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FEDERAL ELECTION COMMISSION

2010 OCT 17 11:12:00
FEC MAIL CENTER

In re: Americans in Contact PAC,)
Gabriel Joseph III, Treasurer, in his)
official capacity; FreeEats.com, Inc.,)
and AIC Communications, LLC,)
dba ccAdvertising)

MUR 6746

RESPONSE AND MOTION TO DISMISS COMPLAINT

Americans in Contact PAC ("the PAC"), Gabriel Joseph III, in his official capacity as treasurer of the PAC, FreeEats.com, Inc., and AIC Communications, LLC, dba ccAdvertising ("CcAdvertising")(collectively hereafter "Respondents"), file this Response and Motion to Dismiss the Complaint filed with the Federal Election Commission ("Commission" or "FEC") by Citizens for Responsibility and Ethics in Washington ("CREW") (sic) falsely alleging that Respondents have committed a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). Respondents affirmatively state that neither the PAC, its Treasurer nor ccAdvertising has committed any violation of the Act.

Respondents

CREW has misdirected its complaint in its identification of respondents, naming Gabriel S. Joseph, III, FreeEats.com, Inc. dba ccAdvertising, and Americans in Contact PAC.

Gabriel S. Joseph, III is the treasurer of Americans in Contact PAC and the President of AIC Communications, LLC d/b/a ccAdvertising. He should not be named in his individual capacity and the complaint alleges no facts supporting the naming of Mr. Joseph individually. Accordingly, Mr. Joseph has responded in his official capacity as treasurer of the PAC and President of AIC Communications, LLC d/b/a ccAdvertising. FreeEats.com, Inc. is a holding company that owns preferred stock in AIC Communications, LLC, which does business as ccAdvertising, Inc. FreeEats.com, Inc. does not operate ccAdvertising, which is owned and operated by AIC Communications, LLC. See Exhibit A, Affidavit of Gabriel S. Joseph, III

Statements of designation of counsel have been filed on behalf of Americans in Contact PAC, Gabriel S. Joseph, III in his official capacity as treasurer; AIC Communications, LLC d/b/a ccAdvertising; and FreeEats.com, Inc. Respondents filed the Statements of Designation of Counsel in the correct capacities, rather than the erroneous manner in which CREW named various Respondents.

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Response to Complaint

CREW is a partisan Democratic political group posing as a charitable organization in order to conceal and provide tax deductibility to its donors – but which, in every respect, is dedicated to attacking Republicans, conservatives, pro-life and Christian organizations, candidates and those who support and sympathize with conservative, pro-life and/or Christian principles. This is yet another in a long line of groundless complaints filed by CREW against conservative groups and Republican committees.

The short story is that the PAC paid ccAdvertising to send email to text messages during the weeks preceding the 2012 election urging voters to defeat President Obama for reelection.

The expenditures for the email to text messages were paid by the PAC, in the amount of \$5,943.67 duly reported to the FEC as an independent expenditure on a 24-hour report filed on October 31, 2012, and another \$3,562.50, duly reported to the FEC as an independent expenditure on a 24-hour report filed on November 2, 2012, for a total of \$9,506.17.

CREW was, along with other Democratic operatives and liberal groups, unable to find any legal basis for attacking Respondents before the Federal Communications Commission (“FCC”) because, in the final analysis, the technology and methodology for delivering the anti-Obama messages is legal, a fact made clear from the news articles attached to the Complaint.

So, true to form, CREW now resorts to filing a frivolous FEC complaint, alleging (a year after the election) that Respondents violated FECA in two ways, which are completely without any legal merit.

The ostensible legal issues in the Complaint include:

Absence of a Disclaimer on the messages sent to cellphones. CREW asserts that it is a violation of FECA that the PAC’s messages did not contain a disclaimer. However, due to the type of message and its small size, a disclaimer would be impracticable and falls squarely within the exception to the disclaimer requirements recognized by the Commission eleven years ago for messages sent via wireless telephone screens. See *Advisory Opinion 2002-09, Target Wireless*, in which the Commission found:

“By virtue of their size, the “small” items listed in 11 CFR 110.11(a)(6)(i), such as bumper stickers, pins, buttons, and pens are limited in the size and length of the messages that they are able to contain. Similarly, the wireless telephone screens that you have described have limits on both the size and the length of the information that can be conveyed. Indeed, the Commission notes that the SMS technology places similar limits on the length of a political advertisement as those that exist with bumper stickers.”

The *Target Wireless* Advisory Opinion is directly on point for the messages referenced in the CREW Complaint. The PAC did not include a disclaimer because it was not necessary,

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due to the size limitations of each message delivered via its technology, and based on the opinion of the Commission on this subject more than a decade ago.

Further, the responsibility for disclaimers rests solely with the PAC. Neither ccAdvertising, as a vendor to the PAC nor FreeEats.com, which is a holding company only, are/were responsible for the PAC's disclaimer and this part of the complaint doesn't even apply to either of those named respondents.

"Affiliation" between the PAC and ccAdvertising. CREW goes to great lengths in its Complaint to outline the FEC regulations governing 'affiliation' and breathlessly claims that because the PAC and ccAdvertising are 'affiliated', somehow there is a violation of FECA.

