



OHIO DEMOCRATIC PARTY

HON. CHRIS REDFERN, CHAIRMAN

COPY

Christopher Hughey
Acting General Counsel
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

MUR # 6357

RECEIVED
FEDERAL ELECTION
COMMISSION
2010 AUG 25 AM 11:34
OFFICE OF GENERAL
COUNSEL

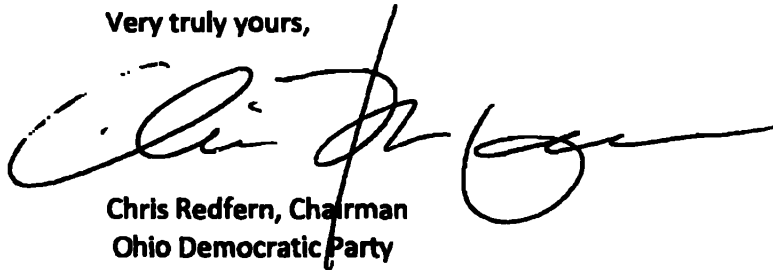
August 23, 2010

Dear Mr. Hughey:

Enclosed please find the original and two copies of the Ohio Democratic Party's complaint against American Crossroads for violations of the Federal Election Campaign Act.

Thank you for your attention to this matter.

Very truly yours,



Chris Redfern, Chairman
Ohio Democratic Party

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2010 AUG 26 P 12:49

340 E. FULTON STREET, COLUMBUS, OH 43215 | TEL: 614-221-6563 | FAX: 614-221-0721 | WWW.OHIODEMS.ORG

Paid for by the Ohio Democratic Party, Chris Redfern, Chairman, 340 E. Fulton Street, Columbus, OH 43215.
Not authorized by any Federal Candidate or Candidate Committee



OHIO DEMOCRATIC PARTY

HON. CHRIS REDFERN, CHAIRMAN

BEFORE THE FEDERAL ELECTION COMMISSION

Chris Redfern, Chairman
Ohio Democratic Party
340 East Fulton Street
Columbus, Ohio 43215

Complainant,

v.

American Crossroads
Margee Clancy, Treasurer
1625 Eye Street NW, 6th Floor
Washington, DC 20006

Respondents.

COMPLAINT

The Ohio Democratic Party ("Complainant") files this complaint with the Federal Election Commission (the "FEC" or "Commission") under 2 U.S.C. § 437g(a)(1) (2010) against American Crossroads and Margee Clancy, Treasurer ("Respondents") for numerous violations of the Federal Election Campaign Act ("FECA" or the "Act").

In two recent advisory opinions, the FEC indicated that political committees that only make independent expenditures may accept unlimited contributions from certain contributors.¹ Following this guidance, on August 10, 2010, American Crossroads registered as an independent expenditure political committee and assured the Commission that it would not "make contributions, whether direct, in-kind, or via

¹ See FEC Adv. Op. 2010-09 (Club for Growth); FEC Adv. Op. 2010-11 (Commonsense Ten).
340 E. FULTON STREET, COLUMBUS, OH 43215 | TEL: 614-227-6563 | FAX: 614-227-0721 | WWW.OHIODEMS.ORG

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coordinated communications, to federal candidates or committees."² And yet, only a week later, American Crossroads did exactly that. On August 17, 2010, American Crossroads made a contribution in the amount of \$454,341.80 to Portman for Senate under 2 U.S.C. § 441a(a)(7)(B)(iii) and 11 C.F.R. § 109.23(a) by financing the republication of Senate candidate Rob Portman's campaign materials. Respondents made a contribution in excess of the limits in violation of 2 U.S.C. § 441a(a). Furthermore, as it has now made a contribution to a federal candidate, American Crossroads may not take advantage of the special exception to the contribution limits for political committees that only make independent expenditures. Every contribution it has received in the past and every contribution it receives in the future exceeding \$5,000 per year constitutes a contribution in excess of the applicable limit and is a violation of 2 U.S.C. § 441a(a) for both American Crossroads and the donor. Similarly, every contribution it has received and every contribution it receives in the future from a corporation, union, or other normally prohibited source constitutes a violation of 2 U.S.C. § 441b for American Crossroads and the donor. American Crossroads should be compelled to return all prohibited contributions it has received to date and comply with all of the provisions of the Act and the Commission's regulations going forward, just like any other political committee that contributes to federal candidates.

A. FACTUAL AND LEGAL BACKGROUND

Following the recent court decisions in *Citizens United v. FEC*, *EMILY's List v. FEC*, and *SpeechNow.org v. FEC*, the Commission issued two advisory opinions concerning political committees that only make "independent expenditures." In both

² See American Crossroads Statement of Organization and the accompanying letter, included herewith as Exhibit A.

