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January 4, 2001

Lois G. Lerner, Esq.  
Acting General Counsel  
Federal Election Commission  
999 E Street, NW - 6th Floor  
Washington, DC 20463

Re: MUR 5158

Dear Ms. Lerner:

This letter is the response of Robb for U.S. Senate and J. Howard Middleton, as Treasurer (together, "Respondents"), to the complaint in MUR 5158. The complaint is meritless and should be dismissed.

**INTRODUCTION**

The American Conservative Union asserts that Handgun Control, Inc. and its separate segregated fund (collectively, "Handgun Control") made a series of expenditures that violated the Federal Election Campaign Act, as amended, 2 U.S.C. § 431 *et seq.* However, the complaint fails to set forth anything that Respondents did to violate the Act. The only basis for Respondents' continued presence in this matter is the complaint's contention that they passively benefited from the alleged expenditures. For this reason alone, the Commission should dismiss Respondents from the complaint.

**DISCUSSION**

**A. Handgun Control's Own Internet Communications Do Not Represent Violations of the Act by the Robb Campaign.**

Robb for U.S. Senate is the principal campaign committee of Chuck Robb, Virginia's Democratic candidate for Senate in 2000. The Republican candidate was George Allen.

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The complaint asserts that Handgun Control, by posting a web site that expressly advocated Allen's defeat, made illegal in-kind contributions to the Robb campaign. See Compl. at 15-18. Yet only "expenditures that are coordinated with a candidate or campaign are considered in-kind contributions." See General Public Political Communications Coordinated With Candidates and Party Committees, 65 Fed. Reg. 76,138 (2000) (citing Buckley v. Valeo, 424 U.S. 1, 46-47 (1976) and FEC v. Christian Coalition, 52 F. Supp. 2d 45, 85 (D.D.C. 1999)). Because the complaint comes nowhere near alleging coordination between Handgun Control and the Robb campaign, there is no reason to believe that Respondents violated the Act.

Ever since the passage of the Act, Congress and the courts have distinguished between those expenditures that are "authorized or requested" by a campaign, which are treated as in-kind contributions; and those that are not, which are treated as independent expenditures. Buckley, 424 U.S. at 46 n.53. The exact nature of this distinction was an open question at the time of this complaint. As the Commission recently wrote: "The statutory terms are not inherently clear, nor does the Act's legislative history provide much guidance." 65 Fed. Reg. at 76,141. New rules that are not yet effective "will fill what is largely a vacuum in this area." Id.

The absence of a clear standard has made the Commission reluctant to take action in other matters that involved far more money and public attention than this one. See, e.g., MURs 4553, 4671, 4713, 4407 and 4544. As the Commission stated in another context, "absent controlling regulations or the authoritative interpretations of the courts, the Commission's enforcement standard [must] be the natural dictate of the language of the statute itself." Statement of Reasons of Commissioners Darryl R. Wold, Lee Ann Elliott, David M. Mason and Karl J. Sandstrom on the Audits of Dole for President Committee, Inc., et al., at 3 (June 24, 1999).

The most authoritative interpretation that existed at the time of this complaint was Christian Coalition. There, the court held that one must ask whether the spending was "made at the request or the suggestion of the candidate or an authorized agent." Id. at 91. If so, then it may be attributed to the campaign. If not, the spending may only be attributed to the campaign when "the candidate or her agents can exercise control over" it, or when "there has been substantial discussion or negotiation between the campaign and the spender over a communication's: (1) contents; (2) timing; (3) location, mode or intended audience . . . ; or (4) volume' . . . ." Id. at 92. The

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Commission's new rules "generally follow" the Christian Coalition standard. 65 Fed. Reg. at 76,138.

Even if the Commission was inclined to seek enforcement against events that occurred when there was a "vacuum" in the law, 65 Fed. Reg. at 76,141, it would find no violation. There was no coordination between the Robb campaign and Handgun Control regarding the communications in question. Indeed, the meager facts offered by the complaint come nowhere near satisfying the Christian Coalition standard. The only facts offered to establish coordination are that Handgun Control endorsed Robb, and that the SSF contributed to his campaign. See Compl. at 6. Neither of these facts suggests that the communications were made at Respondents' request or suggestion, or that there was any discussion at all between Respondents and Handgun Control about them.

Under the logic of this complaint, the Commission would devote its limited resources into a full-scale investigation every time an organization that has endorsed or contributed to a candidate chooses to engage in independent activities in that candidate's support. The Commission has sensibly avoided such action in the past. See, e.g., MUR 4116 (involving a similar complaint filed against Respondents in 1994 by the American Conservative Union). It should do the same here and dismiss the complaint.<sup>1</sup>

**B. Respondents Did Not Violate the Act When James and Sarah Brady Endorsed Chuck Robb.**

Finally, the complaint alleges that Respondents violated the Act by accepting an endorsement from James and Sarah Brady, the former White House press secretary and his wife. The Bradys are well known for their personal advocacy against handgun violence, with Mr. Brady having been wounded in a 1981 assassination attempt against President Reagan.

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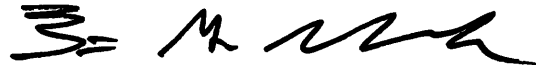
<sup>1</sup> The complaint also raises serious concerns by specifically seeking to restrict Handgun Control's Internet communications, a subject that the Commission has yet to address specifically through regulation See Use of the Internet for Campaign Activity, 64 Fed Reg. 60,360 (1999) Indeed, the Commission has questioned "whether campaign activity conducted on the Internet should be subject to the Act and the Commission's regulations at all " Id. at 60,361

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The complaint simply fails to present any violation of the Act. It depicts an event sponsored and publicized by the Robb campaign, which the Bradys attended. It shows that the event occurred at a county courthouse, see Compl. Exhibits 39-40, where the podium and other necessary equipment were made available to the public free of charge. The complaint itself suggests that there were no travel expenses for Mr. and Mrs. Brady. The complaint contends that the event was held in the Washington, D.C. area, where Mrs. Brady is said to work full time, and where Handgun Control maintains its offices. See Compl. Exhibits 1, 39-40.

For the foregoing reasons, Respondents respectfully request that the Commission dismiss the complaint.

Very truly yours,



Brian G. Svoboda  
Counsel to Respondents

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