

RECEIVED  
FEC MAIL  
OPERATIONS CENTER

2004 DEC 20 P 4: 37

Perkins  
Coie

607 Fourteenth Street NW  
Washington, DC 20005-2011  
PHONE 202 628 6600  
FAX 202 434 1690  
www.perkinscoie.com

December 20, 2004

**BY HAND DELIVERY**

Mr. Lawrence H. Norton  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**Re: MUR 5585**

Dear Mr. Norton:

On behalf of the Democratic Congressional Campaign Committee and James J. Bonham, as Treasurer (collectively, the "DCCC"), we write to respond to the complaint in the above-referenced matter.

The complaint alleges no specific facts that, if proven true, would present a violation by the DCCC. The DCCC was uninvolved in the communications referenced by the complaint. For these reasons, the Commission should dismiss the complaint summarily.

**I. FACTUAL DISCUSSION**

The complaint alleges violations arising from recorded telephone calls that were distributed in the fall of 2004, and that contrasted the positions of Democratic and Republican House candidates on issues, including the national sales tax. The complaint does not clearly allege how many districts received the calls. It cites undocumented "reports" to claim that such calls had been made in 39 districts, *see* Compl. ¶ 14. Elsewhere, it alleges that the calls were made with respect to "at least 28 Republican candidates for Congress." Compl. at 1. It alleges specific facts to show that the calls were made in 11 districts. *See* Compl. ¶¶ 11-12, 16; Exhibits 1, 7-10.

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2004 DEC 21 A 11:23

26044150430

December 20, 2004

Page 2

The complaint alleges facts linking the telephone calls to two commercial vendors: ITC Research and USA Public Opinion Group. See Complaint ¶¶ 11-12, 20; Exhibits 1-2, 7-8, 10. It alleges no specific facts linking the calls to anyone else.<sup>1</sup> It alleges no facts to show who paid for the calls; indeed it seems to suggest that the vendors sponsored the calls on their own and should have registered as political committees as a result. See Compl. ¶¶ 1-6. Finally, it alleges no specific facts to show any coordination between the sponsors of the call and anyone else.

The body of the complaint mentions the DCCC three times. First, the complaint broadly alleges that the DCCC conspired to make the calls, while promising more "detail" to support this allegation:

Respondent Democratic Congressional Campaign Committee ("DCCC") is a party committee registered with the Federal Election Commission. By information and belief, Petitioner believes Respondent DCCC is informed of efforts by the other listed Respondents to violate the FECA, and is conspiring with the other Respondents and other persons to cause telephone bank public communications to occur without the required disclaimer and by conspiring to avoid registration with the Commission of political committees, in order to influence the election for President and of certain Democrat [sic] candidates to the United States Congress, as described in more detail in this Complaint.

Compl. ¶ 8. The promised "detail" never comes. When the complaint next mentions the DCCC in paragraph 17, it alleges no specific facts linking the DCCC to the calls. Rather, it alleges simply that the DCCC sponsored a direct mail program on the same subject as that discussed in the calls:

Respondent DCCC has just started a direct-mail effort that is focused on attacking Republican candidates for Congress on the issue of the "National Sales Tax" plan. The timing of this direct-mail campaign, focused on many of the districts that have received the illegal telephone bank calls, raises an issue of coordination between the DCCC and the producers of the illegal telephone bank communications. In support of this statement, attached to this Complaint as "Exhibit 3" is a true and correct copy of a DCCC direct-mailing attacking "Ted Poe's National Sales Tax Plan."

---

<sup>1</sup> It lists a company called Survey USA and an individual named Fred R. Bierman among the respondents, and then mentions neither again. See Compl. ¶¶ 4-5.

26044150431

Compl. ¶ 17. Ironically, the direct mailing cited by the complaint was sent in Texas' Second Congressional District – a district in which the complaint does not allege any telephone calls to have occurred. *See* Compl. ¶ 14.

The complaint's last reference to the DCCC comes in the "Legal Analysis" section. Here, the sparse legal and factual bases of the charges against the DCCC are neatly summarized:

the fact that the Respondent Democratic Congressional Campaign Committee has launched a direct-mail effort on the same theme targeted at Republican Congressional candidates is evidence that strongly suggests that [it and other] ... Respondents are participating in a conspiracy to violate 2 U.S.C. Section 441(d) and 2 U.S.C. Section 431(4)(5)(6) [*sic*] of the Federal Election Campaign Act.

Compl. at 12-13.

