



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 19 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brian Melendez
Minnesota Democratic-Farmer-Labor Party
255 E. Plato Blvd.
St. Paul, MN 55109

RE: MUR 6077

Dear Mr. Melendez:

On September 30, 2008, the Federal Election Commission reviewed the allegations in your complaint dated September 24, 2008 and found that on the basis of the information provided in your complaint, and information provided by the Respondents, there is no reason to believe Coleman for Senate '08 and Rodney A. Axtell, in his official capacity as treasurer; Norm Coleman; the U.S. Chamber of Commerce; National Federation of Independent Business's SAFE Trust and Tammy Boehms, in her official capacity as treasurer; or Jeff Larson violated the Federal Election Campaign Act of 1971, as amended, in connection with the alleged coordinated communications and reporting violations in this matter. Accordingly, on May 6, 2009, the Commission closed the 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 more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosures
Factual and Legal Analyses

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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

MUR 6077

I. GENERATION OF MATTER

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

II. FACTUAL SUMMARY

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

The Chamber produced and aired three television ads in Minnesota prior to the 2008 U.S. Senate election that focused on the positions of Coleman's opponent, Democratic Senate 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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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Norm Coleman

MUR 6077

I. GENERATION OF MATTER

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

II. FACTUAL SUMMARY

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

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

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: U.S. Chamber of Commerce

MUR 6077

I. GENERATION OF MATTER

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

II. FACTUAL SUMMARY

The Complaint alleges that the U.S. Chamber of Commerce ("the Chamber" or "Respondent") and Jeff Larson coordinated communications with Norm Coleman ("Coleman"), Coleman for Senate '08 ("CFS") and Rodney A. Axtell, in his official capacity as treasurer, and thereby made prohibited corporate in-kind contributions in the form of the Chamber's three television advertisements. The Complaint bases its allegation on an asserted "close knit web of relations" between the identified persons, and an asserted common vendor relationship between the Chamber and Coleman/CFS through Jeff Larson and his company FLS Connect.

The Chamber produced and aired three television ads in Minnesota prior to the 2008 U.S. Senate election that focused on the positions of Coleman's opponent, Democratic Senate candidate Al Franken, on the Employee Free Choice Act and tax increases, and on Coleman's achievements as a Senator on health care, respectively. The television ads aired on August 8, August 28, and September 4, 2008, prior to Minnesota's primary election on September 9, 2008. The Chamber acknowledges that these television ads were paid for and aired by the Chamber on Minnesota television stations. See Chamber Response at 4. For the two Chamber ads that aired

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1 less than 30 days before the primary election, the Chamber disclosed its payments of
2 \$199,463.00 and \$349,967.00 for the electioneering communications. See 2 U.S.C. § 434(f).

3 The available information suggests that Coleman and CFS were not aware of the
4 advertisements produced by the Chamber prior to their airing, and that the Chamber did not
5 consult with Coleman or CFS regarding its advertisements prior to their release. Respondent
6 emphasizes in its Response that FLS Connect did not perform any work on the Chamber ads at
7 issue in this Complaint.

8 Accordingly, the Commission finds no reason to believe that the Chamber violated
9 provisions of the Federal Election Campaign Act of 1971, as amended (“the Act”) by making
10 prohibited corporate in-kind contributions in the form of coordinated communications.

11 **III. ANALYSIS**

12 Under the Act, corporate contributions, including in-kind contributions, to a federal
13 candidate and his authorized political committee are prohibited, and candidates and their
14 authorized committees are prohibited from knowingly accepting such contributions. 2 U.S.C.
15 § 441b(a). The Act defines in-kind contributions as, *inter alia*, expenditures made by any person
16 “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his
17 authorized political committees, or their agents.” 2 U.S.C. § 441a(a)(7)(B)(i).

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

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1 **A. Payment**

2 **In this matter, the first prong of the coordinated communication test is satisfied as to the**
3 **Chamber's ads because the Chamber acknowledges having paid for the ads in question.**
4 **11 C.F.R. § 109.21(a)(1); see Chamber Response at 4.**

5 **B. Content**

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

13 **The public communications portion of the content standard appears to be satisfied as to**
14 **the Chamber's television ads because all of the advertisements clearly identify either Coleman or**
15 **Franken, who were each candidates in the 2008 U.S. Senate election in Minnesota, and because**
16 **the ads were broadcast within 90 days of the September 9, 2008, primary as well as the**

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(e) 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.

