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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6375

DATE COMPLAINT FILED: September 15, 2010

DATE OF NOTIFICATION: September 21, 2010

DATE LAST RESPONSE RECEIVED: October 8, 2010

DATE ACTIVATED: October 27, 2010

SOL: February 2, 2014

COMPLAINANT:

Karen Emily Hyer

RESPONDENTS:

The Independence Caucus and Frank Anderson, in his
official capacity as Treasurer

The Independence Caucus, a Utah non-profit corporation¹

Friends of Jason Chaffetz and Corie Chan, in her official
capacity as Treasurer

RELEVANT STATUTES:

2 U.S.C. § 433

2 U.S.C. § 434

2 U.S.C. § 441a(a)

2 U.S.C. § 441b(a)

2 U.S.C. § 441d

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter involves allegations that The Independence Caucus and Frank Anderson, in
his official capacity as Treasurer ("the PAC"), The Independence Caucus, a Utah non-profit

¹ This Report will refer to the two identically-named Independence Caucus entities as "the PAC" and "the Corporation." The complainant was evidently unaware of the existence of the Utah non-profit corporation when she filed the complaint, and the allegations set forth therein purportedly address the activities of the PAC. As a result, the Commission initially sent a notification to the PAC, and not specifically to the Corporation. The two entities, however, share an address and at least one officer, and the response was submitted on behalf of both entities.

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1 corporation ("the Corporation"), and Friends of Jason Chaffetz and Corie Chan, in her official
2 capacity as Treasurer ("Friends of Jason Chaffetz"), violated various provisions of the Federal
3 Election Campaign Act of 1971, as amended ("the Act"), in connection with a range of political
4 campaign activities in support of various 2010 federal candidates.

5 As discussed below, we recommend that the Commission find reason to believe that the
6 Corporation violated 2 U.S.C. §§ 433(a) and 434(a) by failing to register and report as a political
7 committee, and 2 U.S.C. § 441a(a) by making excessive in-kind contributions to various
8 candidates. If the Commission does not agree that the Corporation is a political committee, we
9 ~~recommend that the Commission find reason to believe that the Corporation violated 2 U.S.C. §~~

10 441b(a) by making prohibited in-kind contributions. We also recommend that the Commission
11 find reason to believe that the PAC violated 2 U.S.C. § 434(a) by filing late reports with the
12 Commission. Further, we recommend that the Commission find reason to believe that the
13 Corporation and the PAC violated 2 U.S.C. § 441d by failing to include proper disclaimers on
14 certain websites. Lastly, we recommend that the Commission take no action at this time with
15 respect to Friends of Jason Chaffetz.

16 II. FACTUAL AND LEGAL ANALYSIS

17 A. Factual Background

18 The Independence Caucus is actually two separate entities: a non-connected
19 multicandidate federal political committee (FEC ID C00461764) ("the PAC"), and an
20 identically-named non-profit corporation ("the Corporation"). The PAC filed its Statement of
21 Organization with the Commission on May 11, 2009. The Statement of Organization does not
22 list any connected organization (which would be required for a separate segregated fund) and
23 curiously lists the PAC as a "joint fundraising representative." In its reports filed with the
24
25

1 Commission, the PAC reported no receipts or disbursements before September 2010. The
2 Corporation was registered with the State of Utah on February 2, 2009. Both organizations share
3 an address and website (www.icaucus.org). According to the iCaucus Response, the website is
4 operated by the Corporation. The website, however, is also listed as the PAC's official web page
5 in its Statement of Organization. Both organizations state that their mission is "to find/elect
6 fiscally sound candidates; help organize locally; educate people on current affairs; [and] research
7 money trails to every rep we can." See <http://www.icaucus.org/about>. The stated methods for
8 accomplishing their goals are to "find, vet, endorse and then help elect principled candidates,"
9 and to "teach our delegates a proven method to achieve grassroots electoral success." See

