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October 29, 2010

Christopher Hughey, Esq.
General Counsel's Office
999 E Street, NW
Washington, DC 20463

Re: Response of Crossroads Grassroots Policy Strategies in MUR 6368

Dear Mr. Hughey,

This Response is submitted by the undersigned counsel of behalf of Crossroads Grassroots Policy Strategies, in response to the Complaint designated as Matter Under Review 6368. By letter dated September 16, 2010, we requested an extension to respond to the Complaint, and that request was granted by letter dated September 21, 2010.

I. The Complaint Does Not Meet the Basic Standard for Finding Reason To Believe

In the Complaint, the Missouri Democratic Party alleges that Crossroads Grassroots Policy Strategies (Crossroads GPS) coordinated one of its advertisements with Roy Blunt, who is a candidate for U.S. Senate in Missouri. The Complaint, however, presents no actual evidence of any coordination. The "strong evidence" cited in the Complaint for this alleged coordination consists merely of assertions regarding "close ties" between Karl Rove and Roy Blunt.

Complainant presents absolutely no evidence whatsoever that any coordination actually occurred. According to the Complaint:

In recording the video, Rove would have learned valuable information about the Blunt campaign's messaging. And, given Rove's close relationship with Blunt, it is likely that the two had additional discussions of the campaign's plans, projects, activities, and needs. Further, given Rove's intimate and well-publicized role in the organization, it is unlikely that the Crossroads GPS created and aired the ad without Rove's involvement. Thus, there is strong evidence that the ad also meets the Commission's conduct prong.

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To the contrary, there is no evidence that any coordination occurred. The Complaint presents nothing but speculation and draws conclusions that are simply incorrect. The Commission has repeatedly held that “[u]nwarranted legal conclusions from asserted facts ... or mere speculation ... will not be accepted as true. . . . Such purely speculative charges, especially when accompanied by a direct imputation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.” Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee); *see also* MUR 6077 (Norm Coleman et al.), Factual and Legal Analysis; Statement of Reasons in MUR 5141 (James P. Moran, Jr.) (“A complainant’s unwarranted legal conclusions from asserted facts, will not be accepted as true.”).

II. Coordination Complaints Containing No Actual Conduct Prong Evidence are Consistently Dismissed

Every election year, the Commission receives a steady stream of harassing complaints that allege coordination, but fail to present any actual evidence of collaborative conduct sufficient to satisfy the coordination test. These complaints are routinely dismissed. For example, the Commission has dismissed coordination complaints that “merely relied on the inference that the communication had been coordinated” and presented “no specific information” or “probative information of coordination.” MUR 6059 (Sean Farnell for Congress), Factual and Legal Analysis. *See also* MUR 5952 (Californians for Fair Election Reform), Factual and Legal Analysis (dismissing coordination allegations “[i]n light of the speculative nature of the allegations and the lack of factual information to substantiate the claims.”); MUR 5870 (West Virginia Values LLC), Factual and Legal Analysis (dismissing complaint “[i]n light of the speculative nature of the allegations”); MUR 5774 (Lamborn for Congress) (dismissing matter after finding insufficient facts to support the complainant’s “inference” of coordination”); MUR 5754 (MoveOn.org Voter Fund), Factual and Legal Analysis (finding “the complaint does not contain sufficient information on which to base an investigation into whether MOVF satisfied the ‘conduct’ standard of the coordinated communications test”).

Nevertheless, Complainant writes, “The Commission should investigate whether the ad is a ‘coordinated communication’ under Commission rules.” In past matters, the Commission has not undertaken such fishing expeditions, and instead sensibly required credible and actual evidence of wrongdoing as a predicate to finding reason to believe. As three Commissioners recently noted, “The RTB [reason to believe] standard does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges.” MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Matthew S. Petersen, Caroline C. Hunter, and Donald F. McGahn at 6, n.12.

