

COMMISSION ON
HOPE, GROWTH & OPPORTUNITY
Supporting Policies of Economic Growth and Free Enterprise

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OFFICE OF GENERAL
COUNSEL

June 1, 2011

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Matter Under Review # 6391

Members of the Commission:

This will serve as the response of the Commission on Hope, Growth & Opportunity (the "CHGO") to the complaint filed with the Federal Election Commission (the "Commission") by the Democratic Congressional Campaign Committee (the "DCCC") that resulted in the above captioned matter. This response is filed pursuant to our request for an extension of the time to respond. The complaint filed by the DCCC was filed without any substantiation and should be dismissed pursuant to the Commission's own rules of procedure. As the Commission well knows, those regulations require a complainant to offer sufficient and specific factual evidence of a statutory violation that would justify further action by the Commission [see, specifically 11 CFR .4(d)(1)-(4), 2 USC 437g(a)(1)].

As the Commission also knows, this complaint was the subject of a Motion to Dismiss dated November 30, 2010. That Motion was predicated upon the Commission's failure to strictly observe its own Regulations by providing the respondent with timely notice of the complaint and the ability to file a timely response denying the assertions contained therein. As a matter of factual record, the complaint was filed with the Commission on or about October 4, 2010 (after the existence of the complaint was made public by the DCCC on or about October 3, 2010) but was not received by CHGO until November 29, 2010, more than six (6) weeks after the filing of the complaint with the Commission. CHGO has now been informed by the Commission that the Motion to Dismiss was denied. However, the legal and factual analysis prepared by the Commission's Office of General Counsel in support of its position to deny the Motion to Dismiss has NOT been provided to CHGO. As a consequence, we incorporate by reference herein, the Motion to Dismiss of November 30, 2010, and specifically ask the Commission to again take this Motion under advisement as the Commission reviews this response and provide CHGO with the legal and factual analysis that formed the basis for the Commission's denial of the Motion to Dismiss.

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I.

The respondent, CHGO, is a tax-exempt, not-for-profit, social welfare organization conducting its public education activities pursuant to section 501c(4) of the Internal Revenue Code of 1986, as amended. CHGO was formed in March, 2010 and was duly registered with the Internal Revenue Service shortly thereafter. CHGO conducts its public education activities in strict compliance with the requirements established by the Internal Revenue Service for 501c(4) organizations. CHGO files an annual informational return with the Internal Revenue Service on the Form 990. Form 990 lists, with specificity, the identity of all donors to a 501c(4), the revenues received by the 501c(4) and the expenditures made by the 501c(4) during the preceding calendar year. CHGO's annual Form 990 Informational Return is in preparation by our Certified Public Accountant and the Internal Revenue Service has granted CHGO a slight extension of the time due for such filing. Once filed, a copy of the Form 990, as established by the regulations for public availability of a Form 990, will be made available to the public at our office of record.

CHGO conducts a public-outreach effort focused on macro-economic issues and functions as an economic "think tank" regarding such federal policy issues as tax, trade, budget and economic growth. CHGO maintains a publicly-available website at www.hopegrowthopportunity.com which offers a sophisticated analysis of current media reports and public opinion polling in the areas of tax, trade, budget and economic growth policy. In addition, CHGO also commissions macro-economic studies by prominent academic scholars. For example, on our website you will find our latest copyrighted policy paper entitled "An Agenda to Restore American Prosperity." This study was prepared for CHGO by Daniel J. Mitchell who was formerly the senior staff economist at the Senate Finance Committee and is now the senior economist in residence at the CATO Institute in Washington, D.C. This forty-plus page position paper has been distributed to the public by CHGO, as well as to interested individuals on Capitol Hill. In addition to the use of a dedicated website and commissioned economic studies, CHGO has communicated with the public through cable television issue-oriented announcements that address macro-economic issues and set-forth the public positions previously taken by legislators on Capitol Hill and individuals seeking public office regarding those macro-economic issues.

As to CHGO funding, all donations received by CHGO to date originate from one and only one source...voluntary, individual donations. CHGO has not accepted any other form of funding from the interested public. CHGO has not accepted funding from any corporation, or from any labor organization, or from any foreign national, or from any permanent resident alien. The entire budget of CHGO consists of individual donations provided by individual United States citizens who have an interest in the macro-economic policies advanced by CHGO. ALL donations accepted by CHGO are deposited into the general treasury fund of CHGO and NO donation may be ear-marked for a particular use by CHGO. Donors to CHGO support its broad mission and do not direct any of their donations to any specific CHGO program or project. CHGO does not maintain any bank account other than its general treasury account and that account is the sole source for all CHGO disbursements.

