



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 19 2009

William J. McGinley, Esq.
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037

RE: MUR 6077
Norm Coleman
Coleman for Senate '08

Dear Mr. McGinley:

On September 30, 2008, the Federal Election Commission notified your clients, Norm Coleman, Coleman for Senate '08 and Rodney A. Axtell, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On May 6, 2009, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe your clients violated the Act in connection with the alleged coordinated communications and reporting violations in this matter. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analyses, which explain the Commission's finding, are enclosed for your information.

If you have any questions, please contact Audra Hale-Maddox, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosures
Factual and Legal Analyses

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT: Norm Coleman**

MUR 6077

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8 **I. GENERATION OF MATTER**

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10 This matter was generated by a complaint filed with the Federal Election Commission by
11 the Minnesota Democratic-Farmer-Labor Party, through its Chairman, Brian Melendez. See
12 2 U.S.C. § 437g(a)(1).

13 **II. FACTUAL SUMMARY**

14 The Complaint alleges that Norm Coleman ("Coleman" or "Respondent"), Coleman for
15 Senate '08 ("CFS") and Rodney A. Axtell, in his official capacity as treasurer, coordinated
16 communications with the U.S. Chamber of Commerce ("the Chamber"); the National Federation
17 of Independent Business's separate segregated fund, the Save America's Free Enterprise (SAFE)
18 Trust and Tammy Boehms, in her official capacity as treasurer ("NFIB"); and Jeff Larson, and
19 thereby accepted prohibited corporate in-kind contributions in the form of the Chamber's three
20 television advertisements and accepted an excessive in-kind contribution in the form of the
21 NFIB's newspaper advertisement. The Complaint bases its allegation on an asserted "close knit
22 web of relations" between the identified persons, and an asserted common vendor relationship
23 between the Chamber/NFIB and Coleman/CFS through Jeff Larson and his company FLS
24 Connect. In addition, the Complaint alleges reporting violations.

25 The Chamber produced and aired three television ads in Minnesota prior to the 2008 U.S.
26 Senate election that focused on the positions of Coleman's opponent, Democratic Senate
27 candidate Al Franken, on the Employee Free Choice Act and tax increases, and on Coleman's
28 achievements as a Senator on health care, respectively. The television ads aired on August 8,

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1 August 28, and September 4, 2008, prior to Minnesota's primary election on September 9, 2008.
2 The available information indicates that these television ads were paid for and aired by the
3 Chamber on Minnesota television stations. For the two Chamber ads that aired fewer than 30
4 days before the primary election, the Chamber disclosed its payments of \$199,463.00 and
5 \$349,967.00 for the electioneering communications. See 2 U.S.C. § 434(f).

6 The NFIB ran a full-page newspaper ad in Minnesota prior to the 2008 U.S. Senate
7 election titled "Take a Quick Quiz and See if You're One of the Minnesotans Who Would Have
8 Their Taxes RAISED by Al Franken," and which contained the NFIB SAFE Trust's
9 endorsement of Norm Coleman. The NFIB's ad ran on September 5, 2008, in the *St. Paul*
10 *Pioneer Press* and the *Minneapolis Star Tribune*, prior to the Minnesota primary election on
11 September 9, 2008. On September 4, 2008, the NFIB disclosed its payment of \$84,426.00 for
12 this ad as an independent expenditure on Schedule E.

13 The available information suggests that Respondent was not aware of the advertisements
14 produced by the Chamber and the NFIB until the ads appeared on the air or in print, and that
15 Respondent had not been consulted by the Chamber or the NFIB regarding the advertisements
16 prior to their release. Available information also indicates that FLS Connect did not perform any
17 work on the Chamber ads or the NFIB ads at issue in this complaint.

18 Accordingly, the Commission finds no reason to believe that Norm Coleman violated
19 provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") by accepting
20 excessive in-kind contributions or prohibited corporate in-kind contributions in the form of
21 coordinated communications.