Advisory Opinion 2010-09 and Advisory Opinion 2010-11, the FEC found that such groups could accept unlimited contributions from individuals, political committees, corporations, and labor organizations to fund independent expenditures, provided that:

(i) the committees report their contributions and expenditures to the FEC just like other political committees, and (ii) that the committees would not make any monetary or in-kind contributions to any candidate, political committee, or other organization.³

Pending future rulemaking and revisions to the FEC's forms, the Commission stated in both advisory opinions that independent expenditure committees should submit a letter with their initial registration statement affirming to the Commission that they would not make any contributions to candidates or other political committees.

Following this guidance, American Crossroads registered as a political committee on August 10, 2010, submitting the proper letter stating that it would only make independent expenditures, would be raising funds in unlimited amounts, and accordingly, would "not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees."⁴ According to reports previously filed with the I.R.S., American Crossroads has, apparently, already accepted contributions in excess of the normal limits, including at least four contributions from individuals of \$1 million or more.⁵

³ FEC Adv. Op. 2010-09; FEC Adv. Op. 2010-11.

⁴ See American Crossroads Statement of Organization and Letter to the FEC, dated August 9, 2010, attached hereto at Exhibit A.

⁵ See Justin Elliot, "Grassroots' Rove-linked group funded almost entirely by billionaires," Salon (July 23, 2010), available at

http://www.salon.com/news/politics/war_room/2010/07/23/rove_group_billionaire_donors (last visited August 18, 2010).

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On August 17, 2010, American Crossroads then spent \$454,341.80 to create and air a television advertisement in support of Ohio Senate candidate Rob Portman.⁶ However, almost all of the actual video footage in the advertisement was taken from a campaign video created by Portman for Senate.⁷ For example, the American Crossroads advertisement shows Portman speaking to voters at a BBQ, walking in a parade, and eating with friends and family. All of this footage comes from a video produced, created, and distributed by the Portman campaign. Presumably, other footage and images in the American Crossroads advertisement also comes from Portman campaign materials.

B. LEGAL ARGUMENT

Pursuant to section 109.23(a) of the FEC's regulations, "[t]he financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure."⁸ When an entity pays to distribute a campaign's materials, even if those materials only constitute part of a larger ad, that payment becomes a contribution.

⁶ See American Crossroads, 24/48 Hour Notice of Independent/Coordinated Expenditure, filed with the Commission on August 17, 2010, attached hereto as Exhibit B. The advertisement may be viewed here: <http://www.youtube.com/watch?v=Cv3xKL4vle8>.

⁷ The Portman for Senate video may be viewed here: <http://www.youtube.com/watch?v=10r6Y6cmoi4>. It includes a disclaimer which states "Paid for by Portman for Senate Committee."

⁸ 11 C.F.R. 109.23(a) (emphasis added); see also 2 U.S.C. 441a(a)(7)(B)(iii).

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For example, in MUR 5743, the Commission admonished a political committee for republishing a candidate's campaign materials as part of a communication, and thereby making an excessive contribution under the Act.⁹ In that case, the republication was only the inclusion of a few still photographs from the candidate's website in direct mail pieces.¹⁰ The Office of the General Counsel relied on the Commission's Explanation and Justification of § 109.23 which "provide[s] an example of reproduction of a picture as being sufficient to constitute a contribution to a candidate."¹¹

Here, American Crossroads republished relatively long segments of a Portman campaign video in its advertisement. According to its own FEC reports, it then paid \$454,341.80 to disseminate the Portman campaign materials. There is no question that this expenditure constitutes a contribution to the Portman for Senate under the plain text of § 109.23(a). As the maximum contribution that American Crossroads could make to the Portman campaign is \$5,000 per election, Respondents have therefore made an excessive contribution in violation of 2 U.S.C. § 441a(a).

Furthermore, regardless of the size of the contribution it made to Portman for Senate, American Crossroads has violated the Act because it is not permitted to make any contributions at all. Generally, under 2 U.S.C. § 441a(a)(1)(C), political committees may only accept contributions from individuals up to \$5,000 in a calendar year. Political committees are also prohibited from accepting contributions from corporations or labor organizations under 2 U.S.C. § 441b. In its recent advisory opinions, the FEC carved out a narrow exception to these restrictions: a political committee can raise

⁹ See MUR 5743, Amended Certification (December 5, 2006).

¹⁰ See MUR 5743, First General Counsel's Report (November 2, 2006) at 7.

¹¹ *Id.*, citing 68 Fed. Reg. 442, 443 (January 2, 2003).

