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JUL 1 3 47 PM '97

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Complaint of

Micheline Z. Burger

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MUR 4634

**ANSWER OF FREE CONGRESS PAC
AND MRS. ROSEMARY A. SWANSON, CPA**

I. Introduction

The Federal Election Commission ("FEC") by letter dated May 12, 1997, forwarded a four-page complaint dated April 29, 1997, sworn to by one Micheline Z. Burger, 21002 Bittersweet Drive, Lenexa, Kansas 66220, otherwise unidentified ("Complainant"),¹ against Brownback for Senate, John H. Stauffer, Ruth Stauffer, Citizens United Political Victory Fund, Free Congress PAC ("FC PAC"), Conservative Victory Committee, American Free Enterprise PAC, Faith, Family & Freedom PAC, The Eagle Forum and The Madison Project.

FC PAC is a qualified political action committee, as such permitted lawfully to contribute not to exceed \$5,000.00 to a candidacy.

¹ In fact, Complainant is a member of the Kansas Bar, listed in 8 *Martindale Hubbell Law Directory* (1997), at KS22P, as a sole practitioner, 302 East Park Street, Olathe, Kansas. It is unclear why Complainant hides her professional identity. But see footnote 3, *infra*.

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The Affidavit of Mrs. Rosemary A. Swanson, CPA, Treasurer, FC PAC, attached, who is named individually as a Respondent, sets forth fully (1) the facts as known to FC PAC and to Mrs. Swanson and (2) the limits of pertinent FC PAC activity. The facts need not be recounted fully in this Answer.

Complainant implicitly, if perhaps not explicitly, alleges a conspiracy between the Respondents Complainant enumerates, by which Mr. and Mrs. John H. Stauffer allegedly contributed to the Brownback for Senate [Committee] ("Brownback Campaign") for the 1996 Kansas Republican senatorial primary Stauffer monies in excess of their lawful maximum allowable contribution.

While it does not appear there was any such conspiracy or plan, it is clear that, were there, FC PAC was not a party and has made no unlawful contribution.

This Answer addresses only the activity of FC PAC, for lack of knowledge as well as lack of relevance.

II. Issues

The issues are the following.

1. Whether FC PAC made an unlawful contribution to the Brownback Campaign?

FC PAC contributed \$4,500.00 in cash, within the \$5,000.00 statutory limitation, CFR §110(b)(1), and also reported an in-kind contribution of \$170.93, the total also within the \$5,000.00 limitation. Swanson Affidavit, ¶8.

2. Whether FC PAC conspired with others to make such an unlawful contribution?²

FC PAC had neither connection with, nor knowledge of, the activities, as alleged by Complainant or otherwise, of the other Respondents in MUR 4634. *Ibid*, ¶¶4-5, 9. FC PAC did not solicit contributions for FC PAC. *Ibid*, ¶¶2-3. FC PAC had no reason to anticipate that any person would contribute to FC PAC but rather was hopeful that some addressees of an endorsement letter which FC PAC wrote would contribute directly to the Brownback Campaign, as specifically requested in that letter. *Ibid*, ¶13. As occasionally happens, when a PAC endorses a candidate and requests a contribution to that candidate, someone will contribute not to the candidate, as requested, but to the endorsing PAC. As also is not uncommon, were that to happen, FC PAC would have contributed not to exceed its lawful limit to the Brownback Campaign. *Ibid*, ¶13.

It is clear FC PAC conspired with nobody to make a contribution, lawful or unlawful, and that, further, FC PAC had no knowledge of the identity, much less the activity, if any, of the Stauffers.

3. Whether FC PAC accepted an unlawful contribution from Mr. and/or Mrs. John H. Stauffer?

² Or to make *any* contribution.

Complainant inaccurately and irrelevantly alleges that a contribution is "earmarked"

. . .whether direct or indirect, express or implied, oral or written [if it] results in all or any part of the contribution or expenditure being made to, or expended on behalf of, . . .a candidate's authorized committee.

11 CFR§110.6(b).

Complainant doctors the language of §110.6(b), omitting the lead, which is a condition precedent:

. . .*earmarked* means a **designation, instruction, or encumbrance**, whether direct or indirect, express or implied, oral or written [if it] results in all or any part of the contribution or expenditure being made to, or expended on behalf of, . . .a candidate's authorized committee.

