

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 6096

SENSITIVE

Americans for Limited Government)

Research Foundation,)

Americans for Limited Government, Inc.,)

and Howard Rich, Chairman of Americans)

for Limited Government)

)

STATEMENT OF REASONS OF
CHAIRMAN STEVEN T. WALTHER,
COMMISSIONER CYNTHIA L. BAUERLY, AND
COMMISSIONER ELLEN L. WEINTRAUB

On April 21, 2009, the Commission closed the file in this matter after failing to approve a recommendation to dismiss this complaint against Americans for Limited Government Research Foundation, Americans for Limited Government, Inc., and Howard Rich, Chairman of Americans for Limited Government (collectively "Respondents"). The complaint alleged that the Respondents obtained names and addresses from the Commission's disclosure reports, in an alleged violation of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a). Because we believed the complaint's allegations and accompanying exhibit raised important questions about whether the Respondents improperly used disclosed contributor information, we supported a motion to find reason to believe that Americans for Limited Government Research Foundation, Americans for Limited Government, Inc., and Howard Rich, Chairman of Americans for Limited Government violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a) in order to open an investigation to ascertain whether the law was violated. That motion failed 3-3.¹

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* ("the Act") requires the Commission to make public reports filed within 48 hours of receipt and prohibits any person from using or selling the information contained in the reports "for the purpose of soliciting contributions or for commercial purposes." 2 U.S.C. § 438(a)(4). Congress limited the use of contributor information to discourage harassment and protect individuals' privacy. Congress was concerned that reporting requirements could "open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment. . . ." and the purpose of the sale and use restriction was to "protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party." 117 Cong. Rec. 30057 (1971) (statement of Senator Bellmon). In Advisory Opinion 2003-24, the National Center for Tobacco-Free Kids asked, among other requests, whether it could use reported contributor information to send educational information about issues, policies, legislation, or issue advocacy. In light of the legislative history, the Commission read the statute as a broad protection of contributors' privacy and determined that the proposed

¹ Chairman Walther, Commissioners Bauerly and Weintraub voted in favor of the motion; Vice Chairman Petersen, Commissioners Hunter and McGahn voted against the motion.

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communications could be "repetitive and intrusive," and that the communications would "fall within the realm of 'harassment'" that was antithetical to the purpose of 2 U.S.C. § 438(a)(4).

The Act requires that the Commission find "reason to believe that a person has committed, or is about to commit, a violation" of the Act as a predicate to opening an investigation into the alleged violation. 2 U.S.C. § 437g(a)(2). "Reason to believe" is a threshold determination that by itself does not establish that the law has been violated. In fact, "reason to believe" determinations indicate only that the Commission found sufficient legal justification to open an investigation to determine whether there is probable cause that a violation of the Act has occurred.² Rather than finding reason to believe, the Commission may vote to dismiss matters at the initial stages of an enforcement matter "due to factors such as the small amount or significance of the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an investigation."³

The complainant here alleged that the Respondents obtained the names and addresses of donors to the Democratic Senatorial Campaign Committee from disclosure reports filed with the Commission in order to send harassing letters to contributors. The letter states that its author, Respondent Howard Rich has been subjected to "attacks, slurs and threats" for his support of particular organizations. See Attachment A. The letter then states that, as a donor to a "new left-wing organization," the Complainant/recipient's "name has been put in our database. We are monitoring all *reports* of a wide variety of leftist organizations. As your name appears in subsequent *reports*, it is our intent to publicize your involvement in your local community." *Id* (emphasis added).

If the proposal of the National Center for Tobacco-Free Kids to send educational materials to contributors violated Section 438(a)(4), then surely sending this type of harassing letter does. "If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought -- not free thought for those who agree with us but freedom for the thought that we hate." See *United States v. Schwimmer*, 279 U.S. 244, 254-55 (1929) (J. Holmes, dissenting). See also *NAACP v. Alabama*, 357 U.S. 449 (1958); *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87 (1982). A political contributor should be able to contribute freely to organizations and causes without fear of threats, harassment or reprisal. As the Commission emphasized in Advisory Opinion 2003-24, the prohibition on the use of contributor information was intended to protect donors against such harassment.

Respondents state that the Commission should find no reason to believe they violated the Act because the "names and addresses were gathered from publicly available sources, including the Internet. None of the names and addresses to whom the letter was sent were[sic] gathered from any FEC reports or from reports filed with the FEC by the DSCC." Response at 2.

² See 72 Fed. Reg. 12545, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (March 16, 2007).

³ 72 Fed. Reg. at 12546; see also *Heckler v. Chaney*, 470 U.S. 821 (1985).

This response that the information was "gathered from publicly available sources, including the Internet," does not fully answer the complaint. The Internet contains many sites where information disclosed in reports filed with the Commission is made available to the public, including the Commission's own website at www.fec.gov. The response does not clearly and unequivocally deny that the information originated from an FEC report. Additionally, our own Internet searches did not reveal any public source that included the complainant's name and address other than sites that compile information obtained from reports filed with the Commission.

In light of the troubling nature of the letter sent to political contributors, the purpose of the ban on using disclosed information, the unsatisfactory response, and the inability to ascertain the source of the Respondent's information, we do not believe this matter should be dismissed at the outset. We might have dismissed the matter at this early stage had the Respondents explained clearly where the information was obtained on the Internet, as long as that source did not derive from reports filed with the Commission. Based on the foregoing, we believe that a limited investigation was warranted to ensure that information reported to the Commission was not used to intimidate or harass.