10 Compl., 12. Frank Anderson is the Treasurer of the PAC and the co-founder of the Corporation.

11 The complaint alleges that the PAC: (a) filed late and inaccurate reports with the
12 Commission in 2009 and 2010; (b) failed to include proper disclaimers on yard signs, websites,
13 and mass emails; and (c) hosted fundraisers and otherwise "help[ed] numerous federal candidates
14 with their fundraising efforts" without reporting its activities to the Commission. See Compl., 4.
15 Additionally, the complaint generally asserts that the allegations contained in the complaint are
16 "just the tip of the iceberg" and that there are "likely many other examples of violations" due to
17 allegations that the PAC coordinated its expenditures with the commitments of various candidates
18 that it endorsed. See Compl., 4-5.

19 The Corporation and the PAC filed a response ("the iCaucus Response") asserting that
20 the Corporation, not the PAC, conducted nearly all of the activities supporting federal candidates

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1 described in the complaint. iCaucus Resp., 2. The iCaucus Response also states that the PAC
2 was dormant until September 2010, and that the reports covering periods before that date
3 accurately reflect that there was no activity for the PAC during the applicable reporting periods. *Id.*
4 *Id.* The iCaucus Response acknowledges, however, that the PAC filed the July 2010 Quarterly
5 Report after the filing deadline and has "filed other quarterly reports after their respective filing
6 deadlines." *Id.* Further, the iCaucus Response indicates that the only activities engaged in by
7 the PAC occurred in September 2010 and consisted of the iCaucus 2010 National Candidate
8 Convention (where the PAC "introduc[ed] iCaucus endorsed Candidates from across the
9 Country" and distributed the "iCaucus Endorsed Candidate Guide 2010"), an
10 Educational/Training Session, and a 9/11 Memorial Service, all held in conjunction with the
11 Unite in Action March on DC on September 9-11, 2010 ("the September 2010 Activities"). See
12 iCaucus Response, 8, Appendix B.

13 The iCaucus Response claims that the Corporation conducted all of the other activities
14 described in the complaint and the iCaucus Response. See Compl., 8. Respondents generally
15 contend that the costs of such activities constituted uncompensated personal services pursuant to
16 11 C.F.R. § 100.74, uncompensated Internet activities under 11 C.F.R. § 100.94, and/or were
17 otherwise not required to be reported under the Act. See, e.g., Compl., 2, 3, 6. Such activities
18 include:

- 19 • Vetting and Endorsing Candidates. The Corporation endorsed at least 46 candidates
20 for federal office in the 2010 election cycle. See Compl., 2; iCaucus Resp., 3.
21
- 22 • Campaign Liaison and Campaign Team Support. The Corporation established a
23 Campaign Liaison and Campaign Team for each of its endorsed candidates in order to
24 provide: "Town-Hall Forums to discuss IC and why we are endorsing the candidate";
25 "Events, venues, speakers, promotions"; "Fundraising events"; "Research teams and
26 research data"; "website and branding"; "Network and Communication"; "Legal Fees
27 (Legal Campaign Retainer)"; "Accounting Fees (FEC Accountant)"; and "Exclusive

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iCaucus Endorsed Candidate Yard Signs, Printing – Brochures, Bumper Stickers, Banners and Door Hangings” (collectively, “Campaign Team Support”). See Compl., 15-16, 42. The Corporation also hosted various events, including an Activist Training Seminar (December 5, 2009), and several Independence Caucus Presentations in South Carolina, North Carolina, and Virginia, during July and August, 2010, though it is unclear whether these events were held in conjunction with any particular committee or candidate. See Compl., 53-55, 64, 94.