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1 **III. ANALYSIS**

2 Under the Act, no multicandidate political committee, such as the NFIB's SAFE Trust,
3 may make a contribution, including an in-kind contribution, to a candidate and his authorized
4 committee with respect to any election for Federal office, which in the aggregate exceeds \$5,000.
5 2 U.S.C. § 441a(a)(2); *see* 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). No candidate
6 or his authorized committee shall knowingly accept a contribution in excess of such limit. *See*
7 2 U.S.C. § 441a(f). Also, corporate contributions, including in-kind contributions, to a federal
8 candidate and his authorized political committee are prohibited, and candidates and their
9 authorized committees are prohibited from knowingly accepting such contributions. 2 U.S.C.
10 § 441b(a). The Act defines in-kind contributions as, *inter alia*, expenditures made by any person
11 "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his
12 authorized political committees, or their agents." 2 U.S.C. § 441a(a)(7)(B)(i).

13 A communication is coordinated with a candidate, an authorized committee, or agent
14 thereof if it meets a three-part test: (1) payment for the communication by a third party; (2)
15 satisfaction of one of four "content" standards; and (3) satisfaction of one of six "conduct"
16 standards. 11 C.F.R. § 109.21.

17 **A. Payment**

18 In this matter, the first prong of the coordinated communication test is satisfied as to both
19 the Chamber's ads and the NFIB's ad because both the Chamber and the NIFB appear to have
20 paid for the ads in question. 11 C.F.R. § 109.21(a)(1).

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1 **B. Content**

2 **The content prong is satisfied where the communication at issue meets one of the**
3 **following content standards: an electioneering communication; a public communication that**
4 **republishes, disseminates, or distributes candidate campaign materials; a public communication**
5 **containing express advocacy; or a public communication that refers to a clearly identified federal**
6 **candidate that was publicly distributed or disseminated 90 days or fewer before a primary or**
7 **general election, and was directed to voters in the jurisdiction of the clearly identified federal**
8 **candidate. 11 C.F.R. § 109.21(c)(1) - (4).¹**

9 **The public communications portion of the content standard appears to be satisfied as to**
10 **both the Chamber's television ads and the NFIB's newspaper ad because all of the**
11 **advertisements clearly identify either Coleman or Franken, who were each candidates in the**
12 **2008 U.S. Senate election in Minnesota, and because the ads were broadcast or published within**
13 **90 days of the September 9, 2008, primary as well as the November 4, 2008, general election**
14 **within the State of Minnesota.² See 11 C.F.R. § 109.21(c)(4)(i).**

¹ After the decision in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (Court of Appeals affirmed the District Court's invalidation of the fourth, or "public communication," content standard of the coordinated communications regulation), the Commission made revisions to 11 C.F.R. § 109.21 that became effective July 10, 2006. In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission's content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. See *Shays v. F.E.C.*, 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying in part the respective parties' motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. See *Shays v. F.E.C.*, 528 F.3d 914 (D.C. Cir. June 13, 2008). The activity at issue in this matter occurred after the July 10, 2006, effective date of the revisions to Section 109.21.

² Although we do not need to analyze whether the Chamber's two television ads in question also meet the "electioneering communication" content standard, the Chamber disclosed its payments for the ads as electioneering communications. See FEC Form 9 filed by U.S. Chamber of Commerce, dated September 9, 2008. In addition, NFIB filed an independent expenditure report disclosing its payment for the ad. See FEC Form 3X filed by National Federation of Independent Business/Save America's Free Enterprise Trust, dated September 4, 2008.

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C. Conduct

The six conduct standards of the coordinated communication test include situations in which the communication is created, produced, or distributed 1) at the request or suggestion of the candidate, his committee, or an agent thereof; 2) with the material involvement of the candidate, the committee, or agent; 3) after a substantial discussion with the candidate, committee, or agent; 4) by a common vendor; 5) by a former employee or independent contractor; or 6) via republication of campaign material. 11 C.F.R. § 109.21(d).