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1 November 4, 2008, general election within the State of Minnesota.² See 11 C.F.R.
2 § 109.21(c)(4)(i).

3 **C. Conduct**

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

10 The Complaint alleges that the advertisements at issue “may also meet the third prong” of
11 the test, stating that the “close-knit web of relations between Senator Coleman, the Chamber, ...
12 Jeff Larson, and FLS-Connect ... taken together, support the inference that the advertisements
13 were produced at the request of Senator Coleman or his agent, with Senator Coleman’s material
14 involvement, or after substantial discussion with Senator Coleman or his agent.” Complaint at 4-
15 5; see 11 C.F.R. § 109.21(d). Available information indicates that Larson and Coleman have
16 many connections, including 1) Larson’s service as a long-time advisor for Senator Coleman, 2)
17 Larson’s service as the treasurer of Coleman’s Northstar Leadership PAC, and 3) Coleman’s
18 employment of Larson’s wife in one of his local constituent offices in Minnesota. The
19 Complaint alleges that Coleman, CFS, and the Chamber have all been clients of Larson’s firm,
20 FLS Connect, and that the coordination took place through Larson as Coleman’s agent. See
21 Complaint at 5. The Complaint further cites this business relationship to support an allegation of

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.

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1 coordinated communications through FLS Connect as a common vendor. *Id.* The available
2 information does not support the Complaint's allegations.

3 Addressing complainant's last allegation first, a vendor is a "common vendor" for the
4 purposes of the Act only if the same vendor creates or distributes the ad alleged to be
5 coordinated and, within 120 days, has provided specified services for the candidate alleged to
6 have benefitted from the coordination. See 11 C.F.R. § 109.21(d)(4). The available information
7 does not indicate that Jeff Larson contracted for, or otherwise participated in, the creation,
8 production, or distribution of the Chamber's advertisements related to the 2008 Minnesota
9 Senate campaign, or otherwise acted as a coordinator for these communications. More broadly,
10 the Chamber denies that FLS Connect did any work for the Chamber during the 2008 election
11 cycle other than membership drive telemarketing, and affirms that another firm created the ads in
12 question. See Chamber Response at 2 and 10.

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

20 In response to the Complaint's inference that the advertisements were produced at the
21 request of Senator Coleman or his agent, with Senator Coleman's material involvement, or after
22 substantial discussion with Senator Coleman or his agent, Respondent denies any involvement
23 by, or coordination with, CFS or any agent thereof in the creation or distribution of the ads, and

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1 **denies using Jeff Larson or FLS Connect in any way in the preparation and dissemination of**
2 **these ads. See 11 C.F.R. § 109.21(d)(1)-(3); Chamber Response at 10.**

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

15 **For the reasons set forth above, the Commission finds no reason to believe that the U.S.**
16 **Chamber of Commerce violated the Act in connection with the alleged coordinated**
17 **communications.**

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

**RESPONDENTS: National Federation of Independent Business's
SAFE Trust and Tammy Boehms, in her official
capacity as treasurer**

MUR 6077

I. GENERATION OF MATTER

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

II. FACTUAL SUMMARY

The Complaint alleges that the National Federation of Independent Business's separate segregated fund, the Save America's Free Enterprise (SAFE) Trust and Tammy Boehms, in her official capacity as treasurer, ("NFIB" or "Respondents") and Jeff Larson coordinated communications with Norm Coleman ("Coleman"), Coleman for Senate '08 ("CFS") and Rodney A. Axtell, in his official capacity as treasurer, and thereby made an excessive in-kind contribution in the form of the NFIB's newspaper advertisement. The Complaint bases its allegation on an asserted "close knit web of relations" between the identified persons, and an asserted common vendor relationship between the NFIB and Coleman/CFS through Jeff Larson and his company FLS Connect. In addition, the Complaint alleges reporting violations on the part of Respondents.

The NFIB ran a full-page newspaper ad in Minnesota prior to the 2008 U.S. Senate election titled "Take a Quick Quiz and See if You're One of the Minnesotans Who Would Have Their Taxes RAISED by Al Franken," and which contained the NFIB SAFE Trust's endorsement of Norm Coleman. The NFIB's ad ran on September 5, 2008, in the *St. Paul*

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1 *Pioneer Press* and the *Minneapolis Star Tribune*, prior to the Minnesota primary election on
2 September 9, 2008. On September 4, 2008, the NFIB disclosed its payment of \$84,426.00 for
3 this ad as an independent expenditure on Schedule E.

