



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

**FEB 24 2011**

Charles R. Spies  
Clark Hill PLC  
1250 Eye Street, NW Suite 250  
Washington, DC 20005

**RE: MUR 6337**  
**Jay Riemersma for Congress Campaign Committee**  
**and John Faber, in his official capacity as Treasurer**

Dear Mr. Spies:

On August 4, 2010, the Federal Election Commission notified your above-referenced clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On February 16, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe the Jay Riemersma for Congress Campaign Committee and John Faber, in his official capacity as Treasurer, violated 2 U.S.C. § 441a(f) or 11 C.F.R. § 110.4(c)(3). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy Q. Lockett".

Roy Q. Lockett  
Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

11044290766

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Jay Riemersma for Congress Campaign Committee      **MUR:** 6337  
and John Faber, in his official capacity as Treasurer

**I.      INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by James R. Barry, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the Jay Riemersma for Congress Campaign Committee and John Faber, in his official capacity as Treasurer (the Committee).

**II.    FACTUAL AND LEGAL ANALYSIS**

The complaint in this matter alleges that the Republican Member Senate Fund ("the Fund") coordinated with the Committee, Jay Riemersma's 2010 principal campaign committee for the U.S. House of Representatives for Michigan's Second Congressional District, in spending \$13,636 on radio ads promoting Riemersma's candidacy in July 2010. Thus, the complaint alleges that the Committee received excessive contributions in violation of Section 441a(f) of the Act. The complaint further alleges that the Committee accepted and retained anonymous cash contributions in excess of \$50, in violation of 11 C.F.R. § 110.4(c)(3).

**A.    Allegation that the Jay Riemersma for Congress Committee received an excessive in-kind contribution as a result of coordination**

In support of the allegation that the Fund coordinated with the Committee in spending \$13,636 on the radio ads at issue, the complaint asserts that:

- Riemersma retained Strategic National Campaign Management LLC ("Strategic National"), a consulting company, and the Committee paid the company at least \$54,288.52 from August 28, 2009 – July 14, 2010. Complaint, pp. 1-2.

- John Yob is a principal and the "resident agent" of Strategic National, and is also a campaign consultant and spokesman for the Riemersma campaign. Complaint, p. 2. Charles Yob, John Yob's father, also works for Strategic National. *Id.* The Fund is controlled by Charles Yob and John Yob. *Id.*
- In mid-July 2010, the Fund ran radio advertisements promoting Riemersma and attacking two of his opponents (Bill Huizenga and Wayne Kuipers) on approximately 12 radio stations in Michigan. Complaint, pp. 2-3; *see* attached advertisement script. Also attached to the complaint are agreements between the Fund and Citadel Broadcasting and Clear Channel, to which the Fund paid \$10,600 and \$3,036, respectively. Attached to the Clear Channel agreement is a Political Inquiry form, identifying Chuck Yob as the Chairman of the "Republican Committee Member Fund" (sic). Complaint, p. 2.
- John Yob continues to be involved with the Republican Member Senate Fund PAC while at the same time managing the Riemersma campaign, because: (1) the broadcast agreements were faxed from a machine used by Nevada Republican U.S. Senate candidate Sharron Angle; (2) John Yob and Strategic National also provided campaign services to Sharron Angle; and (3) John Yob may have been in Nevada when the broadcasting agreements were faxed. Complaint, p. 3.

In response, the Committee argues that the complaint is based on innuendo and incorrect assumptions that are refuted by John Yob's sworn affidavit, which is attached to its response. Committee Response at 1. The Committee states that Strategic National employed John Yob as a political consultant, and that through Strategic National's consulting agreement with the Committee, he provided strategic and campaign management consulting services to the Committee. Committee Response at 2. The Committee further asserts that John's father Charles Yob is an independent consultant with whom Strategic National has at times contracted to do work on various elections. *Id.* The Committee states, however, that Strategic National never employed, or entered a contract with, Charles Yob to do any work regarding the Riemersma campaign. *Id.*

In addition, the Committee asserts that John Yob and Charles Yob did not have any contact regarding the Republican Member Senate Fund radio advertisement at issue in this matter. *Id.* Further, although John Yob was at one point on the Board of Directors of the Republican Member Senate Fund, he resigned from that position in December 2009, and currently has no affiliation with the Fund and had no involvement with the advertisements at issue. *Id.* Finally, the Committee asserts that John Yob was not in Nevada when Jordan Gehrke, who signed the broadcast agreements, faxed them on behalf of the Fund, and John Yob did not have any knowledge or involvement with those agreements. *Id.*

In John Yob's affidavit, he avers, *inter alia*, that he was not in Nevada on July 13, 2010, and did not send the fax mentioned in the complaint; he had no contact with Charles Yob whatsoever regarding the communications at issue, nor to the best of his knowledge, did anyone else associated with the Riemersma campaign; and that he was on the Board of Directors for the Republican Member Senate Fund until December 2009, when he resigned. *See Committee Response, Attachment 1.*

In a sworn affidavit, Charles Yob avers, *inter alia*, that he is the President, Secretary, Treasurer and a Director of the Fund; that no one in the Riemersma campaign or at Strategic National contacted him regarding the creation, production, or distribution of any communication; and that he never notified anyone at either Strategic National or at Riemersma for Congress of his intention to purchase the communications at issue. He maintains that any incidental political or fundraising help he gave to the Riemersma campaign was either on his own time or through the Fund, but that he had no contact at all regarding the communications at issue with either the Riemersma campaign or Strategic National. Finally,

he avers that while working on his various contract projects for Strategic National, he received no information pertinent to the communications at issue regarding the Riemersma campaign.