III. The Factual Allegations Made in the Complaint Are Either Incorrect or Irrelevant

Karl Rove does not hold a formal position with Crossroads GPS, and he is not involved in the process of creating and distributing advertisements. The decision to create and distribute the advertisement that is the subject of this Complaint was made by Steven Law and Carl Forti. See Affidavit of Steven Law at ¶ 4; Affidavit of Carl Forti at ¶ 5. The creative content of the advertisement was the work of Crossroads GPS-approved and "firewalled" vendors under the production management of Anne Beyersdorfer. These individuals were responsible for producing the advertisement. The television stations on which the advertisement was aired were selected by the Crossroads GPS media buyer and approved by Carl Forti. See Affidavit of Carl Forti at ¶ 6. None of these individuals had any discussions or correspondence with Karl Rove regarding whether or not to create the advertisement in question, the content of the advertisement, or the method or means by which the advertisement would be distributed. See Affidavit of Steven Law at ¶ 5; Affidavit of Carl Forti at ¶ 7. Simply stated, Mr. Rove was not involved.

The "evidence" of coordination presented in the Complaint borders on the absurd. While Roy Blunt and Karl Rove may very well have spoken "at least three times a week" in 1999, that is not in the slightest bit relevant to the question of whether the advertisement at issue is a coordinated communication. Also irrelevant are any breakfasts that Roy Blunt and Karl Rove may have had together in 2002 or 2004. And even if Mr. Rove "headline[d] two fundraisers" for Mr. Blunt in 2010, that tells us nothing about whether the advertisement at issue was coordinated. The complaint contains no evidence that in any way serves as a connecting nexus between the alleged facts and the conclusion of coordination. In similar circumstances, the Commission explained:

The only fact regarding conduct alleged by the complainant is that Indeglia hosted a fundraiser for Laffey US Senate and, therefore, Indeglia and Laffey must have a close relationship. Even if true, a close relationship would not by itself meet any of the six conduct standards, and is too attenuated and speculative to support an inference that the parties engaged in coordination....Balancing the complaint's speculative allegation, the respondents' denials, and the absence of any other available information, there is no factual predicate to investigate whether Laffey US Senate received a prohibited in-kind corporate contribution in the form of a coordinated communication.

MUR 5750 (Laffey US Senate), Factual and Legal Analysis at 6-7. See also MUR 5870 (West Virginia Values LLC), Factual and Legal Analysis at 5-6 ("The complaint, however, initially failed to allege which conduct standard is satisfied, alleging only that it is 'probable' that coordination occurred between West Virginia Values and the Committee based on the long-standing relationship between the primary donor to West Virginia Values, Jeffrey Burum, and

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Alan Mollohan.”). The Commission has also rejected the “inference” of coordination based on the alleged existence of a “close-knit web of relations.” See MUR 6077 (Norm Coleman), Factual and Legal Analysis at 5.

The Complaint also refers to a web video endorsement that Mr. Rove recorded for Mr. Blunt, and which was alleged placed on YouTube on June 29, 2010. The Complaint claims that “[i]n recording the video, Rove would have learned valuable information about the Blunt campaign’s messaging.” This is pure speculation on the Complainant’s part and is not substantiated in any way. The web video endorsement does not, on its face, suggest or reveal any “inside information.” The complaint provides no explanation of what the “valuable information” learned might have been, nor any actual evidence that such “valuable information” learned by Mr. Rove was then shared with Crossroads GPS, which in turn used it in making the advertisement at issue.

Finally, the Complaint notes that “the web video tout’s [sic] Blunt’s opposition to health care reform – just as the [Crossroads GPS] video attacks his opponent’s support of it.” It should surprise no one that President Obama’s health care legislation is mentioned in both – it is one of the central political and policy issues of the day. This issue is a component of countless political advertisements aired across the country in recent months. And it should be especially unsurprising that this issue would be mentioned in Missouri, where voters recently approved Proposition C, which was broadly viewed as a referendum on the health care bill.

The Complaint should be immediately dismissed. It is a weak attempt to harass Crossroads GPS, and is an abuse of the Commission’s complaint process. The Complainant alleges coordination, but provides no actual evidence to support the allegation.

Sincerely,



Thomas J. Josefiak
Michael Bayes