- Fundraising Events. Examples contained in the complaint include: (1) the “California and National Fundraising for Candidates,” featuring a federal candidate as speaker and urging attendees to “bring your enthusiasm and your wallets!” (“the August 2009 Fundraiser”); and (2) “A Constitutional Evening in 3D: Dinner, Drama, and Debate,” which was billed as a fundraiser and included a “Meet and Greet” and “A Principled Debate on Fiscal Responsibility and Constitutional Authority” featuring four federal candidates (“the January 2010 Fundraiser”) (collectively, “the Fundraising Events”). See Compl., 50-52, 57. The Corporation also hosted the 2009 California Independence Caucus Convention, although it is unclear whether that event was a fundraiser. See Compl., 59.
- Website Fundraising. Examples include: (1) solicitations for donations from its members and the general public; (2) the sale of merchandise through the Independence Caucus store to “help us raise funds for political campaigns to elect fiscally responsible candidates into office”; (3) the sale of individualized yard signs; and (4) the “Big Stick Tea Party” efforts, in which individuals paid the Corporation to send “individually personalized Teabag & Letter[s]” to incumbent members of Congress, such as Senator Barbara Boxer (collectively, “the Website Fundraisers”). See iCaucus Resp., 3, 5; Compl., 65-72.

Friends of Jason Chaffetz is the principal campaign committee of Rep. Jason Chaffetz of Utah’s 3rd Congressional District. The Corporation was founded by volunteers from Rep. Chaffetz’s 2008 Congressional campaign, and Rep. Chaffetz is described as a “mentor” to the Corporation’s (and possibly also the PAC’s) members. See <http://www.icaucus.org/about>. Friends of Jason Chaffetz also filed a response (“the Chaffetz Response”) contending that the complaint fails to sufficiently allege a violation against it.

B. Analysis

Although the complaint alleges that the PAC conducted a wide range of unreported campaign activity, the iCaucus Response explains that it was actually the identically-named

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1 Corporation, and not the PAC, that conducted most of these activities. Our analysis considers
2 the possible violations of the Act by the Corporation and the PAC in light of this fact.

3 1. Political Committee Status of the Corporation

4 a. Statutory Definition

5 Political committees must register with the Commission and are subject to limits on the
6 contributions they make. 2 U.S.C. §§ 433(a) and 441a(a). They also must periodically disclose
7 their receipts and disbursements. 2 U.S.C. §§ 434(a) and (b). The term "political committee"
8 includes "any committee, club, association, or other group of persons which receives
9 ~~contributions aggregating in excess of \$1,000 during a calendar year or which makes~~
10 expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C.

11 § 431(4)(A).

12 1) Contributions

13 The term "contribution" is defined to include "any gift, subscription, loan, advance, or
14 deposit of money or anything of value made by any person for the purpose of influencing any
15 election for Federal Office." 2 U.S.C. § 431(8)(A)(i). The available information indicates that
16 the Corporation received contributions aggregating in excess of \$1,000 during a calendar year for
17 the purpose of influencing elections for federal office.

18 According to its own statements, the Corporation uses contributions "to support the
19 iCaucus Endorsed Candidate Campaign Teams and to support our Organization's efforts
20 Nationwide." See Compl., 16. The Corporation told potential donors that "[t]hese funds *will not*
21 *go directly to a candidate* but will be used to support our Campaign Teams [sic] efforts *for* our
22 endorsed candidates" (emphasis in original). *Id.* The efforts of those Campaign Teams,
23 according to the available information, included the provision of in-kind contributions in the

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1 form of the Campaign Support including "Research teams and research data," information
2 technology services, legal fees, and fees for an "FEC Accountant" for at least 46 candidates for
3 federal office. *See* Compl., 15-16, 42. Thus, funds received by the Corporation were for the
4 purpose of influencing federal elections and constitute contributions under the Act.

