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August 18, 2008

VIA HAND DELIVERY

Mr Jeff S Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N W
Washington, DC 20463

Re MUR 6034 (Manion for Congress)

Dear Mr Jordan

This office represents Manion for Congress and its Treasurer Susan Manion (collectively "Respondents") in the above-captioned MUR We have received the Complaint filed on July 1, 2008, by Todd Myers of Riegelsville, PA As detailed below, there is no reason to believe a violation occurred with respect to many of the allegations contained in the Complaint In addition, given the relatively low amount of activity involved, the Commission should dismiss the Complaint based upon prosecutorial discretion pursuant to Heckler v Chaney, 470 U S 821, 831 (1985) If the Commission were to decide to go forward with this matter, it should be assigned to the Alternative Dispute Resolution ("ADR") division for appropriate action

## THE COMPLAINT

The Complaint appears to allege, without any legal citations, that Worth & Company, Inc ("Worth & Company") made prohibited corporate contributions to the Manion for Congress campaign committee[1] ("Manion Campaign") in connection with a March 25, 2008, fundraising event held in the offices of Worth & Company in Pipersville, Pennsylvania ("March 25 event") The Complaint attaches an invitation to the March 25 event, which requested minimum donations of $250 per person The Complaint contends that Worth & Company organized and hosted the March 25 event and alleges that "there is no sign" that the Manion Campaign paid for the costs associated with the fundraising event Complaint at 1 The Complaint

[1] Manion for Congress is the authorized campaign committee of Tom Manion, who is running for the U S House of Representatives in Pennsylvania's 8th congressional district

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notes that corporate contributions are prohibited under federal law and alleges that Worth & Company sought to make secret in-kind contributions to the Manion Campaign through the March 25 event Id The Complaint also alleges that the "paid for by" disclaimer on the March 25 event invitation was legally insufficient because the disclaimer did not appear in a printed box Id at 2

## FACTUAL BACKGROUND

On March 25, 2008, a small, low-dollar fundraising event was held at the offices of Worth & Company in Pipersville, Pennsylvania on behalf of the Manion Campaign Approximately 75 people attended the March 25 event and approximately $16,400 was raised at the event The average contribution for the March 25 event was $364 44, in fact, the majority of the contributions received for the event was in the amount of $250 Contributions were collected at the event by a Manion Campaign intern who forwarded the contributions to the Manion Campaign for proper depositing and reporting to the Commission

Because the March 25 event was a small, low-dollar fundraising event, the costs for the event were minimal Upon information and belief, a Worth & Company employee, Sara Alexander, assisted with the event on a volunteer basis On June 30, 2008, Worth & Company provided the Manion Campaign with a detailed invoice in the amount of $5,612 97 for costs incurred in connection with the March 25 event See Worth & Company Invoice No 6278 (attached hereto as Exhibit 1) The Worth & Company invoice was broken down by specific event costs, including those for event fliers, food and beverages, and miscellaneous expenses Id The Manion Campaign promptly paid the invoice in full on the same day it was received See 6/30/08 Manion for Congress Check No 146 (Exhibit 2)

## THE LAW

The Federal Election Campaign Act of 1971, as amended ("Act" or "FECA") provides that a corporation may not make "a contribution or an expenditure in connection with any election for federal office" 2 U S C § 441b(a) In addition, an officer or director of a corporation may not consent to any such contribution Id As used in Section 441b, the term "contribution" includes any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate, campaign committee or political party or organization, in connection with a federal election 2 U S C § 441b(b)(2) It is also unlawful for any candidate, political committee, or other person knowingly to accept or receive any prohibited corporate contribution 2 U S C § 441b(a)

To effectuate this prohibition in FECA, a corporation is barred from facilitating the making of contributions to federal candidates or political committees, other than to a separate segregated fund maintained by the corporation 11 C F R § 114 2(f) Corporate facilitation includes

> (i) Fundraising activities by corporations (except commercial vendors) or labor organizations that involve
>
> > (A) Officials or employees of the corporation or labor organization ordering or directing subordinates or support staff (who therefore are not acting as volunteers)

to plan, organize or carry out the fundraising project as a part of their work responsibilities using corporate or labor organization resources, unless the corporation or labor organization receives advance payment for the fair market value of such services,

(B) Failure to reimburse a corporation or labor organization within a commercially reasonable time for the use of corporate facilities described in 11 CFR 114 9(d) in connection with such fundraising activities,

(C) Using a corporate or labor organization list of customers, clients, vendors or others who are not in the restricted class to solicit contributions or distribute invitations to the fundraiser, unless the corporation or labor organization receives advance payment for the fair market value of the list,

(D) Using meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups, or

(E) Providing catering or other food services operated or obtained by the corporation or labor organization, unless the corporation or labor organization receives advance payment for the fair market value of the services, or

