



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

David Knox  
Democrats for Good Government  
Hampton, GA 30228

AUG 9 2010

RE: MUR 6138

Dear Mr. Knox:

On April 22, 2009, the Federal Election Commission notified Democrats for Good Government ("Committee") and you, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and other available information, on May 25, 2010 the Commission found that there is reason to believe Democrats for Good Government and you violated 2 U.S.C. §§ 441d(a) and 434(c), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information. Also on May 25, 2010, the Commission was equally divided on whether to find reason to believe that Democrats for Good Government or you violated 2 U.S.C. § 441h(a). Accordingly, the Commission closed this portion of the file. A Statement of Reasons explaining the Commission's decision will follow.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoenas. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

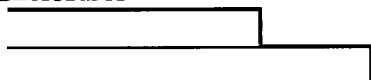
This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(n)(4)(B) and 437g(n)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Shana Broussard, the attorney assigned to this matter, at (202) 494-1650.

On behalf of the Commission,

  
Cynthia L. Bauerly  
Vice Chair

Enclosures



Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Democrats for Good Government      **MUR 6138**  
David Knox

**I.      GENERATION OF MATTER**

This matter was generated by a Complaint filed with the Federal Election Commission ("the Commission") by David Scott for Congress through its campaign manager Kwame Vidal. *See* 2 U.S.C. § 437g(a)(1).

**II.      INTRODUCTION**

The Complaint alleges that Democrats for Good Government ("DGG") and David Knox violated the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with communications critical of U.S. Representative David Scott. First, the Complaint alleges that DGG's communication, "Voters," failed to include the proper disclaimer. *See* Complaint Exhibit C. In addition, the Complaint alleges that DGG fraudulently misrepresented itself as speaking on behalf of the Democratic Party because the "Corrupt" communication included a depiction of the Democratic Party donkey logo. *See* Complaint Exhibit B.

DGG and David Knox did not respond to the Complaint.<sup>1</sup> Because the "Voters" communication failed to include a disclaimer and it was not disclosed as an independent expenditure, the Commission finds reason to believe that Democrats for Good Government and David Knox violated 2 U.S.C. §§ 441d(a) and 434(c). The Commission

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<sup>1</sup> The Commission forwarded the Complaint to DGG and David Knox on two separate occasions at two different addresses. Both were returned by the USPS as "undeliverable as addressed unable to forward." Subsequently, on March 25, 2009, the Commission forwarded a third notification to this new address. Finally, the Commission forwarded the Complaint to DGG and David Knox by Federal Express on April 22, 2009. Federal Express records indicate that the Complaint was delivered on April 23.

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finds no reason to believe the allegation that Democrats for Good Government and David Knox fraudulently misrepresented themselves as acting on behalf of the Democratic Party. *See* 2 U.S.C. § 441h(a).

### **III. FACTUAL AND LEGAL ANALYSIS**

#### **A. Factual Background**

In the 2008 general election, U.S. Rep. David Scott was the Democratic incumbent in the 13<sup>th</sup> Congressional District of Georgia, opposed by Republican Deborah T. Honeycutt. Honeycutt for Congress ("HFC") is the principal campaign committee for Deborah T. Honeycutt.

#### **1. Democrats for Good Government and David Knox**

DGG is an organization created by David Knox. *See* <http://www.democratsforgoodgovernment.com>. DGG is not registered as a political committee with the Commission or the Georgia State Ethics Commission, and is not registered with the IRS as a section 527 organization. According to DGG's website, it is "[t]he place to get the facts about Democrats who are really doing the work for Democrats." *See id.* However, the entire content of the website appears to focus on material opposing a single candidate, Rep. Scott, including portions of local newspaper articles that are highly critical of Rep. Scott. *See id.*

Knox is also the owner and operator of DK Intermedia, a website development company. Both Knox and DK Intermedia were vendors to HFC for Deborah T. Honeycutt's 2006 and 2008 congressional campaigns; Honeycutt faced Rep. Scott in both general elections. The DK Intermedia website indicates it created an "informational site"

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1 for Honeycutt's 2006 congressional campaign.<sup>2</sup> According to HFC's disclosure reports,  
2 the Committee disbursed \$250 to David Knox on February 28 and on March 13, 2006 for  
3 "website and photos," \$750 and \$350 on May 9 and July 7, 2006, respectively, for  
4 "consulting-graphics/website maintenance," and \$350 and \$250 on July 31, 2006 and  
5 February 6, 2007, respectively, for "consulting-graphics/website." HFC disbursed \$525  
6 to DK Intermedia on May 7, 2008 for internet consulting.

