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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6611
COMPLAINT FILED: July 24, 2012
LAST RESPONSE RECEIVED: Sept. 27, 2012
ACTIVATED: Oct. 11, 2012

EARLIEST SOL: June 18, 2017
LATEST SOL: Aug. 2, 2017

COMPLAINANT: James R. Baum

RESPONDENTS: Friends of Laura Ruderman and Abbot Taylor in his
official capacity as treasurer
Laura Ruderman
Progress for Washington and Jeremy Pemble in his
official capacity as treasurer
Margaret Rothschild

RELEVANT STATUTES: 2 U.S.C. § 441a(a)
2 U.S.C. § 441a(f)
11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Complainant alleges that Progress for Washington and Jeremy Pemble in his official capacity as treasurer ("PFW") made impermissible in-kind contributions to Laura Ruderman and her principal campaign committee, Friends of Laura Ruderman and Abbot Taylor in his official capacity as treasurer ("FLR"), by coordinating in connection with advertisements criticizing one of Ruderman's opponents. The allegations are based primarily on the assertion that PFW, an independent expenditure only political committee, is funded almost exclusively by Ruderman's mother, Margaret Rothschild, and that Rothschild has a "starring role" in one of Ruderman's campaign advertisements. According to the Complaint, this shows that Rothschild is "actively

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1 involved" in her daughter's campaign and "obviously possessed material information regarding
2 the campaign's plans and strategy and used that information in determining the direction and
3 content of her attack ads." Compl. at 2-5 (July 24, 2012). Finally, the Complainant alleges that
4 PFW violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by making
5 unlawful in-kind contributions to Ruderman and FLR with funds raised in unlimited amounts for
6 the purpose of making independent expenditures.

7 Respondents, for their part, deny that there was any coordination. Their Responses
8 include a number of supporting declarations and affidavits.

9 Based on the Complaint and the Responses, it appears that, while the alleged
10 communications satisfy the payment and content prongs of the Commission's coordinated
11 communications regulations, the conduct prong is not satisfied. Accordingly, we recommend
12 that the Commission find no reason to believe that Rothschild and PFW made or Ruderman and
13 FLR accepted excessive in-kind contributions as a result of the advertisements, or that PFW
14 violated the Act by raising funds in unlimited amounts.

15 II. FACTUAL AND LEGAL ANALYSIS

16 A. Factual Background

17 FLR is the principal campaign committee of Laura Ruderman, in her 2012 Democratic
18 primary campaign in Washington's first congressional district. PFW is an independent
19 expenditure only political committee that filed its Statement of Organization on June 18, 2012,
20 and has filed regular disclosure reports and independent expenditure notices since that date.
21 PFW is funded primarily by Rothschild, the mother of Ruderman. As of PFW's 2012 October
22 Quarterly Report, Rothschild had contributed \$355,000 of the \$360,000 it received in individual
23 contributions since its formation. During the 2012 election cycle, PFW's activity consisted

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1 solely of communications either in support of Ruderman or in opposition to one of Ruderman's
2 opponents. See Independent Expenditure Reports (July 5, 2012 - Aug. 2, 2012).

3 On July 16, 2012, FLR ran a television advertisement entitled "Family," in which
4 Ruderman discusses her family's struggles with cancer in the context of her support for
5 healthcare reform. Friends of Laura Ruderman, *Watch Our New TV Ad* (July 16, 2012),
6 <http://www.lauraruderman.org/2012/07/16/sneak-peak-watch-our-new-tv-ad/>. This
7 advertisement includes footage of Rothschild walking in a hospital ward with Ruderman. *Id.*
8 Rothschild does not have any speaking lines in the ad and appears in eight seconds of the 31
9 second advertisement. Ruderman and Rothschild are the only people who appear in the
10 advertisement. *Id.*

11 Based on this advertisement, Complainant alleges that Rothschild "surely received
12 material information" about her daughter's campaign and "used that information in determining
13 the direction and content of her attack ads" or at least "informed her daughter of her plans to
14 fund a Super PAC in support of her campaign, to which Ms. Ruderman assented." Compl. at 4-
15 5, 8. Complainant offers further facts in an effort to support his allegation that PFW coordinated
16 its communications with FLR.