The Complaint alleges that the advertisements at issue “may also meet the third prong” of the test, stating that the “close-knit web of relations between Senator Coleman, the Chamber, NFIB, Jeff Larson, and FLS-Connect ... taken together, support the inference that the advertisements were produced at the request of Senator Coleman or his agent, with Senator Coleman’s material involvement, or after substantial discussion with Senator Coleman or his agent.” Complaint at 4-5; *see* 11 C.F.R. § 109.21(d). Available information indicates that Larson and Coleman have many connections, including 1) Larson’s service as a long-time advisor for Senator Coleman, 2) Larson’s service as the treasurer of Coleman’s Northstar Leadership PAC, and 3) Coleman’s employment of Larson’s wife in one of his local constituent offices in Minnesota. The Complaint alleges that Coleman, CFS, the Chamber, and NFIB have all been clients of Larson’s firm, FLS Connect, and that the coordination took place through Larson as Coleman’s agent. *See* Complaint at 5. The Complaint further cites this business relationship to support an allegation of coordinated communications through FLS Connect as a common vendor. *Id.* The available information does not support the Complaint’s allegations.

Addressing complainant’s last allegation first, a vendor is a “common vendor” for the purposes of the Act only if the same vendor creates or distributes the ad alleged to be

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1 coordinated and, within 120 days, has provided specified services for the candidate alleged to
2 have benefitted from the coordination. *See* 11 C.F.R. § 109.21(d)(4). The available information
3 does not indicate that Jeff Larson contracted for, or otherwise participated in, the creation,
4 production, or distribution of the Chamber's or NFIB's advertisements related to the 2008
5 Minnesota Senate campaign, or otherwise acting as a coordinator for these communications.
6 More broadly, the available information does not indicate that FLS Connect performed any work
7 at all for the NFIB during the 2008 election cycle, nor does it indicate that FLS Connect did any
8 work for the Chamber during the 2008 election cycle other than membership drive telemarketing.

9 To fulfill the common vendor standard of the conduct prong, it is not sufficient for the
10 entities involved to have merely hired the same commercial vendor for different work at various
11 points in the past. Instead, the common vendor must be performing work for the candidate or the
12 candidate's committee within 120 days of creating, producing, or distributing the specific
13 communication(s) alleged to have been coordinated, *see* 11 C.F.R. § 109.21(d)(4)(ii). Thus, the
14 available information indicates that FLS Connect is not a common vendor for the purposes of the
15 Act.

16 Although the Complaint infers that the advertisements were produced at the request of
17 Senator Coleman or his agent, with Senator Coleman's material involvement, or after substantial
18 discussion with Senator Coleman or his agent, the available information suggests that Coleman
19 was not involved in any way in the creation or distribution of the ads. *See*
20 11 C.F.R. § 109.21(d)(1)-(3).

21 There is no other support offered for the Complaint's allegation as to the coordinating
22 conduct. Unwarranted legal conclusions from asserted facts, or mere speculation, will not be
23 accepted as true, and "[s]uch speculative charges, especially when accompanied by direct

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1 refutation, do not form an adequate basis to find reason to believe that a violation of FECA has
2 occurred." Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate
3 Exploratory Committee), issued December 21, 2000 (citations omitted). Here, Complainant's
4 inferences are convincingly refuted by the available information. The conduct prong of the
5 coordinated communications test does not appear to be fulfilled in this matter, and so the
6 Chamber's and NFIB's communications do not appear to have been coordinated with Coleman.
7 Accordingly, Coleman does not appear to have accepted excessive or prohibited in-kind
8 contributions. See 2 U.S.C. §§ 441a(f) and 441b(a).

9 For the reasons set forth above, the Commission finds no reason to believe that Norm
10 Coleman violated the Act in connection with the alleged coordinated communications.

