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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6780
DATE COMPLAINT FILED: February 7, 2014
DATE OF NOTIFICATION: April 11, 2014
LAST RESPONSE RECEIVED: May 30, 2014
ACTIVATED: June 17, 2014

EARLIEST SOL: September 19, 2018
LATEST SOL: February 3, 2019
ELECTION CYCLE: 2014

COMPLAINANT: Garrett Arwa
Executive Director, Michigan Democratic Party

RESPONDENTS: Terri Lynn Land
Terri Lynn Land for Senate and Kathy Vosbury in
her official capacity as treasurer
Republican National Committee and Anthony
Parker in his official capacity as treasurer
National Republican Senatorial Committee and
Stan Huckaby in his official capacity as treasurer
Americans for Prosperity
PURE PAC and Mary Doster in her official
capacity as treasurer¹

RELEVANT STATUTES
AND REGULATIONS: 52 U.S.C. § 30116²
52 U.S.C. § 30116(a)
52 U.S.C. § 30118
11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

¹ On June 13, 2014, PURE PAC amended its Statement of Organization to change its treasurer from Ellen Kletzka and Jeffrey Timmer to Mary Doster.

² On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 **I. INTRODUCTION**

2 The Complaint alleges that Senate candidate Terri Lynn Land and her campaign
3 committee "appear to be coordinating" advertisements attacking her opponent with "Super
4 PACs," and other "outside groups," including PURE PAC, Americans for Prosperity, the
5 Republican National Committee and the National Republican Senatorial Committee. The
6 Complaint asserts that these coordinated communications resulted in "illegal in-kind
7 contributions to the campaign."³ Respondents generally deny the coordination allegations,
8 asserting that the Complaint fails to allege facts that would constitute a violation of the Act or
9 Commission regulations.⁴

10 As further discussed below, based on the available information, we recommend that the
11 Commission find no reason to believe that PURE PAC, Americans For Prosperity, the
12 Republican National Committee or the National Republican Senatorial Committee made, or that
13 Terri Lynn Land and Terri Lynn Land for Senate accepted, excessive or prohibited in-kind
14 contributions, and close the file in this matter.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Facts**

17 Terri Lynn Land is the 2014 Republican candidate for U.S. Senate in Michigan. Terri
18 Lynn Land for Senate and Kathy Vosbury in her official capacity as treasurer ("Committee") is
19 Land's authorized campaign committee.⁵

20 In August 2013, Land gave a campaign speech to supporters and said the following:

³ Compl. at 1-2 (Feb. 7, 2014).

⁴ See Land Committee Resp. at 1, 3-4 (March 6, 2014); PURE PAC Resp. at 2-3 (Apr. 25, 2014); AFP Resp. at 1 (May 20, 2014); NRSC Resp. at 1 (May 27, 2014); RNC Resp. at 1 (May 30, 2014).

⁵ On July 10, 2013, Land filed her Statement of Candidacy and the Committee filed its Statement of Organization.

1 So my husband and I, like I said, are committed to this. We are out on the road,
2 we're raising money. It's going to take a lot of resources in order to do so,
3 probably a 20 million dollar campaign. But the reality is we've got new folks out
4 there who are raising money. That's the Super PACs. Now this is a whole new
5 world after, some of you remember, the Citizens United lawsuit had happened,
6 which actually started here in Michigan. I don't know if some of you know that
7 but that was originally here in Michigan, and that changed the dynamic of
8 politics. It restricted the parties but yet let individuals and other raise resources to
9 do that. Our campaign's talked to a lot of those folks. They're committed to
10 Michigan so I want you to understand that. This is not just about Michigan. The
11 whole country is watching. They really want to support us here in Michigan.
12 And again, if we can do this in Michigan that means they [unintelligible] in the
13 other states.⁶
14

15 Following this speech, from September 2013 through January 2014, four groups —
16 PURE PAC, Americans for Prosperity ("AFP"), the Republican National Committee ("RNC"),
17 and the National Republican Senatorial Committee ("NRSC") — disseminated communications
18 criticizing Land's Democratic opponent, Congressman Gary Peters.⁷ The Complaint points to
19 six communications, which, with one exception, criticize Peters' support of the Affordable Care
20 Act. Specifically, PURE PAC, an Independent Expenditure-Only Committee that registered with
21 the Commission on September 9, 2013, spent \$122,000 for two television advertisements titled
22 "Pure Washington"⁸ and "Gary Peters' Friends"⁹ from September through November 2013.