5 Solicitations for donations from "members" of the Corporation and the general public
6 appear to have been a permanent feature on the website. Although no donation is required to
7 become a "member" of the Corporation: (a) one must contribute a minimum of \$40 to be a
8 "delegate" of the Corporation; (b) only "delegates" may hold campaign leadership positions, act
9 as representatives of the Corporation, participate in the interview panels and the annual policy

10 review, and hold Campaign Team leadership positions; and (c) the Corporation has 11 or more
11 national directors, 38 or more regional directors, and a Campaign Team Liaison for each of the
12 Corporation's 46 known endorsed federal candidates, in addition to an unknown number of state
13 and district managers and other "delegates" not occupying one of these leadership positions. *See*
14 Compl., 2-3; iCaucus Resp., 3. At a minimum, the Corporation appears to have received \$3,800
15 from the national directors, regional directors, and federal Campaign Team Liaisons (95
16 "delegates" in total \times \$40 = \$3,800). The Corporation also has a National Director in charge of
17 fundraising (Marilyn Doll), *see* Compl., 43, has hosted at least two Fundraising Events, and has
18 conducted the Website Fundraisers, all of which were designed to yield additional donations.

19 Moreover, each of the activities described in the complaint and iCaucus Response
20 occurred between February 2009 (when the Corporation was originally registered with the State
21 of Utah) and September 2010. One of the Fundraising Events occurred in 2009, and one took
22 place in 2010. Another event that may have been a fundraiser also occurred in 2009. Although
23 this Office does not know the exact amount of funds raised by the Corporation, given the amount

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1 of fundraising activity engaged in by the Corporation in both 2009 and 2010, it is very likely that
2 the Corporation received in excess of \$1,000 in contributions from its fundraising activities.
3 Accordingly, the Committee satisfies the definition of "political committee" in 2 U.S.C. §
4 431(4)(A) based on contributions received.

5 **2) Expenditures**

6 The term "expenditure" includes "any purchase, payment, distribution, loan, advance,
7 deposit, or gift of money or anything of value, made by any person for the purpose of influencing
8 any election for Federal Office." 2 U.S.C. § 431(9)(A)(i). The Corporation also appears to have
9 ~~qualified for the Act's definition of "political committee" by making expenditures in excess of~~
10 \$1,000 during a calendar year.

11 By its own description, the Corporation was providing "a parallel campaign team" to
12 each of its endorsed candidates. See <http://www.icaucus.org/vetting-process/step-by-step>.
13 Although the iCaucus Response claims that the value of uncompensated personal services and
14 Internet activities provided *by individuals* in connection with the Corporation's activities was
15 exempt from regulation, the activities engaged in *by the Corporation* in connection with federal
16 campaigns—including the vetting and endorsing of numerous candidates, Campaign Support
17 (research teams and research data, information technology services, legal fees, and accounting
18 fees, for instance) for at least 46 federal campaigns, and "training to coordinate a Campaign
19 Team, establish various positions and set up the Campaign efforts" for each of its endorsed
20 candidates—would have been virtually impossible to conduct without the Corporation making
21 expenditures in excess of \$1,000 during a calendar year. Expenses for travel and materials used
22 to conduct training of the Campaign Teams would be just one example of costs that would not be
23 exempt as uncompensated volunteer services. See 11 C.F.R. § 100.74. Therefore, according to

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1 the available information, the Corporation likely satisfies the Act's definition of "political
2 committee" by making sufficient expenditures.

3 It is possible that far fewer activities were actually undertaken on behalf of federal
4 candidates than the Corporation's statements indicate, or that the activities that were undertaken
5 were not evenly distributed among the endorsed candidates. Making either of those
6 determinations, however, would require additional information that could likely only be obtained
7 by an investigation.

8 **b. Major Purpose Test**

9 ~~For the Commission to consider the Corporation a "political committee," the Corporation~~
10 must not only qualify under 2 U.S.C. § 431(4)(A), but also satisfy the major purpose test. The
11 Supreme Court has held that only organizations whose major purpose is campaign activity can
12 potentially qualify as political committees under the Act. *See Buckley v. Valeo*, 424 U.S. 1, 79
13 (1975); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("MCFL"). The
14 Commission has limited the definition of "political committee" to organizations whose major
15 purpose is federal campaign activity. *See Political Committee Status: Supplemental Explanation*
16 *and Justification*, 72 Fed. Reg. 5595, 5597, 5601 (Feb. 7, 2007).

