



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SEP - 6 2007

Ian Lang

Providence, RI 02903

RE: MUR 5750

Dear Mr. Lang:

This is in reference to the complaint you filed with the Federal Election Commission on May 18, 2006, concerning possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). On May 30, 2007, the Commission found, on the basis of the information in the complaint, and information provided by the respondents, that there is no reason to believe Citizens Club for Growth, Inc. PAC and Pat Toomey, in his official capacity as Treasurer, violated the Act. In addition, the Commission voted to dismiss as a matter of prosecutorial discretion the allegation that American Labor Services, Inc. and Vincent A. Indeglia violated 2 U.S.C. § 441b, but admonished these respondents that making a corporate expenditure for communications that expressly advocate the election of a clearly identified federal candidate is a violation of 2 U.S.C. § 441b. The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissals. *See* 2 U.S.C. § 437g(a)(8).

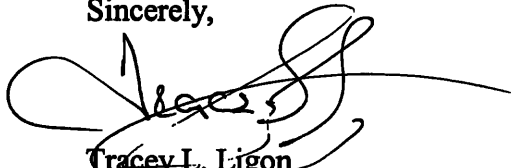
The Commission found that there was reason to believe that Laffey US Senate and Richard L. Sullivan, in his official capacity as Treasurer, violated 11 C.F.R. 110.6(c)(2), which implements a provision of the Act, and conducted an investigation in this matter. On August 28, 2007, a conciliation agreement signed by the respondents was accepted by the Commission. Accordingly, the Commission closed the file in this matter on August 28, 2007.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the agreement is enclosed for your information.

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If you have any questions, please contact me at (202) 694-1650.

Sincerely,



Tracey L. Ligon
Attorney

Enclosure
Factual and Legal Analyses (2)
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Citizens Club for Growth and Pat Toomey,
in his official capacity as Treasurer

MUR: 5750

This matter was generated by a complaint filed with the Federal Election Commission by Chafee for Senate. *See* 2 U.S.C. § 437g(a)(1). The complainant alleges that Laffey US Senate failed to identify Citizens Club for Growth (“CCFG”) in its disclosure reports as the source of \$366,378 in earmarked contributions. Because CCFG’s disclosure reports appear to properly disclose the earmarked contributions it made to Laffey US Senate, there is no reason to believe that Citizens Club For Growth, and Pat Toomey, in his official capacity as Treasurer, violated the Act.

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: American Labor Services, Inc.
Vincent Indeglia, President

MUR: 5750

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Chafee for Senate. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL SUMMARY

The complaint in MUR 5750 alleges that American Labor Services, Inc. ("ALS") made a prohibited corporate "expenditure or contribution" to Laffey US Senate in the form of a letter on corporate letterhead signed by ALS president Vincent Indeglia and distributed to all ALS employees.¹ Specifically, the complainant alleges that the letter, which was attached to the complaint, expressly advocated the election of Stephen Laffey, was coordinated with his campaign, and/or was used to develop a voter list that was provided to Laffey US Senate.²

In the letter, after criticizing Laffey's primary opponents on immigration issues, Indeglia endorses Laffey's candidacy, stating, in pertinent part:

There is only one politician in Rhode Island who is fighting hard to allow people to become legal resident aliens and citizens if they should so choose and that is Mayor Stephen Laffey. . . . I am helping Mayor Laffey to get elected to the United States Senate so that he can make sure the right laws get passed on this issue. I need your help to do this.

¹ ALS, a small corporation in Providence, is a jobs placement agency for blue-collar workers. According to Commission records, ALS does not have a separate segregated fund.

² The complaint in MUR 5750 also alleges "unlawful coercion of employees by Mr Indeglia on Mr. Laffey's behalf" but presents no facts to support the allegation. Because this assertion does not provide sufficient information to infer or support an allegation that the Act may have been violated, it will not be addressed.

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The letter then requests that the reader provide the name, address and phone number of every Hispanic citizen he or she knows who is not registered to vote to either one of two ALS employees so that they may be registered as Republican voters.

ALS and Indeglia submitted separate responses to the complaint. Indeglia states that he drafted the letter on his own time and made between 50 and 100 copies at his office. Indeglia argues that he was expressing his personal opinion regarding immigration issues and the candidates for Senate in Rhode Island, and that he identified himself as president of ALS in the letter so that readers would have a way to contact him if they wanted to discuss the letter. He claims that he did not distribute the letter to "all ALS employees" as alleged but rather placed the stack of letters on the front counter in ALS's lobby, apparently with the intent that they would be available to employees and the public, and did not distribute the letter in any other manner. He also claims that after the letter received some negative publicity, he retrieved the 25 or so copies that had not been taken and never created nor provided a voter list to the Laffey campaign.

The complaint alleges that because Indeglia held a fundraising event for Laffey, he must have a "close relationship" with the campaign, and, therefore, the Commission should investigate whether Indeglia coordinated the letter with Laffey US Senate. While Indeglia acknowledges he hosted a fundraiser for Laffey US Senate around the same time as the letter, he claims that the ALS letter was not connected to the fundraiser, and that he never spoke to anyone on the Laffey campaign about the letter.

In its response, ALS claims that the letter was a personal letter prepared by Indeglia without its consultation or consent. ALS further claims that Indeglia "has a great deal of authority," and that it is not unusual or against company policy for him to use office equipment to

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draft personal letters. ALS does not address the allegation of coordination with the Laffey campaign.

III. LEGAL ANALYSIS

The Act prohibits corporations from making contributions and expenditures in connection with any federal election. 2 U.S.C. § 441b(a). In addition, officers are prohibited from consenting to any contribution or expenditure by the corporation. *See id.* The Act defines contribution or expenditure to include “anything of value” to any candidate. 2 U.S.C. § 441b(b)(2).