- 17 • PFW "carefully timed its advertising to correspond with [FLR's] media rollout." *Id.* at 3.
18 FLR's "Family" advertisement featuring Rothschild aired only one day before PFW
19 launched its media blitz attacking Ruderman's opponent (on July 17, 2012), and PFW's
20 "entire offensive on Ms. Ruderman's behalf started just two weeks prior to that . . ." *Id.*
21 at 3-4.
22
23 • On July 6, 2012, when PFW had only sent a single mailer, blogger David Goldstein wrote
24 that he had been told by "a couple sources that Ruderman had been hinting to people that
25 something big was coming." *Id.* at 4 (citing David Goldstein, *First CD Race Turns*
26 *Negative*, July 6, 2012 ("Goldstein")).¹
27

¹ Goldstein continued that he has "[n]o idea if [PFW's mailer] is what she was allegedly talking about." Goldstein, available at <http://slog.thestranger.com/slog/archives/2012/07/06/first-cd-race-turns-negative>.

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- 1 • PFW and Rothschild “carefully selected topics and targets that [FLR] was avoiding,”
2 such as negative attack ads on Ruderman’s opponent. *Id.* at 4.

3
4 Finally, the Complainant asserts that it is “unfathomable that a mother and daughter that
5 [sic] share a spiritual attachment so publicly promoted by [FLR] would somehow have withheld
6 comparatively trivial, yet material information about the campaign’s strategies or plans.” *Id.*
7 at 9.

8 PFW and Rothschild submitted a joint Response (“PFW Response”) – which includes
9 sworn declarations from Rothschild, Pemble, and the other individuals responsible for PFW’s
10 television advertisement, mailings, and polling – asserting that, “there were no communications,
11 either directly or indirectly, between PFW and FLR about either committee’s projects, needs, or
12 plans.” PFW Resp. at 1 (Sept. 27, 2012); Margaret Rothschild Decl. (Sept. 25, 2012); Jeremy
13 Pemble Decl. (Sept. 24, 2012); Jeff Gumbinner Decl. (Sept. 25, 2012); Lauren Spangler Decl.
14 (Sept. 24, 2012); Martin Hamburger Decl. (Sept. 25, 2012). The PFW Response explains that
15 Rothschild’s role in the FLR advertisement was limited to being filmed walking with Ruderman.
16 PFW Resp. at 2. Rothschild declares that she did not obtain any non-public information
17 regarding the campaign’s plans, projects, or needs in connection with her participation in the
18 advertisements, and that her appearance in FLR’s advertisement had no impact on the
19 expenditures or activities of PFW. PFW Resp. at 2; Rothschild Decl. ¶ 9. Rothschild also states
20 that she did not participate in the creation or substance of PFW advertisements, although she
21 “occasionally commented on a non-substantive element of an advertisement, and approved
22 scripts for political advertisements before PFW ran those advertisements.” Rothschild Decl.
23 ¶¶ 3-4.

24 PFW asserts that it hired an independent pollster to provide all of the information that
25 formed the basis for its communications. PFW Resp. at 2. PFW and Rothschild also state that

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1 the only discussions between Rothschild and Ruderman were “normal family interactions,” and
2 that Rothschild “was very careful” to avoid any discussion of campaign plans with her daughter
3 or anyone at FLR. PFW Resp. at 2; Rothschild Decl. ¶¶ 6-8. Finally, PFW’s treasurer and the
4 other individuals responsible for its television advertisement, mailings, and polling all state in
5 declarations that they did not discuss any of PFW’s activities with Ruderman or anyone from
6 FLR. PFW Resp. at 2; Gumbinner Decl. ¶ 5; Spangler Decl. ¶ 4; Hamburger Decl. ¶ 5; Pemble
7 Decl. ¶ 2.

