



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 23 2010

Mr. Gary Levine

Poughkeepsie, NY 12603

RE: MUR 6218
Ball4NY and Maria DiSalvo, in her
official capacity as treasurer
Greg Ball

Dear Mr. Levine:

On June 15, 2010, the Federal Election Commission reviewed the allegations in your complaint dated October 14, 2009, and on the basis of the information in the complaint, and information provided by your clients, dismissed the allegations that Ball4NY and Maria DiSalvo, in her official capacity as treasurer, and Greg Ball solicited and accepted corporate contributions and solicited excessive contributions in violation of 2 U.S.C. §§ 441b(a), 441i(e) and 441a(f). The Commission also found no reason to believe that Ball4NY and Maria DiSalvo, in her official capacity as treasurer, and Greg Ball used videos or photos from Greg Ball's state committee or the New York State Assembly in violation of 2 U.S.C. § 441i(e) and 11 C.F.R. § 110.3(d) or had automated telephone calls sent on its behalf without improper disclaimers in violation of 2 U.S.C. § 441d(a). Furthermore, the Commission cautioned Ball4NY and Maria DiSalvo in her official capacity as treasurer, and Greg Ball, that corporations are prohibited from making a contribution in connection with a federal election and it is unlawful for any candidate, political committee, or any other person knowingly to accept or receive a prohibited contribution in connection with a federal election. 2 U.S.C. § 441b. Accordingly, on June 15, 2010, the Commission closed the 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 more fully explains the Commission's findings, is enclosed.

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Letter to Gary Levine
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The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,



Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Ball4NY and Maria DiSalvo, in her official capacity **MUR: 6218**
as treasurer
Greg Ball

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by Gary Levine. *See* 2 U.S.C. § 437g(a)(1). First, the complaint alleges that Greg Ball and Ball4NY and Maria DiSalvo, in her official capacity as treasurer, (“Committee”) Greg Ball’s campaign committee for his 2010 race for the U.S. House of Representatives from New York’s 19th Congressional District, solicited “soft money” contributions in violation of 2 U.S.C. §§ 441b and 441i(e) in connection with a silent auction. In response, the Committee states that it neither solicited nor accepted corporate contributions for the silent auction. Though the solicitation encouraged outreach to “businesses” — a term potentially broad enough to encompass corporations — given that a campaign volunteer generated the solicitation without Committee approval, and that the items that possible corporations may have donated were of relatively low value, the Commission decides to exercise its prosecutorial discretion and dismiss the allegations that Greg Ball and the Committee violated 2 U.S.C. §§ 441b(a) and 441i(e) by soliciting corporate contributions in connection with the silent auction. *See Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

Second, the complaint alleges that Ball and the Committee accepted corporate contributions and solicited excessive contributions in violation of sections 441a(f), 441b(a) and 441i(e) of the Act in connection with a campaign event known as the Rockin’ Rib Fest and Battle of the Bands (“Rockin’ Rib Fest”). According to the complaint, the event’s publicity stated that the event would be sponsored by two corporations, and sought contributions in excess

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1 of the federal contribution limit. The Committee admits to mistakenly releasing its publicity in
2 connection with the Rockin' Rib Fest in anticipation of receiving sponsorships from two
3 organizations, neither of which it asserts ultimately contributed to the event. It also avers
4 through its treasurer that the Committee accepted no corporate or excessive contributions for the
5 event. It appears, however, that the Committee accepted a contribution of \$500 from one of the
6 organizations listed as a sponsor, a corporation, within a few weeks of the Rockin' Rib Fest.
7 There also may have been pre-event publicity that solicited excessive contributions.
8 Nevertheless, because (1) the event's publicity mistakenly included the names of the two
9 anticipated sponsors due to the Committee apparently having not yet obtained their agreement or
10 consent to sponsor the event, (2) the one corporate contribution received is of relatively low
11 value, (3) the event does not appear to have raised significant funds, and (4) the candidate
12 withdrew from the race four months after the event and well before the election, the Commission
13 decides to exercise its prosecutorial discretion and dismiss the allegations that Greg Ball and the
14 Committee violated 2 U.S.C. §§ 441a(f), 441b(a) and 441i(e) by soliciting corporate or excessive
15 contributions in connection with the Rockin' Rib Fest. *See Heckler v. Cheney*, 470 U.S. 821,
16 931 (1985).

