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OFFICE OF GENERAL
COUNSEL

December 16, 2010

SENT VIA FEDERAL EXPRESS

Mr. Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination &
Legal Administration
Federal Election Commission
999 E Street, Northwest
Washington, D.C. 20463

Re: MUR 6345 – Chris Nwasike for Congress.

Dear Mr. Jordan:

This office represents Chris Nwasike for Congress and its Treasurer, Marcus Brooks (hereinafter referred to collectively as the "Respondents") in the above-captioned MUR.

The Respondents and I have reviewed the Complaint filed on August 11, 2010, by Jerod Powers. As is detailed below, there is no reason to believe a violation occurred with respect to any of the allegations contained in the Complaint. In addition, given the relatively low amount of activity involved and other mitigating factors, the Commission should dismiss the Complaint based upon prosecutorial discretion pursuant to *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

I. Review of the Complaint:

We believe the Complaint alleges, without any factual evidence in support, that the Chris Nwasike for Congress campaign, a federally registered candidate committee, engaged in activities in violation of 2 U.S.C. §441i¹. Specifically, it appears the Complaint alleges that Respondents conspired with Mr. Jay Fields and Mrs. Jorgine Fields to violate prohibitions relevant to the solicitation for or use of tax-exempt entities by national, State, district or local political party committees. The Complaint provides no evidence whatsoever that the Respondents, Jay Fields, Jorgine Fields or any other entity agreed and conspired to any activity in violation of Federal election law

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II. Factual Review:

Joseph Fields and Jorgine Fields are self-employed/unemployed individuals who provided part-time personal services to the Biblical Concepts Ministries (BCM) of Jacksonville, Florida throughout 2009 and early-to-mid 2010. Specifically, Mr. and Mrs. Fields were compensated for their work in support of BCM's "Keep God in America" campaign. All compensation paid to Mr. and Mrs. Fields came directly from BCM accounts and was duly authorized by BCM's officers. Although Chris Nwasike was an officer of BCM during the Fields' employment by the organization, no checks to the Fields were ever signed or delivered to them by Mr. Nwasike.

Joseph Fields is a natural person and citizen of the United States of America. On April 28, 2010, Mr. Fields submitted a personal contribution to the campaign via a check drawn on a personal account in the amount of \$2,000.00. This contribution was independent of and wholly unrelated to his activities on behalf of BCM.

Neither the Respondents, nor the Fields are agents or representatives of a national, State, district or local party committee. Neither have the Respondents nor the Fields authorized or participated in any solicitation, use or transfer of funds from any tax-exempt organization to a national, State, district or local party committee, agent of such, or vice-versa.

III. Review of the Law:

The Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA") provides that "...a national, State, district, or local committee of a political party (including a national congressional campaign committee of a political party), an entity that is directly or indirectly established, financed, maintained, or controlled by any such national, State, district, or local committee or its agent, and an officer or agent acting on behalf of any such party committee or entity, shall not solicit any funds for, or make or direct any donations to— (1) an organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) and that makes expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity)."ⁱⁱ The Act also prohibits individuals and political committees from making or accepting contributions that exceed FECA's contribution limits.ⁱⁱⁱ

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IV. Discussion:

A. The Complaint Fails to Meet the "Reason to Believe" Threshold.

A "reason to believe" finding that a violation occurred is only appropriate when a complaint sets forth specific facts that, if proven true, would constitute a violation of the Act.^{iv} "Unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true."^v

The Complaint here contains little more than groundless speculation and innuendo, including the naked allegation without any factual evidence that the Chris Nwasike for Congress campaign conspired with the Fields to violate Federal election law. Furthermore, the statute cited by the Complainant, Mr. Powers, is wholly inapplicable to the stated factual evidence contained within the Complaint as neither the Campaign nor the Fields are agents of a national, State, district or local party committee and Mr. Powers has not stated as grounds for his Complaint that any funds were either solicited, delivered or diverted from any tax-exempt organization to a national, State, district or local committee of a political party. Therefore, because the Complaint fails to meet the "reason to believe" threshold and minimal procedural requirements, the Complaint should be dismissed.