8 FLR submitted a separate Response, with supporting affidavits, asserting that Rothschild
9 was not an agent of FLR and that none of the conduct standards is otherwise met. FLR Resp.
10 at 1 (Sep. 20, 2012); Laura Ruderman Aff. (Sept. 19, 2012); Elizabeth Berry Aff. (Sept. 20,
11 2012); Andrew Taylor Aff. (Sept. 18, 2012). FLR explains that Rothschild did not have any
12 actual authority in the campaign: she held no formal role or title; did not offer campaign-related
13 input, participate in campaign discussions, or help make campaign-related decisions; and did not
14 represent FLR in any meetings or communications. FLR Resp. at 2 (citing Berry Aff. ¶ 6;
15 Ruderman Aff. ¶ 5). FLR states that, although Rothschild appeared in a non-speaking role in an
16 FLR advertisement for “a few seconds,” she was not authorized to and did not draft, edit, or
17 make any decisions regarding the advertisement’s creation or distribution. FLR Resp. at 3
18 (citing Berry Aff. ¶ 7; Ruderman Aff. ¶ 6). FLR also asserts that Rothschild’s role in the
19 “Family” advertisement did not require any access to non-public campaign information, and no
20 such information was provided to her. *Id.* at 5 (citing Berry Aff. ¶ 7; Ruderman Aff. ¶ 6).

21 FLR responds to the Complaint’s allegations about PFW’s negative advertising stating
22 that it was not the result of any interaction with FLR. And FLR further responds that its ads
23 aired around the same time as FLR’s because both were aired shortly before the primary election.

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1 FLR Resp. at 4. FLR additionally notes that the alleged statement that "something big was
2 coming" constitutes nothing more than an unsubstantiated rumor. *Id.* Finally, like the PFW
3 Response, FLR's campaign manager, treasurer, and candidate each attest that they did not
4 request or suggest, or assent to, any communications by PFW, and that they did not participate in
5 any discussions about the creation, discussion, or distribution of the PFW advertisements; on the
6 contrary, FLR "asked [PFW] to cease and desist in a public letter." FLR Resp. at 5; Berry Aff.
7 ¶¶ 9-12; Ruderman Aff. ¶¶ 8-11; Taylor Aff. ¶¶ 6-9.

8 **B. Legal Analysis**

9 The primary issue in this matter is whether PFW coordinated the creation, production, or
10 timing of advertisements with the Ruderman campaign, thus making the related costs excessive
11 in-kind contributions to Ruderman's campaign. Expenditures made by any person in
12 cooperation, consultation, or concert with, or at the request or suggestion of a candidate, the
13 candidate's authorized political committees, or agents, are a contribution to such candidate.
14 2 U.S.C. § 441a(a)(7)(B). When a person pays for a communication that is coordinated with a
15 candidate or his or her authorized committee, the communication is considered an in-kind
16 contribution from the person to that candidate and is subject to the limits, prohibitions, and
17 reporting requirements of the Act. 11 C.F.R. § 109.21(b).

18 A communication is coordinated with a candidate, authorized committee, or agent thereof
19 if it meets a three-prong test set forth in the Commission regulations: (1) it is paid for by a
20 person other than the candidate or authorized committee; (2) it satisfies one of five content
21 standards in 11 C.F.R. § 109.21(c); and (3) it satisfies one of six conduct standards in 11 C.F.R.
22 § 109.21(d). 11 C.F.R. § 109.21(a).

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1 In this matter, both the payment and content prongs are satisfied – allegations that
2 Respondents do not dispute. The advertisements at issue, although not specifically identified,
3 were paid for by PFW. See 11 C.F.R. § 109.21(a)(1). According to PFW's reports to the
4 Commission, these ads expressly advocated the defeat of Ruderman's primary opponent, and
5 those distributed from July 10, 2012, forward were distributed within one month before the
6 August 7, 2012, primary election. See 11 C.F.R. § 109.21(c)(1), (3), and (4); Independent
7 Expenditure Reports (July 16, 2012 - Aug. 2, 2012).

8 It does not appear, however, that the conduct prong is met. Commission regulations set
9 forth six types of conduct that satisfy the conduct standard: (1) request or suggestion;
10 (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee;
11 and (6) republication. See 11 C.F.R. § 109.21(d).

