

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION

2013 FEB 22 AM 10: 50
In the Matter of)
)
The Independence Caucus and Frank)
Anderson, in his official capacity as)
treasurer, a/k/a The Independence)
Caucus, a Utah non-profit corporation)
)
Friends of Jason Chaffetz and Corie)
Chan, in her official capacity as)
treasurer)

MUR 6375

2013 FEB 22 AM 10: 50

CELA

SENSITIVE

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

(1) Find reason to believe that The Independence Caucus (FEC ID C00461764) and Frank Anderson in his official capacity as treasurer ("The Independence Caucus") violated 2 U.S.C. §§ 434(a) and 434(b)¹ by failing to properly report its receipts and disbursements; (2) dismiss with caution the allegation that The Independence Caucus violated 2 U.S.C. § 441d by failing to include proper disclaimers on its websites; (3) dismiss the allegation that The Independence Caucus violated 2 U.S.C. § 433(a) by failing to register as a political committee; (4) dismiss the allegation that The Independence Caucus violated 2 U.S.C. § 441a(a) by making excessive contributions; (5) dismiss the allegation that The Independence Caucus violated 2 U.S.C. § 441b(a) by making prohibited contributions; (6) dismiss the complaint as it pertains to Friends of Jason Chaffetz and Corie Chan in her official capacity as treasurer; and (7) enter into conciliation with The Independence Caucus.

¹ For reasons explained below, the First General Counsel's Report did not include a recommendation that The Independence Caucus violated 2 U.S.C. § 434(b).

II. DISCUSSION

A. Background

This matter concerns allegations that The Independence Caucus, a non-connected federal political committee, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to properly report its activities and to include proper disclaimers on its website. The Response denies that the political committee misreported its activities, claiming that the allegation confuses the activities of two separate entities of the same name — (1) the registered political committee, which the FEC identifies as C00461764 (the "PAC" or "Committee") and (2) a non-profit corporation of the same name (the "Corporation"). Resp. at 1. The Response further asserts that the Corporation, not the PAC, conducted nearly all of the activities described in the complaint. *See id.* at 2-6; First Gen. Counsel's Rpt. at 4-5 (Jan. 25, 2011). Relying on those representations, this Office initially recommended that the Commission find reason to believe that the Corporation violated the Act but recommended taking no action at that time as to the PAC. *Id.* at 18 ¶¶ 1-3, 5, 7.

Adopting our recommendation, on July 21, 2011, the Commission found reason to believe that the Corporation violated 2 U.S.C. § 441b(a) by making prohibited in-kind contributions and authorized an investigation. *See* Certification, MUR 6375 (July 21, 2011); Factual and Legal Analysis at 7. The Commission took no action at that time concerning further allegations that the Corporation violated 2 U.S.C. §§ 433(a), 434(a), 441a(a), or 441d by failing to register and report as a political committee, by making excessive in-kind contributions to various candidates, or by failing to include proper disclaimers on its websites. *See* Certification. Additionally, the Commission found no reason to believe that the Corporation violated 2 U.S.C. § 441d by failing to include disclaimers on yard signs it sold for profit. *Id.* The Commission

13044342875

1 also took no action at that time concerning allegations that the PAC violated 2 U.S.C. §§ 434(a)
2 or 441d by failing to properly report its activities and to include proper disclaimers on its
3 websites. *Id.*

4 Contrary to the representations in the Response, the financial records and written answers
5 produced in discovery² reflect that the Corporation and the PAC are not separate entities, but
6 rather a single organization using a single bank account. Accordingly, the Complaint was correct
7 in alleging that The Independence Caucus failed to report its activities fully as required under the
8 Act. Further, the Independence Caucus has not filed any reports with the Commission since the
9 date of the Complaint, constituting additional violations of the Act.

10
11 As detailed below, we therefore recommend that the
12 Commission find reason to believe that The Independence Caucus violated 2 U.S.C. §§ 434(a)
13 and 434(b), and enter into pre-probable cause conciliation. We also recommend that the
14 Commission dismiss allegations that The Independence Caucus violated 2 U.S.C. §§ 433(a),
15 441a(a), and 441b(a). We further recommend that the Commission dismiss with caution the
16 allegation that The Independent Caucus violated 2 U.S.C. § 441d.