17 Generally, an organization's "major purpose" may be established through public
18 statements of its purpose. *See, e.g., FEC v. Malenick*, 310 F. Supp. 2d 230, 234-36 (D.D.C.
19 2004), *rev'd in part on other grounds on reconsideration*, 2005 WL 588222 (D.D.C. 2005); *FEC*
20 *v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996). An organization may also satisfy
21 *Buckley's* "major purpose" test through sufficient spending on campaign activity. *MCFL*, 479
22 U.S. at 262 ("[S]hould *MCFL's* independent spending become so extensive that the

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1 organization's major purpose may be regarded as campaign activity, the corporation would be
2 classified as a political committee.") (citing *Buckley*, 424 U.S. at 79).

3 The Corporation does not purport to be an organization that engages solely, or even
4 substantially, in issue advocacy. Rather, the Corporation's explicit purpose is "to find, vet,
5 endorse and then help elect principled candidates," Compl., 12, by targeting "volunteers in
6 Congressional Districts all across the country...so we can unseat a minimum of 40% of the
7 incumbents who are up for reelection in 2010." Compl., 15; *see also* <http://www.icaucus.org>
8 ("Taking Our Government Back...One Candidate at a Time"). The Corporation aims to "teach
9 ~~our delegates a proven method to achieve grassroots electoral success,~~ noting that "~~we are in~~
10 *this to win.*" *See* <http://www.icaucus.org/about/3rd-party-policy> (emphasis in original); *see also*
11 Compl., 14.

12 The Corporation endorsed 46 federal candidates in the 2010 election. Additionally,
13 public statements advertising the Fundraising Events indicated the participation of five federal
14 candidates (two of whom were endorsed by the Corporation). Although the Corporation also
15 endorsed a similar number of state and local candidates, the Corporation's public statements
16 indicate that federal campaign activity was its major purpose. *See FEC v. Malenick*, 310 F.
17 Supp. 2d at 234-36 (organization was political committee whose stated goal was to achieve
18 specific increases in House and Senate membership, and organization vetted and made
19 "recommendations" of specific candidates). An investigation will be required to confirm that the
20 Corporation's expenditures were focused on federal elections.

21 c. Conclusion

22 Because the Corporation satisfies the definition of "political committee" under 2 U.S.C.

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1 § 431(4)(A) as a result of receiving sufficient contributions and making sufficient expenditures,
2 and because the Corporation's major purpose is federal campaign activity, the Corporation is a
3 political committee and is subject to the requirements of the Act. Accordingly, we recommend
4 that the Commission find reason to believe The Independence Caucus, a Utah non-profit
5 corporation, violated 2 U.S.C. §§ 433(a) and 434(a) by failing to register and report as a political
6 committee.

7 2. In-Kind Contributions

8 The Act and Commission regulations define the term "contribution" to include any gift of
9 money or "anything of value" for the purpose of influencing a federal election. See 2 U.S.C.
10 § 431(8)(A); 11 C.F.R. § 100.52(a). The term "anything of value" includes all in-kind
11 contributions. 11 C.F.R. § 100.52(d)(1). If the Corporation is determined to be a political
12 committee, then any contributions it made to any candidate which, in the aggregate, exceeded
13 \$5,000, would violate the Act. See 2 U.S.C. § 441a(a)(2)(A). In the alternative, if the
14 Corporation is not a political committee, the Act prohibits corporations from making
15 contributions to a federal candidate. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)(1).

