

BURKE, WILLIAM F. SORENSON, LLP

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FEDERAL ELECTION
COMMISSION

2010 MAY 25 PM 2: 04

OFFICE OF THE
FEDERAL
COUNSEL

May 18, 2010

Thomasenia P. Duncan, General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463
Attention: Ann Marie Terzaken

Re: MUR 6211

Dear Ms. Duncan and Ms. Terzaken:

Thank you for your letter dated May 14, 2010 regarding the Complaint filed on September 3, 2009 with the Federal Election Commission (the "Commission") against the Armenian National Committee of America ("ANCA") regarding dissemination of an email soliciting contributions to the Krikorian for Congress campaign. That email communication was disseminated only to those individuals who regularly receive communications from ANCA and are on the ANCA E-list. We have previously responded to your office on September 17, 2009, with regard to this matter discussing various reasons that we believe that no violation of law has occurred. You have now invited us to provide a further amplification or clarification of the facts with regard to dissemination of the email in light of your review so far.

Specifically, you have asked whether the mailing list used to disseminate the communication at issue included only those within ANCA's restricted class, consisting of its stockholders and executive or administrative personnel or administrative personnel and their families. It appears that a comment made in our September 17, 2009 response to you may have inadvertently suggested that we believe that ANCA is subject to the restrictions for regular corporations and membership organizations set forth in the Code of Federal Regulations ("CFR") at 11 CFR §114.2. That is not the case as is demonstrated below.

If ANCA were a for-profit corporation or a membership organization subject to the provisions of 11 CFR §114.2, it would be required to demonstrate that the email solicitation of contributions to the Krikorian campaign was distributed only to the corporate "restricted class" which is its stockholders, and executive or administrative personnel and their families. As previously noted in our earlier correspondence,

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however, ANCA is a nonprofit corporation that has neither stockholders nor members. It is organized under the provisions of the District of Columbia Non-Profit Corporation Act (see Articles of Incorporation, Exhibit A) and is a tax exempt organization under the provisions of 26 USC §501(c)(4). Organizations operating under these laws are expressly authorized to engage in political activity, so long as that activity is not the organization's primary purpose. We have noted the incidental nature of the email dissemination involved in this matter as it relates to the overall activities of ANCA in our letter of September 17, 2009 and would direct your attention to that information again.

Because ANCA is a nonprofit corporation under state and federal law, it is expressly exempt from the restrictions of 11 CFR §114.2 under the provisions of 11 CFR §114.10. 11 CFR §114.10 provides that a nonprofit corporation qualifies for this exemption if it has the following characteristics:

1. Its only express purpose is the promotion of political ideas which include under the provisions of CFR §114.10(b)(1) issue advocacy, election influencing activity and research, training or educational activity that is expressly tied to the organization's political goals.

ANCA's express purpose, as stated in its Articles of Incorporation which have previously been provided to the Commission, is to "Promote greater public understanding of the aspirations of the Armenian people and its historic ties to the United States" and to "Propose and guide policy on matters of common interest to Armenian Americans through participation in the American democratic process" by "gathering and disseminating information affecting the Armenian American Community." These are clearly political and social goals that may incidentally include election activity as well as research, training and educational activity. (See Supplemental Declaration, Exhibit B).

2. It cannot engage in business activities.

ANCA has no authority under its Articles of Incorporation, the District of Columbia Non-Profit Corporation Act or IRC 501(c)(4) to engage in any business activities beyond its stated purpose.

3. It has no shareholders or other persons, other than employees or creditors with no ownership interest, affiliated in any way that could allow them to

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make a claim on the organizations assets or earnings; and no persons who are offered or who receive any benefit that is a disincentive for them to disassociate themselves with the corporation on the basis of the corporation's position on a political issue, such as credit cards, insurance policies or savings plans and training, education, or business information, other than that which is necessary to enable recipients to engage in the promotion of the group's political ideas.

ANCA's Articles of Incorporation specifically note that the Corporation has no members or stockholders and that "no part of any money or other assets received from any source by the Corporation, which is a nonprofit Corporation, shall at any time in any manner inure to the benefit of any member, director, officer, or other individual, except that reasonable compensation may be paid to members or non members of the Corporation for services actually rendered in carrying out the purposes and objects of the Corporation." (See Supplemental Declaration, Exhibit B).

4. It was not established by a business corporation or labor organization and it does not directly or indirectly accept donations of anything of value from business corporations or labor organizations.

ANCA was incorporated by three private individuals in 1986 and is a IRC §501 (c)(3) corporation. It does not accept donations from business corporations or labor unions and has never accepted such contributions with the exception of very limited donations amounting to no more than 1-2% of total contributions from individuals owning private medical, legal or sole proprietor business organizations. (See Articles of Incorporation, Exhibit A and Supplemental Declaration, Exhibit B).