17 The complaint also alleged that Friends of Jason Chaffetz, an additional respondent,
18 received improper support — in the form of a Campaign Liaison and Campaign Team — from
19 The Independence Caucus. At the time of the First General Counsel's Report, we did not have
20 sufficient information to determine whether that support amounted to a contribution, or whether

² After repeated, unsuccessful efforts to obtain information from The Independence Caucus informally through the end of 2011, the Commission approved a subpoena to produce documents and written answers, and a deposition subpoena for Frank Anderson, the committee treasurer. During the spring of 2012, Anderson produced financial records of The Independence Caucus and provided written answers to our inquiries. The written discovery provided an adequate evidentiary record from which to make our further recommendations, and, accordingly, we elected to hold the deposition in abeyance.

13044342876

1 it may have resulted in a coordinated communication. *See* First Gen. Counsel's Rpt. at 11-12
2 (Jan. 25, 2011). On July 21, 2011, the Commission took no action against Friends of Jason
3 Chaffetz pending the investigation into The Independence Caucus's activities. *See* Certification,
4 MUR 6375 (July 21, 2011). As discussed below, we recommend dismissing the complaint as to
5 Friends of Jason Chaffetz.

6 **B. Results of Investigation**

7 The Independence Caucus registered as a non-profit corporation with the State of Utah on
8 February 2, 2009. <https://secure.utah.gov/bes/action/details?entity=7257527-0140>.³ The
9 organization filed a Statement of Organization with the Commission on May 11, 2009.

10 Statement of Organization (May 11, 2009),

11 <http://images.nictusa.com/pdf/897/29030084897/29030084897.pdf#navpanes=0> (later amended).

12 The Independence Caucus subsequently amended its Statement of Organization on November
13 24, 2009, designating itself as a nonconnected, multi-candidate PAC with no connected

14 organization. *See* Amended Statement of Organization (Nov. 24, 2009),

15 <http://images.nictusa.com/pdf/878/29030192878/29030192878.pdf#navpanes=0>. In

16 conversations with this Office, Anderson claimed to have believed that the organization could act
17 as a political committee for certain purposes only and remain a non-political committee for its
18 other activities. Report of Investigation of The Independence Caucus at 1 (Mar. 15, 2012).

19 Review of the financial records obtained during the investigation confirms that The
20 Independence Caucus maintained a single bank account for all of its activities, whether related to
21 the organization's registered political committee or its putative "non-political committee"

³ The registration expired on May 21, 2012. <https://secure.utah.gov/bes/action/details?entity=7257527-0140>.

13044342877

1 dealings.⁴ The purportedly separate organizations also share a mailing address and website
2 (<http://www.icaucus.org>). Further, anyone donating to the organization through its website
3 would not know which of the purportedly separate enterprises was receiving the donation — the
4 donor would know only that the donation went to The Independence Caucus. *See*
5 <http://www.icaucus.org>. For these reasons, there is ample evidence that The Independence
6 Caucus acted as a single entity, notwithstanding the contrary assertion in its Response. As such,
7 the investigation confirms that the activities discussed in the Complaint were undertaken by the
8 registered political committee, as alleged.

9 The Commission's determination that there was reason to believe that The Independence
10 Caucus violated section 441b(a) is based on two events hosted by The Independence Caucus in
11 August 2009 and featuring Congressional candidate Chuck DeVore. *See* Factual and Legal
12 Analysis at 6-7. The investigation revealed that the purpose of the events was to raise money for
13 The Independence Caucus, not DeVore. MUR 6375, Response to Interrogatories at 2 (April 11,
14 2012). Anderson states that The Independence Caucus spent approximately \$2,492 on the event:
15 \$408 for the venue in Balboa Park; \$125 for the venue in Costa Mesa; \$350 for a musician to
16 perform at Balboa Park; \$570 for Bob Basso's performance as Thomas Paine; and \$1,039.49 to
17 reimburse Anderson's travel expenses. *Id.* The Independence Caucus collected only \$406 in
18 donations, and no money was given to or solicited on behalf of DeVore. *Id.* Because of this net
19 loss, the Independence Caucus did not stage any other events of a similar nature. *Id.*

20 Additionally, when it made its reason-to-believe finding the Commission took no action
21 on allegations that both the Corporation and the PAC violated 2 U.S.C. § 441d by failing to

⁴ The account was with America First Credit Union from March 2009 to October 2009. *See* Statement of Organization at 4. The Independence Caucus transferred its account to Central Bank beginning October 2009 and amended its Statement of Organization to reflect that change. *See* Amended Statement of Organization at 4.