7 The website for Democrats for Good Government contains a link to  
8 [www.voteoutdavidscott.com](http://www.voteoutdavidscott.com).<sup>3</sup> The site begins with a heading "Georgia's Congressional  
9 13<sup>th</sup> District Corrupt Congre\$\$man," and continues with a cartoon figure identified as  
10 Rep. Scott sitting at a desk surrounded by individuals identified as "Lobbyist" and piles  
11 of cash with the U.S. Capitol in the background. The website directs the viewer to  
12 "Check Him Out and Vote Him Out!!!" Several pages into the website is the cartoon  
13 depiction of Scott sitting on a mound of cash also included on the "Corrupt"  
14 communication. The website concludes, "No Disclaimer Necessary – We only work for  
15 the government part-time (ourselves the rest of the time.) Sponsored by Democrats for  
16 Good Government!"

## 17 2. "Voters" Communication

18 A copy of the "Voters" communication at issue is included with the Complaint as  
19 Exhibit C. Both sides of "Voters" are headed with the same picture of Rep. Scott and the  
20 words: "Representative Scott's records indicate he cares more about his wealth and

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<sup>2</sup> The website states that "this site is no longer a part of this portfolio. There is no support for this candidate [sic]." [Emphasis in original]. [http://www.dkextra.com/portfolio/web\\_port.htm](http://www.dkextra.com/portfolio/web_port.htm)

<sup>3</sup> The website link, [www.voteoutdavidscott.com](http://www.voteoutdavidscott.com) is now closed; however, the website can be accessed through the Democrats for Good Government website found at <http://www.democratsforgoodgovernment.com/voteoutdavidscott.com>.

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1 comfort than about education, employment and health needs of the citizens of Clayton,  
2 Cobb, DeKalb, Douglas, Henry, and South Fulton Counties. Check his record and vote  
3 him out.” The communication then refers the reader to several websites.<sup>4</sup> The other side  
4 of “Voters” below the header contains the word “WHY” and lists purported reasons such  
5 as “Tax Evasion” and “Misuse of Official Resources.” Both sides of “Voters” include a  
6 tagline, “Time for a Change from David Scott.” Neither side of the communication  
7 contains a disclaimer stating who paid for the communication. Finally, the bottom  
8 portion of each side refers the reader to [www.voteoutdavidscott.com](http://www.voteoutdavidscott.com) and closes with  
9 “Democrats for Good Government.” See Complaint Exhibit C. There is no information  
10 available regarding the production, distribution or costs associated with this  
11 communication.

### 12 3. “Corrupt” Communication

13 A copy of the “Corrupt” communication at issue is included with the Complaint  
14 as Exhibit B. One side of the communication begins with the heading “**CORRUPT**  
15 **DAVID SCOTT,**” followed by a picture of Rep. Scott and the statement “David Scott is  
16 **CORRUPT!!!**” The communication then refers the reader to  
17 [www.voteoutdavidscott.com](http://www.voteoutdavidscott.com). The communication also contains a depiction of the  
18 Democratic Party donkey logo and the tagline, “Your Vote Counts for Change!” The  
19 other side of the communication refers to Scott as “The Worst Black Congressperson,”  
20 and includes a cartoon depiction of Rep. Scott sitting on a mound of cash with the U.S.  
21 Capitol in the background. Both sides of the communication contain a disclaimer stating

<sup>4</sup> The “Voters” communication listed the following websites: <http://www.beyonddelay.org/node/317>;  
[http://www.goodwillhinton.com/rep\\_david\\_scottsfinancial\\_shenanigans](http://www.goodwillhinton.com/rep_david_scottsfinancial_shenanigans); and  
<http://www.citizensforethics.org/node/30146>. The website links are no longer accessible.

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that it was paid for by "DemocratsForGoodGovernment.com." See Complaint Exhibit B.  
The available information does not indicate how this communication was distributed.

**B. Legal Analysis**

**1. "Voters" Communication Disclaimer**

The Complaint alleges that the "Voters" communication did not include the required disclaimer. A political committee that makes a disbursement to finance a public communication must include a disclaimer. 2 U.S.C. § 441d(e); 11 C.F.R. § 110.11(a)(1). Disclaimers are also required for public communications financed by any person that expressly advocate the election or defeat of a clearly identified candidate. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(2). The term "public communication" includes "mass mailings" and "any other general public political advertising." 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. Mass mailing is defined as a mailing by U.S. mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. 2 U.S.C. § 431(23); 11 C.F.R. § 100.27. The Commission has determined that campaign literature "distributed to the general public at their place of residence...constitutes general public political advertising." See MUR 4741 (Mary Bono Committee) Factual and Legal Analysis (finding reason to believe that the Committee violated 2 U.S.C. § 441d(a) by failing to include a disclaimer on campaign material left on doorknobs of residences).