⁶ http://www.huffingtonpost.com/2013/09/25/terri-lynn-land-super-pac_n_3982274.html.

⁷ Land was unopposed in the August 5, 2014, Republican primary.

⁸ The "Pure Washington" advertisement states, "Washington is where you'll find Congressman Gary Peters where he has voted for runaway spending and trillions in new debt and where he helped pass ObamaCare and its escalating price tag. Washington is where Peters wants to stay as Michigan's next Senator and that makes sense if you think Michigan needs more Washington. Congressman Gary Peters. Pure Washington." The ad can be viewed at <http://www.youtube.com/watch?v=GBRvoX2KnUI>.

⁹ The "Gary Peters' Friends" advertisement states, "Trillions. It's how Washington measures the national debt. Congressman Gary Peters, and his big spending Washington friends, have increased our debt by \$7 trillion. Peters can't say no to more spending. Michigan families pay the price. Now Peters wants to stay in Washington as Michigan's next senator. And that makes sense – if you think Michigan needs more federal debt. Congressman Gary Peters. Pure Washington." The ad can be viewed at <http://www.purepac.org/home/gary-peters-friends-tv-ad-released-statewide>.

1 AFP, a 501(c)(4) organization,¹⁰ spent \$718,500¹¹ on a television ad titled "Lie of the Year"
2 regarding Congressman Peters and the Affordable Care Act that aired between January 14, 2014
3 and February 3, 2014.¹² The RNC launched a series of robocalls and Facebook posts on
4 November 5, 2013, targeting eleven Democrats, including Peters, who support the Affordable
5 Care Act¹³ and ran radio ads in January 2014 titled "A New Year's Resolution You Can Keep"
6 which criticized the new healthcare legislation and accused the President and certain candidates,
7 including Peters, of misleading the public about it.¹⁴ Finally, the NRSC reportedly distributed
8 flyers in Michigan in November 2013, clearly referencing Congressman Peters and claiming that
9 the candidate "deceived middle class workers and families" based on the "erroneous claim" by

¹⁰ AFP is organized under section 501(c)(4) of the Internal Revenue Code. It is not registered with the Commission as a political committee but has filed electioneering communication and independent expenditure reports with the Commission during the last two election cycles.

¹¹ AFP Resp. at 3-4.

¹² The "Lie of the Year" advertisement begins, "They told us the lie of the year." It then shows footage of Obama stating, "If you like your health care plan, you will be able to keep your health care plan." This is followed by audio stating "And Congressman Peters kept telling it" and footage of Congressman Peters stating that "The Affordable Care Act bars cancellation of insurance policies." The advertisement continues, "The truth is 225,000 Michiganders have had their insurance canceled. Families are losing their doctors. And healthcare costs are skyrocketing. Call Congressman Peters and tell him Obamacare isn't working. It's hurting Michigan Families." The advertisement can be viewed at <https://www.youtube.com/watch?v=IsLdhwwSwrQ>.

¹³ Compl. at 4. The script for the robocall states, "President Obama and the Democrats said you could keep your healthcare plan under ObamaCare. Now we know [Name] actually made the same promise. Call [name] (xxx) xxx-xxx and ask why [he/she lied].
<http://www.gop.com/trending/rnc-launches-robocalls-facebook-posts-on-obamacare-lie>.