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Coleman for Senate and Rodney A.
6 Axtell, in his official capacity as treasurer

MUR 6077

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9 **I. GENERATION OF MATTER**

10 This matter was generated by a complaint filed with the Federal Election Commission by
11 the Minnesota Democratic-Farmer-Labor Party, through its Chairman, Brian Melendez. See
12 2 U.S.C. § 437g(a)(1).
13

14 **II. FACTUAL SUMMARY**

15 The Complaint alleges that Coleman for Senate '08 ("CFS") and Rodney A. Axtell, in his
16 official capacity as treasurer, ("Respondents") and Norm Coleman ("Coleman") coordinated
17 communications with the U.S. Chamber of Commerce ("the Chamber"); the National Federation
18 of Independent Business's separate segregated fund, the Save America's Free Enterprise (SAFE)
19 Trust and Tammy Boehms, in her official capacity as treasurer ("NFIB"); and Jeff Larson, and
20 thereby accepted prohibited corporate in-kind contributions in the form of the Chamber's three
21 television advertisements and accepted an excessive in-kind contribution in the form of the
22 NFIB's newspaper advertisement. The Complaint bases its allegation on an asserted "close knit
23 web of relations" between the identified persons, and an asserted common vendor relationship
24 between the Chamber/NFIB and Coleman/CFS through Jeff Larson and his company FLS
25 Connect. In addition, the Complaint alleges reporting violations.

26 The Chamber produced and aired three television ads in Minnesota prior to the 2008 U.S.
27 Senate election that focused on the positions of Coleman's opponent, Democratic Senate
28 candidate Al Franken, on the Employee Free Choice Act and tax increases, and on Coleman's

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1 achievements as a Senator on health care, respectively. The television ads aired on August 8,
2 August 28, and September 4, 2008, prior to Minnesota's primary election on September 9, 2008.
3 The available information indicates that these television ads were paid for and aired by the
4 Chamber on Minnesota television stations. For the two Chamber ads that aired fewer than 30
5 days before the primary election, the Chamber disclosed its payments of \$199,463.00 and
6 \$349,967.00 for the electioneering communications. See 2 U.S.C. § 434(f).

7 The NFIB ran a full-page newspaper ad in Minnesota prior to the 2008 U.S. Senate
8 election titled "Take a Quick Quiz and See if You're One of the Minnesotans Who Would Have
9 Their Taxes RAISED by Al Franken," and which contained the NFIB SAFE Trust's
10 endorsement of Norm Coleman. The NFIB's ad ran on September 5, 2008, in the *St. Paul*
11 *Pioneer Press* and the *Minneapolis Star Tribune*, prior to the Minnesota primary election on
12 September 9, 2008. On September 4, 2008, the NFIB disclosed its payment of \$84,426.00 for
13 this ad as an independent expenditure on Schedule E.

14 The available information suggests that Respondents were not aware of the
15 advertisements produced by the Chamber and the NFIB until the ads appeared on the air or in
16 print, and that Respondents had not been consulted by the Chamber or the NFIB regarding the
17 advertisements prior to their release. Available information also indicates that FLS Connect did
18 not perform any work on the Chamber ads or the NFIB ad at issue in this complaint.

19 Accordingly, the Commission finds no reason to believe that Coleman for Senate and
20 Rodney A. Axtell, in his official capacity as treasurer, violated provisions of the Federal Election
21 Campaign Act of 1971, as amended ("the Act") by accepting excessive in-kind contributions or
22 prohibited corporate in-kind contributions in the form of coordinated communications. The

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1 Commission also finds no reason to believe that Coleman for Senate and Rodney A. Axtell, in
2 his official capacity as treasurer, violated the reporting requirements of the Act.

3 **III. ANALYSIS**

4 Under the Act, no multicandidate political committee, such as the NFIB's SAFE Trust,
5 may make a contribution, including an in-kind contribution, to a candidate and his authorized
6 committee with respect to any election for Federal office, which in the aggregate exceeds \$5,000.
7 2 U.S.C. § 441a(a)(2); see 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). No candidate
8 or his authorized committee shall knowingly accept a contribution in excess of such limit. See
9 2 U.S.C. § 441a(f). Also, corporate contributions, including in-kind contributions, to a federal
10 candidate and his authorized political committee are prohibited, and candidates and their
11 authorized committees are prohibited from knowingly accepting such contributions. 2 U.S.C.
12 § 441b(a). The Act defines in-kind contributions as, *inter alia*, expenditures made by any person
13 "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his
14 authorized political committees, or their agents." 2 U.S.C. § 441a(a)(7)(B)(i).

