



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

Friends of Peter Teahen and Jeffrey Elgin,)	
in his official capacity as treasurer)	
Peter Teahen)	MUR 6013
Teahen Funeral Home, Inc.)	

STATEMENT OF REASONS

Chairman Steven T. Walther, Vice Chairman Matthew S. Petersen,
And Commissioners Cynthia L. Bauerly, Caroline C. Hunter and Donald F. McGahn II

I. INTRODUCTION

This matter involves a complaint alleging that Peter Teahen, a candidate seeking the Republican nomination for the U.S. House in Iowa's 2nd Congressional District, and his principal campaign committee, Friends of Peter Teahen, knowingly and willfully violated the Federal Election Campaign Act of 1971, as amended, ("the Act") by coordinating a television advertisement with Teahen's company, Teahen Funeral Home, Inc., resulting in a prohibited in-kind corporate contribution. On March 11, 2009, we rejected the Office of General Counsel's recommendation that we find reason to believe the Respondents violated various provisions of the Act.¹ We instead voted to dismiss this matter in an exercise of our prosecutorial discretion.

See Heckler v. Chaney, 470 U.S. 821, 831 (1985).

¹ Although the complaint alleged that the respondent knowingly and willfully violated the Act, no factual basis was provided to support the knowing and willful nature of the alleged violations. Thus, the Office of General Counsel concluded that a knowing and willful recommendation was not warranted.

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II. **FACTUAL & LEGAL ANALYSIS**

A. **Factual Background**

According to public records, Peter Teahen is the President and a director of Teahen Funeral Home, Inc. Mr. Teahen filed a Statement of Candidacy with the Commission on January 24, 2008. On or before March 31, 2008, Teahen Funeral Home, Inc. began running a television advertisement that aired in the 2nd Congressional District. Complaint at 1. The text of the ad, narrated by Teahen, follows:

My father served in the Navy and like many veterans he didn't talk about his military experience. But we all knew how much he loved his country. Dad had a big flag pole in our front yard and I used to help him raise the flag. Now, when I see a flag, I think of Dad and all the men and women who sacrifice their lives for the sake of freedom. I'm Peter Teahen and I'm proud to be an American. Teahen Funeral Home: Life ends, but memories live on.

Id. at 1-2. See also, James Q. Lynch, *Dems Allege Teahen Campaign Violation*, The Gazette (Cedar Rapids)(May 23, 2008), available at 2008 WLNR 9788607 (hereafter, *Dems Allege*).

The ad (hereafter referred to as *Proud American*) apparently featured images of Teahen and the American flag. A full screen image of Teahen appeared as Teahen stated, "I'm Peter Teahen and I'm proud to be an American." Complaint at 1-2.

In response to the complaint, Respondents deny that they violated the law and assert that the ad was not intended to benefit Mr. Teahen's campaign. They state that *Proud American* was created in 2001 and has been aired each subsequent year "in early spring" prior to Memorial Day and Independence Day as a tribute to veterans and their families as part of the funeral home's marketing strategy. Response at 2. Respondents believed, erroneously, based on their consultation with the cable provider who aired the ad, that if it were removed from the air within 45 days before Iowa's June 3, 2008 Congressional primary, they would be fully compliant with

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FEC regulations.² *Id.* at 2-3. Respondents also assert that the contract to place and air *Proud American* occurred before Mr. Teahen announced his candidacy and that the ad stopped airing by April 15, 2008. *Id.* The funeral home continued to air advertisements afterwards that did not feature Teahen's image, voice or likeness. *Id.*; *Dems Allege, supra.*

B. Analysis

The Act prohibits corporations from making a contribution or expenditure in connection with any Federal election and corporate officers from consenting to such a contribution. 2 U.S.C. § 441b(a). Federal candidates and political committees may not knowingly accept or receive such contributions. *Id.* "Contribution" is defined, in part, as "anything of value" made by any person for the purpose of influencing a Federal election and includes in-kind contributions. 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(d)(1).

The Act defines in-kind contributions as, *inter alia*, "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committee, or their agents." 2 U.S.C. § 441a(a)(7)(B). Pursuant to the Commission's coordinated communication regulations, a communication is coordinated under 2 U.S.C. § 441a(a)(7)(B) if it: (1) is paid for by a person other than the candidate or candidate's committee; (2) satisfies one or more of the four content standards set forth in 11 C.F.R. § 109.21(c); and (3) satisfies one or more of the six conduct standards set forth in 11 C.F.R. § 109.21(d). 11 C.F.R. § 109.21(a).

Proud American satisfies the payment prong of the coordinated communication regulations because it was paid for by Teahen Funeral Home, Inc. *Proud American* satisfies the

² In their response, Respondents cite to FCC regulations at 47 C.F.R. § 73.1942 as apparent support for their understanding of the advice provided by the cable provider concerning applicable FEC regulations. 47 C.F.R. § 73.1942 provides that advertisements made by a federal candidate's business and featuring the candidate cannot be aired within 45 days of a primary election. Thus, respondents ceased airing the ad 47 days before the election.

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coordinated communications content prong because it was a public communication, a television or cable broadcast that referred to a clearly identified candidate; it aired within 90 days of the Iowa primary; and it was targeted to voters in Teahen's jurisdiction by virtue of its broadcast in the 2nd Congressional District. 11 C.F.R. §§ 109.21(c)(4) and 100.26.

The Office of General Counsel ("OGC") recommended that we find reason to believe that Respondents violated the Act, and open an investigation to determine if Mr. Teahen and/or the Committee satisfied the conduct prong of the coordinated communication regulations by having sufficient involvement in the decisions about the timing and placement of the advertisement. However, in light of the low dollar amount at issue, the lack of any electoral portion in the advertisement, and the particular factual circumstances surrounding the creation and dissemination of the advertisement,³ we voted to dismiss this matter in an exercise of our prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

³ According to the factual record, the advertisement at issue was filmed seven years before Mr. Teahen became a candidate, and had been run at approximately the same time every year since then.

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5/12/09
Date

Steven T. Walther
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Chairman

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Date

Matthew S. Petersen
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Vice Chairman

5/12/2009
Date

Cynthia L. Bauerly
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Commissioner

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Date

Caroline C. Hunter
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Donald F. McGahn
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Commissioner

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