[Italics in CFR; bold supplied.]

Thus, there must be a "designation, instruction, or encumbrance" before the balance of the definition is applicable.³

There was none. *Ibid*, ¶¶6, 9, 12.

³ Complainant is an attorney. Her material omission is disingenuous. It also is an ethical breach. FEC should refer Complainant's linguistic doctoring to the Kansas State Bar, for appropriate attention.

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§110.6(b) is inapplicable to FC PAC because the contribution was not earmarked as to FC PAC and there is no proscription against FC PAC's contributing not to exceed \$5,000.00 to the Brownback Campaign.⁴

A donee PAC realistically has no effective means to verify what other contributions its donor has made, to whom or when.

Without suggesting that either Stauffer contribution to FC PAC were unlawful, one notes that it is possible for a contributor to violate law in making a contribution while a donee violates no law in accepting the contribution.⁵

Complainant accurately but irrelevantly invokes 11 CFR §110.1(h), a proscription which presupposes, as Complainant impliedly acknowledges, "that knowledge is present. . ." In the instant case, FC PAC had no such knowledge.⁶

⁴ If Complainant's doctored quoted words of §110.6(b) were applied literally, the regulation would be invalid, as a prior restraint, because it would require FC PAC, before making an otherwise lawful contribution to attempt to identify in detail more than is required by statute or regulation about each contributor to the PAC and then to trace the contribution activity of that contributor over what could be a period of years -- in the case of a Senator seeking full-term reelection, up to six years. Further, there is a lag between the making of a contribution and availability at the FEC of the record of that contribution (notwithstanding a reasonably efficient FEC recordation process). No wonder §110.6(b) requires a condition precedent.

⁵ The classic example is the applicability of the \$25,000.00 limitation, 11 CFR §110.5(b). Neither a PAC nor a campaign committee has a duty, were it possible, to attempt to ascertain whether an individual donor has exceeded his individual \$25,000.00 annual limitation.

⁶ Although FC PAC does not attempt to argue the Stauffers' case for them, it is worth noting that (1) the Stauffers presumably could not know that FC PAC would donate were FC PAC to receive funds during the window of opportunity or (2) that the Stauffer funds would be the first \$5,000.00 received by FC PAC.

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Assuming *arguendo* the hypothesis of a conspiracy, there is no authority for the proposition that FC PAC somehow should have known other activities of Mr. John H. Stauffer, Mrs. John H. Stauffer and/or the other named Respondents.

III. Argument

In view of the facts applicable to FC PAC little formal argument is required.

Much of Complainant's argument is speculation about which FC PAC has no knowledge. Other portions of the argument are clearly erroneous speculation. Thus, at [unnumbered] page 4, Complainant argues, attempting to transmogrify coincidence into coordination, that

. . .the PAC's [sic], the Stauffers and Senator Brownback have attempted to argue that the contributions. . .were not coordinated and that the Stauffer contributions were not earmarked. . .

Having no prior knowledge of the facts Complainant alleges, FC PAC has made no such argument. However, in fact, there was neither coordination nor earmarking as to FC PAC and "the Stauffers [could not have] contributed money [to FC PAC] with the knowledge that a substantial portion would be contributed to the Brownback Campaign. . ." because the Stauffers could not have known (1) what FC PAC intended to do with their money and (2) what other contributions to FC PAC may have preceded theirs, triggering the first-in/first-out rule.

IV. Conclusion

It makes no difference what the Stauffers and/or other Respondents did. FC PAC received no earmarked money. FC PAC made no unlawful contribution. No donor could have known that the donor's money would be contributed to the Brownback Campaign. FC PAC never revealed it would so contribute. FC PAC and Mrs. Rosemary A. Swanson, CPA, had no legal or moral obligation to so contribute. For all the Stauffers could know, other donations may have preempted the Stauffer contributions.

FEC forthwith should dismiss FC PAC and its Treasurer, Mrs. Swanson, as Respondents in MUR 4634.