B. There are Compelling Reasons to Dismiss the Complaint Based Upon Prosecutorial Discretion Pursuant to Heckler v. Chaney.

1. All Contributions at Issue Were from Permissible Sources. The transactions alleged involved contributions to a candidate committee that were made using federally permissible funds.

The Act prohibits federal political committees from accepting contributions from national banks, corporations, labor organizations, government contractors and foreign nationals.^{vi} Given that the Chris Nwasike for Congress campaign is a federally registered candidate committee, the contribution from Joseph Fields consisted of funds raised from permissible sources under the Act.

2. No Party to the Complaint is An Agent of a National, State, District or Local Committee of a Political Party. The Respondents are a federally registered candidate committee and its Treasurer. The Complaint alleges that the Respondents accepted a contribution from a private individual.

As stated above, the Act prohibits national, State, district or local committees of any political party, as well as their agents and representatives, from soliciting funds or

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making direct donations to any tax-exempt organization described in section 501(c) of the Internal Revenue Code of 1986. Given the obvious factual discrepancy between the statute cited in Mr. Powers' Complaint and the relationship of the Respondents to Mrs. Fields and/or BCM, there do not appear to be any grounds for enforcement and application of the strictures of 2 U.S.C.S. §441i(d)(1) in this matter.

3. None of the Contributions At Issue Exceeded the Contribution Limits. All the transactions in question were either legal contributions to a tax-exempt organization or legal contributions to a candidate committee that were within FECA's contribution limits.

Under the Act, a person may make contributions to a candidate for federal office of up to \$2,400.00 per election.^{vii} Accordingly, the fact that none of the contributions at issue exceeded the applicable contribution limit is another ground for the Commission to exercise prosecutorial discretion and dismiss this matter.

4. The Contributions at Issue Were Very Small. The Complaint's allegations involve a personal contribution of \$2,000.00. In previous enforcement cases involving allegations of this nature, the Commission has taken no further action against the respondents or dismissed the matters based on the low dollar amount of the alleged violations. For example, in MUR 5514 (Community Water Systems, Inc.) which involved political contributions that were allegedly reimbursed by a corporation, the Office of General Counsel noted that "the small amount of the alleged conduits' contributions, which collectively totaled \$9,000.00 during 2002, does not appear to justify the use of more resources...to pursue possible violations by them."^{viii} Accordingly, the Commission took no further action in the matter.

Similarly, in MUR 5119 (Friends of John Hostettler), the General Counsel's Office noted that "considering that this matter involves only \$1,000.00, and considering that further investigation will likely not yield additional evidence of this violation, this Office believes that the Commission should no longer devote its resources to this matter."^{ix}

In light of the foregoing, the Commission should exercise prosecutorial discretion and dismiss the Complaint pursuant to *Hecker v. Chaney*, 470 U.S. 821, 831 (1985).

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V. Conclusion:

For all the reasons set forth above, the Commission should find no reason to believe that Respondents violated the Act and should promptly dismiss the Complaint.

Sincerely,



Andrew L. Asher, Esq.
Attorney at Law

Cc: Chris Nwasike
Marcus Brooks

ⁱ Complaint at 3.

ⁱⁱ 2 U.S.C.S. §441i(d)(1).

ⁱⁱⁱ 2 U.S.C.S. §441a(a) and (f).

^{iv} 11 C.F.R. §§111.4(a) and (d).

^v Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee – December 21, 2000); Statement of Reasons in MUR 5141 (Moran for Congress – March 11, 2002).

^{vi} 2 U.S.C.S. §441b, 441c and 441e.

^{vii} 2 U.S.C.S. §441a(a)(1)(A) – Indexed for 2010 election cycle.

^{viii} Second General Counsel's Report in MUR 5514 at 11.

^{ix} Second General Counsel's Report in MUR 5119 at 12.

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