5. It is described in 26 U.S.C. §501(c)(4).

As noted above, ANCA has qualified as a tax exempt organization under § 501(c)(4) and regularly files its tax returns as that provision of law. (See Supplemental Declaration, Exhibit B).

ANCA clearly has all the characteristics necessary to qualify for the exemption under §114.10. Under the provisions of 11 CFR §114.10(d)(1) and (2), ANCA is

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therefore permitted to make independent expenditures and electioneering communications as defined in 11 CFR §100.16 without violating the prohibitions against corporate or membership organization expenditures contained in 11 CFR §114.2. It should be noted that the "expenditures" made in the present case were part of the regular operation of ANCA. While ANCA originally estimated that if they were segregated from general operations the costs would amount to no more than \$500 in value, upon further review, however, we would note that the dissemination was done in the normal operation of ANCA's regular electronic communications with contributors and therefore was a normal part of ANCA's business activities and not subject to an itemized cost analysis. In either event, however, any costs were de minimus in nature.

While, as noted above, we believe that ANCA is exempt from the limitation on corporate and membership organization political activity set forth in §114.2 because of its qualifying nonprofit status under the provisions of §114.10 and 26 USC §501(c)(4) status, even if the provisions of §114.2 were applicable to ANCA, the dissemination was solely to those individuals who over the years have accepted communications from the ANCA E-list. To the extent that §114.2 might apply if ANCA were determined to be a membership organization, the ANCA E-list is analogous to a membership list of a membership organization and is limited and proprietary. The dissemination that occurred in this instance was solely to members of ANCA's E-list – a list limited to supporters and contributors who regularly receive communications from ANCA as part of the ANCA organization – individuals who would constitute the equivalent of members if ANCA were in fact a membership organization. As such, the provisions of §114.7 which restricts membership organizations would apply and would permit broad communication between ANCA and its members including the communication involved here.

Given the applicable exemptions under 11 CFR §114.10 for nonprofit 26 USC §501(c)(4) organizations like ANCA, and the membership organization rules under 11 CFR §114.2 and §114.7, and the fact that the communication in question was an email sent to a private list of contributors and supporters in the ordinary course of business, paid for as part of the ordinary expenses and overhead of the organization, we fail to see how the dissemination of the email solicitation could possibly be construed as an illegal campaign expenditure. We refer you to the other arguments and provisions of law that were previously presented in our letter of September 17, 2009.

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If you have any further questions or need for clarification, please do not hesitate to call.

Very truly yours,

BURKE, WILLIAMS & SORESENSEN, LLP



JULIE HAYWARD BIGGS

JHB:dkc

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



C E R T I F I C A T E

THIS IS TO CERTIFY that all provisions of the DISTRICT OF COLUMBIA
NON-PROFIT CORPORATION ACT have been complied with and accordingly
this CERTIFICATE of Incorporation

is hereby issued to THE ARMENIAN NATIONAL COMMITTEE OF AMERICA

as of January 6, 1987

Donald G. Murray
Acting Director

R. Benjamin Johnson
Administrator
Business Regulation Administration

Vandy L. Jamison, Jr.
Vandy L. Jamison, Jr.

Assistant

Superintendent of Corporations
Corporations Division

Marion Barry, Jr.
Mayor



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ARTICLES OF INCORPORATION

DCRA

OF

JAN 6 10 07 AM '87

THE ARMENIAN NATIONAL COMMITTEE OF AMERICA

We, the undersigned natural persons of the age of twenty-one years or more, acting as incorporators of a Corporation pursuant to the District of Columbia Nonprofit Corporation Act:

FIRST: The name of the Corporation is The Armenian National Committee of America.

SECOND: The period of duration is perpetual.

THIRD: The purpose or purposes for which the Corporation is organized is as follows:

Promote greater public understanding of the aspirations of the Armenian people and its historic ties to the United States.

Propose and guide policy on matters of common interest to Armenian-Americans through participation in the American democratic process.

Gather and disseminate information affecting the Armenian-American Community.

For the Purposes aforesaid, the Corporation shall have the following powers:

(1) To amend the Articles of Incorporation with the consent of such number of the members as may be permitted by law and as set forth in the By-Laws of this Corporation.

(2) To do and perform all lawful acts and things deemed necessary or proper in the judgement of the Board of Directors to promote the objects of the Corporation.

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INCORPORATION ARTICLES
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(3) The foregoing enumeration of the powers of the Corporation is made in furtherance and not in limitation of the powers conferred upon the Corporation by law, and it is not intended by the mention of any particular power to limit or restrict any of the powers granted to the Corporation by law.