The disclaimer for a communication that is paid for and authorized by a candidate, an authorized committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized committee. 2 U.S.C. § 441d(a)(1). The disclaimer for a communication not authorized by the candidate shall

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1 clearly state the name and permanent street address, telephone number or World Wide  
2 Web address of the person who paid for the communication and state that the  
3 communication is not authorized by any candidate or candidate's committee. 2 U.S.C.  
4 § 441d(a)(3). The Commission now addresses the communication in question.

5 The Complaint alleges that the "Voters" communication violated the Act's  
6 disclaimer provisions. The communication itself states neither who paid for it nor  
7 whether it was authorized by a candidate or candidate committee. *See* 2 U.S.C.  
8 § 441d(a). David Knox and DGG did not respond to the Complaint. The dissemination  
9 of "Voters" determines whether it is a public communication and thus required a  
10 disclaimer under the Act. *See id*; 11 C.F.R. §§ 110.11(a) and 100.26. It appears that  
11 "Voters" may constitute a public communication in the form of general public political  
12 advertising. *See* 11 C.F.R. § 100.26; *see also* MUR 4741 (Mary Bono Committee)  
13 Factual and Legal Analysis. "Voters" expressly advocates the defeat of Rep. Scott with  
14 phrases such as "Voters vote him out," and "Time for a Change from David Scott." *See*  
15 Complaint Exhibit C; 11 C.F.R. § 100.22(a). Thus, the communication should have  
16 contained a disclaimer. *See* 2 U.S.C. § 441d(a).

17 As to what the "Voters" disclaimer should have stated, the available information  
18 is limited as to whether DGG and Knox acted with the involvement of a candidate or  
19 candidate committee in the payment, production, and distribution of "Voters." If DGG or  
20 Knox acted without such involvement, "Voters" was not authorized by a candidate and  
21 thus required by the Act to include the name, permanent street address, telephone number  
22 or website address of the person that paid for the communication and state that the  
23 communication was not authorized by any federal candidate or candidate's committee.

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1 See 2 U.S.C. § 441d(a)(3).<sup>5</sup> The line at the bottom of both sides of the "Voters" card,  
2 "Democrats for Good Government," does not satisfy this requirement. Because "Voters"  
3 appears to be a communication produced by DGG and David Knox and appears to lack  
4 an appropriate disclaimer, the Commission finds reason to believe that Democrats for  
5 Good Government and David Knox violated 2 U.S.C. § 441d(a).

6 **2. Independent Expenditure Reporting for "Voters" Communication**

7 If DGG or David Knox spent more than \$250 on "Voters," and the  
8 communication was not coordinated with any candidate, DGG or Knox was required to  
9 file an independent expenditure report with the Commission. See 2 U.S.C. § 434(c). An  
10 independent expenditure is "an expenditure by a person expressly advocating the election  
11 or defeat of a clearly identified candidate" and "that is not made in concert or cooperation  
12 with or at the request or suggestion of such candidate, the candidate's authorized political  
13 committee, or their agents, or a political party committee or its agents." 2 U.S.C.  
14 § 431(17); 11 C.F.R. § 100.16. Under the Act, every person who makes independent  
15 expenditures in excess of \$250 must file a report that discloses information on its

<sup>5</sup> If DGG or David Knox paid for "Voters" but a candidate or candidate's committee, or its agents, authorized the communication, "Voters" should have included a disclaimer pursuant to 2 U.S.C. § 441d(a)(2). The question then arises whether the "Voters" communication was coordinated with the candidate. If "Voters" met the criteria set forth in the Commission's regulations for coordinated communications, then DGG's or Knox's payment for the communication would constitute a potentially excessive in-kind contribution to the candidate committee. See 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. §§ 109.21 and 109.22. The criteria for a coordinated communication consists of three standards – payment by someone other than the candidate or her committee; satisfaction of one or more of the four content standards; and satisfaction of one or more of the six conduct standards. 11 C.F.R. § 109.21. The payment standard would be satisfied if DGG/Knox or another person other than the candidate committee paid for "Voters." The content standard is satisfied because the communication expressly advocates the defeat of Rep. Scott, and the conduct standard of the coordination regulations would be satisfied if the communication was created at the request or suggestion, material involvement, or substantial discussion with the candidate, committee, or her agents. See 11 C.F.R. § 109.21(d). Since the Commission has no information at this time regarding the costs of "Voters" or indicating that a candidate or candidate committee was involved with this communication, the Commission makes no determination at this time as to a possible resulting excessive contribution by DGG or David Knox.