(ii) Providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or political committee other than the corporation's or labor organization's separate segregated fund, or other similar items which would assist in transmitting or delivering contributions, but not including providing the address of the candidate or political committee

11 C F R § 114 2(f)(2)(i) & (ii) Also prohibited is "[u]sing coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee " 11 C F R § 114 2(f)(2)(iv)

Notwithstanding the foregoing, Commission regulations provide that corporate stockholders and employees may make "occasional, isolated, or incidental use of the facilitates of a corporation for individual volunteer activity in connection with a Federal election and will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are not increased " 11 C F R § 114 9(a)(1) "Occasional, isolated, or incidental use" generally means

(i) When used by employees during working hours, an amount of activity which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period

11 C F R § 114 9(a)(1)(i)

The Commission has also established a safe harbor for the permissible use of corporate facilities for individual volunteer activities on behalf of federal candidates

(2) *Safe harbor* For the purposes of paragraph (a)(1) of this section, the following shall be considered occasional, isolated, or incidental use of corporate facilities

(i) Any individual volunteer activity that does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, or

(ii) Any such activity that constitutes voluntary individual Internet activities (as defined in 11 CFR 100 94), in excess of one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, provided that

(A) As specified in 11 CFR 100 54, the activity does not prevent the employee from completing the normal amount of work for which the employee is paid or is expected to perform,

(B) The activity does not increase the overhead or operating costs of the corporation, and

(C) The activity is not performed under coercion

11 C F R § 114 9(a)(2)

In addition, Commission regulations provide that an employee or stockholder may make more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activities, provided that they reimburse the corporation "within a commercially reasonable time for the normal and usual rental charge" for the use of the facilities 11 C F R § 114 9(a)(3) The term "commercially reasonable time" is not defined in FEC regulations However, the Commission's Office of General Counsel has stated that

> [i]n situations in which a corporation normally operates as a vendor of the goods and services involved, the Commission has compared billing and payment timing accorded a political committee/customer with that accorded other customers of the same corporation In situations in which a corporation does not normally provide the goods and services at issue, as when its facilities are used by volunteers, it becomes necessary to compare its charging and collection processes with those of outside vendors who do normally provide such goods or services

General Counsel's Probable Cause Brief in MUR 3191 at 14 (Christmas Farm Inn, Inc)

11 C F R § 100 74 states that "the value of services provided without compensation by an individual who volunteers on behalf of a candidate or political committee is not a contribution "

FECA requires that when a federal candidate's authorized committee makes a disbursement for the purpose of financing a public communication through a mailing, or solicits contributions through a mailing, such communication shall clearly state that the authorized committee paid for the public communication 2 U S C § 441d(a)(1) Any disclaimer described in 2 U S C § 441d(a)(1) must be contained in a printed box set apart from the other contents of the communication 2 U S C

§ 441d(c)(2), 11 C F R § 110 11(c)(2)(u) 11 C F R § 110 11(a)(3) requires disclaimers for "all public communications, as defined in 11 C F R § 100 26, by any person that solicit any contribution" A "public communication" is defined as

> a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general political advertising The term general public political advertising shall not include communications over the Internet, except for communications placed for a fee on another person's Web site

11 C F R § 100 26 A "mass mailing" "means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period" 11 C F R § 100 27



## DISCUSSION

### A. There is No reason to Believe a Violation Occurred Due to the Absence of a Payment from the Manion Campaign to Worth & Company for the Services of Corporate Employees.

The Complaint makes specious allegations that Worth & Company used corporate employees to work the March 25 fundraising event, including to "bundle contributions for Manion and his campaign" (Complaint at 1) and "to collect the RSVPs, and [Worth & Company] may have coerced them to do so" (Complaint at 3) However, it is the Manion Campaign's understanding that a Worth & Company employee who assisted with the March 25 event, Sara Alexander, did so on a volunteer basis See 11 C F R § 100 74 (detailing broad exemption from the definition of contribution for "[t]he value of services provided without compensation by an individual who volunteers on behalf of a candidate or political committee ") In addition, the Manion Campaign sent an intern to the March 25 event who collected contributions received at the event In light of the foregoing, the Commission should find no reason to believe that a violation occurred due to the absence of a payment from the Manion Campaign to Worth & Company for the work services of corporate employees

### B. There is No Reason to Believe a Violation Occurred Based Upon Corporate Bundling of Campaign Contributions Because Contributions Received at the Event Were Collected By a Representative of the Manion Campaign.

