



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
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 Friends of Roy Blunt, et al. ) MUR 6368  
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 )

**STATEMENT OF REASONS  
OF CHAIR ELLEN L. WEINTRAUB AND  
COMMISSIONERS CYNTHIA L. BAUERLY AND STEVEN T. WALTHER**

This matter concerns allegations of coordination between Crossroads Grassroots Policy Strategies ("Crossroads GPS")<sup>1</sup> and the principal campaign committee of Senator Roy Blunt ("the Blunt Committee"). The facts before us, in our opinion, present a sufficient basis<sup>2</sup> to open a limited investigation to determine whether or not coordination actually took place. Accordingly, we could not support the Office of General Counsel's ("OGC") recommendation to find no reason to believe that Crossroads GPS made a prohibited corporate in-kind contribution to the Blunt Committee.<sup>3</sup> As we recently observed in similar matters,<sup>4</sup> the Commission is the sole authority charged with civil

<sup>1</sup> Crossroads GPS is a non-profit organization that, on June 2, 2010, was organized under the laws of the Commonwealth of Virginia.

<sup>2</sup> "Reason to believe" is a threshold determination that by itself does not establish that the law has been violated. See Guidebook for Complainants and Respondents on the FEC Enforcement Process, May 2012, available at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf). In fact, a "reason to believe" determination indicates only that the Commission has found sufficient legal justification to open an investigation to determine whether there is probable cause to believe that a violation of the Act has occurred. See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 F.R. 12545 (March 16, 2007).

<sup>3</sup> Vice Chair McGahn and Commissioner Petersen supported the motion to find no reason to believe that respondents violated 2 U.S.C. § 441b(a). We dissented. See Certification in MUR 6368, dated January 9, 2013. Commissioner Hunter was not present and did not vote in this matter. *Id.*

<sup>4</sup> See Statement of Reasons of Chair Ellen L. Weintraub and Commissioner Cynthia L. Bauerly in MUR 6570 (Berman for Congress, et al.) and Statement of Reasons of Commissioner Steven T. Walther in MUR 6570 (Berman for Congress, et al.); Statement of Reasons of Chair Ellen L. Weintraub and Commissioners Cynthia L. Bauerly and Steven T. Walther in MUR 6611 (Friends of Laura Ruderman, et al.).

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enforcement of the Federal Election Campaign Act (the "Act"); as such, the Commission has a responsibility to ensure that the limits of the Act are maintained by investigating potential violations such as that alleged in this matter.<sup>5</sup>

The complaint in this matter alleges that Crossroads GPS coordinated with the Blunt Committee when it ran an advertisement criticizing Blunt's opponent (the "GPS Ad"). Specifically, the complaint alleges that Karl Rove, founder of Crossroads GPS, obtained information from the Blunt Committee about campaign plans and needs through his campaign activity for Blunt, headlining two fundraisers and making an advertisement on behalf of the Blunt campaign.<sup>6</sup> The Blunt campaign ad consisted of a web video, starring Karl Rove, which touted Blunt's opposition to health care reform, among other issues.<sup>7</sup> The Blunt campaign ran this ad in June 2010. Just two months later, Crossroads GPS began airing the GPS Ad, which specifically criticized Blunt's opponent for supporting health care reform. The complaint maintains that "in recording the [web] video, Rove would have learned valuable information about the Blunt campaign's message" and that "given Rove's close relationship with Blunt, it is likely that the two had additional discussions of the campaign's plans, projects, activities, and needs."<sup>8</sup> The complaint further maintains that "given Rove's intimate and well-publicized role in the organization, it is unlikely that Crossroads GPS created and aired the ad without Rove's involvement."<sup>9</sup>

The response from the Blunt Committee does not provide any facts about information Rove had access to or discussions he had while participating in the campaign, and did not provide sufficiently specific facts to conclusively rebut the allegations. Counsel for the Blunt Committee simply asserts that "[n]o coordination had occurred between Respondents and anyone."<sup>10</sup> Counsel for Crossroads GPS makes a similar blanket denial. Counsel simply states that "[t]he creative content of the advertisement was the work of Crossroads GPS-approved and 'firewalled' vendors under