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1 expenditures and identify each person who made a contribution in excess of \$200 in a  
2 calendar year and each person who gave more than \$200 for the purpose of furthering an  
3 independent expenditure. 2 U.S.C. § 434(c). It is likely that the costs associated with the  
4 production and distribution of "Voters" exceeded the \$250 independent expenditure  
5 reporting threshold. For example, HFC disclosure reports reflect that the Committee paid  
6 \$1,385.75 for the production of the "Corrupt" communication. Therefore, the  
7 Commission finds reason to believe that Democrats for Good Government and David  
8 Knox violated 2 U.S.C. § 434(c).<sup>6</sup>

9 **3. Alleged Fraudulent Misrepresentation**

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11 Finally, the Complaint alleges that, by including a depiction of a logo similar to  
12 the logo of the Democratic Party on "Corrupt," David Knox, acting on behalf of DGG,  
13 fraudulently misrepresented that the mailer was disseminated by the Democratic Party.  
14 Complaint at 5. The Act prohibits federal candidates and their employees or agents from  
15 fraudulently misrepresenting themselves, or any organization under their control, as  
16 speaking or otherwise acting on behalf of any other candidate or political party on a  
17 matter which is damaging to such other candidate or party. 2 U.S.C. § 441h(a).<sup>7</sup> In past  
18 enforcement matters dealing with fraudulent misrepresentation allegations, the  
19 Commission has focused its analysis on whether the Respondent was acting like the  
20 "official" party organization. See MUR 4919 (Charles Ball for Congress); see also MUR

<sup>6</sup> There is an additional independent expenditure reporting requirement at 2 U.S.C. § 434(g) (persons that make independent expenditures aggregating \$1,000 or more after the 20<sup>th</sup> day, but no more than 24 hours before the date of an election, must file a report within 24 hours with the Commission describing the expenditure). In view of the lack of information as to the amount DGG or David Knox spent on "Voters," as well as to the timing of its distribution (it may have been disseminated within 20 days before the July 15, 2008 primary election) the Commission makes no determination at this time as to whether section 434(g) reporting was also required.

<sup>7</sup> Section 441h(b) prohibits the fraudulent solicitation of funds, which seems to be further afield here where the available information does not indicate that DGG used the logo in connection with soliciting funds.

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1 5444 (National Democratic Campaign Comm.). In MUR 4919 (Ball), the Commission  
2 found reason to believe that the Committee, Campaign Manager, and Finance Director  
3 knowingly and willfully violated 2 U.S.C. § 441h, and that the Committee treasurer  
4 violated 2 U.S.C. § 441h, when Respondents, on behalf of the Republican candidate in  
5 the California's 10<sup>th</sup> Congressional district, disseminated a communication within days of  
6 the general election to Democratic voters in the district that was purportedly prepared by  
7 a fictitious local party committee, the East Bay Democratic Committee, and signed by a  
8 Democratic Congressman of a neighboring district that expressly advocated the defeat of  
9 the Democratic incumbent. The communication's text suggested that committee was a  
10 legitimate organization within the Democratic Party by including language such as  
11 "Representing all Democrats in the East Bay." The communication urged the defeat of  
12 the incumbent but did not include a disclaimer identifying who paid for it or whether it  
13 was authorized by any candidate or committee.<sup>8</sup>

14 Unlike the communication in MUR 4919, in the instant matter, the "Corrupt"  
15 communication cannot be construed as an instrument of an "official organization" within  
16 the Democratic Party. Neither the complete name of the organization "Democrats for  
17 Good Government" nor the use of the word "Democrat" is sufficient to conclude that  
18 Respondents attempted to damage the Democratic Party. See 2 U.S.C. § 441h(a).  
19 "Corrupt" does not contain text designed to make the communication appear that the  
20 source of this communication was the Democratic Party. See Complaint Exhibit B.  
21 Although Deborah T. Honeycutt was the Republican nominee in the 2008 general  
22 election against Rep. Scott, the presence of the donkey logo on the "Corrupt"

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<sup>8</sup> After an investigation, the Commission found probable cause to believe as to Charles Ball for Congress, its treasurer and its campaign manager and conciliated with these respondents.

1 communication does not rise to the level of a violation of section 441h(a). The donkey  
2 logo, which is a generic symbol of the Democratic Party, is minimally displayed on the  
3 bottom left portion of the "Corrupt" communication that expressly advocates the defeat  
4 of Rep. Scott. *See* Complaint Exhibit B. The available information does not suggest that  
5 DGG represents itself as an arm of the official Democratic Party structure, such as a  
6 district or local party committee as defined at 11 C.F.R. § 100.14(b). Accordingly, the  
7 Commission finds no reason to believe that Democrats for Good Government and David  
8 Knox violated 2 U.S.C. § 441h(a).

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