4 The available information suggests that Coleman and CFS were not aware of the
5 advertisement produced by the NFIB until the ad appeared in print, and that Coleman and CFS
6 had not been consulted by the NFIB regarding the advertisement prior to its release.
7 Respondents emphasize in a sworn affidavit that FLS Connect did not perform any work on the
8 NFIB ad at issue in this complaint.

9 Accordingly, the Commission finds no reason to believe that the NFIB violated
10 provisions of the Federal Election Campaign Act of 1971, as amended (“the Act”) by making an
11 excessive in-kind contribution in the form of coordinated communications. The Commission
12 also finds no reason to believe that the NFIB violated the reporting requirements of the Act.

13 **III. ANALYSIS**

14 Under the Act, no multicandidate political committee, such as the NFIB’s SAFE Trust,
15 may make a contribution, including an in-kind contribution, to a candidate and his authorized
16 committee with respect to any election for Federal office, which in the aggregate exceeds \$5,000.
17 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
18 or his authorized committee shall knowingly accept a contribution in excess of such limit. *See*
19 2 U.S.C. § 441a(f). The Act defines in-kind contributions as, *inter alia*, expenditures made by
20 any person “in cooperation, consultation, or concert, with, or at the request or suggestion of, a
21 candidate, his authorized political committees, or their agents.” 2 U.S.C. § 441a(a)(7)(B)(i).

22 **A. Coordinated Communications**

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

4 **1. Payment**

5 In this matter, the first prong of the coordinated communication test is satisfied as to the
6 NFIB's ads because the NFIB acknowledges having paid for the ad in question.
7 11 C.F.R. § 109.21(a)(1); *see* NFIB Response at 1.

8 **2. Content**

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

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.

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1 offices in Minnesota. The Complaint alleges that Coleman, CFS, the Chamber, and NFIB have
2 all been clients of Larson's firm, FLS Connect, and that the coordination took place through
3 Larson as Coleman's agent. See Complaint at 5. The Complaint further cites this business
4 relationship to support an allegation of coordinated communications through FLS Connect as a
5 common vendor. *Id.* The available information does not support the Complaint's allegations.

6 Addressing complainant's last allegation first, a vendor is a "common vendor" for the
7 purposes of the Act only if the same vendor creates or distributes the ad alleged to be
8 coordinated and, within 120 days, has provided specified services for the candidate alleged to
9 have benefitted from the coordination. See 11 C.F.R. § 109.21(d)(4). The available information
10 does not indicate that Jeff Larson contracted for, or otherwise participated in, the creation,
11 production, or distribution of the NFIB's advertisement related to the 2008 Minnesota Senate
12 campaign, or otherwise acted as a coordinator for this communication. More broadly, the
13 Response denies that FLS Connect performed any work at all for the NFIB during the 2008
14 election cycle. See NFIB Response at 2 and attached Affidavit of NFIB vice-president Lisa
15 Gocas at ¶2.

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

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1 In response to the Complaint's inference that the advertisement was produced at the
2 request of Senator Coleman or his agent, with Senator Coleman's material involvement, or after
3 substantial discussion with Senator Coleman or his agent, Respondents deny any involvement
4 by, or coordination with, CFS or any agent thereof in the creation or distribution of the ad.
5 See 11 C.F.R. § 109.21(d)(1)-(3). The NFIB denies seeking or gaining any information from
6 Coleman or CFS for the ad, and it denies using Jeff Larson or FLS Connect in any way in the
7 preparation and dissemination of the ad. See NFIB Response at 1-2 and Affidavit of NFIB vice-
8 president Lisa Goeas at ¶¶ 2 and 5.

9 There is no other support offered for the Complaint's allegation as to the coordinating
10 conduct. Unwarranted legal conclusions from asserted facts, or mere speculation, will not be
11 accepted as true, and "[s]uch speculative charges, especially when accompanied by direct
12 refutation, do not form an adequate basis to find reason to believe that a violation of FECA has
13 occurred." Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate
14 Exploratory Committee), issued December 21, 2000 (citations omitted). Here, Complainant's
15 inferences are convincingly refuted by the available information including the response of the
16 NFIB, which denies any coordinating activity. The conduct prong of the coordinated
17 communications test does not appear to be fulfilled in this matter, and so the NFIB's
18 communication does not appear to have been coordinated with Coleman or CFS. Accordingly,
19 the NFIB does not appear to have made an excessive in-kind contribution. See
20 2 U.S.C. § 441a(a)(2).