17 Third, the complaint alleges that Ball and the Committee also solicited excessive funds in
18 connection with a campaign event featuring Ari Fleischer, in violation of sections 441a(f) and
19 441i(e). The Committee's treasurer averred that no excessive contributions were received in
20 connection with the event, and there is no information to the contrary. Therefore, the
21 Commission decides to exercise its prosecutorial discretion and dismiss the allegations that Greg
22 Ball and the Committee violated 2 U.S.C. §§ 441a(f) and 441i(e) by soliciting excessive
23 contributions in connection with the Ari Fleischer event.

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1 Fourth, the complaint alleges that Ball and the Committee accepted transfers of assets
2 from Greg Ball's state campaign committee or Ball's State Assembly Office, in the form of
3 photographs and videos used by the Committee, in violation of 2 U.S.C. § 441i(e) and 11 C.F.R.
4 § 110.3(d). The Committee maintains that it did not accept photographs or videos from Ball's
5 state campaign committee. According to the Committee, either Greg Ball or the Committee
6 owns the photographs, some of which the Committee paid to license from the New York State
7 Assembly, and the Committee obtained the videos that are freely available on YouTube. There
8 is no information to the contrary. Accordingly, there is no reason to believe that Greg Ball and
9 the Committee violated 2 U.S.C. § 441i(e) and 11 C.F.R. § 110.3(d) in connection with
10 photographs or videos used in Ball's federal campaign.

11 Finally, the complaint alleges that Ball and the Committee had automated telephone calls
12 sent on the Committee's behalf without saying who paid for the calls or whether the Committee
13 or Ball authorized them, in violation of 2 U.S.C. § 441d. The Committee states that the
14 telephone calls contained a disclaimer saying the Committee paid for the calls, but that the
15 disclaimer represented vendor error, because an individual, not the Committee, paid for the calls.
16 There is no reason to believe that Greg Ball and the Committee violated 2 U.S.C. § 441d(a) in
17 connection with the automated calls, since it appears that the calls required no disclaimer. For
18 the aforementioned reasons, the Commission voted to close the file.

19 **III. FACTUAL AND LEGAL ANALYSIS**

20 **A. Alleged Solicitations of Corporate Contributions for a Silent Auction**

21 The Committee held a golf outing that included a silent auction on June 5, 2009. Before
22 the event, Jacqueline Ambrosino, representing herself as affiliated with Greg Ball's Exploratory
23 Committee, sent an email to a distribution list soliciting donations for the silent auction that

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1 encouraged the recipients of the email to “reach out to your network and try to get donations
2 from both businesses and people.”¹ According to the complaint, the email expressly asked for
3 corporate contributions.

4 It appears that the complaint is alleging that the email’s suggested outreach by
5 individuals to “businesses” for donations to the silent auction is equivalent to a solicitation for
6 prohibited corporate contributions, and constitutes a violation of section 441i(e) of the Act,
7 which provides that a candidate, individual holding federal office, agent of a candidate or an
8 individual holding federal office shall not solicit, receive, direct, transfer or spend funds in
9 connection with an election for Federal office unless the funds are subject to the limitations,
10 prohibitions and reporting requirements of the Act. *See* 2 U.S.C. § 441i(e). Corporations are
11 prohibited from making a contribution in connection with a federal election, and it is unlawful
12 for any candidate, political committee, or any other person knowingly to accept or receive a
13 prohibited contribution in connection with a federal election. 2 U.S.C. § 441b.

14 In response, the Committee maintains that Ms. Ambrosino, who sent the email, was a
15 campaign volunteer, used her personal email account to send the email, at her own expense, and
16 the Committee did not review, approve, or authorize the email before she distributed it. There is
17 no information to the contrary. The Committee did not send a corrective email because it
18 determined that nothing in Ms. Ambrosino’s email was improper. According to the Committee,
19 it is well aware of the source restrictions in the Act as illustrated by its donor reply forms
20 attached to its response, and disagrees that the email expressly solicited prohibited corporate
21 contributions. It points out that under the Act, several forms of “businesses,” including

¹ In its response, the Committee stated that the communication about the event was e-mailed on May 1, 2009 and the Committee filed its Statement of Organization on May 6, 2009. Thus, while the e-mail referred to the exploratory committee as the sponsor of the event, the Committee actually sponsored the event. According to the Committee, Ms. Ambrosino sent the email to the Committee’s general email distribution list of individual supporters and donors.

