

BEFORE THE FEDERAL ELECTION COMMISSION

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New Summit Republicans

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MUR 5974

STATEMENT OF REASONS

I. INTRODUCTION

This matter involves a complaint filed by Angela McMillen against the New Summit Republicans. The complaint alleges that the New Summit Republicans (“NSR”) mailed a brochure in December of 2007 that expressly advocated the defeat of a federal candidate but did not contain a disclaimer, in violation of the Federal Election Campaign Act of 1971, as amended (“the Act”). We received a response to the complaint from Ohio State Senator Kevin Coughlin, writing on behalf of NSR. Response at 1. NSR requests that the Commission dismiss the complaint. *Id.* NSR denies that the brochure expressly advocates the defeat of a federal candidate, and argues that it is not reasonable to expect that individuals running for county party central committee would be subject to federal election laws when state law does not recognize them as candidates or subject them to regulations. *Id.* at 3.

On March 4, 2009, we rejected the Office of General Counsel’s recommendation that we find reason to believe the New Summit Republicans violated various provisions of the Act in order to open an investigation in this matter. We instead voted to dismiss this matter in an exercise of our prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

II. FACTUAL AND LEGAL ANALYSIS

The brochure in question contains two photographs of then Senator and presidential candidate Hillary Clinton (one of which showed her laughing) and the statements “Stop her laughing!” and “We can beat her if we are united.” The brochure also criticized the chairman of

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1 the Summit County Republican Central Committee and solicited support to replace him as leader
2 of the committee. The brochure did not contain a disclaimer.

3 According to statements on its website, NSR is operating from Ohio State Sen. Kevin
4 Coughlin's campaign office. According to publicly-available information on the Ohio Secretary
5 of State's website, Team Coughlin (Sen. Coughlin's state candidate committee) reported
6 spending approximately \$3,700 on printing and postage between November 26 and December
7 14, 2007. The disclosed disbursements include: \$491.94 for printing on November 26, 2007;
8 \$2,060.47 for printing on December 7, 2007; and \$1,230 for postage on December 14, 2007.
9 This suggests that relatively little money was spent on the NSR brochure.

10 Under the Act, a communication that expressly advocates the election or defeat of a
11 clearly identified candidate that is not authorized by a candidate, an authorized committee of a
12 candidate or its agents, must clearly state the name and permanent street address, telephone
13 number or World Wide Web address of the person who paid for the communication, and state
14 that the communication is not authorized by any candidate or candidate's committee.¹ 2 U.S.C.
15 § 441d(a)(3). In relevant part, Section 441d(c) requires that the disclaimer be of sufficient type
16 size to be clearly readable and be contained in a printed box set apart from the other contents of
17 the communication.

¹ "Expressly advocating" means any communication that: (a) Uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!"; or (b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because – (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action. 11 C.F.R. § 100.22.

1 The disclaimer requirement in Section 441d applies to any person making a “public
2 communication.” 11 C.F.R. § 110.11(a)(2). One form of “public communication” is a mass
3 mailing, which means a mailing of 500 pieces of mail matter of an identical or substantially
4 similar nature within any 30 day period. 11 C.F.R. §§ 100.26 and 100.27.

5 Furthermore, a person must file a statement containing certain disclosures with the
6 Commission if they make “independent expenditures” in excess of \$250 during a calendar year,
7 that is, expenditures expressly advocating the election or defeat of a clearly identified candidate
8 and not made in concert or cooperation with or at the request or suggestion of a candidate, the
9 candidate’s authorized political committee, or their agents, or a political party committee or its
10 agents. *See* 2 U.S.C. § 434(c)(1); 11 C.F.R. § 109.10.

11 While we could not reach agreement as to whether this brochure expressly advocates the
12 defeat of Hillary Clinton, due to the small amount potentially in violation we agreed to dismiss
13 the matter. The committee reported to the Ohio Secretary of State spending over \$3,700 on
14 printing and postage between November 26 and December 14, 2007. This nominal amount may
15 have been spent on other mailers, not solely the mailer at issue here. Although we do not know
16 the exact amount spent for these mailers, we know the total cost is not likely to have exceeded
17 \$3,700.

18 Given the relatively small amount potentially in violation, we do not believe that further
19 use of the Commission’s limited resources is warranted in this matter. Accordingly, we voted to
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1 dismiss this matter in an exercise of our prosecutorial discretion. *See Heckler v. Chaney*, 470
2 U.S. 821, 831 (1985).

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5 4/14/09.
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7 Date

Steven T. Walther
Steven T. Walther
Chairman

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11 4/14/09
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13 Date

Matthew S. Petersen
Matthew S. Petersen
Vice Chairman

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16
17 4/14/09
18
19 Date

Cynthia L. Bauerly
Cynthia L. Bauerly
Commissioner

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21
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23 4/14/09
24
25 Date

Carole C. Hunter
Caroline C. Hunter
Commissioner

26
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29 4/14/09
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31 Date

Donald F. McGahn, II
Donald F. McGahn, II
Commissioner

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34
35 4/14/09
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37 Date

Ellen L. Weintraub
Ellen L. Weintraub
Commissioner

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