The Complaint alleges erroneously that "there is no question that Worth & Company facilitated the making of contributions there is every reason to think that the company handled and forwarded checks" Complaint at 3 In fact, as was noted above, the Manion Campaign had an intern attend the event who collected contribution checks received at the event and who forwarded the checks to the Manion Campaign for proper depositing and reporting to the Commission Accordingly, there is no reason to believe that contributions raised at the March 25 event were impermissibly bundled using corporate resources

**C. There is No Reason to Believe a Violation Occurred Due to the Use of Worth & Company Email Accounts to Publicize the Event Because Corporate Employees, Under Commission Regulations, May Use Corporate Computers for Volunteer Internet Activity Without Making a Contribution.**

The Complaint alleges that the Manion Campaign was required to reimburse Worth & Company for use of a Worth & Company email account to publicize the March 25 event Complaint at 2-3 However, Commission regulations expressly allow corporate employees to use corporate computers and Internet facilities in connection with volunteer work on behalf of a federal candidate without making a prohibited corporate contribution or expenditure Specifically, 11 C F R § 114 9(a)(2)(ii) provides a safe harbor indicating that employees of a corporation may use corporate computer facilities and resources for uncompensated Internet political activities on behalf of a federal candidate without reimbursing the corporation, provided that the volunteer activity does not prevent the corporate employee from completing his or her work, does not increase the overhead costs of the corporation, and is not performed under coercion

As the Commission explained in the Explanation and Justification for Internet Communications, the Commission's regulations "do not distinguish between sources of computer equipment nor locations where the Internet activities are performed an individual does not make a contribution or expenditure when using equipment or services for uncompensated Internet activities for the purpose of influencing a Federal election, regardless of who owns such equipment or where the equipment is located" 71 Fed Reg 18589, 18605 (April 12, 2006) The Commission also stressed that "individuals are free to use whatever [corporate] computer and Internet facilities that are otherwise available to them to engage in uncompensated Internet political activities" Id at 18611 In creating a safe harbor for online volunteer political activities, the Commission emphasized that it was "not quantifying a permissible use of corporate and labor organization facilities for Internet activities" Id

As was noted above, upon information and belief, a Worth & Company employee, Sara Alexander, spent time working on and publicizing the March 25 event in a volunteer capacity, including by sending email messages from a Worth & Company email account There is absolutely no evidence that Ms Alexander's volunteer work in connection with the March 25 event prevented her from performing her normal work duties, increased the overhead costs of Worth & Company, or was done under coercion Accordingly, the Commission should find no reason to believe a violation occurred given that, under 11 C F R § 114 9(a)(2)(ii), the use of Worth & Company corporate computers and Internet facilities did not constitute a corporate contribution or expenditure, and the Manion Campaign was not required to reimburse Worth & Company for these activities

**D. There is No Reason to Believe a Violation Occurred as a Result of the Use of a Worth & Company Room for the Event.**

The March 25 event was held in a room located at Worth & Company Upon information and belief, Worth & Company makes its rooms available to outside groups free of charge Pursuant to 11 C F R § 114 2(f)(2)(i)(D) of the Commission's regulations, federal campaigns are required to reimburse corporations for use of corporate meeting rooms if the rooms "are not customarily made available to clubs, civic or community organizations or other groups " Id

Given that Worth & Company makes the room that was used for the March 25 event available to other groups free of charge, the Manion Campaign was not required to reimburse Worth & Company for use of the room Accordingly, there is no reason to believe that a violation occurred as a result of the Manion Campaign's use of the Worth & Company room

**E The Manion Campaign Promptly Reimbursed Worth & Company for the Stationary, Envelopes, and Postage Costs That Were Incurred in Connection with the March 25 Event.**



The Complaint alleges erroneously that Worth & Company underwrote various costs for the March 25 fundraising event and that the Manion Campaign failed to reimburse Worth & Company for the costs that were incurred Complaint at 1-3 In fact, Worth & Company generated a detailed invoice to the Manion Campaign identifying the various costs incurred for the March 25 event and the Manion Campaign promptly paid the invoice in full

Specifically, on June 30, 2008, Worth & Company provided the Manion Campaign with an invoice in the amount of $5,612 97 for costs incurred in connection with the March 25 event See Worth & Company Invoice No 6278 ( Exhibit 1) The Worth & Company invoice was broken down by specific event costs, including those for event fliers, food and beverages, and miscellaneous expenses Id The Manion Campaign paid the invoice in full the same day it was received, on June 30, 2008 See 6/30/08 Manion for Congress Check No 146 (Exhibit 2)

Commission regulations require federal campaigns to reimburse corporations within a commercially reasonable period of time when they use corporate resources such as office supplies and postage See 11 C F R § 114 2(f)(2)(i)(C) FEC regulations do not define what constitutes a "commercially reasonable time" within the meaning of 11 C F R §§s 114 2(f) and 114 9(d) However, the Commission's Office of General Counsel has stated that

> [i]n situations in which a corporation normally operates as a vendor of the goods and services involved, the Commission has compared billing and payment timing accorded a political committee/customer with that accorded other customers of the same corporation In situations in which a corporation does not normally provide the goods and services at issue, as when its facilities are used by volunteers, it becomes necessary to compare its charging and collection processes with those of outside vendors who do normally provide such goods or services