The exhibits add no further facts relevant to the complaint's allegations against the DCCC. Exhibit 3 presents the direct mailing that the DCCC sent in Texas's Second District, to which paragraph 17 refers. Exhibit 7 describes an exchange between the DCCC and a Republican House candidate in Louisiana on matters unrelated to the national sales tax. Exhibits 8 and 9 present news articles that refer to advertisements sponsored by the DCCC in Kentucky's Third District and Connecticut's Second District respectively, again on matters unrelated to the national sales tax.

In the end, the complaint presents no specific facts to link the DCCC to the phone calls. It does not allege, and presents no facts to suggest, that the DCCC paid for the calls. It does not allege, and presents no facts to show, any contact between the DCCC and the vendors who distributed the calls. It does not allege, and presents no facts to show, that the DCCC had engaged those vendors at any time.

In fact, as demonstrated by the affidavit submitted with this response, the DCCC was not involved in the phone calls in any way. It did not pay for the calls. *See* Affidavit of James J. Bonham ¶¶ 2-5. It knows of no basis whatsoever for any claim that the DCCC or its agents were involved in the calls in any way. *See id.* ¶¶ 2-5. It did not engage any of the vendors listed in the complaint during the 2004 election cycle. *See id.* ¶ 6. It enforced policies and procedures to avoid prohibited coordination, and to include required disclaimers on all its public communications, and knows of no deviation from those policies and procedures in this case. *See id.* ¶ 7.

26044150432

While the DCCC identified and aggressively pursued the national sales tax as an issue in many of its targeted races, so too did others. As the complaint acknowledges, the national sales tax was controversial enough to attract the attention of Senate candidates in South Carolina and Georgia. *See* Exhibit 5 and 11.

## II. LEGAL ANALYSIS

For the Commission to find reason to believe that a violation occurred, a complaint must set forth sufficient specific facts which, if proven true, would actually constitute a violation. *See* Commissioners Mason, McDonald, Sandstrom, Smith, Thomas and Wold, Statement of Reasons, MUR 5141; Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960.

Complaints not based upon personal knowledge should identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented. *See* Statement of Reasons, MUR 4960. Unwarranted legal conclusions from asserted facts are not accepted as true. *See id.* Purely speculative charges do not form an adequate basis to find reason to believe that a violation has occurred. *See id.*

The Commission has applied these principles to dismiss summarily several complaints like the one here. For example:

- When it dismissed MUR 4960, the Commission did not credit general allegations that third parties had paid for the costs of Senator Hillary Rodham Clinton's move from Washington, D.C., to Chappaqua, N.Y. *See* Statement of Reasons, MUR 4960. The Commission termed the allegations "purely speculative." *Id.*
- When it dismissed MUR 5136, the Commission did not accept a claim of coordination between Gore/Lieberman, Inc., and the AFL-CIO over a newspaper advertisement that referred to George W. Bush before the 2000 election. *See* First General Counsel's Report, MUR 5136. The Commission described the elements of coordination as defined at the time, observed that the complaint had not alleged facts to support the presence of any of those elements, and noted that the Gore/Lieberman campaign had denied through counsel any involvement in the advertisement. *See id.* at 7.
- When it dismissed the principal allegation of MUR 5304, the Commission did not credit allegations that Congressional candidate Dennis Cardoza "conspired with state Democratic leaders and the Latino Political Action Committee to launder money from Cardoza's non-Federal assembly campaign fund into his federal

26044150433

congressional campaign fund." First General Counsel's Report, MUR 5304, at 3-4 (quoting Complaint, MUR 5304, at 3). The Commission held that the "only facts provided by Complainant, derived from public disclosure records, show a series of contributions between respondents that are legal on their face." First General Counsel's Report, MUR 5304, at 8-9.

These same principles warrant summary dismissal of the complaint here:

*First*, like the complaint in MUR 4960, this complaint is premised entirely on "purely speculative" allegations. Statement of Reasons, MUR 4960. It alleges a conspiracy among the DCCC and the sponsors of the phone calls. *See* Compl. ¶ 8. Yet it presents no contacts between the DCCC and anyone associated with the phone calls. The only basis offered for further investigation is that the DCCC, like the sponsors of the calls, raised the national sales tax issue in its own communications. *See* Compl. ¶ 17.