1 partnerships, certain LLCs, and sole proprietorships, are permitted to make federal contributions.
2 *See* 11 C.F.R. §§ 110.1(e) (partnership contributions) and 110.1(g) (LLC contributions), and
3 Advisory Opinion 1981-03 (Robinson) (partnership and sole proprietorship contributions).
4 Moreover, the Committee provides an affidavit from its treasurer averring that no in-kind
5 contributions or monetary contributions were made by prohibited sources in connection with the
6 silent auction. *See* Affidavit of Maria DiSalvo attached to the Response. The treasurer attaches,
7 as an exhibit to her affidavit, a spreadsheet listing all items contributed to the silent auction
8 (which ranged in value from \$50 to \$950 per item,² the contributor, the value of the in-kind
9 contribution, the purchaser of the items, and references to the disclosure of the contributions in
10 the Committee's Schedules A and B. The Committee acknowledged that in preparing its
11 response it discovered errors on its disclosure reports, mostly involving not itemizing multiple
12 contributions of repeat donors whose aggregate contributions exceeded \$200, and states that it
13 plans to file amended reports.

14 According to the spreadsheet attached to the treasurer's affidavit and the Committee's
15 disclosure reports, the Committee in all cases treated the individuals providing items to be
16 auctioned — such as gift certificates — as the contributors. Although it is possible that some or all
17 of the individuals donated the items, it is also possible that some businesses may have donated
18 items for free through the individuals named as the contributors. However, though, the email at
19 issue encouraged individuals to approach businesses for free donations, no information suggests
20 that Ms. Ambrosino was acting as an agent of the Committee when she sent the email.

² For example, among the donated items are gift certificates for restaurants, clubs, and retail and professional services, such as Tom & Jerry's Restaurants and Beach Bum Tanning businesses, and others described generically, such as "restaurant gift certificate" or "restaurant gift basket."

1 Therefore, given that a campaign volunteer without Committee authorization or approval
2 generated the solicitation, and given the low value (10% or less of the total value of \$11,000 of
3 all silent auction items) of any items that may have been provided for free by corporations to
4 individuals expressly for the auction, the Commission decides to exercise its prosecutorial
5 discretion and dismiss the allegations that Greg Ball and Ball4NY and Maria DiSalvo, in her
6 official capacity as treasurer, violated 2 U.S.C. §§ 441b(a) and 441i(e) in connection with the
7 email soliciting donations for the silent auction. *See Heckler v. Cheney*, 470 U.S. 821, 831
8 (1985).

9 **B. Rockin' Rib Fest: Alleged Acceptance of Corporate Sponsorships and**
10 **Soliciting Excessive Contributions**
11

12 Based on a flyer and accompanying information, the complaint alleges that on July 25,
13 2009, the Committee held a Rockin' Rib Fest that was sponsored by the New York Rifle and
14 Pistol Association and the National Rifle Association, which complainant believes are
15 corporations. The complaint also alleges that the Committee's publicity for the event sought
16 additional sponsorships in the amount of \$2,900, an amount in excess of the applicable federal
17 contribution limit. *See* 2 U.S.C. §§ 441a(f), 441b and 441i(e).

18 In response, the Committee states that it anticipated receiving support from the political
19 action committees of both the New York Rifle and Pistol Association and the National Rifle
20 Association for the Rockin' Rib Fest event, because both organizations had supported Mr. Ball in
21 the past as a New York State Assemblyman, and Mr. Ball personally solicited contributions from
22 the National Rifle Association's PAC for the event. The Committee acknowledges that Mr. Ball
23 was mistaken in his belief that the New York Rifle and Pistol Association has a federal political
24 action committee.

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1 According to the Committee and supported by its treasurer's affidavit, the Committee
2 accepted no excessive contributions and no corporate entity made a contribution or provided any
3 "sponsorship" for the event. The Committee acknowledges that the final version of the pamphlet
4 produced to publicize the event, attached to its response, contains an incorrect "sponsorship"
5 statement, but the Committee claims the pamphlet was released too late to be revised and notes
6 that the pamphlet specifically states the source prohibitions of the Act, including the ban on
7 corporate contributions. Moreover, according to the Committee, it is not prohibited to solicit
8 \$2,900, but only to solicit in excess of \$2,400 per person, per election, and that if it had received
9 a contribution in excess of \$2,400, the contributor would have had to sign a "Contribution
10 Form," attached to the response, designating the excess for the general election.

