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FEDERAL ELECTION  
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**FEDERAL ELECTION COMMISSION**

**999 E Street, N.W.  
Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6880

**CELA**

DATE COMPLAINT FILED: October 14, 2014

DATE OF NOTIFICATION: October 28, 2014

LAST RESPONSE RECEIVED: January 14, 2015

DATE ACTIVATED: February 5, 2015

ELECTION CYCLE: 2014

EXPIRATION OF SOL: September 15, 2019 –  
October 5, 2019

COMPLAINANT: Casey M. Mann, North Carolina Democratic Party

RESPONDENT: Carolina Rising, Inc.

RELEVANT STATUTES  
AND REGULATIONS: 52 U.S.C. § 30104(f)<sup>1</sup>  
11 C.F.R. § 104.20

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: Internal Revenue Service

**I. INTRODUCTION**

The Complaint in this matter alleges that Carolina Rising, Inc. ("Carolina Rising"), a North Carolina-based 501(c)(4) organization, violated 11 C.F.R. § 104.20(c)(9) by failing to disclose donors for two electioneering communications aired in September and October 2014.<sup>2</sup> Based on the available information, it appears that the Respondent's activities did not give rise to the donor disclosure obligations in 11 C.F.R. § 104.20(c)(9). Accordingly, we recommend that

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

<sup>2</sup> Supp. Compl. at 1 (Oct. 28, 2014).

1 the Commission find no reason to believe that Carolina Rising violated 52 U.S.C. § 30104(f) and  
2 11 C.F.R. § 104.20(c)(9).

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Factual Background**

5 Carolina Rising incorporated in North Carolina in March 2014.<sup>3</sup> During the period of  
6 September 12, 2014 to October 5, 2014, Carolina Rising ran two advertisements featuring North  
7 Carolina Senate candidate Thom Tillis entitled "Autism Bill" and "Better Schools."<sup>4</sup> Carolina  
8 Rising filed 24-Hour Notices of Disbursements/Obligations for Electioneering Communications  
9 ("FEC Form 9") totaling approximately \$3.3 million dollars in connection with these  
10 advertisements.<sup>5</sup> The three original and amended FEC Forms 9 filed in connection with the  
11 advertisements disclosed disbursements to Crossroads Media LLC for media production and  
12 placement but did not disclose any donors.<sup>6</sup> Complainant alleges that "the circumstances of the  
13 formation of Carolina Rising and its sudden substantial funding cause me to believe that the  
14 contributions to Carolina Rising were made for the purpose of furthering the reported  
15 electioneering communications" and that, "in failing to report the identity of its donors,"  
16 Carolina Rising violated 11 C.F.R. § 104.20(c)(9).<sup>7</sup>

<sup>3</sup> Corporations Division, North Carolina Dep't of the Secretary of State, <https://www.secretary.state.nc.us/Search/profcorp/10486496>.

<sup>4</sup> See Amend. FEC Form 9 (Nov. 8, 2014) (originally filed Sept. 15, 2014); Amend. FEC Form 9 (Nov. 8, 2014) (originally filed Sept. 16, 2014); Amend. FEC Form 9 (Nov. 8, 2014) (originally filed Sept. 23, 2014).

<sup>5</sup> Compl. at 1 (Oct. 14, 2014).

<sup>6</sup> *Id.*; see Amend. FEC Form 9 (Nov. 8, 2014) (originally filed Sept. 15, 2014); Amend. FEC Form 9 (Nov. 8, 2014) (originally filed Sept. 16, 2014); Amend. FEC Form 9 (Nov. 8, 2014) (originally filed Sept. 23, 2014).

<sup>7</sup> Supp. Compl. at 1.

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1 segregated bank account consisting of funds provided solely by persons other than national  
2 banks, corporations organized by authority of any law of Congress, or foreign nationals, the  
3 disclosure statement must include "the name and address of each person who made a donation  
4 aggregating \$1,000 or more to the corporation or labor organization, aggregating since the first  
5 day of the preceding calendar year, which was made *for the purpose of furthering electioneering*  
6 *communications.*"<sup>14</sup> The report must contain the following information about the disbursements:  
7 the identity of the person making the disbursement, the amount of each disbursement of more  
8 than \$200 during the period covered by the statement, the identity of the person to whom each  
9 disbursement is made, and the election to which the communication pertains and the names of  
10 the candidates to be identified.<sup>15</sup> The disclosure statement must also include information about  
11 certain contributions made to the person making the disbursement.<sup>16</sup>

