



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 6371
Friends of Christine O'Donnell, *et al.*)

STATEMENT OF REASONS
Vice Chair CAROLINE C. HUNTER and
Commissioners DONALD E. McGAHN and MATTHEW S. PETERSEN

The complaint in this matter alleged that Our Country Deserves Better PAC – TeaPartyExpress.org (“TPAC”) made, and Friends of Christine O’Donnell and Matthew J. Moran, in his official capacity as treasurer (“O’Donnell Committee”) accepted, excessive contributions as a result of: (1) TPAC exercising direction and control over contributions earmarked for supporting O’Donnell’s candidacy and (2) TPAC coordinating its expenditures with O’Donnell and the O’Donnell Committee. The Office of General Counsel (“OGC”) recommended, *inter alia*, that the Commission find reason to believe that: (1) TPAC violated 2 U.S.C. §§ 441a(a)(2) and 434(b) by making and failing to disclose excessive in-kind contributions in the form of coordinated expenditures; (2) Christine O’Donnell violated 2 U.S.C. §§ 441a(f) by accepting excessive in-kind contributions in the form of coordinated expenditures; and 3) the O’Donnell Committee violated 2 U.S.C. §§ 434(b) and 441a(f) by accepting and failing to disclose in-kind contributions in the form of coordinated expenditures.¹ As explained in greater detail below, we voted to close the file in this matter because there is insufficient basis to find reason to believe.

I. Background

The complainant alleges that earmarking and coordination resulted in excessive contributions. First, the complainant alleges that TPAC, a non-connected political committee, made and the O’Donnell Committee—the principal campaign committee of Christine O’Donnell, a candidate in the September 14, 2010, special primary election for U.S. Senate—accepted excessive contributions by virtue of TPAC’s solicitation of what

¹ We agree with OGC’s recommendation that there is *no* reason to believe that: (1) Christine O’Donnell violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions in the form of earmarked contributions sent through TPAC and (2) the O’Donnell Committee and its treasurer violated 2 U.S.C. § 441a(f) or 434(b) by accepting or failing to disclose excessive in-kind contributions in the form of earmarked contributions sent through TPAC. For purposes of 2 U.S.C. § 437g(a)(8), we adopt the reasoning behind OGC’s First General Counsel’s Report as to those allegations.

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the complaint deems earmarked contributions. The complainant also alleges coordination between TPAC and the O'Donnell Committee. The allegations rest on: (1) O'Donnell's appearance at a "Delaware 9-12 Patriots" event where she ended her comments by identifying a TPAC official and giving the audience information on TPAC; (2) O'Donnell's appearance at a TPAC press conference after which she reportedly entered a "closed door meeting" with an unnamed TPAC official; (3) a TPAC announcement that O'Donnell was to make a speaking appearance at a TPAC radiothon; and (4) a post the complainant alleges was made by the O'Donnell Committee's press secretary on his Facebook page.

We agree with OGC that there is no reason to believe that Christine O'Donnell violated 2 U.S.C. § 441a(f) and the O'Donnell Committee and its treasurer violated 2 U.S.C. § 441a(f) or 434(b) by accepting or failing to disclose excessive in-kind contributions in the form of earmarked contributions sent through TPAC. However, we did not agree with OGC with regard to the coordination allegations. As explained in greater detail below, because the complainant fails to provide an adequate basis for finding reason to believe, we voted against OGC's recommendation and voted to close the file in this matter.

II. Analysis

The Act defines "contribution" as, *inter alia*, expenditures by any person made "in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, his authorized political committee, or their agents"² A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent thereof if it meets a three-part test: (1) payment by a third party; (2) satisfaction of one of four "content" standards; and (3) satisfaction of one of six "conduct" standards.³

Based on our review of the complaints and response, we voted to dismiss this matter because there is no reason to believe TPAC, Christine O'Donnell, and the O'Donnell Committee violated the Act. Complainant alleges that Christine O'Donnell appeared at a "Delaware 9-12 Patriots" event where she ended her comments by identifying a TPAC official and giving the audience information on TPAC. OGC believes, as do we, that "the video footage provided by Complainant falls short of the complaint's characterization of the event. The September 1st video footage only shows O'Donnell directing a question regarding TPAC's website address to a TPAC representative, and does not show either O'Donnell or the TPAC representative soliciting donations for expenditures supporting O'Donnell. Also, the video footage shows O'Donnell stating that she had no interactions with TPAC prior to this event."⁴ Thus, we conclude the coordination allegation based on this appearance is meritless.

² 2 U.S.C. § 431(8)(A)(i).

³ 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.21(d).

⁴ MUR 6371 (TPAC), First General Counsel's Report at 9.