11 The Commission decides to exercise its prosecutorial discretion and dismiss the
12 allegations pertaining to the Rockin' Rib Fest solicitations and contributions. Though the
13 Committee's publicity for the event did not make clear on the publicity itself that contributions
14 were limited to \$2,400 per person, per election, any contributions received in excess of \$2,400
15 could have been properly reattributed or redesignated using the "Contribution Form." See
16 11 C.F.R. § 110.1(b)(5). The Committee states it did not receive corporate contributions or
17 excessive contributions in connection with the Rockin' Rib Fest. There is no information to the
18 contrary, except a \$500 contribution disclosed on the Committee's July 2009 Quarterly Report
19 from New York State Rifle and Pistol Association, which does not have a federal political
20 committee. It is unclear whether the contribution was made in connection with the Rockin' Rib
21 Fest held four weeks later or whether Mr. Ball or other Committee representatives specifically
22 solicited it.

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1 With respect to the publicity stating that the National Rifle Association and the New
2 York Rifle and Pistol Association were sponsoring the Rockin' Rib Fest, the Committee states
3 that a "similar case of misidentification" arose in MUR 5859 (Lois Murphy for Congress
4 Committee), in which the Commission found no reason to believe the respondents violated
5 section 441b of the Act where the Committee mistakenly identified ACORN in a press release
6 endorsing Murphy, when it was actually a related state PAC, Pennsylvania ACORN, that made
7 the endorsement and sponsored a subsequent rally.

8 A contribution includes anything of value made by any person for the purpose of influencing a
9 Federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value" encompasses any goods or
10 services provided without charge or at less the usual and normal charge unless otherwise
11 specifically exempted. *See* 11 C.F.R. § 100.52(d)(1). Because the Act prohibits corporations
12 from contributing anything of value to committees, or using their resources to facilitate
13 contributions to committees, *see* 11 C.F.R. § 114.2(f)(1), the lending of a corporation's name to a
14 committee for use on a fundraising solicitation would constitute an impermissible corporate
15 contribution.³

16 In this matter, it appears that the Committee released its publicity before receiving any
17 consent or assurance from the National Rifle Association or the New York Rifle and Pistol
18 Association that they intended to "sponsor" or contribute their names to the event and without an
19 agreement to list them as sponsors. Thus, this matter is distinguishable from MUR 5859 in that

³ *See, e.g.,* Advisory Opinion 2007-10 (Reyes) (the Commission concluded that a committee holding a fundraising golf tournament could not recognize its contributors by posting signs including the name, trademark, or service mark of their employers); Factual and Legal Analysis in MUR 6110 (Obama Victory Fund) (dismissing allegations of corporate sponsorship of concert where the value of the names and logos of the particular businesses constituted an in kind contribution but was likely unsubstantial and the event was modest in size); *see also* MUR 5578 (Wetterling for Congress) (Commission found no reason to believe that a committee received a corporate contribution when it allegedly used a corporation's trademark in a campaign ad where the committee paid for all advertising expenses, the advertisement did not suggest a corporate endorsement, and the alleged corporate logo used in the campaign ad at issue was not the alleged contributing corporation's logo).

1 it involves not simply a mistake in identifying the correct names of sponsors, but rather a mistake
2 in listing particular corporations as sponsors at all. Notwithstanding that fact, from a review of
3 the Committee's disclosure reports, the Commission's best estimate is that the Committee raised
4 \$7,670 from the Rockin' Rib Fest, which is a small percentage of the total amount of \$418,000
5 raised by the Committee before Greg Ball withdrew from the congressional race long before the
6 election.

7 Therefore, because (1) the Committee included the names of two corporations in its
8 publicity by mistake and apparently without the agreement or consent of the corporations, (2) the
9 one corporate contribution it received was of relatively low value, (3) the Rockin' Rib Fest event
10 does not appear to have raised significant funds and the candidate withdrew from the race four
11 months after the event and well before the election, and (4) the Committee did not accept
12 excessive contributions in connection with the event, the Commission decides to exercise its
13 prosecutorial discretion and dismiss the allegations that Greg Ball and Ball4NY and Maria
14 DiSalvo, in her official capacity as treasurer, violated 2 U.S.C. §§ 441(a)(f), 441b(a) and 441i(e)
15 in connection with the Rockin' Rib Fest. *See Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