12 The Complaint alleges that Carolina Rising violated 11 C.F.R. § 104.20(c)(9) by failing  
13 to report the identity of its donors, but provides no information indicating that the donations to  
14 Carolina Rising were made for the purpose of furthering electioneering communications, beyond  
15 its assertion that the entity obtained "sudden substantial funding." For its part, Carolina Rising

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<sup>14</sup> 11 C.F.R. § 104.20(c)(9) (emphasis added). This regulation has been the subject of ongoing litigation. In 2012, the U.S. District Court for the District of Columbia found the Commission's promulgation of 11 C.F.R. § 104.20(c)(9) to be foreclosed by the plain language of the Bipartisan Campaign Reform Act ("BCRA"). *Van Hollen v. FEC*, 851 F. Supp. 2d 69, 72 (D.D.C. 2012). The D.C. Circuit later reversed this determination. *Center for Individual Freedom v. Van Hollen*, 694 F.3d 108, 110 (D.C. Cir. 2012). On remand, the district court again vacated 11 C.F.R. § 104.20(c)(9), finding its promulgation to be arbitrary and capricious and an unreasonable interpretation of BCRA. 74 F. Supp. 3d 407, 410 (D.D.C. 2014). On appeal, the D.C. Circuit reversed this decision, holding that the regulation's purpose requirement—that is, its limiting of the donations that must be disclosed to only those donations that were provided for the purpose of furthering electioneering communications—was based on a permissible construction of BCRA in light of the Act's language, structure, and purpose, and that the regulation was not arbitrary and capricious. *Van Hollen, Jr. v. FEC*, 811 F.3d 486, 492, 501 (D.C. Cir. 2016). A petition for rehearing *en banc* is currently pending.

<sup>15</sup> See *id.* § 30104(f)(1) - (2); 11 C.F.R. § 104.20(c)(1)-(6).

<sup>16</sup> *Id.*

1 represents that it does not accept directed donations and accepts donations only for general  
2 obligation purposes.<sup>17</sup> We are not aware of any other information that suggests that Carolina  
3 Rising may have obtained funds that were provided for any particular purpose. As such, the  
4 Complaint's general assertion regarding Carolina Rising's funding does not support a reasonable  
5 inference that Carolina Rising may have failed to disclose the identity of individuals who made  
6 donations "for the purpose of" furthering electioneering communications in violation of section  
7 104.20(c)(9).<sup>18</sup>

8 Accordingly, we recommend that the Commission find no reason to believe that Carolina  
9 Rising failed to disclose its donors for electioneering communications.

10 **III. RECOMMENDATIONS**

- 11 1. Find no reason to believe that Carolina Rising, Inc. violated 52 U.S.C. § 30104(f) and  
12 11 C.F.R. § 104.20;
- 13 2. Approve the attached Factual and Legal Analysis;
- 14 3. Approve the appropriate letters; and

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<sup>17</sup> Resp. at 1.

<sup>18</sup> We are not aware of any publicly available Form 990 or other IRS filing that would identify the group's funding sources or what percentage of its overall spending was for electioneering communications and other media.



1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 RESPONDENT: Carolina Rising, Inc.

MUR: 6880

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7 **I. INTRODUCTION**

8 The Complaint in this matter alleges that Carolina Rising, Inc. ("Carolina Rising"), a  
9 North Carolina-based 501(c)(4) organization, violated 11 C.F.R. § 104.20(c)(9) by failing to  
10 disclose donors for two electioneering communications aired in September and October 2014.<sup>1</sup>

11 Based on the available information, it appears that the Respondent's activities did not give rise to  
12 the donor disclosure obligations in 11 C.F.R. § 104.20(c)(9). Accordingly, the Commission  
13 finds no reason to believe that Carolina Rising violated 52 U.S.C. § 30104(f) and 11 C.F.R.  
14 § 104.20(c)(9).

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Factual Background**

17 Carolina Rising incorporated in North Carolina in March 2014.<sup>2</sup> During the period of  
18 September 12, 2014 to October 5, 2014, Carolina Rising ran two advertisements featuring North  
19 Carolina Senate candidate Thom Tillis entitled "Autism Bill" and "Better Schools."<sup>3</sup> Carolina  
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22 advertisements.<sup>4</sup> The three original and amended FEC Forms 9 filed in connection with the

<sup>1</sup> Supp. Compl. at 1 (Oct. 28, 2014).

