



**Federal Election Commission
Washington, DC 20463**

June 17, 2013

John Flynn, VP and General Counsel
Americans For Prosperity
2111 Wilson Boulevard, Suite 350
Arlington, VA 22201

Re: ADR 630 (P-MUR 548
Americans for Prosperity

Dear Mr. Flynn:

Enclosed is the signed copy of the agreement resolving the *sua spontae* submission filed October 1, 2012 with the Federal Election Commission (FEC/Commission) by Americans for Prosperity (Respondent). The agreement for ADR 630 (P-MUR 548) was approved by the Commission on June 12, 2013 – the effective date of the agreement.

Note the specific time frame for compliance in paragraph 7 of the agreement. Please forward to this office, a statement confirming Respondent's compliance with the term designated in paragraph 7 of the aforementioned agreement. The letter should note the date on which Respondents complied with the settlement term, and contain the ADR caption and case number

As you are aware, the settlement agreement will be made part of the record that is released to the public. The Commission will also place on the record copies of the *sua spontae* submission correspondence exchanged between your office and this office prior to our entry into settlement negotiations and reports prepared for the Commission by this office to assist in its consideration of this matter. The Commission is obliged by Federal statute to place on the public record documents in closed enforcement and alternative dispute resolution cases; accordingly, copies of documents relative to this matter will be forwarded shortly to the FEC's Public Information Office.

13190293296

This agreement resolves the issues involved in the *sua sponte* submission. I appreciate your assistance in effectively resolving this matter and bringing the case to a mutually acceptable conclusion.

Sincerely,

Lynn M. Fraser, Director
Alternative Dispute Resolution Office
202-694-1665

Enclosure: Agreement

13190293297



Federal Election Commission
Washington, DC 20463

Case Number: ADR 630
Source: P-MUR 548
Case Name: Americans for Prosperity

NEGOTIATED SETTLEMENT

This matter was initiated by *sua sponte* submission. Following review of the matter, and in an effort to promote compliance with the Federal Election Campaign Act of 1971, as amended, (FECA) and resolve this matter, the Federal Election Commission (Commission) entered into negotiations with John Flynn, Vice President and General Counsel, representing Americans for Prosperity (Respondent). It is understood that this agreement will have no precedential value relative to any other matters coming before the Commission.

Negotiations between the Commission and Respondent addressed the issues raised in this submission. The parties agree to resolve the matter according to the following terms:

1. The Commission entered into this agreement as part of its responsibility for administering the FECA, and in an effort to promote compliance on the part of Respondent. The Commission's use of alternative dispute resolution procedures (ADR) is guided by "The Administrative Dispute Resolution Act of 1996," 5 U.S.C. § 572 and is an extension of 2 U.S.C. § 437g.
2. Respondent voluntarily enter into this agreement with the Commission.
3. In its *sua sponte* submission, Respondent stated that it sponsored a radio advertisement satisfying the statutory definition of an electioneering communication. The ad began airing on September 27, 2012 on Pennsylvania radio stations in Harrisburg, Philadelphia, and Reading, and was scheduled to run through October 1, 2012 at a total cost of \$9,990. Due to inadvertent oversight by Respondent, the ad contained an incomplete disclaimer in that it did not state that the ad was not authorized by any candidate or candidate's committee, and that Respondent was responsible for the content of this advertising. Respondent corrected the disclaimer as soon as it realized the error on September 28, 2012.
4. If the communication, including any solicitation, is not authorized by a candidate, authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee. 11 C.F.R. §110.11(b)(3).
5. In addition to the general requirements of 11 C.F.R. § 110.11, a communication not authorized by a candidate or a candidate's authorized committee that is transmitted through radio or television or through any broadcast, cable, or satellite transmission, must include the following audio statement, "XXX is responsible for the content of this advertising," spoken clearly, with

13190293298

the blank to be filled in with the name of the political committee or other person paying for the communication, and the name of the connected organization, if any, of the payor unless the name of the connected organization is already provided in the "XXX is responsible" statement. 11 C.F.R. §110.11 (c)(4)(i).

6. Respondent contends it filed eight FEC Form 9 reports (24 Hour Notice of Disbursements/Obligations for Electioneering Communications) and eleven Form 5 reports (Report of Independent Expenditures Made and Contributions Received) during the 2012 election cycle. Even though this appears to be the only advertisement with an incomplete disclaimer, Respondent asserts it immediately implemented measures to ensure compliance such as having two attorneys review each ad whenever it clearly identifies a Federal candidate, and having the marketing department staff responsible for broadcast ads flag the advertisement for the attorneys' specific review.
7. Respondent, in an effort to avoid similar errors in the future, agrees to send a representative to a FEC reporting seminar within twelve (12) months of the effective date of this agreement.
8. Respondent agrees that all information provided to resolve this matter is true and accurate to the best of their knowledge and that they sign this agreement under penalty of perjury pursuant to 28 U.S.C. § 1746.
9. The parties agree that if Respondent fails to comply with the terms of this settlement, the Commission may undertake civil action in the U.S. District Court for the District of Columbia to secure compliance.
10. This agreement shall become effective on the date signed by all parties and approved by the Commission. Respondent shall comply with the terms of this agreement as set out in paragraph 7 above, and shall certify compliance with the above settlement terms in writing to the Alternative Dispute Resolution Office on or before the date each term becomes due.
11. This Negotiated Settlement constitutes the entire agreement between the parties on ADR 630 (P-MUR 548), and resolves those issues identified in paragraph 3 above. No other statement, promise or agreement, either written or oral, made by either party, not included herein, shall be enforceable.

FOR THE COMMISSION:

Lynn M. Fraser, Director
Alternative Dispute Resolution Office



6/12/2013
Date Signed

FOR THE RESPONDENT:

John Lynn, Vice President and General Counsel



5/30/2013
Date Signed

13190293299