

**FEDERAL ELECTION COMMISSION**  
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**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6368  
DATE COMPLAINT FILED: 9/2/2010  
DATE OF NOTIFICATION: 9/8/2010  
DATE LAST RESPONSE RECEIVED: 10/29/2010  
DATE ACTIVATED: 2/15/2011

EARLIEST SOL: 8/21/2015

**COMPLAINANT:**

Missouri Democratic Party

**RESPONDENTS:**

Friends of Roy Blunt and Gordon Elliott  
in his official capacity as treasurer  
Senator Roy Blunt  
Crossroads Grassroots Policy Strategies

**RELEVANT STATUTES AND  
REGULATIONS:**

2 U.S.C. § 441a(a)(7)(B)(i)  
2 U.S.C. § 441b  
2 U.S.C. § 433  
2 U.S.C. § 434  
11 C.F.R. § 109.21

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

This matter involves allegations that Crossroads Grassroots Policy Strategies ("Crossroads GPS") made a prohibited corporate in-kind contribution to Senator Roy Blunt and his 2010 U.S. Senate campaign's principal campaign committee, Friends of Roy Blunt and Gordon Elliott in his official capacity as treasurer ("Committee"). According to the Complaint, Crossroads GPS aired a television advertisement that attacked Blunt's 2010 opponent Robin Carnahan ("Carnahan Ad"). Citing Karl Rove's relationship with both Blunt and Crossroads

1 GPS, the Complaint alleges that the Carnahan Ad was coordinated. Compl. at 1-5 (Sept. 2,  
2 2010).

3 Respondents each deny that the advertisement was a coordinated communication. See  
4 Crossroads GPS Resp. (Oct. 29, 2010); Roy Blunt and Friends of Roy Blunt Joint Resp. (Oct. 19,  
5 2010) ("Joint Blunt Resp."). Crossroads GPS also denies that Rove played any role in the  
6 creation or production of the Carnahan Ad. See Crossroads GPS Resp. at 3.

7 As discussed below, there is no basis to conclude that the conduct prong of the  
8 Commission's coordinated communication regulation was met with respect to the Carnahan Ad.  
9 Accordingly, we recommend that the Commission find no reason to believe that Crossroads GPS  
10 made, and Blunt and his Committee received, a prohibited corporate in-kind contribution in  
11 violation of 2 U.S.C. § 441b(a).

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 **A. Factual Background**

14 Crossroads GPS is a non-profit organization that, on June 2, 2010, was organized under  
15 the laws of the Commonwealth of Virginia. Crossroads GPS describes itself as "a policy and  
16 grassroots advocacy organization." See About, CROSSROADS GPS,  
17 <http://www.crossroadsgps.org/about>. Steven Law is the President of Crossroads GPS, and Carl  
18 Forti is the Advocacy Director in charge of overseeing and directing the conception and  
19 production of all Crossroads GPS television advertising. See Crossroads GPS Resp. at 3; Carl  
20 Forti Aff. ¶ 2 (Oct. 29, 2010). According to the Complaint, Crossroads GPS is a "spin-off  
21 group" of American Crossroads, an independent expenditure-only political committee registered  
22  
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1 with the Commission. Compl. at 2. Rove does not hold an official position with Crossroads  
2 GPS. See Crossroads GPS Resp. at 3.

3 Roy Blunt was elected to serve as a U.S. Senator from Missouri in 2010 after previously  
4 serving as a member of the U.S. House of Representatives. According to the Complaint, Karl  
5 Rove actively campaigned for Blunt in Missouri during the 2010 election cycle. Compl. at 2-3.  
6 As part of Rove's campaign efforts, he recorded a web video supporting Blunt that was posted to  
7 YouTube by the Blunt campaign on June 29, 2010. Compl. at 2; *Blunt for Senate 2010*, Message  
8 from Karl Rove, YOUTUBE (Jun. 29, 2010) [http://www.youtube.com/watch?feature=player](http://www.youtube.com/watch?feature=player_detailpage&v=tkIJ-r9Gf1U)  
9 [detailpage&v=tkIJ-r9Gf1U](http://www.youtube.com/watch?feature=player_detailpage&v=tkIJ-r9Gf1U).<sup>2</sup>

10 Later that summer, Crossroads GPS began airing the Carnahan Ad, which used the  
11 following voiceover text to criticize Senator Blunt's opponent, Robin Carnahan, for supporting  
12 health care reform. Compl. at 3.