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1 advertisements disclosed disbursements to Crossroads Media LLC for media production and  
2 placement but did not disclose any donors.<sup>5</sup> Complainant alleges that “the circumstances of the  
3 formation of Carolina Rising and its sudden substantial funding cause me to believe that the  
4 contributions to Carolina Rising were made for the purpose of furthering the reported  
5 electioneering communications” and that, “in failing to report the identity of its donors,”  
6 Carolina Rising violated 11 C.F.R. § 104.20(c)(9).<sup>6</sup>

7 Carolina Rising’s Response filed by its President, Dallas Woodhouse, asserts that the  
8 Complaint is baseless.<sup>7</sup> The Response contends that Carolina Rising’s policy is to accept  
9 donations only for general obligation purposes, and that the organization does not and has never  
10 accepted directed donations.<sup>8</sup> Woodhouse asserts that he founded Carolina Rising in  
11 consultation with its Board of Directors and that all spending decisions are his own, with the  
12 oversight of the board.<sup>9</sup>

13 **B. Legal Analysis**

14 An “electioneering communication” is a cable or satellite communication that refers to a  
15 clearly identified candidate for federal office, is publicly distributed within sixty days before a  
16 general election or thirty days before a primary election, and is targeted to the relevant

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<sup>6</sup> Supp. Compl. at 1.

<sup>7</sup> Resp. at 1 (Jan. 15, 2015).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*



1 electorate.<sup>10</sup> A communication is “targeted to the relevant electorate” if it can be received by  
2 50,000 or more persons in the district or state in which the candidate is running.<sup>11</sup>

3 The Act provides that a person who makes a disbursement for the direct costs of  
4 producing and airing electioneering communications in an aggregate amount in excess of  
5 \$10,000 during any calendar year must file a disclosure statement.<sup>12</sup> In implementing this  
6 disclosure requirement, the Commission’s regulations provide that, where the disbursements  
7 were made by a corporation or labor organization and were not paid exclusively from a  
8 segregated bank account consisting of funds provided solely by persons other than national  
9 banks, corporations organized by authority of any law of Congress, or foreign nationals, the  
10 disclosure statement must include “the name and address of each person who made a donation  
11 aggregating \$1,000 or more to the corporation or labor organization, aggregating since the first  
12 day of the preceding calendar year, which was made *for the purpose of furthering electioneering*  
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14 the identity of the person making the disbursement, the amount of each disbursement of more  
15 than \$200 during the period covered by the statement, the identity of the person to whom each

<sup>10</sup> See 52 U.S.C. § 30104(f)(3)(A)(i).

<sup>11</sup> *Id.*

<sup>12</sup> See *id.* § 30104(f)(1).

<sup>13</sup> 11 C.F.R. § 104.20(c)(9) (emphasis added). This regulation has been the subject of ongoing litigation. In 2012, the U.S. District Court for the District of Columbia found the Commission’s promulgation of 11 C.F.R. § 104.20(c)(9) to be foreclosed by the plain language of the Bipartisan Campaign Reform Act (“BCRA”). *Van Hollen v. FEC*, 851 F. Supp. 2d 69, 72 (D.D.C. 2012). The D.C. Circuit later reversed this determination. *Center for Individual Freedom v. Van Hollen*, 694 F.3d 108, 110 (D.C. Cir. 2012). On remand, the district court again vacated 11 C.F.R. § 104.20(c)(9), finding its promulgation to be arbitrary and capricious and an unreasonable interpretation of BCRA. 74 F. Supp. 3d 407, 410 (D.D.C. 2014). On appeal, the D.C. Circuit reversed this decision, holding that the regulation’s purpose requirement—that is, its limiting of the donations that must be disclosed to only those donations that were provided for the purpose of furthering electioneering communications—was based on a permissible construction of BCRA in light of the Act’s language, structure, and purpose, and that the regulation was not arbitrary and capricious. *Van Hollen, Jr. v. FEC*, 811 F.3d 486, 492, 501 (D.C. Cir. 2016). A petition for rehearing *en banc* is currently pending.

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11 such, the Complaint's general assertion regarding Carolina Rising's funding does not support a  
12 reasonable inference that Carolina Rising may have failed to disclose the identity of individuals  
13 who made donations "for the purpose of" furthering electioneering communications in violation  
14 of section 104.20(c)(9).

15 Accordingly, the Commission finds no reason to believe that Carolina Rising failed to  
16 disclose its donors for electioneering communications.

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<sup>14</sup> See *id.* § 30104(f)(1) - (2); 11 C.F.R. § 104.20(c)(1)-(6).

<sup>15</sup> *Id.*

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