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June 30, 1997

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Complaint of

Micheline Z. Burger

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MUR 4634

**AFFIDAVIT OF
MRS. ROSEMARY A. SWANSON, CPA**

Mrs. Rosemary A. Swanson, CPA, first sworn, deposes and says as follows:

1. I submit this Affidavit as Treasurer, Free Congress PAC ("FC PAC"), a Respondent herein.

2. Upon information and belief, in a conversation with [then] Representative Sam Brownback, the Chairman, FC PAC, volunteered to write, and wrote, on or about June 18, 1996 to individuals selected by FC PAC, endorsing the nomination of Representative Brownback as the Republican candidate for United States Senator from Kansas.

3. The letter pertinently reads:

Sam Brownback needs to win this race for the good of the nation. I have pledged to help him and I hope you will send him a generous contribution to Brownback for Senate at 4010 Franconia Road, Alexandria, Virginia 22310-2136.

If you have any friends in Kansas, don't take for granted that they understand the dynamics of this race. Let them know. You will be doing yourself and America a great favor.

4. The letter was *not* sent to either Mr. John H. Stauffer or Mrs. Ruth Stauffer. FC PAC neither had heard of, nor had knowledge of, either such person at the time.

5. FC PAC has no way of knowing whether, or how many, individuals contributed to the Brownback campaign as a consequence of, or as a partial consequence of, the FC PAC letter.

6. The two checks at issue in this MUR 4634 ("Stauffer Checks") were received by FC PAC in an envelope with a return address of Triad Management Services, Inc., 53 D Street, S.E., Washington, D.C. 20003 ("Triad"). Other than receipt of the Stauffer Checks in that envelope, FC PAC has, and has had, no dealing with Triad, and is unfamiliar with Triad.

7. The Stauffer Checks were received in the mail, deposited in the FC PAC account, receipt reported as required by law to the Federal Election Commission ("FEC").

8. Shortly after receipt of the checks FC PAC made its one and only contribution to the Brownback campaign, in the sum of \$4,500.00. FC PAC also made a contribution in kind of \$170.93 (attributing the cost of the solicitation letter).

9. At no time until on or about April 4, 1997 did FC PAC know, or have reason to know, the identity of either Stauffer or know, or have reason to know, of coordinated (or any other) activity, if any, between the Stauffers and other PACs, as alleged in the Complaint.

10. On Friday, April 4, 1997, one James Kuhnhenh, identifying himself as a newspaper reporter, telephoned FC PAC and was referred to Counsel for FC PAC.

11. Upon information and belief, Mr. Kuhnhenh twice spoke with Counsel for FC PAC. Mr. Kuhnhenh, for the first time to FC PAC, identified the Stauffers as the parents of the wife of Senator Brownback, and mentioned that they had contributed to other PACs. Counsel explained to Mr. Kuhnhenh the facts to the extent of FC PAC's knowledge, as set forth above.

12. Inasmuch as neither Stauffer Check contained a printed name, as a precaution Counsel for FC PAC enquired on April 7, 1997 of the Stauffers to be sure of the identity of the accounts against which the Stauffer Checks were written and promptly was informed by Mr. John H. Stauffer that one account is that of Mr. Stauffer and the other of Mrs. Stauffer.

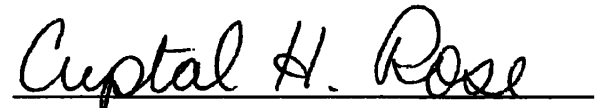
13. In view of the wording of the appeal in FC PAC's solicitation letter, FC PAC had no reason to anticipate that any person would contribute to FC PAC but was hopeful that some addressees would contribute to the Brownback campaign -- the purpose of the FC PAC letter. FC PAC itself would have contributed within its lawful limit of \$5,000.00 to the Brownback campaign were FC PAC to have received \$5,000.00 or more in contributions during the brief window of opportunity. FC PAC received the Stauffer Checks and contributed accordingly.

Further Affiant sayeth not.


ROSEMARY A. SWANSON

Commonwealth of Virginia }
 }ss
City of Falls Church }

Subscribed and sworn to before me on June 30, 1997.


Notary Public

My commission expires April 30, 2000.