However, the entire analysis in the CREW complaint is completely misplaced because the affiliation regulations and analysis cited by CREW apply to two (or more) *political committees* which, if 'affiliated', are subject to a single contribution limit to or from those committee(s). See 11 C.F.R. §110.3. The 'affiliation' rules have no bearing whatsoever on the proposition CREW submits to the Commission in its Complaint, namely, that ccAdvertising and the PAC are 'affiliated'.

The 'affiliation' issue has no bearing whatsoever on the facts of this MUR. There is no 'affiliation' issue between one PAC and another non-political committee entity, and there is no assertion that the PAC somehow violated the 'affiliation' rules that would subject it to a single contribution limit with some other political committee.

Other False Assertions by CREW. While CREW does not allege any specific violation of FECA related to the status of the PAC as a non-connected PAC, the FEC must not now conjure up a separate violation that even CREW knew could not be raised. In that regard, the Complaint should be dismissed because the PAC *is* a non-connected PAC, as evidenced by the disbursements about which CREW complains.

The PAC has paid its administrative, compliance, and fundraising costs from PAC funds, as reflected from its FEC reports. For 2012 alone, the PAC reported payments for such costs that a connected PAC would not be required to pay. See Exhibit B, Summary of Administrative Costs Paid by PAC During 2012.

CREW actually states in its complaint that the PAC has, indeed, paid for its administrative and fundraising costs from PAC funds, something it would not have to do if it were the connected PAC of ccAdvertising.

According to the Complaint itself, the PAC has paid for office space ("AIC PAC has reported making 45 separate payments of approximately \$200 each for "rent" to HQ Global Workplaces, 1200 G Street, NW, Suite 800, Washington, DC 20005". See Complaint @ ¶ 20), a post office box ("AIC PAC's official address is a post office box in Alexandria, VA, located in the same U.S. Post Office building as the post office box for AIC PAC's accounting firm, Koch & Hoos, LLC". See the Complaint @ ¶19), and fundraising expenses ("[s]ince its creation in

2008, AIC PAC has reported making \$496,659 in expenditures to ccAdvertising". See the Complaint @ ¶15).

CREW complains about the payments made from the PAC to ccAdvertising, but if, as CREW contends, the PAC were a connected PAC to ccAdvertising, the PAC would not have been obligated to make *any* of the payments to ccAdvertising or to any other vendor for administrative, accounting or fundraising costs that the Complaint has documented.

Finally, the amount at issue in the Complaint is \$5,943.67 for one series of messages and \$3,562.50 for a second round of messages, for a total of \$9,506.17. The Commission should, in its discretion, dismiss the Complaint because a) there is no violation of FECA and b) the amount complained about is *de minimis* and further inquiry is simply not a good use of Commission time and resources.

CONCLUSION

This particular complaint is one of the strangest in a series of frivolous CREW complaints. The Commission should dismiss this MUR for a number of reasons:

- The Respondents named by CREW are erroneous
- The Commission ruled a number of years ago that disclaimers are not required for communications delivered to wireless telephones.
- The affiliation rules do not apply to these Respondents as there is only one political committee referenced in the Complaint
- The PAC has demonstrated its compliance with the requirements for a non-connected committee by paying for its administrative, accounting and fundraising costs from PAC funds, facts contained in the Complaint itself, and further documented by the PAC's FEC reports
- The amount(s) at issue here are *de minimis* and the Commission should exercise its discretion and cease any further inquiry

Accordingly, Respondents respectfully move the Commission to dismiss the Complaint in its entirety, for the reason that all allegations of violations of FECA contained in the Complaint are false and/or lack any basis in law for proceeding further.

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Respectfully submitted,

Cleta Mitchell

Cleta Mitchell, Esq.
FOLEY & LARDNER, LLP
3000 K Street, NW #600
Washington, DC 20007
(202) 295-4081 (ofc)
(202) 672-5399 (fax)
cmitchell@foley.com
Counsel for Respondents

Submitted this 3d day of October, 2013.

**SUMMARY OF ADMINISTRATIVE COSTS PAID BY
AMERICANS IN CONTACT PAC IN 2012***

<u>Payee</u>	<u>Amount</u>	<u>Purpose</u>
ccAdvertising	\$ 120,882.68	PAC Surveys/Cont Fulfillment
Global Payments	\$ 3,575.31	PAC Credit Card Processing
Neace & Lukens	\$ 3,500.00	PAC Insurance
Koch & Hoos, LLC	\$ 3,342.00	PAC Accounting Consulting
HQ Global Workplaces	\$ 2,425.00	PAC Rent
U.S. Postmaster	\$ 1,650.00	PAC PO Box Rental
BB&T	\$ 814.15	PAC Bank Fees
CO Secretary of State	\$ 750.00	PAC List Expense
State of Illinois	\$ 500.00	PAC List Expense
American Express	\$ 231.81	PAC Credit Card Processing
NC State Board of Elections	\$ 25.00	PAC List Expense
Commonwealth of Pennsylvania	\$ 20.00	Voter File
Paypal	\$ 0.82	PAC Credit Card Processing
ccAdvertising	\$ 13,117.32	IE Phone Communications
2012 Total Admin Disbursements	\$ 150,834.09	

*Source: 2012 FEC Reports of Americans in Contact PAC

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