16 a. Campaign Support

17 The Campaign Support provided by the Corporation to its endorsed candidates includes
18 several things of value that appear to constitute in-kind contributions. For instance, the
19 Corporation provided "research teams and research data," information technology, legal fees,
20 and fees for an "FEC Accountant" (the latter two of which may constitute outright contributions,
21 rather than the in-kind variety) to at least 46 candidates for federal office. See Compl., 15-16,
22 42.

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Moreover, the Campaign Support may have resulted in the Corporation making in-kind contributions because it appears to have been coordinated with the Corporation's endorsed candidates. An expenditure is "coordinated" when it is made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee, or an agent thereof. See 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(a). Expenditures that are not made for communications but that are coordinated with a candidate, authorized committee, or political party committee, are treated as in-kind contributions to the coordinating entity. 11 C.F.R. § 109.20(b); see also *Explanation and Justification for Final Rules on Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 425-6, (Jan. 3, 2003). The available information does not indicate whether the Corporation made any public communications, and thus it is unclear at this time whether a "coordinated communication" analysis under 11 C.F.R. § 109.21 is appropriate.

The Corporation states that although it "does not manage or run" any candidate's campaign, it designates a "Campaign Liaison," see Compl., 42, and establishes a "parallel campaign team" for each endorsed candidate. See <http://www.icaucus.org/vetting-process/step-by-step>. The Corporation provides training to "coordinate a Campaign Team, establish various positions and set up the Campaign efforts." See Compl., 42. Those "campaign efforts" include the aforementioned Campaign Support, much of which would have been exceedingly difficult (and potentially futile) without cooperating, consulting, or acting in concert—coordinating—with the campaigns the Corporation was endorsing. According to the Corporation's statements, in order to gain the Corporation's endorsement, a candidate must approach the Corporation, complete the Corporation's questionnaire, and participate in a recorded interview with the organization's members. See Compl., 40-42. While this process in itself does not demonstrate

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1 coordination, it shows that the Corporation was not conducting its activities in a manner totally
2 independent of its endorsed candidates. An investigation is required to determine if a particular
3 candidate's involvement with the Campaign Liaison and Campaign Team assigned to him or her
4 resulted in coordination and in-kind contributions.

5 b. Fundraisers

6 In addition to the Campaign Support described below, the August 2009 Fundraiser and
7 January 2010 Fundraiser may have resulted in the Corporation making in-kind contributions. In
8 prior advisory opinions, the Commission has determined that the financing of activities in which
9 a federal candidate participates will result in a contribution to that candidate if the activities

10 involve: (1) the solicitation, making, or acceptance of contributions to the candidate's campaign;
11 (2) communications, including communications by a candidate, expressly advocating the
12 nomination, election, or defeat of the candidate or that candidate's opponent; or (3) the
13 identification of the candidate as such. See Advisory Opinions 1999-11 (Byrum), 1994-15
14 (Byrne), 1992-37 (Terry), 1992-06 (Duke), 1992-05 (Moran), and 1986-37 (National
15 Conservative Foundation). The iCaucus Response indicates that "if any donations have ever
16 been solicited for or made to any federal candidate at any event hosted by the Independence
17 Caucus non-profit corporation, those donations were solicited by the candidates themselves and
18 made by individual attendees who donated directly to the Candidate."

19 In publicizing its August 2009 Fundraiser, the Corporation identifies speaker Chuck
20 Devore as "CA Assemblyman and 2010 Senatorial Candidate." See Compl., 57 ("bring your
21 enthusiasm and your wallets!"). Likewise, publicity for the January 2010 Fundraiser identifies
22 federal candidates Tim Bridgewater, Mike Lee, Cherilyn Eagar, and James Williams as "the

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1 2010 Senatorial Candidates, vying to be Utah's next U.S. Senator."³ See Compl., 51. Because
2 those federal candidates were identified as candidates in publicity for the fundraisers, their
3 appearances at the fundraisers would be campaign related and the costs paid by the Corporation
4 to host the events would be a contribution to those candidates' authorized committees. See
5 Advisory Opinion 1986-37 (National Conservative Foundation); see also Advisory Opinions
6 1992-06 (Duke) and 1992-05 (Moran).