15 **A. Coordinated Communications**

16 A communication is coordinated with a candidate, an authorized committee, or agent
17 thereof if it meets a three-part test: (1) payment for the communication by a third party; (2)
18 satisfaction of one of four "content" standards; and (3) satisfaction of one of six "conduct"
19 standards. 11 C.F.R. § 109.21.

20 **1. Payment**

21 In this matter, the first prong of the coordinated communication test is satisfied as to both
22 the Chamber's ads and the NFIB's ad because both the Chamber and the NFIB appear to have
23 paid for the ads in question. 11 C.F.R. § 109.21(a)(1).
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1 coordinated and, within 120 days, has provided specified services for the candidate alleged to
2 have benefitted from the coordination. See 11 C.F.R. § 109.21(d)(4). The available information
3 does not indicate that Jeff Larson contracted for, or otherwise participated in, the creation,
4 production, or distribution of the Chamber's or NFIB's advertisements related to the 2008
5 Minnesota Senate campaign, or otherwise acting as a coordinator for these communications.
6 More broadly, the available information does not indicate that FLS Connect performed any work
7 at all for the NFIB during the 2008 election cycle, nor does it indicate that FLS Connect did any
8 work for the Chamber during the 2008 election cycle other than membership drive telemarketing.

9 To fulfill the common vendor standard of the conduct prong, it is not sufficient for the
10 entities involved to have merely hired the same commercial vendor for different work at various
11 points in the past. Instead, the common vendor must be performing work for the candidate or the
12 candidate's committee within 120 days of creating, producing, or distributing the specific
13 communication(s) alleged to have been coordinated, see 11 C.F.R. § 109.21(d)(4)(ii). Thus, the
14 available information indicates that FLS Connect is not a common vendor for the purposes of the
15 Act.

16 In response to the Complaint's inference that the advertisements were produced at the
17 request of Senator Coleman or his agent, with Senator Coleman's material involvement, or after
18 substantial discussion with Senator Coleman or his agent, CFS campaign manager Cullen
19 Sheehan denied under oath any knowledge of the Chamber and NFIB ads or their contents prior
20 to their release, and denied providing either the Chamber or the NFIB with any information
21 regarding the campaign. See CFS Response at 1-2; Sheehan affidavit at 1-2;
22 11 C.F.R. § 109.21(d)(1)-(3).

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1 There is no other support offered for the Complaint's allegation as to the coordinating
2 conduct. Unwarranted legal conclusions from asserted facts, or mere speculation, will not be
3 accepted as true, and "[s]uch speculative charges, especially when accompanied by direct
4 refutation, do not form an adequate basis to find reason to believe that a violation of FECA has
5 occurred." Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate
6 Exploratory Committee), issued December 21, 2000 (citations omitted). Here, Complainant's
7 inferences are convincingly refuted by the available information including the response of CFS,
8 which denies knowledge of the NFIB or the Chamber's actions with regard to the 2008 campaign
9 in general or the advertisements in particular, and denies any coordinating activity. The conduct
10 prong of the coordinated communications test does not appear to be fulfilled in this matter, and
11 so the Chamber's and NFIB's communications do not appear to have been coordinated with
12 CFS. Accordingly, Coleman for Senate does not appear to have accepted excessive or prohibited
13 in-kind contributions. *See* 2 U.S.C. §§ 441a(f) and 441b(a).

14 **B. Reporting Violations**

15 The Complaint suggests that if the communications at issue are found to be coordinated
16 communications, then Respondents failed to disclose the resulting contributions. *See* 2 U.S.C.
17 § 434. As there appears to be no support for a finding that the communications in this case were
18 coordinated, there is no reason to believe Respondents violated the reporting provisions of the
19 Act.

20 **C. Conclusion**

21 For the reasons set forth above, the Commission finds no reason to believe that Coleman
22 for Senate '08 and Rodney A. Axtell, in his official capacity as treasurer, violated the Act in
23 connection with the alleged coordinated communications.

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