1 include proper disclaimers on their websites. In the original response, The Independence Caucus
2 argued that the PAC does not have a website, and that the Corporation operates all websites
3 described in the Complaint.⁵ Because the facts reflect that The Independence Caucus is a single
4 entity and registered as a political committee, it follows that the websites identified in the
5 Complaint were operated by a registered political committee.

6 Lastly, the investigation revealed no evidence that The Independence Caucus actually
7 carried out its plans to establish Campaign Liaisons and Campaign Teams to assist Chaffetz (or
8 any other candidate).

9 **C. Legal Analysis**

10 The Act requires a political committee to file periodic reports of its receipts and
11 disbursements with the Commission. 2 U.S.C. §§ 434(a), 434(b); 11 C.F.R. §§ 104.1(a), 104.3.
12 As detailed in Table 1, *infra*, The Independence Caucus filed three reports late and has neglected
13 to file eight additional reports, all in violation of section 434(a). The Commission's records also
14 reflect that the five reports filed by The Independence Caucus failed to include approximately
15 \$90,374 in receipts and disbursements, thereby also violating section 434(b). *See infra* tbl. 1.

16

⁵ The Complaint identified the following websites related to The Independent Caucus: www.icaucus.org; www.ourcaucus.com; www.icaucus.us; and www.icaucus.ning.com. Only the first website is presently active. Although that website previously contained a banner with some proprietary language ("All information within this site is the property of Independence Caucus"), the website has been redesigned since the filing of the Complaint and no longer contains that banner. *See* <http://www.icaucus.org>.

Table 1
Section 434(a) and (b) Violations

Disclosure Report	Section 434(a) Violations					Section 434(b) Violations		
	Number of Days Late	Reported Activity	Actual Activity ⁷	Aggregate Activity ⁶	Admin Fine Threshold Met	Unreported Receipts	Unreported Disbursements	Total Unreported
2009 Mid-Year	116	0	4,284	4,284	No	2,784	1,500	4,284
2009 Year End	69	0	11,823	11,823	No	5,738	6,085	11,823
April 2010 Quarterly	Timely	0	35,002	35,109	No	19,195	15,807	35,002
July 2010 Quarterly	68	0	23,086	23,741	No	7,498	15,587	23,085
October 2010 Quarterly	Timely	11,036	27,217	101,242	Yes But report timely	12,904	3,276	16,180
2010 Post-General	Not filed	n/a	19,905	21,317	Yes			
2010 Year End	Not filed	n/a	666	12,983	Yes			
2011 Mid-Year	Not filed	n/a	9,250	19,250	No			
2011 Year End	Not filed	n/a	5,892	15,142	No			
April 2012 Quarterly	Not filed	n/a	n/a					
July 2012 Quarterly	Not filed	n/a	n/a					
October 2012 Quarterly	Not filed	n/a	n/a					
2012 Post-General	Not filed	n/a	n/a					
TOTAL:						48,119	42,255	90,374

⁶ None of these amounts meets the increase in activity referral threshold under Standard 7 of the Reports Analysis Division's Review and Referral Procedures for the 2013-14 Election Cycle.

⁷ The totals in this column are from records provided in response to the subpoena. See *supra* note 2.

⁸ Only committees that file a report more than five days late and have receipts and disbursements exceeding \$100,000 during the election cycle will be subject to the Administrative Fine Program.

⁹ Although The Independence Caucus registered with Utah as a non-profit organization on February 2, 2009, it did not file its Statement of Organization with the Commission until May 11, 2009. The documents provided by The Independence Caucus show that it accepted \$6,335 and spent \$4,542 in the period prior to filing its Statement of Organization. The group did not receive \$1,000 until April 13, 2009, and it did not spend \$1,000 until April 15, 2009. The available information does not indicate that those funds, or any other funds received or spent prior to the organization's registration with the Commission, were contributions or expenditures. Thus, the available information does not suggest that The Independence Caucus was a political committee prior to its May 11, 2009, registration. Therefore, the total amount in violation of section 434(b) for the 2009 Mid-Year Report reflects only activity from its date of registration through the end of the reporting period.

¹⁰ The Independence Caucus reported \$6,343 in receipts (though it had received \$19,248) and \$4,693 in disbursements (though it had spent \$7,969) on its October 2010 Quarterly Report.
<http://query.nictusa.com/pdf/902/10030443902/10030443902.pdf#navpanes=0>.