7 c. Conclusion

8 The available information does not state the dollar value of the in-kind contributions
9 ~~provided by the Corporation to its endorsed candidates. However, given the scope of the~~
10 Corporation's activities, there is reason to believe that the Corporation made substantial in-kind
11 contributions to one or more federal candidates. Accordingly, we recommend that the
12 Commission find reason to believe that The Independence Caucus, a Utah non-profit
13 corporation, violated 2 U.S.C. § 441a(a) by making excessive in-kind contributions, and, in the
14 alternative, that the Corporation violated 2 U.S.C. § 441b(a) by making prohibited corporate in-
15 kind contributions.

16 3. PAC Reporting

17 The PAC's October 2010 Quarterly Report was timely filed on October 14, 2010. The
18 iCaucus Response acknowledges, however, that the PAC filed the July 2010 Quarterly Report
19 after the filing deadline, and that the PAC has filed late reports in the past. See iCaucus Resp., 2.
20 The Commission's records reflect that the July 2010 Quarterly Report was filed late on

³ Under 11 C.F.R. § 100.92, funds provided to defray the costs of staging candidate debates in accordance with the provisions of 11 C.F.R. § 110.13 and 114.4(f) are not contributions. However, 11 C.F.R. § 110.13 limits this exemption to (1) section 501(c)(3) and (c)(4) organizations which do not endorse, support, or oppose political candidates, and (2) broadcasters, neither of which describes the Corporation.

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1 September 21, 2010.⁴ The Commission's records further show that the PAC's 2009 Mid-Year
2 Report and 2009 Year-End Report were filed several months after the respective deadlines. Each
3 of these three missed deadlines represents a violation of 2 U.S.C. § 434(a). Although it was not
4 the case at the time of the Complaint, the Commission's records also indicate that the PAC was
5 notified on December 20, 2010, that it may have missed the filing deadline for its Post-General
6 Report, due December 2, 2010. Accordingly, we recommend the Commission find reason to
7 believe The Independence Caucus and Frank Anderson, in his official capacity as Treasurer,
8 violated 2 U.S.C. § 434(a).

9 **4. Disclaimers**

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11 The Act requires disclaimers on certain public communications. See 2 U.S.C. § 441d;
12 11 C.F.R. § 110.11. The definition of "public communication" includes "outdoor advertising
13 facilit[ies]." 11 C.F.R. § 100.26. Under 11 C.F.R. § 110.11(a)(1), disclaimers are required on all
14 mass emails sent by political committees and Internet websites of political committees available
15 to the general public.

16 **a. Yard Signs**

17 Complainant alleges that the PAC violated the Act by failing to include proper
18 disclaimers on individualized yard signs it produced and sold to the general public. The iCaucus
19 Response asserts that the Corporation, not the PAC, conducted the sale of the yard signs. In this
20 case, the Corporation was acting as a vendor when it sold the signs for profit. As the
21 Corporation appears to a vendor in this context, the resulting public communication cannot be
22 said to have been made "by" the Corporation. Therefore, any sign lacking a required disclaimer

⁴ The Commission's website incorrectly identifies this report as the "October Quarterly." See <http://query.nictusa.com/cgi-bin/fecimg/?C00461764>.

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1 would have resulted in a violation by the purchaser, not by the Corporation. Accordingly, we
2 recommend that the Commission find no reason to believe that The Independence Caucus, a
3 Utah non-profit corporation, violated
4 2 U.S.C. § 441d by not including disclaimers on the individualized yard signs it sold for profit.

5 **b. Websites and Mass Emails**

6 The complaint also alleges that the PAC failed to use proper disclaimers on its websites
7 and mass emails. The complaint, however, does not identify specific emails that allegedly
8 violate the Act's disclaimer requirements. As such, we are unable to determine whether a
9 violation occurred with respect to mass emails.