<sup>5</sup> The Act provides that an expenditure made by any person "in cooperation, consultation, or concert with, or at the request or suggestion of" a candidate or his authorized committee or agent is considered a contribution made to the candidate. See 2 U.S.C. §§ 441a(a)(7)(B)(i) and 441a(f); see also 11 C.F.R. § 109.21. The cost of such a coordinated expenditure, when aggregated with other contributions to a particular federal candidate or committee, could not exceed \$2,400 per election in the 2010 cycle. 2 U.S.C. § 441a(a)(1)(A); see also 2 U.S.C. § 441a(e) (providing that the limit is adjusted for inflation every odd-numbered year); Price Index Increases for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 74 Fed. Reg. 7435, 7437 (Feb. 17, 2009).

<sup>6</sup> Complaint at 2-3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 5.

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

<sup>10</sup> Friends of Roy Blunt Response at 2.

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the production management of Anne Beyersdorfer.”<sup>11</sup> GPS Counsel provides affidavits from two individuals who produced and distributed the ad, Steven Law and Carl Forti. But there are no affidavits from anyone who actually *created* the ad. The Forti and Law affidavits make no mention of Beyersdorfer, the vendors, or the firewall.<sup>12</sup> Moreover, there are no affidavits from Beyersdorfer or the vendors – or even from Blunt or Rove. As a result, the Commission has virtually no relevant and material information about the creators of the GPS Ad, including Beyersdorfer, and no information about which side of the “firewall” she was on or with whom she may have discussed the GPS Ad. Most importantly, it is not clear from the response which side of the “firewall” Rove was on. Accordingly, more factual development is required here.

Neither Counsel’s response nor the supporting affidavits provide any substantive assurance that Karl Rove did not participate in the creation of the GPS Ad, as alleged in the complaint. Instead, Counsel simply points to the fact that Rove does not hold “a formal position” within Crossroads GPS.<sup>13</sup> This leaves open the question about what “informal” role Rove played in Crossroads GPS and the creation of the GPS Ad. All told, the responses and affidavits do not refute the allegation that information that Rove obtained from the Blunt Committee by actively participating in the campaign, including making the Blunt Campaign’s web video, may have been used in the creation, production, or distribution of the GPS Ad.

Based upon the facts available to the Commission, as discussed above, we conclude that the facts before us present a sufficient basis to open a targeted investigation. In light of gaps in the information provided, more factual development is required to assess whether coordination in fact took place. A few questions would have likely been sufficient to determine whether Rove had substantial discussions with the campaign or with any agent in which he obtained material, nonpublic information that was provided to Crossroads GPS employees or vendors and used to inform the creation of the GPS Ad. As we have said before, such a limited investigation is particularly warranted in light of the United States District Court for the District of Columbia’s admonition to the Commission against relying on conclusory denials in lieu of relevant facts.<sup>14</sup> For these reasons, we could not support the Office of the General Counsel’s recommendation to find no reason to believe in this matter without first conducting a targeted investigation.

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<sup>11</sup> Crossroads GPS Response at 3.

<sup>12</sup> See Affidavits of Steven Law and Carl Forti. Forti makes incongruous statements in his affidavit regarding his general activities with respect to ads when compared to his activity with respect to the ad at issue. See Forti Affidavit ¶ 2 (stating that he directs the “conception and production of all Crossroads GPS television advertisements”) but see Forti Affidavit ¶ 5 (stating that he made the determination to “produce and distribute” this ad).

<sup>13</sup> Crossroads GPS Response at 3.

<sup>14</sup> See *La Botz v. FEC*, \_\_\_ F.Supp.2d \_\_\_, 2012 WL 3834865, \*8 (D.D.C. Sept. 5, 2012).

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MUR 6368 (Friends of Roy Blunt, et al.)  
Statement of Reasons of Chair Weintraub and Commissioners Bauerly and Walther

1/31/13  
Date

Ellen L. Weintraub  
Ellen L. Weintraub  
Chair

1/31/2013  
Date

Cynthia L. Bauerly  
Cynthia L. Bauerly  
Commissioner

1/31/13  
Date

Steven T. Walther  
Steven T. Walther  
Commissioner

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