Lastly, all communications with the public on the policy issues supported by CHGO contain a specific paragraph identify CHGO as a 501c(4) social welfare organization and not a federal political

committee and none of the public communications issues by CHGO support or oppose any identified federal candidate. Any federal office holder or individual seeking public office whose name or image appears in the public communications of CHGO is only so referenced in the explicit context of that person's public record in support of or opposition to the majority party controlling Congress as such support or opposition specifically relates to the macro-economic policies espoused CHGO. CHGO's mandate as a 501c(4) social welfare organization is to educate the public on pending policy issues. CHGO may not and does not engage in electoral politics at the federal level and all communications made to the public by CHGO are specifically issue oriented and do not advocate the election or defeat of any identified federal candidate. CHGO scrupulously adheres to this bright-line test.

CHGO does not act surreptitiously. Its activities are widely known to the public via its website and its public-policy position papers. In fact, CHGO has made it a practice to directly engage the public via fund-raising appeals contained in such publications as the Wall Street Journal and Investors Business Daily.

ii.

This response will address the assertions set forth in the complaint, in seriatim, and as they were set forth in the complaint of October 4, 2010.

The complaint asserts that "from September 24, 2010 through September 30, 2010, [r]espondent disseminated broadcast television advertisements attacking Congressman John Spratt (totaling in excess of \$200,000) and Congressman Dan Maffei (totaling in excess of \$100,000" and that "on September 30, [r]espondent disseminated broadcast television advertisements attacking Congressman Frank Kratovil, Congresswoman Kathy Dahlkemper, and Congressman Alan Boyd" and that "these ads are expected to run through October 5, 2010 and will [sic] in excess of \$300,000, \$200,000, and \$100,000 respectively."

Response: The assertion is without merit and is not supported by any factual evidence. CHGO ran public communications on cable television stations in a number of media markets during the time period referenced above. NONE of these communications was "targeted" at any specific electoral constituency and NONE of these public communications "attacked" any identified individual. Webster's New Collegiate Dictionary defines the word "attack" as follows: "to set upon forcefully; to threaten with immediate capture; to assail with unfriendly or bitter words; to begin to affect or to act upon injuriously; to set to work upon ...to make an attack." The complaint cites specific language from these public communications to support its notion that these communications "attacked" various Congressmen, ipso facto, by CHGO's very limited use of a Congressman's name or image in the communication. However, none of the language quoted by the complainant can support the premise that these communications "attacked" a Member of Congress. CHGO's communications did not "attack" anyone. CHGO's communications were carefully written so as not to be seen, by any disinterested viewer, to have been a political attack on any politician. CHGO's communications informed viewers on policy positions previously taken by some lawmakers, while scrupulously avoiding any language that could remotely be viewed as an "attack" in a political context. It is the position of CHGO that the public has a

Constitutionally-protected right to know how decision-makers in Washington are supporting or opposing the macro-economic policies espoused by CHGO. It may well be that the complainant, BCCC, is unhappy that the public has the right to obtain this information, but that general unhappiness does not point to any identified statutory violation.

The complainant asserts that "[n]either ad (sic) states that the [r]espondent is 'responsible for the content of this advertising' – either orally or in writing."

Response: The assertion is without merit and is not supported by any factual evidence. Each and every public communication referenced in this complaint contained an explicit paragraph at its conclusion setting forth the identity of CHGO as their sponsor of the message. Here is the exact language employed by CHGO in these messages: "Paid for by the Commission on Hope, Growth and Opportunity, a tax-exempt 501c4 organization and not a federal political committee. This message is not coordinated with any federal candidate or committee. www.hopegrowthopportunity.com." Not one single broadcaster, on whose station our public communications were aired, objected to the identification language used by CHGO in these messages and not one broadcaster required that CHGO modify this identification language prior to the airing of the public communication. Indeed, CHGO did not receive a single complaint from the public asserting that either the content of the communication or the identity of the sponsor was unclear or in any way misleading.

The complainant asserts that "[r]espondent had not reported any of these advertisements to the Federal Election Commission."

Response: CHGO believed at the time that the public communications as aired were fully compliant with applicable disclosure requirements since (a) the communications did not advocate the election or defeat of any identified federal candidate, (b) the communications employed the name or likeness of a Member of Congress only in the context of that individual's previous record of support or opposition to the macro-economic policies espoused by CHGO, and (c) since CHGO has a Constitutionally-protected First Amendment right to disseminate to the public information on policy positions previously taken by a legislator and the public has a Constitutionally-protected First Amendment right to be informed about the policy positions previously taken by legislators in Washington, that no additional disclosure involving these communications was required. As CHGO understands the disclosure requirement established by the Commission for so-called "electioneering communications," the public policy element that underlines the disclosure of so-called "electioneering communications" is to provide knowledge to the public as to (a) the sponsor of such "electioneering Communications" as well as to provide (b) information to the public regarding the costs to the sponsor for such "electioneering Communications" as well as (c) identity of the broadcast outlets where such "electioneering communications" are being aired. In addition, where a donor to an "electioneering communication" ear-marks that donation for a specific communication and where the donation is deposited into a separate account to be used for that ear-marked "communication, the donor's identity must be disclosed to the Commission. As noted above, the CHGO accepts no such ear-marked donation from any individual.

