



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG - 1 2011

Frank Anderson, Treasurer
The Independence Caucus
793 Orchard Drive
Pleasant Grove, UT 84062

RE: MUR 6375
The Independence Caucus, a Utah
non-profit corporation

Dear Mr. Anderson:

On September 21, 2010, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on July 19, 2011, found reason to believe that the Independence Caucus, a Utah non-profit corporation, violated 2 U.S.C. § 441b(a), a provision of the Act. Also on this date, the Commission found no reason to believe that The Independence Caucus, a Utah non-profit corporation, violated 2 U.S.C. § 441d with respect to certain activities. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

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Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.


Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

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

On behalf of the Commission,



Cynthia L. Bauerly
Chair

Enclosures

Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: The Independence Caucus and Frank Anderson, MUR: 6375
 in his official capacity as Treasurer

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

I. INTRODUCTION

 This matter was generated by a complaint filed by Karen Emily Hyer. *See*
2 U.S.C. § 437(g)(a)(1). This matter involves allegations that The Independence Caucus,
a non-connected multicandidate federal political committee, and Frank Anderson, in his
official capacity as Treasurer ("the PAC"), and The Independence Caucus, a Utah non-
profit corporation ("the Corporation"),¹ violated various provisions of the Federal
Election Campaign Act of 1971, as amended ("the Act"), in connection with a range of
political campaign activities in support of various 2010 federal candidates.

 As set forth below, the Commission finds reason to believe that The
Independence Caucus, a Utah non-profit Corporation ("the Corporation"), violated
2 U.S.C. § 441b by making prohibited in-kind contributions to a federal candidate. The
Commission finds no reason to believe that the Corporation violated 2 U.S.C. § 441d by
not including disclaimers on the individualized yard signs it sold for profit.

¹ The complainant was evidently unaware of the existence of the Utah non-profit corporation when she filed the Complaint. The two identically-named Independence Caucus entities share an address and at least one officer, and the response submitted on behalf of both entities clarifies that many of the activities described in the Complaint were undertaken by the Corporation rather than the PAC.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Independence Caucus has two separate constituent entities: a non-connected multicandidate federal political committee (FEC ID C00461764) ("the PAC"), and an identically-named non-profit corporation ("the Corporation"). The PAC filed its Statement of Organization with the Commission on May 11, 2009. The Statement of Organization does not list any connected organization (which would be required for a separate segregated fund) and lists the PAC as a "joint fundraising representative." In its reports filed with the Commission, the PAC disclosed no receipts or disbursements before September 2010. The Corporation was registered with the State of Utah on February 2, 2009. Frank Anderson is the Treasurer of the PAC and the co-founder of the Corporation.

Both organizations share an address and website (www.icaucus.org).² According to the response filed by the Corporation and the PAC ("the iCaucus Response"), the website is operated by the Corporation and the PAC itself does not have a website. The www.icaucus.org website, however, is also listed as the PAC's official web page in its Statement of Organization. Both organizations state that their mission is "to find/elect fiscally sound candidates; help organize locally; educate people on current affairs; [and] research money trails to every rep we can." See <http://www.icaucus.org/about>. The stated methods for accomplishing their goals are to "find, vet, endorse and then help elect principled candidates," and to "teach our delegates a proven method to achieve grassroots

² The complaint lists three additional websites – www.ourcaucus.com, www.icaucus.us, and www.icaucus.ning.com – all of which bear the name of The Independence Caucus, although it is not clear whether they are websites of the PAC or the Corporation, or both.

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electoral success,” Compl., 12, noting that “we are in this to win.” See <http://www.icaucus.org/about/3rd-party-policy> (emphasis in the original).

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

The iCaucus Response stated that the Corporation, not the PAC, conducted nearly all of the activities supporting federal candidates described in the Complaint. iCaucus Resp., 2. The iCaucus Response also states that the PAC was dormant until September 2010, and that the reports covering periods before that date accurately reflect that there was no activity for the PAC during the applicable reporting periods. *Id.* The iCaucus Response acknowledges, however, that the PAC filed the July 2010 Quarterly Report after the filing deadline and has “filed other quarterly reports after their respective filing deadlines.”³ *Id.* Further, the iCaucus Response indicates that the only activities engaged in by the PAC occurred in September 2010 and consisted of the iCaucus 2010 National Candidate Convention (where the PAC “introduc[ed] iCaucus endorsed Candidates from

³ The Commission’s records reflect that the July 2010 Quarterly Report was filed late on September 21, 2010. See <http://query.nictusa.com/cgi-bin/fecimg/?C00461764>. The Commission’s records further show that the PAC’s 2009 Mid-Year Report and 2009 Year-End Report were filed several months after the respective deadlines. Although it was not the case at the time the complaint was filed, the Commission’s records indicate that the PAC was notified on December 20, 2010 and February 16, 2011, that it may have missed the filing deadline for its Post General Report, due December 2, 2010, and its 2010 Year End Report, due January 31, 2011, respectively.