21 **B. Reporting Violations**

22 The Complaint suggests that if the communication at issue is found to be a coordinated
23 communication, then Respondents failed to disclose the resulting contribution. See

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1 **2 U.S.C. § 434. As there appears to be no support for a finding that the communication in this**
2 **case was coordinated, there is no reason to believe Respondents violated the reporting provisions**
3 **of the Act.**

4 **C. Conclusion**

5 **For the reasons set forth above, the Commission finds no reason to believe that the**
6 **National Federation of Independent Business's separate segregated fund, the Save America's**
7 **Free Enterprise (SAFE) Trust and Tammy Boehms, in her official capacity as treasurer, violated**
8 **the Act in connection with the alleged coordinated communication.**

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1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT: Jeff Larson**

MUR 6077

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7
8 **I. GENERATION OF MATTER**

9
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 Jeff Larson ("Larson" or "Respondent") acted as the agent of
15 Coleman for Senate '08 and Rodney A. Axtell, in his official capacity as treasurer, ("CFS") and
16 Norm Coleman ("Coleman"), in coordinating communications with the U.S. Chamber of
17 Commerce ("the Chamber") and the National Federation of Independent Business's separate
18 segregated fund, the Save America's Free Enterprise (SAFE) Trust and Tammy Boehms, in her
19 official capacity as treasurer ("NFIB"), which constituted prohibited corporate in-kind
20 contributions in the form of the Chamber's three television advertisements and an excessive in-
21 kind contribution in the form of the NFIB's newspaper advertisement. The Complaint bases its
22 allegation on an asserted "close knit web of relations" between the identified persons, and an
23 asserted common vendor relationship between the Chamber/NFIB and Coleman/CFS through
24 Larson and his company FLS Connect.

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 Coleman and CFS were not aware of the
14 advertisements produced by the Chamber and the NFIB until the ads appeared on the air or in
15 print, and that Coleman and CFS had not been consulted by the Chamber or the NFIB regarding
16 the advertisements prior to their release. Jeff Larson has stated in a sworn affidavit that neither
17 he nor FLS Connect performed any work on the Chamber ads or the NFIB ad at issue in this
18 Complaint.

19 Accordingly, the Commission finds no reason to believe that Jeff Larson violated
20 provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") by acting as
21 the agent of Coleman or CFS in facilitating excessive in-kind contributions or prohibited
22 corporate in-kind contributions in the form of 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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1 **C. Conduct**

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

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

22 **Addressing complainant’s last allegation first, a vendor is a “common vendor” for the**
23 **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). Jeff Larson denies under
3 oath that he or his company contracted for, or otherwise participated in, the creation, production,
4 or distribution of the Chamber's or NFIB's advertisements related to the 2008 Minnesota Senate
5 campaign, or otherwise acting as a coordinator for these communications. See Affidavit of Jeff
6 Larson at 1-2. More broadly, the Response states that Larson and FLS Connect did not perform
7 any work at all for the NFIB during the 2008 election cycle, and states that FLS Connect's only
8 work for the Chamber during the 2008 election cycle was membership drive telemarketing. See
9 Response at 1-2.

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

17 Although the Complaint infers that the advertisements were produced at the request of
18 Senator Coleman or his agent, with Senator Coleman's material involvement, or after substantial
19 discussion with Senator Coleman or his agent, the available information indicates that CFS and
20 Coleman did not have knowledge of the Chamber and NFIB ads or their contents prior to their
21 release, and the available information indicates that the Chamber and the NFIB did not gain
22 information regarding the Coleman campaign prior to producing their ads from Larson or others.
23 See 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 Larson's Response,**
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 **Coleman or CFS through Larson. Accordingly, Larson does not appear to have been the agent of**
13 **Coleman or CFS regarding the alleged excessive or prohibited in-kind contributions. See**
14 **2 U.S.C. §§ 441a(f) and 441b(a).**

15 **For the reasons set forth above, the Commission finds no reason to believe that Jeff**
16 **Larson violated the Act in connection with the alleged coordinated communications.**

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