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BY HAND DELIVERY

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

Re: MUR 5738

Dear Mr. Norton:

On behalf of Congressman Charles Gonzalez and the Charles A. Gonzalez Congressional Campaign (collectively, the "Committee"), this letter is submitted in response to the complaint filed by Michael Idrogo (the "Complaint") and subsequently labeled MUR 5738. For the reasons set forth below, this Complaint should be dismissed immediately.

Introduction

Congressman Gonzalez represents the 20th Congressional district of Texas. He ran unopposed in the March 7 primary, and faces no opponent in the general election. The Complaint contains vague allegations against Congressman Gonzalez concerning an advertisement published in the San Antonio Express-News on April 8, approximately one month after Congressman Gonzalez's primary election, and 7 months before his general election. The ad relates to the West San Antonio Chamber of Commerce's 5th Annual State of the District, with Congressman Gonzalez as the featured guest. The ad lists the ticket price for Chamber of Commerce members, non-members and group tables.

There is no basis for concluding that the advertisement at issue violates the Federal Election Campaign Act of 1971, as amended (the "Act") or Commission regulations. It does not constitute a "coordinated communication," nor is the advertised event in

connection with any election. *See* 11 C.F.R. § 109.21 and 2 U.S.C. § 441i(e). The allegation that Congressman Gonzalez or the Charles A. Gonzalez Congressional Campaign received $5000 or any funds from this event in support of his reelection is utterly false. This frivolous Complaint is simply a ploy by Mr. Idrogo to misconstrue campaign finance law for nuisance purposes, and should be dismissed immediately.

Legal Analysis

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation. *See* 11 C.F.R. §§ 111.4(a), (d) (2004). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. *See* Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

The advertisement does not constitute an in-kind contribution to the Committee. The Commission's "coordinated communication" regulations set forth a three-prong test for determining whether a communication constitutes an in-kind contribution to a federal candidate. The first prong requires that the communication be paid for by a person other than the candidate, the candidate's authorized committee or any of their agents. *See* 11 C.F.R. § 109.21(a)(1). Next, the communication must include content that satisfies at least one of the Commission's four "content standards." *See* 11 C.F.R. § 109.21(a)(2) and (c). Finally, the candidate and the person paying for the communication must satisfy at least one of the Commission's six "conduct standards." *See* 11 C.F.R. § 109.21(a)(3) and (d)(1) through (6). A communication must satisfy all three prongs – payment, content and conduct – in order to be deemed a "coordinated communication" that must be treated as an in-kind contribution to a federal candidate. *See* 11 C.F.R. § 109.21(a) and (b). The advertisement fails to meet any of the content standards of section 109.21(c), and thus does not constitute a "coordinated communication."

(1) The first content standard implements the statutory requirement that any disbursement for an electioneering communication that is coordinated with a candidate, a candidate's authorized committee, or their agents be treated as a contribution to the candidate. *See* 2 U.S.C. §§ 434(f), 441a(a)(7)(C). In order to constitute an "electioneering communication," a communication must refer to a clearly identified federal candidate; it must be "aired, broadcast, cablecast or otherwise disseminated through the facilities of a television station, radio station, cable

television system, or satellite system;" and it must be disseminated within 60 days before a general, special or runoff election for the office sought by the candidate referenced in the communication, or within 30 days before a primary, preference, special or runoff election, or a caucus or convention, in which the candidate referenced is seeking the nomination of that political party. *See* 11 C.F.R. § 100.29(a)(1)-(3). In addition, in the case of a candidate for the U.S. House of Representatives, the communication must be targeted to the relevant electorate. *See* 11 C.F.R. § 100.29(a)(3) and (b)(5)(i).

Because the advertisement was published in a newspaper, and was published after Congressman Gonzalez's primary election and seven months before his general election, there is no basis for treating the advertisement as an "electioneering communication."

(2) The second content standard implements the statutory requirements for republished campaign materials. 2 U.S.C. §441a(a)(7)(B)(iii); 11 C.F.R. § 109.21(c)(2). The advertisement contains no campaign materials and therefore does not satisfy this standard.

(3) The third content standard covers a public communication "that expressly advocates the election or defeat of a clearly identified candidate for Federal office." 11 C.F.R. § 109.21(c)(3). The advertisement does not expressly advocate the election of any federal candidate, and therefore does not trigger this third content standard.

(4) The fourth content standard that was in effect at the time[1] only applies to public communications that are publicly distributed or otherwise publicly disseminated 120 days or fewer before a candidate's primary or general election. 11 C.F.R. § 109.21(c)(4) (revised as of Jan. 1, 2006). The advertisement at issue was not published during this timeframe, and therefore does not qualify under this standard. There is no basis for treating this advertisement as a "coordinated communication."

In addition, there is no basis for concluding that this advertisement violated any other provision of the Act or Commission regulations. In particular, because the event described in the advertisement was not in connection with any election, its content is

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[1] The Commission has since revised 11 C.F.R. § 109.21(c)(4) to reduce the 120-day time period to 90 days. *See* Final Rule and Explanation and Justification on Coordinated Communications, 71 *Fed. Reg.* 33190 (June 8, 2006).

entirely consistent with the restrictions on federal officeholders and candidates set forth in 2 U.S.C. § 441i(e).

Conclusion

In sum, the Complaint is baseless and should be dismissed immediately.

Very truly yours,

Caroline P. Goodson
Counsel to Congressman Charles A. Gonzalez and the
Charles A. Gonzalez Congressional Campaign