13 The message is clear. 71% of Missouri voters don't want  
14 government-mandated health care. We want to make our own  
15 health care decisions. But Robin Carnahan disagrees. While 71%  
16 of us voted no, Carnahan sided with lobbyists, big unions and  
17 Washington insiders to force Obamacare on us. Missouri's  
18 Lieutenant Governor is suing the federal government so we can  
19 keep our health care. Tell Carnahan to get in touch with  
20 Missourians and to support the health care challenge.  
21

22 See *Crossroads GPS Channel*, Crossroads GPS Issue Ad on Robin Carnahan, YOUTUBE (Aug.  
23 29, 2010) <http://www.youtube.com/watch?v=4lr9xEr9zgU>.<sup>3</sup>

<sup>2</sup> In the video, Rove contrasts Senator Blunt's opposition to health care reform with Carnahan's support of it. The video contains a disclaimer that it was paid for and authorized by Friends of Roy Blunt.

<sup>3</sup> The visual portion of the advertisement contains a disclaimer stating the ad was paid for by Crossroads GPS. Crossroads GPS filed an electioneering communication report indicating disbursements of \$390,197 for television advertisements referencing Robin Carnahan during this same time period. See Crossroads GPS, Electioneering Communication Reports (filed Sept. 3, 2010).

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1 The Complaint alleges that the Carnahan Ad constitutes a prohibited corporate in-kind  
2 contribution because the advertisement was a coordinated communication. According to the  
3 Complaint, "Rove would have learned valuable information about the Blunt campaign's  
4 messaging" when Rove recorded for the Committee the web video supporting Blunt in June,  
5 2010. Compl. at 5. Moreover, according to the Complaint, the "close relationship" between  
6 Rove and Blunt made it "likely that the two had additional discussions of the [Blunt] campaign's  
7 plans, projects, activities, and needs." *Id.* The Complaint also surmises that "given Rove's  
8 intimate and well-publicized role in the organization, it is unlikely that the Crossroads GPS  
9 created and aired the [Carnahan] ad without Rove's involvement." *Id.*

10 Crossroads GPS, Blunt, and his Committee submitted Responses, each of which denies  
11 any coordination with respect to the Carnahan Ad. Crossroads GPS asserts — relying on sworn  
12 affidavits submitted with the Response — that Law and Forti made the decision to create and  
13 distribute the Carnahan Ad, and that Rove, who holds no formal position with Crossroads GPS,  
14 played no part in the process. Crossroads GPS Resp. at 2-3; Steven Law Aff. ¶ 4 (Oct. 29,  
15 2010); Forti Aff. ¶ 5. Further, Crossroads GPS states that the Carnahan Ad was produced by  
16 "firewalled" vendors under the management of Anne Beyersdorfer." Crossroads GPS Resp. at  
17 2-3. Crossroads GPS argues that the web video endorsement by Rove does not, on its face,  
18 indicate what "inside information" might have been relayed to Rove during its taping that was  
19 subsequently used by Crossroads GPS in creating the Carnahan Ad. *Id.* at 4. Indeed, all  
20 Respondents assert that the Carnahan Ad concerned a ubiquitous political issue, and that  
21 Crossroads GPS would not have needed to coordinate with Senator Blunt or his Committee in  
22 order to understand the issue's relevance to the Blunt-Carnahan race. See Joint Blunt Resp. at 2;  
23 Crossroads GPS Resp. at 4.

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**B. Legal Analysis**

The Complaint alleges that Crossroads GPS made and Blunt and his Committee accepted a prohibited corporate in-kind contribution because they coordinated the production and airing of the Carnahan Ad. The Complaint contends that the "conduct" prong of the coordination analysis is satisfied by the "close ties" between Karl Rove, Crossroads GPS, and Blunt. Compl. at 1-2.

**1. Coordination**

The Federal Election Campaign Act of 1971, as amended (the "Act") prohibits corporations from making contributions from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a). Correspondingly, no candidate or political committee may knowingly accept a corporate contribution. *Id.*

Under the Act, an expenditure made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees or their agents" constitutes an in-kind contribution. 2 U.S.C. § 441a(a)(7)(B)(i). A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication (1) is paid for, in whole or part, by a person other than that candidate, authorized committee, or political party committee; (2) satisfies at least one of the content standards described in 11 C.F.R. § 109.21(c);<sup>4</sup> and (3) satisfies at least one of the conduct standards described in 11 C.F.R. § 109.21(d). 11 C.F.R. § 109.21(a)(1)-(3).