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funds in unlimited amounts from most sources if it makes independent expenditures exclusively and does not make contributions in any amount to candidates or federal political committees.¹² According to its own filings with the Commission, this is the exception under which American Crossroads is operating. That is the only reason that it may accept million dollar contributions as recently reported. Now that it is in fact making contributions to candidate committees under 11 C.F.R. § 109.23(a), American Crossroads is not permitted to accept unlimited funds or contributions from prohibited sources. Accordingly, American Crossroads has violated 2 U.S.C. § 441n(a)(1)(C) every time it has accepted a contribution in excess of the limits, violated 2 U.S.C. § 441b every time it accepted a corporate or labor contribution, and is bound by the contribution limits and source restrictions going forward. Any donor who, either in the past or going forward, violates the contribution limits or source restrictions has similarly violated the Act.

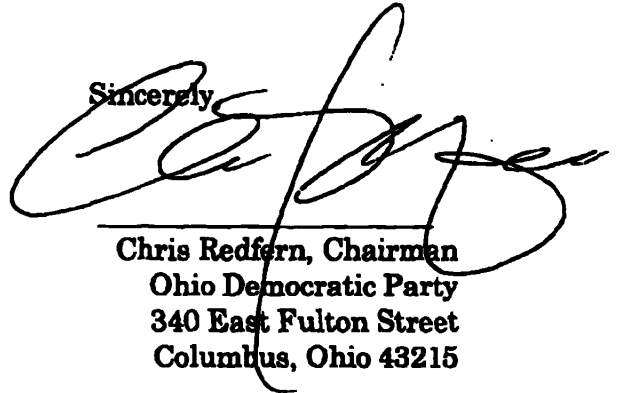
C. REQUESTED ACTION

American Crossroads has violated the Federal Election Campaign Act by republishing Portman for Senate's campaign materials, and thereby making an excessive contribution. Furthermore, as it is now making contributions to federal candidates, American Crossroads may not raise funds in unlimited amounts or from impermissible sources, and has itself violated the contribution limit set forth in 2 U.S.C. § 441a. These are serious violations that go to the heart of the Act. The Courts and the FEC created a narrow exception for political committees that only make independent expenditures, and it only took American Crossroads a week to start abusing it. We respectfully request that the Commission investigate these violations,

¹² See FEC Adv. Op. 2010-09; FEC Adv. Op. 2010-11.

enjoin American Crossroads from further violations, order it to refund all of the excessive contributions it has received to date, and assign the maximum fines permitted by law. Similarly, any contributions made to American Crossroads in the future in excess of \$5,000 or from a corporation, labor organization, or other prohibited source should be investigated and both American Crossroads and the donor should be held to account for violating the Act.

Sincerely



Chris Redfern, Chairman
Ohio Democratic Party
340 East Fulton Street
Columbus, Ohio 43215

SUBSCRIBED AND SWORN to before me this 21 day of August, 2010.


Notary Public

My Commission Expires:

DAVID L. DUFFEY
Notary Public, State of Ohio
My Commission has no Expiration Date

Exhibit A

RECEIVED
FEC MAIL CENTER
2010 AUG 10 AM 10: 08

American Crossroads
1401 New York Avenue, NW
Suite 1200
Washington, DC 20005

August 9, 2010

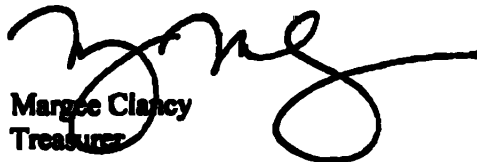
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Form 1, Statement of Organization—Unlimited Contributions

To Whom It May Concern:

This committee intends to make independent expenditures and, consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in *SpeechNow v. FEC*, it therefore intends to raise funds in unlimited amounts. This committee will not use those funds to make contributions, whether direct, indirect, or via coordinated communications, to federal candidates or committees.

Respectfully submitted,


Margee Clancy
Treasurer

12044312167

**FEC
FORM 1**

**STATEMENT OF
ORGANIZATION**

(See instructions)

FEC MAIL CENTER
2010 AUG 10 AM 10:08

Office use only

1. NAME OF COMMITTEE (In full) (Check if name is changed) Example: If typing, type over the line 12FE4M5

American Crossroads

ADDRESS (number and street)

1401 New York Ave., NW

(Check if address is changed)

Suite 1200

Washington

DC

20005

CITY

STATE

ZIP CODE

COMMITTEE'S E-MAIL ADDRESS (Please provide only one e-mail address)

(Check if address is changed)

info@americancrossroads.org

COMMITTEE'S WEB PAGE ADDRESS (URL)

(Check if address is changed)

www.americancrossroads.org

2. DATE 07/31/2010

3. FEC IDENTIFICATION NUMBER

C

4. IS THIS STATEMENT ☒ NEW (N) OR ☐ AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete

Type or Print Name of Treasurer Margee Clancy

Signature of Treasurer Electronically Filed by Margee Clancy

Date 08/09/2010

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS

Office
Use
Only

For further information contact:
Federal Election Commission
Toll Free 800-434-6530
Local 202-694-1100

FEC FORM 1
(Revised 02/2009)

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10020403017

Candidate Committee:

- (a) ☐ This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) ☐ This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate

Candidate

Party Affiliation

**Office
Sought:**

House

Serrote:

President

State

District

- (c) **This committee supports/opposes only one candidate, and is NOT an authorized committee.**

Name of Candidate

Party Committee:

- (d) This committee is a (National, State (or subordinate) committee of the (Democratic, Republican, etc.) Party.