The complainant further alleges that O'Donnell's appearance at a TPAC press conference after which she reportedly entered a "closed door meeting" with an unnamed TPAC official provides a basis for a coordination finding. Based on the complaint and response, there is no information to contradict denials by TPAC and the O'Donnell Committee that such a private meeting ever happened.

Finally, the complainant alleges that the O'Donnell Committee's press secretary stated on his Facebook page that he speaks to TPAC "daily."⁵ The complainant also states that TPAC was planning a radiothon during which O'Donnell would make an appearance.⁶ OGC recommended finding reason to believe that violations of the Act occurred based on those facts. We disagreed.

We note again that "opening an investigation to determine whether we could discover a basis for those suspicions runs counter to the statutory constraints imposed on the Commission."⁷ That "reason to believe" requires more than mere speculation has been established in prior enforcement matters. For example, in MUR 4960 (Hillary Clinton), the Commission summarized the requirements as follows:

The Commission may find "reason to believe" *only if* a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA. Complaints not based upon personal knowledge *must* identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented. . . .

Unwarranted legal conclusions from asserted facts, *see* SOR in MUR 4869 (American Postal Workers Union), or mere speculation, *see* SOR of Chairman Wold and Commissioners Mason and Thomas in MUR 4850 (Fossella), will not be accepted as true. In addition, . . . a complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in the response to the complaint

. . . .⁸

⁵ Complaint, Ex. F.

⁶ Complaint, Ex. E.

⁷ MUR 6296 (Kenneth R. Buck), Statement of Reasons of Vice Chair Caroline Hunter and Commissioners Matthew S. Petersen and Donald F. McGahn at 4.

⁸ MUR 4960 (Hillary Rodham Clinton For U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1-2 (emphasis added).

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Similarly, in MUR 5467 (Michael Moore), the Commission stated that “[p]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find a reason to believe that a violation of the FECA has occurred.”⁹

Therefore, under the Act, before making a reason-to-believe determination, the Commission must assess both the law and the credibility of the facts alleged. To do so, the Commission must identify the sources of information and examine the facts and reliability of those sources to determine whether they “reasonably [give] rise to a belief in the truth of the allegations presented.”¹⁰ Only if this standard is met may the Commission investigate whether a violation occurred.¹¹ These requirements are not met here.

Assuming that the radiothon was paid for by TPAC, mentioned the candidate, and was broadcast shortly before the primary election, the available information, including the Facebook posts at issue, provides insufficient basis for a reason-to-believe finding. First, the Facebook posting for the event does not indicate whether or not O’Donnell was set to appear. While a Facebook post by Evan Queitsch, apparently directed to a WDEL radio station employee, reads “@Jensen 1150 WDEL let me know if you want to know about the Tea Party Express as I speak w/them daily,”¹² OGC states that the posts on their face do not satisfy the conduct prong. We agree. And even if TPAC and the O’Donnell Committee were in daily contact, such contacts would not be sufficient to meet the conduct threshold. More specific information is necessary.¹³

Our unwillingness to find reason to believe a violation occurred based on the O’Donnell Committee’s original response is bolstered by later confirmation that Mr. Queitsch was not a member of the O’Donnell campaign during the primary campaign.¹⁴ Therefore, the complainant’s accusations in this matter, including one of which was based on the incorrect factual implication that Evan Queitsch was the O’Donnell Committee’s press secretary, provide insufficient basis to find reason to believe.

⁹ MUR 5467 (Michael Moore), First General Counsel’s Report, at 5 (citing MUR 4960 (Hillary Rodham Clinton For U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 3).

¹⁰ MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas.

¹¹ As we noted in MUR 6296 (Kenneth Buck, *et al.*), Statement of Reasons of Commissioners Hunter, McGahn, and Petersen at 6 n.23, despite several Commission legislative recommendations, Congress has refused to lower the standard to “reason to investigate.” See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007) (noting past legislative recommendations to “clarify” that reason to believe means reason to investigate).

¹² Complaint, Ex. F.

¹³ See *FEC v. Machinists Non-partisan League*, 655 F.2d 380,388 (D.C. Cir. 1981) (“Plainly, mere ‘official curiosity’ will not suffice as the basis for FEC investigations.” (footnote omitted)).

¹⁴ See Letter from Cleta Mitchell, Esq., dated July 5, 2011.

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III. Conclusion

For the foregoing reasons, we voted to close the file in this matter.

8/4/11
Date


CAROLINE C. HUNTER
Vice-Chair

8/4/11
Date


DONALD F. MCGAHN II
Commissioner

8/4/2011
Date


MATTHEW S. PETERSEN
Commissioner

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