16 **C. Ari Fleischer Event: Alleged Solicitation of Excessive Contributions**

17 The complaint alleges that a Committee solicitation to a campaign event featuring Ari
18 Fleischer sought contributions in excess of the contribution limits. In response, the Committee
19 maintains that beside the options in the solicitation to contribute in excess of \$2,400 is the
20 language "(call for details)," which was intended to allow contributors to contribute to both the
21 primary and general elections; if they called, they would have been advised of the contribution
22 limits, and the need to designate amounts in excess of \$2,400 to the general election and to sign
23 the "Contribution Form" containing the designation information. The treasurer's affidavit avers

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1 that no potential contributor contacted the Committee for details pertaining to contributions in
2 excess of \$2,400, and the Committee received no contributions in excess of \$2,400 in connection
3 with this event.

4 Based on the Committee's treasurer affidavit stating that no excessive contributions were
5 received in connection with the event, and with no information to the contrary, the Commission
6 decides to exercise its prosecutorial discretion and dismiss the allegations that Greg Ball and
7 Ball4NY and Maria DiSalvo, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f) and
8 2 U.S.C. § 441i(e) in connection with the Ari Fleischer event. *See Heckler v. Cheney*, 470 U.S.
9 821, 831 (1985); *see also* Factual and Legal Analysis in MUR 5918 (Romney for President)
10 (dismissing allegation of violation of 2 U.S.C. § 441i(e) based on the likely low dollar amount
11 involved).

12 **D. Alleged Transfers of Assets from Greg Ball's Nonfederal Campaign or Office**
13 **to his Federal Campaign**
14

15 As discussed above, Section 441i(e)(1)(A) of the Act prohibits a federal candidate, a
16 candidate's agent, and entities established, financed, maintained or controlled by, or acting on
17 behalf of, a candidate from soliciting, receiving, directing, transferring or spending funds in
18 connection with a Federal election unless the funds are subject to the Act's limitations,
19 prohibitions and reporting requirements. In addition, Commission regulations specifically
20 prohibit transfers of funds or assets from a candidate's account for a nonfederal election to his or
21 her principal campaign committee for a federal election. 11 C.F.R. § 110.3(d).

22 Attaching pages from the Committee's website as examples, the complaint alleges that
23 Greg Ball and the Committee used videos, photographs and other unspecified assets from Ball's
24 nonfederal campaign or his New York Assembly office without payment to his nonfederal
25 campaign or the State of New York. In response, the Committee states that with respect to the

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1 assets specified in the complaint, the 32 thumbnail screen captures on its website that link to
2 video footage are freely available on YouTube, and were never assets of Greg Ball's nonfederal
3 campaign or his New York Assembly office. A review of the videos shows Assemblyman Ball
4 debating issues in the state legislature, speaking at various events, and engaging in state
5 campaign debates. It appears that these videos were filmed by news media or by unknown
6 individuals. There is no information that Mr. Ball's state committee or New York Assembly
7 office ever owned these videos, which are available on YouTube.

8 The Committee also states that there is a photo "tab" on the website linking to a photo
9 hosting service known as Picassa Web Album, which contains a "Greg Ball Public Gallery" of
10 photographs. The photographs show Mr. Ball attending various events in his state legislative
11 district, in New York City, or elsewhere in New York. According to the Committee, these
12 photographs are the personal property of Greg Ball or the federal committee, or were licensed
13 from the New York State Assembly. The Committee's treasurer averred that the Committee
14 purchased the right to use 246 photographs from the New York State Assembly on October 6,
15 2009 for \$615, and provided supporting documentation with exhibits to her affidavit. There is
16 no information to the contrary. While pointing out that the complaint does not identify any other
17 assets allegedly transferred from Ball's nonfederal campaign or office, the Committee states that
18 it did not improperly transfer any assets.

19 Based on the above, there is no reason to believe that Greg Ball and Ball4NY and Maria
20 DiSalvo, in her official capacity as treasurer, violated 2 U.S.C. § 441i(e) and 11 C.F.R.
21 § 110.3(d).

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E. Alleged Lack of Disclaimer on Automatic Calls

The complaint alleges that on or about June 9, 2009, an automated call featuring Greg Ball was distributed to voters in the 19th Congressional District that contained no disclaimer stating who paid for the call or whether it had been authorized by the campaign. In support, the complaint attached a CD that contained no disclaimer. The complaint also states that Committee's July Quarterly Report discloses an in-kind contribution made on June 29, 2009 by Brian Callaghan in the form of "Automated Calls," suggesting that this individual may have paid for the calls that allegedly had no disclaimer.