¹⁴ *Id.* at 4; <http://www.gop.com/general/rnc-launches-new-years-resolutions-radio-ads-against-targeted-democrats>. The radio advertisement states, "So what's your New Year's resolution? Here's one you can keep. Resolve to keep [Senator/Representative] honest in 2014. President Obama and [Senator/Representative] said if you like your insurance plan you can keep it under ObamaCare. They lied to you. Big time. PolitiFact called that the "lie of the year." Millions will lose their insurance—and their doctors. 2014 is your chance to hold [Senator/Representative] accountable. Tell him this is one New Year's resolution you're sticking to."

1 Democrats and President Obama that, under ObamaCare, “Americans could keep their insurance
2 policies if they liked them.”¹⁵

3 **B. Legal Analysis**

4 Under the Act, communications that are paid for by a third party, but coordinated with a
5 candidate, are in-kind contributions to the candidate. A communication is coordinated if it: (1) is
6 paid for by a person other than the candidate or candidate’s committee; (2) satisfies one or more
7 of the four content standards set forth at 11 C.F.R. § 109.21(c)¹⁶; and (3) satisfies one or more of
8 the six conduct standards set forth at 11 C.F.R. § 109.21(d).¹⁷

9 When a third party makes a coordinated communication, the resulting in-kind
10 contribution must comply with the limits and prohibitions of the Act, *i.e.*, the costs of the
11 communications must not exceed the applicable contribution limit, and the funds used to pay for
12 the communication must come from a permissible source. In this case, the Complaint alleges
13 that PURE PAC, AFP, and two national party committees — the RNC and the NRSC — made
14 in-kind contributions to the Land Committee by coordinating ads attacking Land’s opponent.

¹⁵ Compl. at 4-5, n.10; Alexandra Jaffe, NRSC Targets Female Voters with Black Friday Hit, THEHILL.COM (Nov. 26, 2013), available at <http://thehill.com/blogs/ballot-box/senate-races/191452-nrsc-targets-female-voters-with-black-friday-hit-on-landrieu>. We do not have a copy of the flyer.

¹⁶ The content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate’s authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication, in relevant part, that refers to a clearly identified House or Senate candidate, and is publicly distributed or disseminated in the clearly identified candidate’s jurisdiction 90 days or fewer before the candidate’s primary election; or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c)(1)-(5). A communication is the functional equivalent of express advocacy if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.¹⁶ *Id.* at 109.21(c)(5). The term “public communication” encompasses broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank, or any other form of general public political advertising, and excludes communications over the internet, except for communications placed for a fee on another person’s web site.¹⁶ *Id.* § 100.26.

¹⁷ The six types of conduct that satisfy the conduct standard are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication. 11 C.F.R. § 109.21(d).

1 Corporations¹⁸ and IEOPCs¹⁹ are prohibited from making contributions to candidates; thus,
2 neither AFP, nor PURE PAC is permitted to make any contributions, whether in-kind or direct,
3 to the Land Committee. And the Act limits the amount that national party committees, such as
4 the RNC and the NRSC, can contribute to a Senate candidate committee to a total of \$45,400 per
5 campaign,²⁰ though they may also make an additional amount of coordinated party expenditures
6 in connection with the general election campaign of a candidate for federal office, which in the
7 2014 election cycle was \$722,900 for U.S. Senate nominees in Michigan.²¹

8 According to the Complaint, the ads may qualify as coordinated communications under
9 the Act because: (1) entities other than the Land campaign paid for the ads, satisfying the
10 payment prong; (2) several ads contain express advocacy and other ads may contain the
11 functional equivalent of express advocacy, satisfying the content prong; and, (3) Land's speech
12 indicates that her campaign had "substantial discussions with Super PACs and requested and
13 obtained their commitment to make expenditures on her behalf," satisfying the conduct prong.²²
14 Complainant argues that the "FEC should immediately launch an investigation to shed light on
15 the full scope of Land's discussions with outside groups, determine which groups she has

¹⁸ 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(a).

¹⁹ See Advisory Opinion 2010-11 (Commonsense Ten). See also FEC Press Release (Oct. 9, 2014), http://www.fec.gov/press/press2014/news_releases/20141009release.shtml; FEC Agenda Document 14-53-A, Final Rules on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations (Oct. 8, 2014), http://www.fec.gov/agenda/2014/documents/mtgdoc_14-53-a.pdf.