10 With respect to the websites, the iCaucus Response indicates that the PAC does not have
11 a website, and that the Corporation operates all websites described in the complaint. However,
12 the Statement of Organization for the PAC lists "www.icaucus.org" as the PAC's web page
13 address. Therefore, it appears that www.icaucus.org is a PAC website and requires a disclaimer
14 under 11 C.F.R. § 110.11. Although the website contains a disclaimer ("All information within
15 this site is the property of Independence Caucus"), it does not indicate that the PAC paid for and
16 authorized the site, and it does not differentiate between the Corporation and the PAC, an
17 important distinction, given that they have the same name and use the same website. See
18 11 C.F.R. § 110.11(c). The complaint lists three additional websites—www.ourcaucus.com,
19 www.icaucus.us, and www.icaucus.ning.com—all of which bear the name of The Independence
20 Caucus, although it is not clear whether they are websites of the PAC or the Corporation, or both.
21 Regardless, none of the three websites contains a disclaimer. Accordingly, we recommend the
22 Commission find reason to believe The Independence Caucus, a Utah non-profit corporation, and

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1 The Independence Caucus and Frank Anderson, in his official capacity as Treasurer, violated
2 2 U.S.C. § 441d by failing to include a proper disclaimer on each of the four websites.

3 **5. Friends of Jason Chaffetz**

4 Although Friends of Jason Chaffetz is identified in the complaint as a respondent, there
5 are no clear allegations made against it, other than the fact that Rep. Chaffetz is one of the
6 Corporation's 46 endorsed federal candidates to which a Campaign Liaison and Campaign Team
7 were assigned. See Compl., 58. While it is possible that the Corporation made in-kind
8 contributions to Friends of Jason Chaffetz, we have insufficient information to make a
9 recommendation at this time. Accordingly, we recommend that the Commission take no action
10 at this time with respect to Friends of Jason Chaffetz.

11 **III. SCOPE OF INVESTIGATION**

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21 Although we first would seek information voluntarily from the respondents,
22 we are asking the Commission to authorize the use of compulsory process, including the
23 issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas.

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IV. RECOMMENDATIONS

1. Find reason to believe that The Independence Caucus, a Utah non-profit corporation, violated 2 U.S.C. §§ 433(a) and 434(a); and
2. Find reason to believe that The Independence Caucus, a Utah non-profit corporation, violated 2 U.S.C. § 441a(a); and
3. Find reason to believe that The Independence Caucus, a Utah non-profit corporation, violated 2 U.S.C. § 441b(a); and
4. Find reason to believe that The Independence Caucus (FEC ID C00461764) and Frank Anderson, in his official capacity as Treasurer, violated 2 U.S.C. § 434(a); and
5. Find no reason to believe that The Independence Caucus, a Utah non-profit corporation, violated 2 U.S.C. § 441d by not including disclaimers on the individualized yard signs it sold for profit; and
6. Find reason to believe that The Independence Caucus (FEC ID C00461764) and Frank Anderson, in his official capacity as Treasurer, violated 2 U.S.C. § 441d by failing to include proper disclaimers on its websites; and
7. Find reason to believe that The Independence Caucus, a Utah non-profit corporation, violated 2 U.S.C. § 441d by failing to include proper disclaimers on its websites; and
8. Take no action at this time with respect to Friends of Jason Chaffetz and Corie Chan, in her official capacity as Treasurer.
9. Authorize the use of compulsory process, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.
10. Approve the attached Factual and Legal Analysis.
11. Approve the appropriate letters.

Christopher Hughey
Acting General Counsel

Date: 1/25/11

By:


Stephen Gura
Acting Associate General Counsel



Mark Shonkwiler
Assistant General Counsel



Peter Reynolds
Attorney

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