General Counsel's Probable Cause Brief in MUR 3191 at 14 (Christmas Farm Inn, Inc Here, there is no evidence that the Manion Campaign's reimbursement to Worth & Company was not made within a commercially reasonable time Worth & Company generated an invoice for the costs incurred within 95 days of when the March 25 event was held, and the Manion Campaign paid the invoice in full on the very same day In any event, in previous enforcement cases, the FEC has found reimbursement periods of three to four times the amount of time involved here to have occurred within a commercially reasonable period of time See e g., MUR 3070 (finding no reason to believe where a campaign committee did not pay an invoice for over 12 months after services were rendered and invoiced)

In light of the foregoing, there is no reason to believe a violation occurred given that the Manion Campaign reimbursed Worth & Company for the office supplies and postage costs that were incurred for the March 25 event and did so within a commercially reasonable period of time

### F The Manion Campaign Reimbursed Worth & Company for the Catering Costs That Were Incurred in Connection with the March 25 Event.

Commission regulations require political committees to pay corporations in advance for the fair-market value of catering and other food services See 11 C F R § 114 2(f)(2)(i)(E) Although Worth & Company was not paid in advance for the catering costs that were incurred for the March 25 event, the Manion Campaign did reimburse Worth & Company for these costs See Worth & Company Invoice No 6278 ( Exhibit 1) (detailing $3627 13 in charges for "Lily's Gourmet Foods" and $797 04 in charges for "Beverages from Phillips Fine Wines") See also 6/30/08 Manion for Congress Check No 146 (Exhibit 2) (paying Worth & Company Invoice No 6278 in full)

Although the failure to pre-pay Worth & Company for these costs may have been a technical violation of the Commission's regulations, given that relatively little money was involved, and given that the Manion Campaign reimbursed Worth & Company for these costs and did so within 95 days of the March 25 event, the Commission should exercise prosecutorial discretion with respect to this activity pursuant to Heckler v Chaney, 470 U S 821, 831 (1985)

### G. The "Paid for By" Disclaimer on the Event Invitation Was Accurate.

Upon information and belief, invitations for the March 25 event were sent via U S mail and e-mail Commission regulations require political committees to include a "paid for by" disclaimer on a mass mailing of more than 500 pieces of mail of an identical or substantially similar nature within a 30-day period See 11 C F R § 110 11(a)(3) See also 2 U S C § 441d(c)(2) and 11 C F R § 110 11(c)(2)(ii) (requiring disclaimer to be in a printed box set apart from the other contents of the communication)

The Complaint alleges that "the disclaimer on the invitations failed to comply with the law it was not contained in a printed box, and it falsely identified the payor, if the corporation indeed provided the postage to send them" Complaint at 3 In fact, as was outlined above, the Manion Campaign paid for the costs associated with the March 25 event, including the out-of-pockets costs for the office supplies, envelopes and postage charges that were incurred Accordingly, the text of the disclaimer used for the event invitation, which read "Paid for by Manion for Congress," was complete and accurate

The printed disclaimer for the March 25 event invitation did not appear in a printed box as required by the Act and Commission regulations However, for violations of this nature, in circumstances analogous to these, the Commission has exercised prosecutorial discretion and has dismissed the complaint See e.g., Factual and Legal Analysis for MUR 5925 (Foust for Congress) at 4-5 (dismissing complaint for congressional campaign's failure to place disclaimer in a box given "the de minimis nature of the violation) See id at 4 n 2 (noting that congressional campaign had spent $2,761 37 on the mass mailing at issue) See also ADR 320 (DeFazio for Congress Committee) (dismissing with admonishment ADR matter involving a campaign's failure to include a disclaimer in

a clearly readable size surrounded by a box), ADR 350 (Montanans for Lindeen) (dismissing complaint involving congressional campaign's failure to include a box around disclaimers on several public communications), ADR 376 (Jeff Fortenberry for United States Congress) (dismissing complaint involving congressional campaign's failure to include a box around a disclaimer on a billboard)

Accordingly, the Commission should exercise prosecutorial discretion, pursuant to Heckler v Chaney, 470 U S 821, 831 (1985), with respect to the disclaimer used for the March 25 event invitation

## CONCLUSION

For all the foregoing reasons, there is no reason to believe a violation occurred with respect to many of the allegations contained in the Complaint In addition, given the relatively low amount of activity involved, the Commission should dismiss the Complaint based upon prosecutorial discretion pursuant to Heckler v Chaney, 470 U S 821, 831 (1985) In any event, if the Commission decides to go forward with this matter, it should be assigned to ADR for appropriate disposition

Respectfully submitted,

Michael E Toner