<sup>4</sup> The Commission revised the content standard in 11 C.F.R. § 109.21(c) in response to the D.C. Circuit's decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008), adding a new standard to the content prong of the coordinated communications rule to cover communications that are the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c)(5); see Coordinated Communications, 75 Fed. Reg. 55,947 (Sept. 15, 2010) (explanation and justification). The effective date of the new content standard is December 1, 2010, after the events at issue in this matter. Nonetheless, application of the new standard would not change the analysis in this Report.

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1 Here, both the payment and content prongs of the Commission's coordinated  
2 communication regulation are met — allegations that Crossroads GPS does not dispute.  
3 Crossroads GPS is a third-party payor responsible for airing the Carnahan Ad, and the  
4 advertisement was a public communication that refers to Carnahan, a clearly identified candidate  
5 for federal office, and was broadcast in her jurisdiction within 90 days of the November 2, 2010  
6 general election. *See* 11 C.F.R. § 109.21(a)(1) and (c)(4)(i). It does not appear, however, that  
7 the conduct prong is met.

8 The conduct prong is satisfied where any of the following types of conduct occurs:  
9 (1) the communication was created, produced, or distributed at the request or suggestion of a  
10 candidate or his campaign; (2) the candidate or his campaign was materially involved in  
11 decisions regarding the communication; (3) the communication was created, produced, or  
12 distributed after substantial discussions with the campaign or its agents; (4) the parties contracted  
13 with or employed a common vendor that used or conveyed material information about the  
14 campaign's plans, projects, activities or needs, or used material information gained from past  
15 work with the candidate to create, produce, or distribute the communication; (5) the payor  
16 employed a former employee or independent contractor of the candidate who used or conveyed  
17 material information about the campaign's plans, projects, activities or needs, or used material  
18 information gained from past work with the candidate to create, produce, or distribute the  
19 communication; or (6) the payor republished campaign material. *See* 11 C.F.R. § 109.21(d).

20 The Complaint argues that Rove's connections to both Blunt and Crossroads GPS  
21 indicate that Blunt and Crossroads GPS are connected. But, beyond Rove's individual  
22 relationships with both Blunt and Crossroads GPS, the Complaint provides no basis for  
23 concluding that the conduct prong was met. *See* 11 C.F.R. § 109.21(d). And Crossroads GPS

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1 and the Committee explicitly deny that there was any such interaction regarding the Carnahan  
2 Ad. The Crossroads GPS Response — supported by affidavits from Forti and Law — further  
3 states that Rove played no role in creating or placing the Carnahan Ad. See Crossroads GPS  
4 Resp. at 3-4; Law Aff. ¶ 4; Forti Aff. ¶ 5. As the person who “oversee[s] and direct[s] the  
5 conception and production of all Crossroads GPS television advertisements,” Forti would have  
6 personal knowledge of his sworn assertion that the Carnahan Ad was “produced entirely  
7 independently of Roy Blunt and Roy Blunt for U.S. Senate.” Forti Aff. ¶¶ 2, 4. As a  
8 consequence, we see no basis to support the conclusion that the Carnahan Ad satisfied the  
9 conduct prong. 11 C.F.R. § 109.21(d).

10 Accordingly, we recommend that the Commission find no reason to believe that  
11 Crossroads GPS violated 2 U.S.C. § 441b(a) by making a prohibited corporate in-kind  
12 contribution in the form of a coordinated communication. Correspondingly, we also recommend  
13 that the Commission find no reason to believe that Blunt and the Committee violated 2 U.S.C.  
14 § 441b(a) by knowingly accepting or receiving a prohibited corporate in-kind contribution in the  
15 form of a coordinated communication.

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4 **III. RECOMMENDATIONS**

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1. Find no reason to believe that Crossroads Grassroots Policy Strategies, Senator Roy Blunt, and Friends of Roy Blunt and Gordon Elliott in his official capacity as treasurer violated 2 U.S.C. § 441b(a).

3. Approve the attached Factual and Legal Analyses.

4. Approve the appropriate letters.

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5. Close the file.

Date: 11/9/12


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