1 across the Country” and distributed the “iCaucus Endorsed Candidate Guide 2010”), an
2 Educational/Training Session, and a 9/11 Memorial Service, all held in conjunction with
3 the Unite in Action March on DC on September 9-11, 2010 (“the September 2010
4 Activities”). See iCaucus Response, 8, Appendix B.

5 The iCaucus Response claims that the Corporation conducted all of the other
6 activities described in the Complaint and the iCaucus Response. See Compl., 8.

7 ~~Respondents generally contend that the costs of such activities constituted~~
8 ~~uncompensated personal services pursuant to 11 C.F.R. § 100.74, uncompensated~~
9 ~~Internet activities under 11 C.F.R. § 100.94, and/or were otherwise not required to be~~
10 ~~reported under the Act. See, e.g., Compl., 2, 3, 6. Such activities include:~~

- 11 • Vetting and Endorsing Candidates. The Corporation endorsed at least 46
12 candidates for federal office in the 2010 election cycle. See Compl., 2;
13 iCaucus Resp., 3. According to the Corporation’s statements, in order to gain
14 the Corporation’s endorsement, a candidate must approach the Corporation,
15 complete the Corporation’s questionnaire, and participate in a recorded
16 interview with the organization’s members. See *id.*, 40-42.
- 17
18 • Campaign Liaison and Campaign Team Support. The Corporation stated that
19 donations it received would be used for: “Website and Branding”; Network
20 and Communication”; “Local and National Advertising and Marketing”;
21 “Events, venues, speakers”; “Legal Fees (Legal Campaign Retainer)”;
22 “Accounting Fees (FEC Accountant)”; “Exclusive iCaucus Endorsed
23 Candidate Yard Signs, Printing – Brochures, Bumper Stickers, Banners and
24 Door Hangers”; and “Set-up for iCaucus Campaign Teams (to launch effort
25 for our Endorsed Candidates).” See Compl., 15-16. According to its own
26 statements, the Corporation solicited funds “to support the iCaucus Endorsed
27 Candidate Campaign Teams and to support our Organization’s efforts
28 Nationwide.”⁴ *Id.* The Corporation states that although it “does not manage
29 or run” any candidate’s campaign, it designated a “Campaign Liaison,” see
30 Compl., 42, and established a “parallel campaign team” for each endorsed
31 candidate. See <http://www.icaucus.org/vetting-process/step-by-step>. The
32 Corporation also provides training to “coordinate a Campaign Team, establish

⁴ The Corporation’s fundraising materials noted that contributions to the Independence Caucus “will not go directly to a candidate but will be used to support our Campaign Teams [sic] efforts for our endorsed candidates.” Complaint at 16 (emphasis in original).

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various positions and set up the Campaign efforts." See Compl., 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 *id.*, 53-55, 64, 94.

- **Fundraising for a Federal Candidate.** The Complaint included an excerpt from the Corporation's Facebook page stating "Aug 1&2 Frank Anderson will be speaking at a fundraiser for Chuck Devore." Compl. 57-58. The Corporation issued an invitation for an August 2, 2009 event to "Come and join Independence Caucus as we launch our California and National Fundraising for Candidates," featuring Chuck Devore, a federal candidate, as a "Special Guest" and urging attendees to "bring your enthusiasm and your wallet!" ("the August 2009 Fundraiser"). *Id.*
- **Other Fundraising.** The Complaint includes several examples of other events hosted by the Corporation and how the Corporation raised its funds. For example, the Corporation hosted "A Constitutional Evening in 3D: Dinner, Drama, and Debate" with a "Meet and Greet" and "A Principled Debate on Fiscal Responsibility and Constitutional Authority" featuring, among other individuals, four federal candidates (three of whom were opponents of each other in a Utah primary election). Publicity for the January 2010 Fundraiser identifies federal candidates Tim Bridgewater, Mike Lee, Cheryl Ensign, and James Williams as "the 2010 Senatorial Candidates, vying to be Utah's next U.S. Senator." See *id.*, 51. The Corporation stated in pre-event publicity that it charged \$40 per person to have dinner and attend the program, or \$15 per person to attend the program without dinner. The publicity further stated that "[a]ll proceeds from this fundraiser will be used by The Independence Caucus" ("the January 2010 Fundraiser"). See Compl., 50-52. The Complaint also includes examples of the Corporation's website fundraising, such as: (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. The Corporation also hosted the 2009 California Independence Caucus Convention, although it is unclear whether the Corporation raised funds at that event. See *id.*, 59.