²⁰ This limit is shared by the national committee and the national Senate campaign committee. 11 C.F.R. § 110.2(e).

²¹ 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)); 52 U.S.C. § 30116(d) (formerly 2 U.S.C. § 441a(d)); see http://www.fec.gov/info/charts_441ad_2014.shtml#search=2014%20coordinated%20limits.

²² *Id.* at 5-7.

1 coordinated with, and find out whether any of the outside attack ads already aired in Michigan
2 constitute illegal in-kind contributions to Land's campaign."²³

3 Each of the respondents submitted responses disputing the Complaint's argument that
4 Land's statement shows that the conduct prong of the coordinated communication test is
5 satisfied.²⁴ Further, AFP²⁵ and PURE PAC²⁶ deny coordinating with Land or the Committee
6 whatsoever, and the RNC denied coordinating the communication that is at issue in the
7 Complaint.²⁷ The AFP and the NRSC also assert that their ads do not meet the content prong of
8 the coordinated communication test because the ads do not contain express advocacy or its
9 functional equivalent.²⁸

10 We conclude that the available information provides no basis to conclude that the
11 Respondents coordinated the communications. Although the payment prong is satisfied: PURE
12 PAC, AFP, the RNC and the NRSC each acknowledge paying for the communications at issue,
13 the available information does not provide a reason to believe that the conduct prong is met.²⁹
14 First, the Complaint provides no direct evidence that the communications at issue were made at
15 the request or suggestion of the Land Committee, that the Land Committee assented to any
16 suggestion by these groups with respect to the communications, that the Land Committee was
17 materially involved in decisions regarding the communications, or that there were substantial

²³ *Id.* at 3.

²⁴ PURE PAC Resp. at 3; AFP Resp. at 1, 4, 8-10; Land Resp. at 2-3; RNC Resp. at 3-4; and NRSC Resp. 2.

²⁵ AFP Resp. at 1.

²⁶ PURE PAC Resp. at 1.

²⁷ RNC Resp. at 4, n.14.

²⁸ AFP Resp. at 2, 6-8; NRSC Resp. at 2, n.2.

²⁹ Because the conduct prong is not met, we do not analyze whether the communications meet the content standard.

1 discussions between the Land Committee and any of these groups. The basis for the Complaint's
2 assertion that the conduct prong is met is Land's statements that Super PACs have been raising
3 money, that her "campaign has talked to a lot of those folks," and that they "really want to
4 support us here in Michigan," followed closely in time by communications disseminated by third
5 party groups criticizing Land's opponent in the Senate race. Thus, the complaint infers from
6 Land's general statement that Land and her campaign may have talked to these four groups about
7 these six communications because they began airing ads "shortly after" Land's speech in August
8 2013. This inference, however, is not borne out by the available information.

9 There is nothing in Land's speech or any other facts that suggest that Land or her
10 campaign had interactions with any of the groups cited in the complaint. Land does not name
11 any particular group she may have spoken to (other than a general statement about Super PACs)
12 or describe the nature of these discussions, and complainant has produced no other information
13 on such discussions. PURE PAC points out that it did not even file a Statement of Organization
14 with the Commission until September 2013, after Land's August 2013 statement.³⁰ And AFP
15 has pointed out that it did not begin running its ads until five months after the speech.³¹ Thus,
16 there is an insufficient basis upon which to conclude that the Land Committee had discussions
17 with PURE PAC, AFP, the RNC, or the NRSC much less that the discussions were substantial or
18 about the subject communications or that Land requested and obtained their commitment to
19 make expenditures on her behalf with these communications.

³⁰ PURE PAC Resp. at 2.

³¹ AFP Resp. at 12.