(4) All of the powers hereinbefore granted to the Corporation are to be so exercised that no part of any money or other assets received from any source by the Corporation, which is a nonprofit Corporation, shall at any time in any manner inure to the benefit of any member, director, officer, or other individual, except that reasonable compensation may be paid to members or nonmembers of the Corporation for services actually rendered in carrying out the purposes and objects of the Corporation. The Board of Directors shall have the right to dissolve the Corporation in conformity with the provisions of the District of Columbia Nonprofit Corporation Act when, in its judgment, such dissolution is necessary and proper. Upon dissolution, the assets, funds and property of the Corporation shall be assigned and conveyed to or for the use of one or more other organizations or its successor provision, as shall be designated by the Board of Directors.

FOURTH: The Corporation will not have any members.

FIFTH: The business of the Corporation shall be managed by a Board of Directors; the number of Directors may be increased in accordance with the By-Laws of the Corporation, but shall never be less than three (3).

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SIXTH: The Address, including street and number, of its initial registered office is 1901 Pennsylvania Ave, Suite 503, N.W., Washington, D.C. 20006 and the name of its initial registered agent at such address is Mr. Vahe Yacoubian. The Board of Directors by a majority vote may change the location of the principal office to any place within the United States of America.

SEVENTH: The number of directors constituting the initial Board of Directors is Five (5), and the names and addresses, including street and number, of the persons who are to serve as the initial Directors until their successors be elected or appointed in accordance with the By-Laws are:

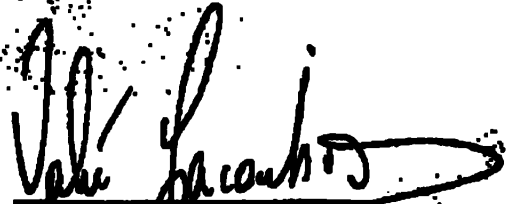
1. Mr. Garo Armenian
9006 Balsum Drive
McLean, Va. 22101
2. Mr. Levon Kinnkossian
717 W. Temple St. , Suite 222
Los Angeles, Ca. 90012
3. Mr. Aram Kailian
GSB Building, Suite 518
City Line & Belmont Ave.
Bala Cynwyd, Pa. 19004
4. Mr. Manas Doujirian
1742 Crenshaw Blvd.
Torrance, Ca. 90501
5. Mr. Hrayr Boyadjian
3009 Black Swist Rd.
Morristown, Pa.

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EIGHTH: The name and address, including street and number, of each incorporator is:

1. Mr. Vahe Yacoubian
1816 New Hampshire Ave.,
Suite #408
Washington, D.C., 20009
2. Mr. Aram Kallian
GSB Building, Suite #518
City Line & Belmont Ave.
Bala Cynwyd, Pa. 19004
3. Mr. Levon Kirakosian
717 W. Temple St.
Suite 222
Los Angeles, Ca. 90012


Mr. Vahe Yacoubian


Mr. Aram Kallian


Mr. Levon Kirakosian

INCORPORATORS

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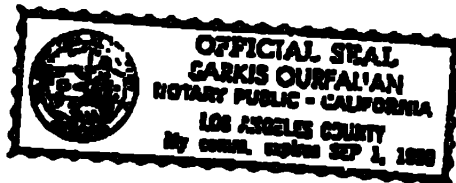
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Executed this 29th day of December, 1986

STATE OF CALIFORNIA
~~District of Columbia~~ ss:
COUNTY OF LOS ANGELES

I, GARKIS OURFALIAN, a Notary Public in and forth the ^{State} District
of ^{CALIFORNIA} Columbia, hereby certify that on the 29th day of
December, 1986, personally appeared before me, Mr. Vahe Yacoubian
who, being by me first sworn, declared, that they signed the fore-
going document as incorporators, and that the statements therein
contained are true.

Garkis Ourfalian
Notary Public



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Executed this 17 day of JUNE, 1986

District of Columbia, ss:

I, MARTIN A. HARRIS, a Notary Public in and forth ^{Lower Merion Twp} ~~the District~~
~~Montgomery Co PA~~ of Columbia, hereby certify that on the 17 day of
JULY, 1986, personally appeared before me, Mr. Aram Kailian,
who, being by me first sworn, declared, that they signed the fore-
going document as incorporators, and that the statements therein
contained are true.

Martin A. Harris
Notary Public
My Commission Expires 12/31/88

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GENERAL ACKNOWLEDGMENT

NO. 27

State of California }
County of Los Angeles } ss.

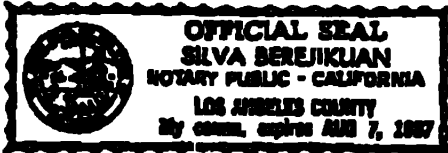
On this the 24th day of June 195, before me,

Silva Berejiklian

the undersigned Notary Public, personally appeared

Leon Kirakosian

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence
to be the person whose name(s) is subscribed to the
within instrument, and acknowledged that he executed it.
WITNESS my hand and official seal.



Silva Berejiklian
Notary's Signature

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NATIONAL NOTARY ASSOCIATION • 2202 Vermont St. • P.O. Box 4888 • Woodland Hills, CA 91364

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