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B. Analysis

Although the Complaint alleges that the PAC conducted a wide range of unreported campaign activity, the iCaucus Response explains that it was the identically named Corporation, and not the PAC, that conducted most of these activities. The Commission's analysis considers the possible violations of the Act by the Corporation and the PAC in light of this response.

1. In-Kind Contributions

The Act prohibits any contribution to a federal candidate made with corporate funds. See 2 U.S.C. § 441b. The Act and Commission regulations define the term "contribution" to include any gift of money or "anything of value" for the purpose of influencing a federal election. See 2 U.S.C. § 431(8)(A); 11 C.F.R. § 100.52(a). The term "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.52(d)(1).

The Corporation's Facebook page, in the "News" section, notes that, "Aug 1&2 - Frank Anderson will be speaking at a fundraiser for Chuck DeVore in Balboa and Costa Mesa California. Also speaking are Chuck DeVore, Mason Weaver, and Bob Basso, the internet sensation who plays Thomas Paine sharing common sense with modern Americans." Compl., 58. This posting appears to reference the event billed by the Corporation as an "Independence Caucus Rally and Fundraising Event." See Compl., 57. If so, this event, according to information provided by the complainant, was titled "Come and join Independence Caucus as we launch our California and National Fundraising for Candidates." See Compl., 57. The event description stated, "Listen to... Chuck Devore - CA Assemblyman and 2010 Senatorial Candidate," and "Bring your enthusiasm and your wallets!" See Compl., 57.

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1 The iCaucus Response states that "if any donations have ever been solicited for or
2 made to any federal candidate at any event hosted by the Independence Caucus non-profit
3 corporation, those donations were solicited by the candidates themselves and made by
4 individual attendees who donated directly to the Candidate."

5 Thus, if the August 2009 Fundraiser was a fundraising event hosted by the
6 Corporation, at which Chuck Devore, a federal candidate, or an agent of the Corporation
7 solicited funds for his campaign, or if the candidate engaged in express advocacy on
8 behalf of his own election or the defeat of his opponent, then any unreimbursed costs for
9 the event could constitute an in-kind contribution by the Corporation.

10 Accordingly, the Commission finds reason to believe that The Independence
11 Caucus, a Utah non-profit corporation, violated 2 U.S.C. § 441b(a) by making prohibited
12 corporate in-kind contributions.

13 2. Disclaimers

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

19 The Complainant alleges that the PAC violated the Act by failing to include
20 proper disclaimers on individualized yard signs it produced and sold to the general
21 public. The iCaucus Response asserts that the Corporation, not the PAC, conducted the
22 sale of the yard signs acting as a vendor when it sold the signs for profit.

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1 As the Corporation appears to be a vendor in this context, the resulting public
2 communication cannot be said to have been made "by" the Corporation. Therefore, any
3 sign lacking a required disclaimer would have resulted in a violation by the purchaser,
4 not by the Corporation. Accordingly, the Commission finds no reason to believe that The
5 Independence Caucus, a Utah non-profit corporation, violated 2 U.S.C. § 441d by not
6 including disclaimers on the individualized yard signs it sold for profit.

7 **3. Possible Political Committee Status of the Corporation**

8 Political committees must register with the Commission, periodically disclose
9 their receipts and disbursements, and are subject to limits on the contributions they make.
10 2 U.S.C. §§ 433(a), 434(a) and 441a(a). The Act defines a "political committee" as any
11 committee, club, association, or other group of persons that receives "contributions" or
12 makes "expenditures" for the purpose of influencing a federal election which aggregate in
13 excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). An organization will not
14 be considered a "political committee" unless its major purpose is "Federal campaign
15 activity (*i.e.*, the nomination or election of a Federal candidate)." Political Committee
16 Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7,
17 2007). *See Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for*
18 *Life, Inc. (MCFL)*, 479 U.S. 238, 262 (1986). The term "contribution" is defined to
19 include "any gift, subscription, loan, advance, or deposit of money or anything of value
20 made by any person for the purpose of influencing any election for Federal Office." 2
21 U.S.C. § 431(8)(A)(i). The Act defines the term "expenditure" as, *inter alia*, "any
22 purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of

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- 1 value, made by any person for the purpose of influencing any election for Federal office.”
2 2 U.S.C. § 431(9)(A)(i).

- 3 The information presented in the Complaint raises the question of whether the
4 Corporation satisfies the definition of “political committee” because the Corporation may
5 have received “contributions” or made “expenditures” for the purpose of influencing a
6 federal election which aggregate in excess of \$1,000 during a calendar year, and the
7 Corporation’s major purpose may be the nomination or election of a Federal candidate.

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