facebook page for the event, which was included in the complaint, the event was "a special broadcast by the Tea Party Express to raise money and awareness for the conservative candidate for US senate Christine O'Donnell." The radiothon was aired on WDEL 1150 AM, as well as on the Internet at WDEL.com. The complaint also includes two statements made by Evan Quietsch, the Committee's press secretary, on his Facebook page on September 2, 2010 regarding the radiothon. The first post, made at 11:51am, stated: "Tea Party Express Radiothon on #wdel@ 7PM Thurs Sept. 9th #delaware #ntde ur calls and guests discuss #desec race #tpp #tpx listen online www.wdel.com." Quietsch's second post, made about three hours later, was apparently directed to a staff member of the radio station and stated: "@Jensen1150WDEL let me know if you want to know about the Tea Party Express as *I speak w/them daily*" (emphasis added).

Respondents' counsel, in two letters to the Commission, stated that "[t]he *only* evidence of 'coordination' cited by Complainant is a surprise appearance by candidate Christine O'Donnell at an event sponsored by the Tea Party Express, at which Ms. O'Donnell appeared without the advance knowledge of the Tea Party Express and at which event Ms. O'Donnell publicly *thanked* the Tea Party Express for its support of her candidacy." Letter from Cleta Mitchell, Oct. 18, 2010, at 1. Respondents' counsel also stated that "[t]here have *never* been any meetings or conversations between Ms. O'Donnell or persons from her campaign and the Tea party Express, *other* than the public appearance by Ms. O'Donnell at the event referenced by the Complainant in the complaint." *Id.*

The Act limits the contributions a multicandidate committee such as TPAC may make to a candidate or candidate committee to \$5,000 and provides that no candidate shall knowingly accept any contribution in excess of this limit. 2 U.S.C. 441a(a)(2) and 441a(f). Furthermore, the Act provides that all political committees must report the amount and source of all contributions received. 2 U.S.C. 434(b)(2)-(3). An expenditure coordinated with a candidate is considered a contribution to that candidate or committee, 2 U.S.C. 441a(a)(7)(B)(i), and a communication is considered coordinated with a candidate or committee when the communication (1) is paid for by a person other than that candidate or committee; (2) satisfies at least one of the content standards described in 11 CFR 109.21(c); and (3) satisfies at least one of the conduct standards described in 11 CFR 109.21(d). 11 CFR 109.21(a)(1)-(3).

The Radiothon for Christine O'Donnell satisfies the payment and content prongs of the test for coordinated communications. The broadcast was paid for by TPAC, mentioned the candidate, and was broadcast on a Delaware radio station five days before the primary election on September 14, 2010. *See* 11 CFR 109.21(c)(4)(i). The only question in dispute is whether a conduct standard was satisfied. Participation in the radiothon by either O'Donnell herself or members of her staff could have satisfied several of the conduct standards, including the "material involvement," "request or suggestion," or "substantial discussion" standards. The material involvement standard, for example, is satisfied if the candidate or committee is materially involved in decisions regarding (1) the communication's content; (2) the intended audience for the communication; (3) the means or mode of the communication; (4) the specific media outlet for the communication; (5) the timing or frequency of the communication; or (6) the duration of a broadcast communication. 11 CFR 109.21(d)(2); *see also* 11 CFR 109.21(d)(1) and (3).

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The complaint asserted that TPAC's communications were coordinated with O'Donnell and Committee staff and specifically alleges that O'Donnell participated in the radiothon. The complaint provided information that O'Donnell appeared at two TPAC events in addition to the radiothon. Furthermore, Quietsch, the Committee's press secretary, apparently made one statement promoting the radiothon and another statement to radio station staff indicating that he had daily communication with TPAC and offering to provide information about TPAC to the radio station. There is currently no information indicating whether or not O'Donnell also participated in the radiothon, as the complaint alleges.

Respondents' counsel acknowledged O'Donnell's appearance at the press conference on September 7, 2010, but generally denied any other appearances at TPAC events or communication between TPAC and O'Donnell or Committee staff. This statement, however, is contradicted by both Quietsch's statement and the video of O'Donnell's appearance at an apparent second TPAC event on September 1. Furthermore, the letter from Respondents' counsel did not specifically address O'Donnell's possible participation in the radiothon or the coordination allegations regarding that specific event.

We believe there is sufficient basis to investigate this matter. O'Donnell's participation in the radiothon may well have satisfied one or more of the conduct standards. The Committee's statement to radio station staff also suggests communication with TPAC by the Committee that could satisfy one or more of the conduct standards. This information combined with the lack of sworn or specific denials provide reason to believe that O'Donnell or Committee staff may have coordinated expenditures with TPAC. It is therefore appropriate to begin an investigation to determine the facts. Thus, we voted to find reason to believe that TPAC violated 2 U.S.C. 441a(a)(2) and 434(b) and O'Donnell and the Committee violated 2 U.S.C. 441a(f) and 434(b).

"Reason to believe" is a threshold determination that by itself does not establish that the law has been violated. In fact, "reason to believe" determinations indicate only that the Commission has found sufficient legal justification to open an investigation to determine whether there is probable cause to believe that a violation of the Act has occurred. Here, the campaign press secretary represented to a radio station employee that he spoke daily with the third party paying for a supposedly independent communication on that radio station. If that is not enough information to begin an investigation into coordination, it is unclear what would be enough.

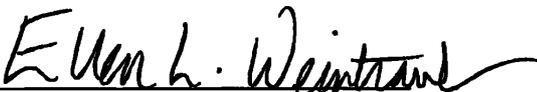
6/27/11
Date


Cynthia L. Bauerly
Chair

6/27/11
Date


Steven T. Walther
Commissioner

6/27/11
Date


Ellen L. Weintraub
Commissioner

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