



The Federal Election Commission
Washington, DC 20463

JUL 25 2007

Dan Seals for Congress
Attn: Harry Pascal, Treasurer
P.O. Box 584
Wilmette, IL 60091

RE: MUR 5865
Dan Seals for Congress and Harry Pascal, in his
official capacity as treasurer

Dear Mr. Pascal:

On November 2, 2006, the Federal Election Commission ("Commission") notified Dan Seals for Congress and Richard Berman, in his then-official capacity as treasurer (the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On July 16, 2007, the Commission found that, on the basis of the information in the complaint and information provided by the Committee, there is no reason to believe Dan Seals for Congress and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f). Accordingly, the Commission closed its file in this matter.

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). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1598.

Sincerely,

A handwritten signature in cursive script that reads "Susan L. Lebeaux".

Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

27044174186

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4
5
6 **RESPONDENTS:** Dan Seals for Congress and Harry Pascal, in his **MUR: 5865**
7 his official capacity as treasurer
8

9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission by
11 Tolbert Chisum. *See* 2 U.S.C. § 437g(a)(2). The complaint alleges that the New Trier
12 Democratic Organization (“NTDO”) mass-mailed flyers advocating the election of congressional
13 candidate Dan Seals to residents in the Illinois Tenth Congressional District that did not contain
14 a federally compliant disclaimer. The complaint maintains that without the proper disclaimer, it
15 is unclear to readers who paid for the message and whether it was authorized by, or coordinated
16 with, the Seals campaign. Drawing the conclusion that “coordination appears to have occurred,”
17 Complaint at 2, complainant alleges that the flyers constituted an unreported in-kind contribution
18 to the Dan Seals for Congress Committee and Harry Pascal, in his official capacity as treasurer
19 (the “Seals Committee” or “Respondents”).¹ In their separate responses, the Seals Committee
20 and NTDO deny that the flyers were coordinated.

21 Based on the reasons outlined below, the Commission found no reason to believe that
22 Dan Seals for Congress and Harry Pascal, in his official capacity as treasurer, violated 2 U.S.C.
23 §§ 434(b) and 441a(f).
24

¹ At the time of the events described herein, Richard Berman, who responded to the complaint on behalf of the Seals Committee, was the Committee’s treasurer.

II. FACTUAL SUMMARY

A. Factual Background

In 2006, Daniel Seals and Mark Kirk ran for the House of Representatives in Illinois' Tenth Congressional District. In mid-October 2006, prior to the general election, NTDO, the local party committee of the Democratic Party of Illinois and a newly registered federal committee, mailed an unknown number of flyers within New Trier Township expressly advocating the election of Dan Seals and the defeat of Mark Kirk. The flyers characterize the Bush Administration's policies and record in a negative manner and state that "if you support" the Bush Administration and its policies, "then vote for Mark Kirk for U.S. Congress," but "if you've had enough, vote for change . . . vote Democrat Dan Seals for Congress." The flyers, however, omitted the requisite printed box with the disclaimer language disclosing who had paid for the flyers, and whether the flyers were authorized by any candidate or candidate's committee. *See* U.S.C. § 441d(a).

The complainant alleges that without a proper disclaimer, "the reader does not know who paid for the message or, critically, whether its message was coordinated or otherwise authorized by Seals." Complaint at 2. The complaint also states that republication of campaign materials (such as the Seals photograph that appears in the flyer) or substantial discussion with a campaign are relevant to a determination of coordination, pursuant to the Commission's coordination regulations. According to the complaint, "[g]iven that coordination appears to have occurred, [the flyers] would constitute an unreported excessive in-kind contribution" accepted by the Seals Committee, in violation of 2 U.S.C. § 441a(f). *Id.* at 2.

27044174189

1 The Seals Committee's response states that it had "no involvement" with the NTDO
2 flyer, and "neither paid for, prepared, discussed, reviewed, nor authorized or approved this
3 campaign flyer with any party prior to its mailing." Seals Response at 1. Responding separately,
4 NTDO, by sworn declaration of its treasurer, Marvin Miller, states that the flyer was "written and
5 designed by NTDO members without any participation by" Seals' campaign, and were "paid for
6 solely by NTDO (with federally eligible dollars) and [were] not authorized by" Seals' campaign.
7 Declaration of Marvin Miller at 2, attached to Response of NTDO. Although not stating where it
8 obtained the material for the flyer, NTDO further avers "[t]he source material . . . was not
9 obtained from" Seals' campaign. *Id.*

10 **B. The Information Presented Does Not Provide a Basis for Investigating**
11 **Whether the Flyers Constitute Coordinated Communications**
12

13 Section 109.37 of the Commission's regulations provides that a political party
14 committee's public communication is coordinated with a candidate, an authorized committee or
15 agent thereof if it meets a three-part test: (1) payment by a political party committee or its agent;
16 (2) satisfaction of one of three "content" standards; and (3) satisfaction of one of six "conduct"
17 standards in 11 C.F.R. § 109.21(d)(1) through (d)(6).²

18 In this matter, the information presented is not sufficient to warrant an investigation into
19 whether the "conduct" prong is satisfied. The complaint provides no facts to support its

² Although state and national party committees are permitted to make coordinated expenditures within certain dollar limits, local party committees have no such spending authority of their own. *See* 2 U.S.C. § 441a(d), *see also* 11 C.F.R. §§ 109.32 and 109.33. There is no indication that the national or state Democratic party committees assigned a portion of their expenditure limits to NTDO. In addition, NTDO is not a "subordinate committee" of the state party and, as such, is not authorized to share its expenditure limits. *Id.*, *see also* 11 C.F.R. §§ 100.14(b) and (c). Thus, had NTDO coordinated the flyers in question with the Seals campaign, the cost of the flyers would have constituted an excessive contribution by the former to the latter, as NTDO had already contributed \$5,000 to the Seals Committee during the 2006 general election cycle, the maximum amount permitted. *See* 2 U.S.C. § 441a(a)(1)(C).

1 allegation suggesting NTDO coordinated the flyers with the Seals Committee, and relies solely
2 on the lack of a proper disclaimer and the possible republication of the candidate's photograph.
3 In contrast, NTDO has asserted by sworn declaration that it produced the flyers without
4 participation by the Seals campaign, that they were not authorized by that campaign, and that the
5 Seals photograph came from sources other than the campaign. While NTDO did not name those
6 sources, there are copies of the same photograph in numerous places in the public domain.
7 See, e.g., <http://www.actblue.com/page/dansealsforcongress.com>. Likewise, the Seals
8 Committee categorically denied that it had any involvement with the flyers prior to their mailing.
9 We have no information to the contrary.³

10 In the past, the Commission has stated that unwarranted legal conclusions from asserted
11 facts, or mere speculation, will not be accepted as true, and "[s]uch speculative charges,
12 especially when accompanied by a direct refutation, do not form an adequate basis to find reason
13 to believe that a violation of FECA has occurred." Statement of Reasons in MUR 4960 (Hillary
14 Rodham Clinton for U.S. Senate Exploratory Committee, issued December 21, 2000) (citations
15 omitted). Such appears to be the case here.

16 Therefore, there is no reason to believe that Dan Seals for Congress and Harry Pascal, in
17 his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f).

³ Miller's sworn Declaration at 2 also states that NTDO wrote, designed, and published the flyers itself, using a commercial printer and mailing house. NTDO Response at 2 also states that there was no "common vendor," and the respective committees' disclosure reports do not indicate otherwise. See 11 C.F.R. §§ 109.21(d)(4) and 109.37(a)(3).