12 1. Material Involvement

13 The material involvement standard is satisfied when a candidate or authorized committee
14 is materially involved in decisions regarding: (1) the content of the communication; (2) the
15 intended audience for the communication; (3) the means or mode of the communication; (4) the
16 specific media outlet used for the communication; (5) the timing or frequency of the
17 communication; or (6) the size or prominence of a printed communication, or duration of a
18 communication by means of broadcast, cable, or satellite. 11 C.F.R. § 109.21(d)(2). This
19 standard is not satisfied if the information material to the creation, production, or distribution of
20 the communication was obtained from a publicly available source. *Id.*

21 Complainant alleges that Rothschild's appearance in a television advertisement produced
22 by FLR establishes that she received material information that she used to inform PFW's
23 communications. The allegation, however, is unsubstantiated. And both Responses assert – with

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1 supporting declarations and affidavits – that Rothschild’s role in the advertisement did not
2 provide her any access to any non-public information about FLR’s plans, projects, or needs; and
3 that it therefore had no impact on the activities or expenditures of PFW. *See supra* pp. 4-6.
4 Furthermore, Rothschild attests that she did not participate in the creation or substance of PFW
5 advertisements; therefore, she could not have imparted any non-public material information even
6 if she had received it. *See id.*

7 Similarly, the remaining allegations in the Complaint rest on unsupported surmise that is
8 easily refuted by more plausible explanations. The similar timing of FLR and PFW ads, for
9 example, is likely the product of their proximity to the election date, when the frequency of all
10 political advertisements increases. The unattributed quotation from blogger Goldstein’s column
11 lacks any context to make it credible evidence of material involvement.

12 In sum, there is no reason to believe that the material involvement standard has been met.
13 The Complaint’s assertions are speculative and lack factual support, while the Responses are
14 supported with specific denials in declarations and affidavits.

15 2. Substantial Discussion

16 The Complaint suggests that the mother-daughter relationship between Rothschild and
17 Ruderman – by itself – satisfies the substantial discussion standard. To satisfy the substantial
18 discussion standard, the communication must be created, produced, or distributed after one or
19 more substantial discussions about the communication between the person paying for the
20 communication, or the employees or agents of the person paying for the communication, and the
21 candidate who is clearly identified in the communication, or the candidate’s authorized
22 committee, or the candidate’s opponent. 11 C.F.R. § 109.21(d)(3). A discussion is substantial if
23 information about the candidate’s campaign plans, projects, activities, or needs is conveyed to a

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1 person paying for the communication, and that information is material to the creation,
2 production, or distribution of the communication. *Id.* This standard is not satisfied if the
3 information material to the creation, production, or distribution of the communication was
4 obtained from a publicly available source. *Id.*

5 Although Complainant alleges that Rothschild and Ruderman must have shared material
6 information with each other simply by virtue of their filial relation, there is no information as to a
7 specific discussion. This is too thin a reed. The Commission has not found that a family
8 relationship – by itself – is enough to provide reason to believe that there has been unlawful
9 coordination.²

10 Moreover, Rothschild's declaration specifically states that she was familiar with the rules
11 relating to independent expenditure committees, "was very careful not to discuss any PFW plans
12 or activities with [Ruderman] or anyone in her campaign," and did not discuss anything related
13 to her daughter's campaign with her daughter or an agent of her campaign. Rothschild
14 Decl. ¶¶ 7, 8.

15 Ruderman more broadly asserts that she did not participate in any discussions about the
16 creation, production, or distribution of the PFW advertisements. Ruderman Aff. ¶ 10. And the
17 other FLR employees also submitted affidavits stating that they did not participate in any
18 discussions about the creation, discussion, or distribution of the PFW advertisements. *See supra*
19 p. 6. Similarly, PFW's consultants declare that they did not discuss any of PFW's activities with
20 Ruderman or anyone associated with FLR. *See supra* p. 5.

² The Commission considered coordinated communications between family members in MUR 6277 (Kirkland), but split on the Office of the General Counsel's recommendations and did not issue a Factual & Legal Analysis. Three Commissioners issued a Statement of Reasons, however, stating, "Indeed, the Commission has made clear in related contexts that a mere family relationship is not enough to . . . support an inference of coordination." Statement of Reasons, Comm'rs. Hunter, McGahn, & Petersen at 10, MUR 6277 (Kirkland) (citing Advisory Opinion 2003-10 at 4 (Reid) ("the father-son relationship alone is insufficient to create an agency relationship."))