Although Indeglia and ALS contend that the letter is Indeglia’s and not ALS’s, the letter is written on corporate letterhead; it was signed by Indeglia as president of ALS; copies were made in ALS’s office using ALS equipment; it was available to the general public in ALS’s lobby; and it appears to ask readers to provide identifying information, to be used for voter contact purposes, to two ALS employees. It thus appears that the letter constitutes corporate activity.³ Although ALS could have permissibly disseminated the letter to ALS’s restricted class – its executive and administrative personnel – placing the letter in a public location made the letter available to the general public, or at least to ALS customers and employees outside the restricted class. *See* 11 C.F.R. § 114.3(a)(1).

Whether ALS violated section 441b(a) depends upon whether the costs associated with the letter resulted in an in-kind contribution to Laffey US Senate, through coordination between Indeglia and the campaign, and, in the absence of coordination, whether the costs constitute a

³ Letters written on corporate letterhead at the expense of the corporation supported conclusions of corporate activity in other enforcement matters. *See, e.g.*, MUR 4538 (Boston Capital Corp), MUR 5020 (Atlantic City Showboat, Inc.), MUR 5573 (Westar Energy, Inc.)

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prohibited corporate expenditure by expressly advocating the election or defeat of a clearly identified candidate. To determine whether a communication is coordinated and, thus, a contribution to the candidate, 11 C.F.R. § 109.21 sets forth a three-pronged test: (1) the communication must be paid for by a person other than a Federal candidate, a candidate's authorized committee, or political party committee, or any agent of any of the foregoing; (2) one or more of the four content standards set forth in 11 C.F.R. § 109.21(c) must be satisfied; and (3) one or more of the six conduct standards set forth in 11 C.F.R. § 109.21(d) must be satisfied. See 11 C.F.R. § 109.21(a).

The first prong is clearly met as ALS paid for the letter. With respect to the content prong, the letter is not an electioneering communication, and there is a substantial question as to whether it constitutes a public communication as defined in 11 C.F.R. § 100.26, which includes "any other form of general public political advertising." If the letter does not constitute a public communication, then the content standard is not met. See 11 C.F.R. § 109.21(c)(1-4). This question, however, need not be answered because the conduct prong is clearly not met on this record.

The only fact regarding conduct alleged by the complainant is that Indeglia hosted a fundraiser for Laffey US Senate and, therefore, Indeglia and Laffey must have a close relationship. Even if true, a close relationship would not by itself meet any of the six conduct standards,⁴ and is too attenuated and speculative to support an inference that the parties engaged in coordination. Moreover, Indeglia denies coordinating the letter. Balancing the complaint's

⁴ The conduct standards are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee or independent contractor; and (6) dissemination, distribution, or republication of campaign material. 11 C.F.R. § 109.21(d).

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speculative allegation, the respondents' denials, and the absence of any other available information, there is no factual predicate to investigate whether Indeglia or ALS made a prohibited in-kind corporate contribution in the form of a coordinated communication. In addition, according to Indeglia, no one responded to Indeglia's request for voter names, he never created a "voter list." Thus, there is no basis to investigate whether Indeglia or ALS made an in-kind contribution in the form of a voter list.

Nevertheless, if the letter expressly advocated the election or defeat of a clearly identified federal candidate, the costs incurred by ALS to produce and disseminate the letter would constitute a prohibited corporate expenditure. *See* 2 U.S.C. § 441b(a).⁵ Under the Commission's regulations, a communication contains express advocacy when it uses phrases such as "vote for the President," "re-elect your Congressman," or "Smith for Congress," or uses campaign slogans or individual words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, or advertisements that say, "Nixon's the One," "Carter '76," "Reagan/Bush," or "Mondale!" *See* 11 C.F.R. § 100.22(a); *see also Massachusetts Citizens For Life*, 479 U.S. at 249 ("[The publication] provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than "Vote for Smith" does not change its essential nature.").

The letter expressly advocated the election of Laffey to the U.S. Senate by endorsing Laffey's candidacy and soliciting help to get him elected: "I am helping Mayor Laffey to get elected to the United States Senate so that he can make sure the right laws get passed on this

⁵ A communication does not have to be a "public communication" to be an "independent expenditure." *See* 2 U.S.C. § 431(17).

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issue. I need your help to do this.” These words have no other reasonable meaning than to urge the election of Laffey and, therefore, constitute express advocacy under 11 C.F.R. § 100.22(a). See, e.g., MUR 5146 (Michigan Democratic State Central Committee) (Commission found reason to believe that advertisement comparing Al Gore and George W. Bush and containing statements by individuals such as “we support the Democratic ticket” and “we need to give our allies a President who will work with them” constitute express advocacy).

Because the letter expressly advocated the election of Laffey to the U.S. Senate and was distributed beyond ALS’s restricted class, ALS made a prohibited corporate expenditure and Indeglia consented to the expenditure as a corporate officer. The costs, however, to produce and disseminate the letters were likely *de minimis*, and the actual dissemination was very limited. For these reasons, the Commission dismisses the allegation that American Labor Services, Inc. and Vincent Indeglia violated 2 U.S.C. § 441b as a matter of prosecutorial discretion, *see Heckler v. Cheney*, 470 U.S. 821 (1985), and admonishes ALS and Indeglia.⁶

⁶ See MUR 5523 (Local 12, United Assoc. Plumbers and Gasfitters Bldg. Corp.) (Commission dismissed matter based on minimal dissemination of express advocacy website communication and negligible costs); MUR 5522 (Wisconsin Right to Life) (Commission found reason to believe 441b violation occurred by placing express advocacy material on a corporate website but took no action other than sending admonishment letter because costs and dissemination were *de minimis*); MUR 5281 (American Muslim Council) (same)

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