13014342880

1 Accordingly, we recommend that the Commission find reason to believe that The Independence
2 Caucus violated 2 U.S.C. §§ 434(a) and 434(b).

3 The Act also requires disclaimers on certain communications, including all Internet
4 websites of political committees available to the general public. 2 U.S.C. § 441d; 11 C.F.R.
5 § 110.11(a)(1). The disclaimer for a communication not authorized by a candidate must clearly
6 state the full name and permanent street address, telephone number, or World Wide Web address
7 of the person who paid for the communication, and that the communication is not authorized by
8 any candidate or candidate's committee. 11 C.F.R. § 110.11(b)(3).

9 The Independence Caucus currently maintains only one website — www.icaucus.org —
10 although it maintained four at the time of the Complaint. *See supra* n.7. The current website
11 provides the name of the organization and its permanent street address, but fails to indicate that
12 the site is not authorized by any candidate or candidate's committee. As a result, it does not
13 satisfy the Commission's disclaimer requirements. Given that the websites (including the only
14 active website) contained identifying information, however, and considering the minimal costs
15 associated with maintaining them, we recommend that the Commission exercise its prosecutorial
16 discretion, *see Heckler v. Chaney*, 470 U.S. 821 (1985), and dismiss the violations of 2 U.S.C. §
17 441d with caution. *See* MUR 6425 (Ed Martin, et al) First General Counsel's Report at 10 (June
18 20, 2011); Certification at ¶ 4 (Sept. 12, 2011); *see also* MUR 6260 (Rocky for Congress); MUR
19 6252 (A.J. Otjen for Congress).

20 Several other of the Commission's findings in the July 2011 certification have been
21 resolved or mooted by the investigation. Because the investigation revealed no evidence that
22 The Independence Caucus provided campaign support to Jason Chaffetz, we recommend that the

13044342881

1 Commission dismiss the complaint as it pertains to Friends of Jason Chaffetz and Corie Chan, in
2 her official capacity as treasurer.

3 We also recommend that the Commission dismiss the allegation that The Independence
4 Caucus violated 2 U.S.C. § 433(a) by failing to register as a political committee — an allegation
5 that relied on the premise that there were two Independence Caucus entities, not one. In fact,
6 The Independence Caucus did file a Statement of Organization. Statement of Organization (May
7 11, 2009), <http://images.nictusa.com/pdf/897/29030084897/29030084897.pdf?navpanes=0> (later
8 amended). Further, because the investigation revealed that a political committee was responsible
9 for the activities, any resulting contribution to the DeVore campaign would not have been
10 covered by the prohibition against corporate contribution in 2 U.S.C. § 441b. We therefore
11 recommend that the Commission dismiss that allegation. Finally, we recommend that the
12 Commission dismiss the alleged violation of 2 U.S.C. § 441a(a). Even assuming that a portion
13 of the costs for the event could be considered a contribution, the portion allocable to the DeVore
14 campaign would be less than the \$2,400 contribution limit that was applicable at the time. See
15 <http://www.fec.gov/info/contriblimits0910.pdf>.

13044342882

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

13044342883

13044342884

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13

V. RECOMMENDATIONS

1. Find reason to believe that The Independence Caucus and Frank Anderson, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(a) and 434(b) by failing to properly report to the Commission.
2. Dismiss with caution the allegation that The Independence Caucus and Frank Anderson, in his official capacity as treasurer, violated 2 U.S.C. § 441d.
3. Dismiss the allegation that The Independence Caucus and Frank Anderson, in his official capacity as treasurer, violated 2 U.S.C. § 433(a).
4. Dismiss the allegation that The Independence Caucus and Frank Anderson, in his official capacity as treasurer, violated 2 U.S.C. § 441a(a).
5. Dismiss the allegation that The Independence Caucus and Frank Anderson, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a).
6. Dismiss the allegations against Friends of Jason Chaffetz and Corie Chan, in her official capacity as treasurer.
7. Enter into conciliation with The Independence Caucus and Frank Anderson, in his official capacity as treasurer, prior to a finding of probable cause to believe that a violation occurred.
- 8.

13044342885

9. Approve the appropriate letters.

BY: 02/22/13
Date

Anthony Herman
General Counsel


Daniel A. Petalas
Associate General Counsel for Enforcement


Mark Shonkwiler
Assistant General Counsel


Peter Reynolds
Attorney

13044342886