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December 6, 2013

BY HAND DELIVERY

Mr. Jeff S. Jordan
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RECEIVED
FEDERAL ELECTION
COMMISSION
2013 DEC -9 AM 11:10
OFFICE OF GENERAL
COUNSEL

Re: Federal Election Commission RR 13L-43

Dear Mr. Jordan:

We write on behalf of our clients Campaign for Working Families ("Committee") and Dorie Velezis, Treasurer, in her official capacity, in response to the Reports Analysis Division ("RAD") referral to the Office of General Counsel ("OGC") in the above-captioned matter.

As discussed below, the late reporting of the three independent expenditures at issue was the result of inadvertent technical or administrative errors. The facts related to what was reported related to these three expenditures, however, demonstrates that any resulting harm to public disclosure was slight.

The issues involved in this matter are discrete and relatively minor, and should not require significant diversion of resources by either the Commission or the Committee.¹ In light of the complete absence of any intent to violate the Commission's rules, and the lack of harm to

¹ The Committee notes that pending legislation would put common independent expenditure reporting issues, such as the ones involved in this referral, within the scope of the Commission's Administrative Fine Program. H.R. 3487, 113th Cong. (2013). This shows the desire of Congress to provide filers under identical circumstances as the Committee with an "inexpensive and efficient alternative to full investigations and enforcement proceedings to resolve very minor filing violations." See Ex. 1, 159 Cong. Rec. H7163 (statement of Rep. Miller on introduction of H.R. 3487).

1419029461

Mr. Jeff S. Jordan
December 6, 2013
Page 2

public disclosure, the Commission should exercise its discretion and dismiss this referral with no further action.

I. October 17 Radio Advertisement

On October 17, 2012, the Committee publicly disseminated a radio advertisement in support of Todd Akin for the 2012 general election. The advertisement involved a \$2,825 payment for production costs and a \$121,212.17 payment for the airtime buy.

A 48-hour independent expenditure report for the two expenses was due on October 19, 11 CFR 104.4(b)(2). The Committee's Treasurer believes that she prepared an independent expenditure report and attempted to file the report by that deadline. She believed at the time that the report had been properly filed. However, due to either a technical error in the Committee's FECFile software,² or an inadvertent error by the Committee, the 48-hour report was not filed.

Drawing from the 48-hour independent expenditure report entry recorded in the Committee's FECFile software database, the two expenditures were properly disclosed on the Committee's 12-day Pre-General Report filed on October 25, 2012. *See* Exh. 2, pp. 2, 5. At that time, the Committee was still under the impression that the 48-hour report had been properly filed, and the details on the expenditures were automatically included in the 12-day Pre-General Report because the Treasurer had previously entered them into FECFile when attempting to submit the 48-hour report.

Because the Committee's 12-day Pre-General Report was filed shortly after the radio advertisement was disseminated—on October 25, 2012—the two expenditures were disclosed to the FEC and the public only six days after the 48-hour independent expenditure report for that advertisement was due. In addition, the disclosure of the two general election expenditures to the FEC and public on the Pre-General Report occurred twelve days prior to the general election. For these reasons, the practical effect that this reporting error had on public disclosure was very minimal.

II. October 29 Postcard

On October 29, 2012, the Committee publicly disseminated a postcard mailer in support of Representative Steve King. A 24-hour independent expenditure report for the expenses related to the postcard was due on October 30. 11 CFR 104.4(c). The Committee filed a 24-

² The Committee had contacted the FECFile technical support staff earlier in 2012 related to a corrupted FECFile database, and these issues persisted through 2012. The Committee suspects that this technical issue may have contributed to the draft report not being filed, but cannot confirm that this is the case.

14190294462

Mr. Jeff S. Jordan
December 6, 2013
Page 3

hour independent expenditure report for the postcard on October 29, one day early, disclosing expenditures for the purchase of a mailing list for the postcard, consulting services for the mailer, and postcard production /postage costs.

In early December 2012, when the Committee was preparing to file its 30-Day Post-General Election Report, the Committee realized that it had inadvertently not included on its 24-hour report for the postcard an additional \$27,500 expenditure for postcard production costs. Upon discovering this inadvertent clerical error, the Committee immediately filed an amended 24-hour independent expenditure report on December 6, 2012, disclosing the additional production costs expenditure alongside the previously disclosed postcard expenditures. *See* Exh. 3, p. 3. In addition, the Committee included all expenses related to the October 29 independent expenditure on the Committee's 30-Day Post-General Report filed on December 6, 2012. *See* Exh. 4, p. 6.

Similar to the radio advertisement expenditures, the impact on public disclosure for the postcard was reduced by what *was* disclosed. The Committee's 24-hour independent expenditure report filed on October 29 provided the FEC and the public with timely notice of the Committee's involvement with the postcard supporting Representative King. Though one expense was not included on that report, the public was made aware of the type of independent expenditure activity engaged in by the Committee in that election.

The result here is somewhat analogous to the Commission's advice to committees on how to handle vendor costs for an independent expenditure that are not fully known at the time of dissemination—committees are instructed to report estimated costs as placeholders so that the public will be alerted to the activity in a timely manner, even if the exact costs are not reported. *See* RAD FAQ for Political Action Committees, available at <http://www.fec.gov/rad/pacs/FederalElectionCommission-RAD-PACs.shtml#ie10>. Here, the public received timely notification of the Committee's general involvement with the postcard in support of Rep. King, even though the full production costs associated with the postcard were inadvertently disclosed 37 days late. Therefore, as with the radio ad expenditures, the practical effect that this reporting error had on public disclosure was very minimal.

* * *

In response to the Commission's May 3, 2013, Request for Additional Information letters, the Committee acknowledged that it inadvertently did not complete the filing of its draft independent expenditure report for the October 17 radio advertisements by the 48-hour deadline, and that it did not timely disclose one of the production expenses for its October 29 postcard on its 24-hour independent expenditure report filed that same day. However, the Commission should consider the very minor impact on public disclosure caused by these two errors, as

14190294463

Mr. Jeff S. Jordan
December 6, 2013
Page 4

detailed above, and exercise is discretion to dismiss the referral of these claims without further action.³

Respectfully submitted,



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Enclosures

³ The Committee makes significant efforts to comply with the relevant disclosure rules and desires to continue to do so in the future. If the Commission does not choose to dismiss this referral, the lack of disputed facts makes this a matter well suited for resolution by the Office of Alternative Dispute Resolution.

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