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1 In short, the Complainant's allegations fall short of meeting the substantial discussion
2 standard.

3 3. Request or Suggestion

4 Finally, Complainant implicates the request or suggestion standard in his allegation that
5 Rothschild "informed her daughter of her plans to fund a Super PAC in support of her campaign,
6 to which Ms. Ruderman assented." Compl. at 8.

7 To satisfy the request or suggestion standard, the communication must be created,
8 produced, or distributed at the request or suggestion of a candidate or authorized committee; or,
9 alternatively, the communication is created, produced, or distributed at the suggestion of the
10 person paying for the communication, and the candidate or authorized committee assents to the
11 suggestion. 11 C.F.R. § 109.21(d)(1).

12 Complainant does not provide any specific information as to where, when, or in what
13 manner Ruderman or FLR requested, suggested, or assented to Rothschild's plans to form PFW
14 or to create, produce, or distribute PFW's communications. In contrast, Ruderman attests that
15 she only learned of PFW's advertisements through media reports, suggesting that she was
16 completely unaware of its activities. Ruderman Aff. ¶ 7. Moreover, both PFW's and FLR's
17 Responses specifically assert that FLR (including Ruderman) did not assent to PFW's activities,
18 and in fact "publically disavowed . . . and denounced" PFW in a cease-and-desist letter signed by
19 Ruderman. PFW Resp. at 5; FLR Resp. at 5 (citing Letter from Ruderman, FLR, to PFW (July
20 18, 2012)). In their affidavits, FLR's campaign manager, treasurer, and candidate attest that they
21 did not request or suggest that anyone affiliated with PFW create, produce, or distribute any
22 communication, or provide assent to PFW for any communication. *See supra* p. 6.

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1 Accordingly, there is no information that the request or suggestion standard is met in this
2 matter.

3 4. Conclusion

4 It does not appear that PFW coordinated its communications with and thereby made an
5 in-kind contribution to FLR. Thus, because it does not appear that PFW conducted any activity
6 other than independent expenditures, there is no basis for the Complaint's contention that PFW
7 has violated the Act by funds raised in unlimited amounts for that purpose.

8 We recommend that the Commission find no reason to believe that PFW and Rothschild
9 violated 2 U.S.C. § 441a(a) by making excessive contributions; find no reason to believe that
10 FLR and Ruderman violated 2 U.S.C. § 441a(f) by accepting excessive contributions; and find
11 no reason to believe that PFW violated 2 U.S.C. § 441a(f) by accepting excessive contributions.³

12 **III. RECOMMENDATIONS**

- 13 1. Find no reason to believe that Margaret Rothschild and Progress for Washington and
14 Jeremy Pemble in his official capacity as treasurer violated 2 U.S.C. § 441a(a).
15
16 2. Find no reason to believe that Laura Ruderman and Friends of Laura Ruderman and
17 Abbot Taylor in his official capacity as treasurer violated 2 U.S.C. § 441a(f).
18
19 3. Find no reason to believe that Progress for Washington and Jeremy Pemble in his
20 official capacity as treasurer violated 2 U.S.C. § 441a(f).
21

³ We are mindful of, and share, the Commission's concerns regarding findings of no reason to believe on the basis of declarations and affidavits alone, especially in light of *LaBotz v. FEC*, No. 11-1247 (D.D.C. Sept. 5, 2012) (concluding that the Commission's no reason to believe finding was not supported by "substantial evidence" because it was grounded in a single post-litigation affidavit that was not clearly supported by personal knowledge and was contradicted by contemporaneous written evidence). We believe that such a finding is appropriate here, however, because it is based on eight declarations and affidavits that are supported by specific personal knowledge, that attest to or declare facts rather than state summary conclusions, and are not contradicted by contemporaneous evidence. See, e.g., MUR 5943 (Giuliani) (Commission found no reason to believe as to coordination allegations when press accounts were countered by a sworn affidavit).

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4. Approve the attached Factual and Legal Analyses.
5. Approve the appropriate letters.
6. Close the file.

Anthony Herman
General Counsel

Daniel A. Petalas
Associate General Counsel

11-9-12
Date

BY:


Kathleen Guith
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