*Second*, like the complaint in MUR 5136, this complaint alleges none of the necessary elements of coordination. It does not allege that the DCCC requested or suggested the calls. *See* 11 C.F.R. 109.21(d)(1). It does not allege that the DCCC was materially involved in any decisions regarding the calls. *See id.* 109.21(d)(2). It does not allege any substantial discussions involving the DCCC in which information material to the calls might have been conveyed. *See id.* 109.21(d)(3). It does not allege that the calls were made using a common vendor with the DCCC. *See id.* 109.21(d)(4). It does not allege that any former DCCC employees or independent contractors were involved in the calls. *See id.* 109.21(d)(5).

Moreover, as discussed above, the DCCC denies involvement in the phone calls. It did not pay for them, it was not involved in them, and it did not use any of the vendors listed as Respondents in the complaint during the 2004 election cycle.

*Third*, as in MUR 5304, the conduct ascribed to the DCCC by the complaint is legal on its face. Once stripped of its legal conclusions and speculative charges, the complaint shows only that the DCCC sent direct mail attacking Republican candidates for their support of the national sales tax. Such transactions are "legal on their face" and provide no basis for investigation. *See* First General Counsel's Report, MUR 5304, at 8-9.

*Finally*, the DCCC has refuted the allegations of the complaint with sufficiently compelling evidence. In stark contrast to the complaint's speculative charges, the DCCC produces with this response an affidavit that thoroughly rebuts those charges. *See* Bonham Affidavit. The Commission has treated both sworn and unsworn denials of

26044150434

December 20, 2004

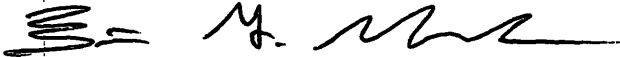
Page 6

conduct as sufficient to defeat speculative allegations like these. *See, e.g.*, First General Counsel's Report, MUR 5136, at 7-8.

In short, as to the DCCC, the complaint does not meet the standard for further Commission consideration. It relies entirely on speculative and conclusory allegations to connect the DCCC to the phone calls. It alleges no coordination between the DCCC and the sponsors of the calls. Indeed, it alleges no specific conduct by the DCCC that would violate any law.

For these reasons, the Commission should summarily dismiss the complaint.

Very truly yours,



Judith L. Corley

Brian G. Svoboda

Counsel to the Democratic Congressional Campaign Committee

Enclosure

26044150435

BEFORE THE FEDERAL ELECTION COMMISSION

*In re*

MUR 5585

DEMOCRATIC CONGRESSIONAL  
CAMPAIGN COMMITTEE and JAMES J.  
BONHAM, AS TREASURER

**AFFIDAVIT OF JAMES J. BONHAM**

I, James J. Bonham, do depose and state as follows:

1. My name is James J. Bonham. I am the Treasurer and Executive Director of the Democratic Congressional Campaign Committee ("DCCC"). I have served in these capacities since 2003. Through this position, I am familiar with the day-to-day operations of the DCCC. I have reviewed the complaint in the above-referenced matter, along with the attached exhibits.

2. The DCCC did not pay for the phone call described in Exhibit 1 and Paragraph 12 of the complaint. I know of no basis whatsoever for any claim that the DCCC, or any agent of the DCCC, was involved in this call in any way.

3. The DCCC did not pay for the phone call described in Paragraph 11 of the complaint. I know of no basis whatsoever for any claim that the DCCC, or any agent of the DCCC, was involved in this call in any way.

4. The DCCC did not pay for the phone calls pertaining to the national sales tax that are described in Exhibits 7-10 of the complaint. I know of no basis whatsoever for any claim that the DCCC, or any agent of the DCCC, was involved in these calls in any way.

26044150436

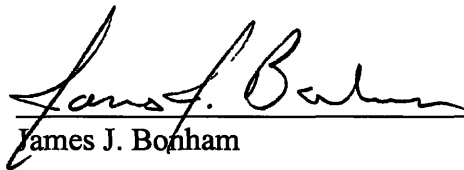
5. The DCCC did not pay for any phone calls similar to those described in Paragraphs 2-4 herein. I know of no basis whatsoever for any claim that the DCCC, or any agent of the DCCC, was involved in such calls in any way.

6. During the 2004 election cycle, the DCCC did not engage the services of ITC Research; Mitchell Research & Communications, Inc.; Steve Mitchell; SurveyUSA; Fred R. Bierman; or USA Public Opinion Group.

7. During the 2004 election cycle, the DCCC adopted and implemented policies and procedures to avoid prohibited coordination on its behalf, and to ensure the inclusion of required disclaimers for all its public communications. I know of no deviation from these policies and procedures that might be relevant to the subject matter of the complaint.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 20, 2004.

  
James J. Boham