Under the Act, no multicandidate political committee, such as the Republican Member Senate Fund, may make a contribution, including an in-kind contribution, to a candidate and his authorized political committee with respect to any election for Federal office, which, in the aggregate, exceeds \$5,000. 2 U.S.C. § 441a(a)(2), *see* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(d)(1). The Act defines in-kind contributions as, *inter alia*, expenditures made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." 2 U.S.C. § 441a(a)(7)(B)(i). A communication is coordinated with a candidate, an authorized committee, a political party committee, or agent thereof if it meets a three part test: (1) payment by a third-party; (2) satisfaction of one of four "content" standards; and (3) satisfaction of one of six "conduct" standards. *See* 11 C.F.R. § 109.21.

In this matter, the first prong of the coordinated communication test is satisfied because the Republican Member Senate Fund is a third-party payor. *See* 11 C.F.R. § 109.21(a)(1). The complaint alleges that the second prong of this test, the content standard, is satisfied because the ads are public communications that refer to clearly identified candidates for federal office (Jay Riemersma, Bill Huizenga, and Wayne Kuipers), and were apparently run in the clearly identified candidates' jurisdiction within 90 days of the primary election. *See* 11 C.F.R. § 109.21(c). 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.” 11 C.F.R. § 100.26. The response of the Republican Member Senate Fund states that it does not dispute that it paid for the advertisement and that the communication thus satisfies the payment prong. The response further states that there is similarly no dispute that the communication satisfies a content standard in 11 C.F.R. § 109.21(c) as the communication in question refers to three House candidates and was run within 90 days of the Republican primary for Michigan’s Second Congressional District. See 11 C.F.R. § 109.21(c)(4)(i).

However, the conduct prong is not satisfied in this matter. The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced, or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign’s plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the payor employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign’s plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the payor republished campaign material. See 11 C.F.R. § 109.21(d).

The complaint does not allege specific facts indicating that the conduct prong was met in this matter, nor does publicly available information support that conclusion. Instead, the complaint cites the positions held by John Yob and his father Charles Yob, and asserts, "Fundamentally, any expenditure is inherently coordinated where, as here, the same person or people running a candidate's campaign are able through a separate PAC to authorize creation and dissemination of public communications that are intended to benefit the candidate whose campaign they are running." Complaint at 4. However, the complaint contains no specific information indicating that any of the conduct standards were satisfied in this matter.

Moreover, the Respondents have specifically denied facts that would give rise to a conclusion that the conduct prong is satisfied pursuant to 11 C.F.R. § 109.21(d), and provided sworn affidavits supporting those denials. Charles Yob avers that he has "not been paid" by Strategic National to do any work for the Riemersma campaign, but that he gave "incidental political or fundraising help" to the campaign on his own, presumably as an independent contractor or volunteer, or through the Fund. While Charles Yob's statement suggests that he provided unspecified services to the Riemersma campaign, he also maintains that he had no contact at all regarding the communications at issue with either the Riemersma campaign or Strategic National. Consistent with this statement, we have no information that Charles Yob received information material to the creation, production, or distribution of the communication at issue during his work for the Riemersma campaign, in whatever capacity, or that he used or conveyed such information to the Fund in connection with the communication. Further, while John Yob provided consulting services to the Committee through his employment with Strategic National, he avers that he had no contact whatsoever

with Charles Yob regarding the communication at issue, and that he resigned from the Fund's Board of Directors in December 2009, approximately seven months before the Fund began running the advertisement. In addition, it is possible that Charles Yob and/or the Fund obtained information material to the creation, production, or distribution of the communication from a publicly available source, namely, the Riemersma campaign's website, which contained information similar to the advertisement at issue. See 11 C.F.R. § 109.21(d)(4)(iii) and (d)(5)(ii) (these provisions, known as publicly available source exemptions, provide that the conduct standard is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source). Finally, while the information in the radio ad at issue is similar to information on the candidate's website, it does not appear that the Fund republished in whole, or even in part, any campaign materials.

Given the Respondents' denials, the speculative nature of the complaint, and the absence of any other information suggesting coordination, the conduct prong of the coordinated communications regulations has not been met, thus, there appears to be no resulting violation of the Act. Therefore, the Commission has determined to find no reason to believe that the Jay Riemersma for Congress Campaign Committee and John Faber, in his official capacity as Treasurer, violated 2 U.S.C. § 441a(f).

**B. Allegation that the Jay Riemersma for Congress Campaign Committee accepted and retained anonymous cash contributions in violation of 11 C.F.R. § 110.4(c)(3)**

Pursuant to 11 C.F.R. § 110.4(c)(3), a candidate or committee that receives an anonymous cash contribution in excess of \$50 must promptly dispose of the amount over \$50.



While the complaint alleges that the Committee accepted and retained anonymous cash contributions in excess of \$50 in violation of 11 C.F.R. § 110.4(c)(3), the Committee explains that the contributions cited in the complaint are batches of unitemized contributions, and each of these contributions was less than \$50. Further, the Washington Intelligence Bureau, Inc. ("WIB"), the company that processes the Committee's receipts, assured the Committee that it followed FEC guidelines regarding the acceptance of anonymous cash donations. The WIB states in a letter that it could verify that no single anonymous donation exceeded the \$50 limit by examining "the scanned donation detail." Committee Response, Attachment 2. The respondents' explanation that the anonymous contributions were in amounts of less than \$50 is plausible, and we have no information to the contrary. Therefore, the Commission has determined to find no reason to believe the Jay Riemersma for Congress Campaign Committee and John Faber, in his official capacity as Treasurer, violated 11 C.F.R. § 110.4(c)(3).