5/21/09
Date

Steven T. Walther
Steven T. Walther
Chairman

5/22/09
Date

Cynthia L. Bauerly by ^{K6}
Cynthia L. Bauerly
Commissioner

5/26/09
Date

Ellen L. Weintraub
Ellen L. Weintraub
Commissioner

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ATTACHMENT A



**AMERICANS FOR
LIMITED GOVERNMENT
FOUNDATION**

WWW.GETLIBERTY.ORG

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Suite 305
Lorton, VA 22031
Phone: 703.383.0890
Fax: 703.383.5288
info@getliberty.org

Mr. James Ross
770 Park Ave.
New York, NY 10021

Dear Mr. Ross,

Recently a new left-wing organization announced that it would be targeting donors to conservative, free-market organizations. The major press announcement stated that the organization intended to engage in such activities as "public exposure," having "watchdog groups digging through the lives" of these individuals, and "possible legal trouble."

As someone who has been put through that abuse over the years, I can tell you from first-hand experience that it is not fun and not something to take lightly. I have supported groups and efforts that I believe will push back against the radical agenda of the Left. And, I have paid the price for it, in attacks, slurs and threats.

As a donor to one or more of these organizations and efforts, you have been able to engage in these activities without notice, operating in relative obscurity. I am writing to inform you that this will no longer be the case.

Your name has been put in our database. We are monitoring all reports of a wide variety of leftist organizations. As your name appears in subsequent reports, it is our intent to publicize your involvement in your local community. Should any of these organizations be found to be engaged in illegal or questionable activity, it is our intent to publicize your involvement with those activities. You should know that instances of coordinated voter fraud are surfacing all across America and investigations into possible criminal coordination are underway.

For your review, I have enclosed a memorandum from our legal counsel.

Sincerely,

Howard Rich
Chairman

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GEORGE D. WEBSTER (1921 - 1984)
CHARLES E. CHAMBERLAIN (1917 - 2001)

OF COUNSEL
J. COLEMAN BEAN
KEITH MASTERSON BROWN

*NOT ADMITTED TO D.C. BAR

MEMORANDUM

TO: Howard Rich, Chairman
Bill Wilson, President
Americans for Limited Government

FROM: Frank M. Northam

DATE: September 22, 2008

RE: Heightening Awareness of Political Activity

COPY

The federal election laws require the reporting and disclosure of the identities of contributors to political candidates, political parties and politically active organizations that are subject to regulation by the Federal Election Commission. In addition, publicly available reports to the Federal Election Commission contain the names of individuals and organizations that provide services or other support to PAC's and advocacy groups. Section 527 organizations file publicly available reports with the Internal Revenue Service that disclose the identities of all of the contributors to those 527 organizations.

The mandated public disclosure of this information is intended to provide the public with valuable assistance in exercising the right to vote and, as the Supreme Court has acknowledged, is "fundamental to the political process."

Because information concerning political contributors and activities is fundamental, the public may freely discuss and comment upon those individuals and organizations that engage in political activity. The "transparency" sought to be achieved by disclosure, is intended to encourage open discussion and debate concerning politicians and issues, as well as the proponents and opponents on each side. The intended result will be an "informed electorate."

Undisclosed Political Activity

Despite the mandatory disclosure rules, there are many 527 groups and nonprofit organizations that engage in fundraising and political activity without filing reports with the Federal Election Commission or the Internal Revenue Service. In fact, in recent years, the Federal Election Commission has been recovering record amounts of fines and civil penalties in large part due to 527's and nonprofits that violated the law by collecting and expending millions

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of dollars that should have been fully disclosed. In many of those cases, the FEC investigations that led to the imposition of fines and penalties were instigated by complaints filed by nongovernmental watchdogs.

The federal election laws expressly anticipate active citizen oversight of the Federal Election Commission and its enforcement role and encourage citizens to monitor political activities and to make their own reports/complaints to the FEC. Any citizen may file a complaint with the FEC, alerting the Commission to alleged violations of the election laws, and the FEC must take some action on the complaint.

Although the Federal Election Commission may initiate investigations and compliance proceedings on its own, the Commission is also reliant on nongovernmental individuals and entities to alert the Commission to election law violations.

Individuals and groups, engaging in political activity that is not reported or disclosed to the FEC or IRS, may be discussed and commented upon just as much as those individuals and entities that do file reports and make disclosures. If the non-reporting individuals or groups do violate the election laws, they can be subject to severe monetary penalties, as well as other sanctions.

Election Law Violations

In the 2004 election cycle, there were several 527 organizations and other nonprofits that collected substantial sums of money, in violation of the federal contribution limits, by advising contributors that the monies being solicited were not subject to FEC regulation. In actuality, as later determined by the FEC, those monies were subject to regulation and exceeded contribution and expenditure limitations.

The FEC exacted substantial monetary penalties in resolving the investigations of those entities and imposed severe restrictions on their continued existence and operations. During the investigations, the FEC also utilized its extensive law enforcement authority to delve into the files and bank account records of individuals who had made contributions to the groups that were under investigation.

The FEC has broad investigative authority, including subpoena power which permits the Commission to subpoena records from virtually any person who actively contributes to or participates in an organization or group under investigation. The FEC may also force people to provide depositions and testimony under oath.

Both civil and criminal penalties may be pursued for violation of the election laws. Civil penalties in the amount of \$5,000.00 or more per violation may be sought by the Commission; if the amount of money involved in a violation exceeds \$5,000.00, then the Commission may seek that greater amount. The Commission may also seek injunctive relief imposing restrictions on a person's future political activity.

By their nature, many FEC investigations and enforcement proceedings drag on for years and the individuals involved in the matter being investigated will be subject to having to respond to inquiries and requests for records throughout the investigation.

Both governmental enforcement of election laws and the exposure of illegal political activity by civic-minded individuals serve to promote informed public opinion and to prevent misuses of the political process and abuses of the laws governing political activity.