The Commission should note that, with regard to these three public disclosure elements, all three were met with regard to the communications aired by CHGO. As mentioned above, each and every public communication aired by CHGO and cited in the complaint contained a specific paragraph listing the identity of CHGO as the sponsor of the message, citing CHGO as a tax-exempt 501c(4) public welfare organization and not a federal political committee, showing the organization's website address and specifically stating that the communication had not been coordinated with any federal candidate or committee. In addition, every broadcaster who airs a commercial message is required, by the Federal Communications Act, to make available, to the public, a daily log which identifies those messages. The format used by all broadcasters for this daily log was prepared by the National Association of Broadcasters with the approval of the Federal Communications Commission. The daily log of each broadcaster that aired a CHGO communication contained the following information: the identity of CHGO as the sponsor of the message; the cost to CHGO for the airing of the message, the dates on which the message was to air, a description of or the name of the specific message, and the name and contact information for the media buyer who had placed the order for the CHGO message with the broadcaster. Thus the daily log for each broadcaster airing a CHGO-sponsored communication would provide real-time information to any member of the interested public as to the factual details surrounding the CHGO communications. In other words, no member of the public was deprived of any specific, factual information concerning CHGO's messages. Indeed, the broadcaster's log book provided such information in real-time to the public, as the messages were being aired that day. By definition, the broadcaster's log-book of CHGO message was made public well in advance of an "electioneering communication" form filed with the Commission days after the communication was aired. In fact, the FCC-required log-book information about CHGO communications became the source for a substantial number of local media (both print and broadcast) accounts of CHGO's activities. Similarly, national news organizations as diverse as the New York Times, Washington Post, Bloomberg Financial News, and the Associated Press, employed data taken from broadcaster's log-books to inform the public on CHGO's activities. Similarly, national broadcast monitoring services, such as Broadcast Media Monitoring, Inc., Data-Care Systems, the Media Analysis Group, and VMS/Media Intelligence Solutions, utilized real-time information taken from individual broadcaster's daily logs to report on the public communications of CHGO. In fact, the complainant inadvertently supports this very fact since the complainant utilized publically-available cost and station data concerning CHGO communications as a substantive part of its complaint. In sum, the information contained in an "electioneering communications" disclosure report to the Commission was actually made more available to the public in a real-time setting via the FCC-mandated log-book disclosure.

If CHGO made an error with respect to the disclosure reports required of "electioneering communications," such an error was made in good faith and was one of omission rather than commission.

The complainant asserts that the public communications aired by CHGO were either (a) "independent expenditures" and/or (b) were "coordinated" with a federal candidate or political party.

Response: Both assertions are without merit and are not supported by any factual evidence. Contrary to the complainant's assertion that the public communications aired by CHGO met all of the

definitional prongs established at 11 CFR 100.16(a), no text in any of the communications complained of by the DCCC contained a single word or any phrase that would constitute "express advocacy," as that term is defined at 11 CFR 100.22(a). All language employed by CHGO in its public communications was carefully constructed so as not to employ any language that could reasonably be interpreted as advocating the election or defeat of any identified federal candidate. Indeed, the complainant offers no evidence to the contrary. Since these communications with the public on macro-economic issues of interest to CHGO did not contain any words of "express advocacy," such messages cannot be deemed to be "independent expenditures" as that term is defined at 11 CFR 100.16(a).

Without proffering a single factual bit of evidence, the complainant further asserts that the public communications aired by CHGO somehow must have been coordinated with some otherwise unidentified federal candidate or party committee. The complainant is unable to offer any such factual documentation because no such evidence exists. CHGO was absolutely scrupulous in avoiding ANY contact (written, oral, telephonic or electronic) directly or indirectly with any federal candidate or party committee or with any person representing or acting on behalf of any federal candidate or party committee. While we believed, at the time, and continue to believe, that the public communications of CHGO did not contain a single word or phrase that could be viewed as constituting "express advocacy" and thus were neither "contributions" or "independent expenditures" as those terms have been defined by the Commission, CHGO believes that it had the requisite legal authority to discuss its activities with any individual, political or non-political, as the case maybe. Notwithstanding that point of view, CHGO adopted an internal policy that no such communications regarding CHGO's activities would be discussed with the public. In point of fact, this internal policy precluded CHGO from discussing its activities with the press who made numerous requests that CHGO go on the public record regarding its public communications.

III.

In conclusion, CHGO believes that it was acting in full compliance with the requirements imposed on tax-exempt 501c(4) public welfare organizations in communicating with the public on matters involving its views on macro-economic public policy issues and the of public position taken by Members of Congress in support of or in opposition to macro-economic public policy issues. In airing these messages, CHGO did not violate the Federal Election Campaign Act as asserted by the complainant. Having produced not a single shred of factual evidence to the contrary, the assertions of the complainant should be dismissed and CHGO requests that the Commission take no further action on this complaint.



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Counsel to CHGO