Political Action Committee (PAC):





- (e) This committee is a separate segregated fund. (Identify connected organization on line 6.) Its connected organization is a:
- | | | |
|--|--|---|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Corporation w/o Capital Stock | <input type="checkbox"/> Labor Organization |
| <input type="checkbox"/> Membership Organization | <input type="checkbox"/> Trade Association | <input type="checkbox"/> Cooperative |

- () In addition, this committee is a Lobbyist/Registrant PAC.
- X This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee. (i.e., nonconnected committee)
- In addition, this committee is a Lobbyist/Registrant PAC.
- In addition, this committee is a Leadership PAC. (Identify sponsor on line 6.)

Joint Fundraising Representative:

- (g) This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, at least one of which is an authorized committee of a federal candidate.
- (h) This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, none of which is an authorized committee of a federal candidate.

Committees Participating in Joint Fundraiser

1.  **FEC ID number**
2.  **FEC ID number**
3.  **FEC ID number**
4.  **FEC ID number**

American Creasolade

NONE

ZIP CODE ▲

Connected Organization	Affiliated Committee	Joint Fundraising Representative	Leadership PAC Sponsor
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Margoe Clancy

Serie 1200

20005

ZIP CODE ▲

Telephone number 703 - 988 - 6167

Marpoc Clancy

1401 New York Ave., NW

Subno 1200

Washington

DC

2000s

ZIP CODE 4

Telephone number 703 - 909 - 6167

Mailing Address**ZIP CODE A****Telephone number**

Name of Bank, Depository, etc.

Mailing Address

Lexington

KY

40555

ZIP CODE ▲

Mailing Address

ZIP CODE ▲

12049512171

Exhibit B

American Crossroads

1401 New York Ave NW
Suite 1200
Washington

DC 20005

FEC ID No. C00487363

24-Hour Notice ☒ 48-Hour Notice

08/17/2010 16:22

SCHEDULE E (FEC Form 3X)

ITEMIZED INDEPENDENT EXPENDITURES

PAGE OF 1/1
FOR LINE 24 OF FORM 3X

NAME OF COMMITTEE (In Full) American Crossroads	FEC IDENTIFICATION NUMBER C C00487363
--	---

Check <input type="checkbox"/> 24-hour notice <input checked="" type="checkbox"/> 48-hour notice	Date MM / DD / YYYY 08 / 17 / 2010
--	--

Full Name (Last, First, Middle, Initial) of Payee Cicero Media	Amount 14341.80
---	--------------------

Mailing Address 1625 Eye Street NW 6th Floor	Office Sought: House State: OH X Senate District: _____ Presidential
City Washington State DC Zip Code 20006	Check One: <input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose
Purpose of Expenditure Television media production	Disbursement For: Primary <input checked="" type="checkbox"/> General 2010 Other (specify): _____
Category/Type 004	Transaction ID: SE.4105

Name of Federal Candidate supported or Opposed by expenditure: Rob Portman	Calendar Year-To-Date Per Election for Office Sought 454341.80
---	---

Full Name (Last, First, Middle, Initial) of Payee Mentzer Media Services Inc.	Date MM / DD / YYYY 08 / 17 / 2010
--	--

Mailing Address 600 Fairmont Ave Suite 306	Amount 440000.00
--	---------------------

City Towson State MD Zip Code 21286	Office Sought: House State: OH X Senate District: _____ Presidential
Purpose of Expenditure TV/media placement	Check One: <input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose
Category/Type 004	Disbursement For: Primary <input checked="" type="checkbox"/> General 2010 Other (specify): _____

Name of Federal Candidate supported or Opposed by expenditure: Rob Portman	Transaction ID: SE.4105
---	-------------------------

(a) SUBTOTAL of Itemized Independent Expenditures	454341.80
(b) SUBTOTAL of Unitemized Independent Expenditures	
(c) TOTAL Independent Expenditures	454341.80

Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of either, or (if the reporting entity is not a political party committee) any political party committee or its agent.

Margie D. Clancy
Signature

MM / DD / YYYY
08 / 17 / 2010

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