1 Further, AFP and PURE PAC each deny coordinating with Land or the Committee on
2 any communications whatsoever.³² The RNC, which is not prohibited from coordinating
3 with the Land Committee, denied coordinating the advertisements at issue in the complaint.³³

4 Respondents have also explained that the advertisements were part of a larger media
5 effort that was focused on concerns regarding the Affordable Care Act. For example, AFP
6 asserts that, far from being a coordinated effort with any candidate's campaign, the Michigan Ad
7 was part of AFP's own much larger paid media effort on the Affordable Care Act, involving
8 seven members of Congress from six states, beginning in late December 2013 and continuing
9 into early February 2014.³⁴ The RNC and the NRSC's responses also state that their
10 communications were part of a campaign to engage voters on the issue of the Affordable Care
11 Act.³⁵

12 A determination of whether a communication was made at the request or suggestion or
13 pursuant to material involvement or substantial discussions with a candidate or the campaign is
14 necessarily a fact-based determination. The lack of specific facts about the communications in
15 the complaint, combined with the denials, and other explanations, does not provide a basis to
16 conclude that the conduct prong was met with respect to any of these communications. Though
17 several of the responses are unsworn, (responses by the Land Committee, the RNC, and the
18 NRSC) and the responses by the Land Committee and the NRSC do not specifically deny
19 coordination, as discussed above, the Complaint's assertions as to the conduct prong of the

³² AFP Resp. at 1; PURE PAC Resp. at 1.

³³ RNC Resp. at 4, n.14. The Land Committee disclosed contributions totaling \$45,400 from the party committees—a \$25,000 contribution from the RNC on December 31, 2013, and a \$20,400 contributions from the NRSC on March 31, 2014.

³⁴ AFP Resp. at 12.

³⁵ RNC Resp. at 4, n.14; NRSC Resp. at 2.

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1 coordinated communication test are speculative and lack factual support. Because the conduct
2 prong has not been met, we recommend that the Commission find no reason to believe that
3 PURE PAC and Mary Doster in her official capacity as treasurer and Americans For Prosperity
4 violated 52 U.S.C. §§ 30116(a) or 30118 (formerly 2 U.S.C. §§ 441a(a) and 441b) by making
5 excessive or prohibited in-kind contributions to the Land Committee; find no reason to believe
6 that the Republican National Committee and Anthony Parker in his official capacity as treasurer
7 and the National Republican Senatorial Committee and Stan Huckaby in his official capacity as
8 treasurer violated 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)) by making excessive in-
9 kind contributions to the Land Committee; find no reason to believe that Terri Lynn Land and
10 Terri Lynn Land for Senate and Kathy Vosbury in her official capacity as treasurer violated 52
11 U.S.C. §§ 30116(f) or 30118 (formerly 2 U.S.C. §§ 441a(f) and 441b) by accepting excessive or
12 in-kind prohibited contributions from PURE PAC, AFP, the RNC or the NRSC, and close the
13 file in this matter.

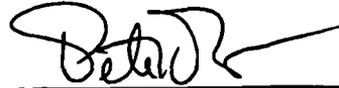
14 **III. RECOMMENDATIONS**

- 15 1. Find no reason to believe that PURE PAC and Mary Doster in her official capacity as
16 treasurer and Americans for Prosperity violated 52 U.S.C. §§ 30116(a) or 30118
17 (formerly 2 U.S.C. §§ 441a(a) or 441b).
18
- 19 2. Find no reason to believe that the Republican National Committee and Anthony
20 Parker in his official capacity as treasurer, and the National Republican Senatorial
21 Committee and Stan Huckaby in his official capacity as treasurer violated 52 U.S.C.
22 § 30116(a) (formerly 2 U.S.C. § 441a(a)).
23
- 24 3. Find no reason to believe that Terri Lynn Land and Terri Lynn Land for Senate and
25 Kathy Vosbury in her official capacity as treasurer violated 52 U.S.C. § 30116(f) or
26 30118 (formerly 2 U.S.C. §§ 441a(f) or 441b).
27
- 28 4. Approve the attached Factual and Legal Analysis.
29
- 30 5. Approve the appropriate letters.
31

6. Close the file.

10-15-14
Date


Kathleen Guith
Deputy Associate General Counsel


Peter Blumberg
Assistant General Counsel


Dominique Dillenseger
Attorney

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