In response, the Committee provided, as an exhibit, a copy of the recording that was distributed to the public and a transcript of the call. The recording, in fact, contains the following disclaimer "This call was paid for by Ball4NY." While Greg Ball delivers the call's message, the disclaimer is spoken by another male. There is no information as to why the copy of the recording attached to the complaint does not contain this disclaimer.

According to the Committee, the disclaimer is wrong because it did not pay for the automated calls. Instead, Brian Callaghan, as reported by the Committee, paid \$526.84 for the production and distribution of the calls with his personal credit card. At Mr. Ball's suggestion, Callaghan employed a vendor for the calls that had a long relationship with Ball. The response states its belief that the vendor made an incorrect assumption when it recorded the disclaimer because of Greg Ball's participation in the recording. Once the recording was distributed, according to the Committee, it was too late to correct the disclaimer.

When a person other than a political committee makes a public communication consisting of more than 500 identical phone calls within a 30-day period, the Act and the Commission's regulations require a disclaimer stating who paid for the call and whether it was authorized by a

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1 candidate or his or her authorized committee in the following circumstances: (1) if the
2 communication expressly advocates the election or defeat of a clearly identified candidate; (2) if
3 the communication contains a solicitation; or (3) if the communication is an electioneering
4 communication. 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a). None of these circumstances is
5 present here.

6 The text of the automated calls, preceding the disclaimer, states:

7 Hello, this is State Assemblyman Greg Ball. On July 6 at 7 pm join the Tea Party
8 Patriots at Dutchess Stadium for the Hudson Valley's second Tea Party. We can't
9 afford to lose more jobs and we must unite as taxpayers and voters to fight these
10 ongoing tax increases, the out of control spending and the bailouts and corporate
11 welfare. For more information, go to FishkillTeaParty.com, that's
12 FishkillTeaParty.com. Albany is a disaster, and in Washington, our own
13 Congressman was one of the deciding votes for cap and trade, a national energy
14 tax that will cost your family \$1600. Have you had enough? King George
15 wanted 10%; we revolted. Now's the time. Our government is asking for nearly
16 50% and families are struggling just to get by. Join me, the Tea Party Patriots on
17 July 6 at 7 pm at Dutchess Stadium to say "Enough is enough." Come early and if
18 you can be kind to the environment by carpooling. Let's fight and let's do it
19 together.
20

21 First, we conclude that the recorded message does not contain express advocacy within
22 the meaning of 11 C.F.R. § 100.22.⁴ The message appears to be an invitation to a "Tea Party"
23 event sponsored by a group called the Fishkill Tea Party, not Greg Ball's campaign. A
24 newspaper announcement for the event describes it as a non-partisan event and a follow-up to the
25 April 15th Tax Day Tea Party, focusing on government spending and tax increases, including

⁴ Under the Commission's regulations, a communication contains express advocacy when it uses phrases such as "vote for the President," "reelect your Congressman," "support the Democratic nominee," or "Smith for Congress" or "individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers or advertisements" saying "Carter '76" or "Reagan/Bush." 11 C.F.R. § 100.22(a). The second part of the regulation encompasses a communication that, when taken as a whole or with limited reference to external events, "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because" it contains an "electoral portion," that is "unmistakable, unambiguous, and suggestive of only one meaning," and "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." 11 C.F.R. § 100.22(b).

1 bills pending in Congress, with a businessman, students and two New York State Assemblymen,
2 including Greg Ball, as speakers. *See Independence Day Tea Party*, Hudson Valley Press, July
3 5, 2009. While the message appears to criticize Ball's opponent (John Hall) for supporting a bill
4 in the House that raised taxes, the message could reasonably be interpreted as a call for listeners
5 to join the fight against tax increases. Second, the text does not solicit contributions. Third, it
6 was not run during an electioneering communications time-period. Consequently, the Act did
7 not require the calls to carry any disclaimer at all.

8 Therefore, there is no reason to believe that Greg Ball and Ball4NY and Maria DiSalvo,
9 in her official capacity as treasurer, violated 2 U.S.C. § 441d(a) because a disclaimer was not
10 required, the error was apparently made by the vendor, the Committee did not pay for the
11 telephone calls, the candidate did not record the disclaimer statement, and the Committee
12 properly disclosed the in-kind contribution. For all of these reasons, the Commission closes the
13 file.

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