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BEFORE THE
FEDERAL ELECTION COMMISSION 2010 AUG 26 PM 2:02

Dwight Pelz
Chair, Washington State Democratic Party

OFFICE OF GENERAL
COUNSEL

Complainant,

v.

MUR # 6358

Jamie Herrera
P.O. Box 1814
Ridgefield, WA 98642

Jamie Herrera for Congress
Stephanie McClintock, Treasurer
P.O. Box 1814
Ridgefield, WA 98642

Americans for Prosperity
2111 Wilson Blvd., Suite 350
Arlington, VA 22201

Respondents.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Jamie Herrera, her authorized campaign committee, Jamie Herrera for Congress, Stephanie McClintock, Treasurer and Americans for Prosperity ("Respondents") for apparently violating the Federal Election Campaign Act ("FECA" or the "Act"). Americans for Prosperity is currently running an advertisement which it made with the help of a number of people with close ties to Herrera, individuals that, in fact, appear in the advertisement itself. Given the numerous connections between Herrera and the ad, it appears that Americans for Prosperity may have coordinated its efforts with Herrera, thereby making a prohibited contribution to her campaign. The Federal Election

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Commission ("FEC" or "Commission") should investigate whether the advertisement constitutes a coordinated communication under 11 C.F.R. § 109.21, and thus a contribution in excess of the limits from a prohibited source in violation of 2 U.S.C. § 441a(a) and 2 U.S.C. § 441b.

A. FACTS

Jamie Herrera is a candidate for the United States House of Representatives in Washington's Third Congressional District. Her opponent is Denny Heck.

Americans for Prosperity ("AFP") is a non-profit corporation organized under IRC § 501(c)(4) and incorporated under the laws of the District of Columbia.

On or about August 18, 2010, AFP began running a television advertisement entitled "Tell Denny Heck we Need Leadership."¹ The ad clearly identifies Denny Heck. The ad also features several individuals believed to be closely associated with Herrera and her campaign, including Ryan Hart, Keith Huff, and Aaron Christopherson. Mr. Christopher was Herrera's campaign manager when she ran for re-election for Washington State Representative and is listed on Herrera's website as endorsing her candidacy.² Mr. Huff and Mr. Hart are also listed on Herrera's website as endorsing her candidacy and are members of several Republican organizations with close ties to her campaign.³ Mr. Huff has also recently identified himself as a "friend" and "supporter" of Herrera.⁴

¹ See <http://americansforprosperity.org/washington>; the television spot may also be viewed here: <http://www.politico.com/singlemedia/video.html?bcid=88099111001&bctid=587476337001>.

² See <http://www.jaimesherrera.com/endorsements.html>.

³ See <http://www.jaimesherrera.com/endorsements.html>; <http://vote-wa.org/Intro.aspx?State=WA&Id=WAHuffKeith>; <http://clarkcountygop.org/content.htm?cid=28>.

⁴ See <http://libertyteeth.com/?tag=cowlitz-county-wa>.

B. LEGAL ARGUMENT:

1. Legal Background

The Federal Election Campaign Act limits the amount of money that any person may contribute to Federal candidates and political committees. 2 U.S.C. § 441a(a). The Act also prohibits corporations from making contributions in connection with Federal elections. 2 U.S.C. § 441b(a).

Federal campaign finance law treats coordinated expenditures by a non-party, non-candidate sponsor as in-kind contributions to the candidate with whom they were coordinated. See 2 U.S.C. § 441a(a)(7)(B)(i)-(ii); 11 C.F.R. § 109.21(b). When an ad identifies a candidate's opponent, coordination occurs if the candidate, the candidate's campaign, or an agent acting on behalf of the candidate or campaign suggested the ad; was materially involved in decisions about the ad; had substantial discussions in which information material to the ad was conveyed; or if a former employee, consultant, or common vendor used candidate or party information in producing the ad for the sponsor. See 11 C.F.R. § 109.21(d).

2. The FEC Should Investigate whether AFP Made and Herrera Accepted an Illegal In-Kind Contribution

The FEC should investigate whether the AFP ad was coordinated with Herrera given the many apparent ties between people appearing in the advertisement and the campaign. It is implausible that Herrera's friends, former employees, party supporters, surrogates, and endorsers would have all agreed to appear in the AFP advertisement without the assent, substantial discussion or material involvement of Herrera or her campaign concerning the ad itself. Assuming that there was coordination, AFP and Herrera violated 2 U.S.C. § 441b; AFP made, and Herrera accepted, a prohibited

contribution from a corporate entity in the amount of the cost of the advertisement, which must have exceeded the contribution limit.

3. AFP May Have Failed to Register as a Political Committee with the FEC

Any group or association that makes contributions or expenditures aggregating in excess of \$1,000 during a calendar year must file a statement of organization with the FEC. 2 U.S.C. §§ 431(4), 433. If AFP's advertisement was coordinated with Herrera, AFP would have made an expenditure well in excess of \$1,000 and, thus, would have been required to register as a political committee. It failed to do so.

4. Respondents May Have Failed to Properly Report Coordinated Communications

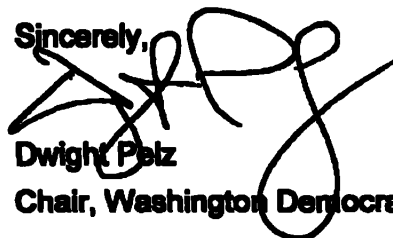
Political committees must report all expenditures to the Commission. 2 U.S.C. § 434. Commission regulations require that coordinated communications be reported to the Commission as expenditures. 11 C.F.R. § 109.21(b)(1). Candidates and their authorized committees must report coordinated communications made on their behalf to the FEC as both expenditures and receipts. 11 C.F.R. § 109.21(b)(3). Political committees that make coordinated communications must report these as both contributions and expenditures. *Id.*

Assuming that AFP's advertisement was coordinated with Herrera, Herrera was obligated to report the cost of the expenditure as a receipt and as an expenditure. She failed to do so. Similarly, if the ad was coordinated and AFP was required to register as a political committee, it too would have been required to report the expenditure for the ad. It has not done so.

C. REQUESTED ACTION

Given the evidence described above, the FEC should investigate whether Respondents violated the Federal Election Campaign Act. AFP may have coordinated with Herrera, her campaign, or their agents to create an ad in violation of the law. Should the Commission determine that Respondents have violated FECA, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.


Sincerely,



Dwight Pelz

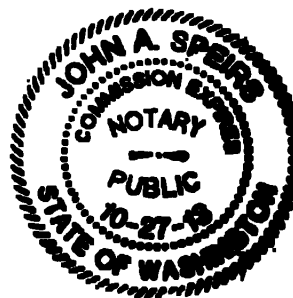
Chair, Washington Democratic Party

SUBSCRIBED AND SWORN to before me this 25 day of August, 2010.


Notary Public

My Commission Expires:

10-27-12



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