



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP -7 2011

E. Mark Braden, Esq.
Baker & Hostetler LLP
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 6366
Charles R. Black and Judy Black

Dear Mr. Braden:

On September 8, 2010, the Federal Election Commission notified your clients, Charles R. Black and Judy Black, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time. Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on August 30, 2011, voted to dismiss the complaint as to Charles R. Black and Judy Black. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

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. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

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

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", is written over a horizontal line.

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:**

Charles R. Black

MUR 6366

6 Judy Black

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9 **I. GENERATION OF MATTER**

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11 This matter was generated by a complaint filed with the Federal Election Commission by
12 Ryan Miskell. See 2 U.S.C. § 437g(a)(1).

13 **II. FACTUAL SUMMARY**

14 This matter concerns allegations that the U.S. Chamber of Commerce ("the Chamber")
15 and Jane Norton for Colorado Inc. ("Norton Committee" or "Committee"), Jane Norton's
16 principal campaign committee for U.S. Senate in Colorado in 2010, coordinated fundraising for a
17 television advertisement supporting Jane Norton through Charles and Judy Black.

18 **A. Background**

19 Judy Black, Jane Norton's sister, is a Policy Director at Brownstein Hyatt Farber
20 Schreck, LLP ("Brownstein"). Judy Black Affidavit at ¶ 1. Charles Black, Judy Black's
21 husband, is Chairman of Prime & Policy, Inc. Charles Black Affidavit at ¶ 1.

22 On August 2, 2010, the Chamber sponsored a television advertisement entitled "Stand up
23 to Washington," which supported Jane Norton's candidacy in the Colorado Republican Senate
24 primary election.¹ Available at
25 http://www.politico.com/blogs/bensmith/0810/Chamber_up_backing_Norton_in_CO.html. On
26 July 29, 2010, the Chamber filed a Form 9 (24-Hour Notice of Disbursements/Obligations for
27 Electioneering Communications) with the Commission, which disclosed that the Chamber spent

¹ The complaint identifies the name of the advertisement as "Rock Ribbed Conservative," however the title was changed to "Stand up to Washington."

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1 \$250,000 on the advertisement and listed Bill Miller, the Chamber's Vice President for Political
2 Affairs and Federation Relations, as a person "sharing/exercising control" over the electioneering
3 communication.

4 **B. Alleged Coordination**

5 **1. Complaint**

6 The complaint alleges that the Chamber coordinated the "Stand up to Washington"
7 advertisement with the Norton Committee. Complaint at 1. The complaint asserts that "public
8 information and knowledgeable sources" indicate that Josh Penry, the Norton Committee's
9 campaign manager, and Bill Miller, the Chamber's Vice President for Political Affairs and
10 Federation Relations, coordinated with Charles and Judy Black to raise money for the
11 advertisement, and that Judy Black is a representative of the Norton Committee who is employed
12 by a lobbying firm that works for the Chamber. *Id.* at 2.

13 **2. Response of Charles and Judy Black**

14 Charles and Judy Black deny that they raised money for any Chamber communications
15 and that they have any knowledge of coordination between the Chamber and the Norton
16 Committee. Black Response at 2. The attached affidavits of Charles and Judy Black state that
17 neither participated in any discussion with the Chamber regarding any independent expenditures
18 or electioneering communications; are aware of any discussions between representatives of the
19 Chamber and the Norton Committee regarding any such communications; raised any funds for
20 the Chamber for any communication on behalf of the Norton Committee; or coordinated with
21 Josh Penry and Bill Miller to raise funds for any communications by the Chamber or any other
22 organization. Charles Black Affidavit at ¶¶ 2-4 and Judy Black Affidavit at ¶¶ 2-4. The
23 response confirms that Judy Black works for Brownstein and that Brownstein lobbies for the

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1 Institute for Legal Reform ("ILR"), a separate entity from the Chamber, but asserts that
2 Brownstein's lobbying representation of the ILR has no relationship to the Norton Committee or
3 any of the Chamber's expenditures for the Colorado election. Black Response at 2.

4 **III. ANALYSIS**

5 The Commission dismisses the complaint as to Charles R. Black and Judy Black.

6 Under the Federal Election Campaign Act of 1971, as amended ("the Act"), a corporation
7 is prohibited from making any contribution in connection with a federal election, and candidates
8 and political committees are prohibited from knowingly accepting corporate contributions.

9 2 U.S.C. § 441b. An expenditure made by any person "in cooperation, consultation, or concert,
10 with, or at the request or suggestion of, a candidate, his authorized political committees or their
11 agents" constitutes an in-kind contribution. 2 U.S.C. § 441a(a)(7)(B)(i).

12 A communication is coordinated with a candidate, a candidate's authorized committee, or
13 agent of the candidate or committee when the communication satisfies the three-pronged test set
14 forth in 11 C.F.R. § 109.21(a): (1) the communication is paid for by a person other than that
15 candidate or authorized committee; (2) the communication satisfies at least one of the content
16 standards set forth in 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of
17 the conduct standards set forth in 11 C.F.R. § 109.21(d). The Commission's regulations at
18 11 C.F.R. § 109.21 provide that coordinated communications constitute in-kind contributions
19 from the party paying for such communications to the candidate, the candidate's authorized
20 committee, or the political party committee which coordinates the communication.

21 While the complaint alleges that Judy Black, a representative of the Norton campaign,
22 was employed by a lobbying firm that worked for the Chamber, the response of Charles and Judy
23 Black clarifies that Brownstein was retained by the ILR, a separate entity. The response also

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- 1 asserts that Brownstein had no involvement with the "Stand up to Washington" advertisement.
- 2 Finally, Charles and Judy Black specifically deny that they raised any funds for the Chamber's
- 3 advertisement or were involved in its production or dissemination.

- 4 The complaint does not allege that Mr. and Mrs. Black violated the Act, and only
- 5 identifies them as possible conduits of information to establish alleged coordination between the
- 6 Chamber and the Committee. Accordingly, the Commission dismisses the complaint as to
- 7 Charles R. Black and Judy Black.

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