



HONORABLE CHRIS VAN HOLLEN
CHAIRMAN

RECEIVED
FEDERAL ELECTION
COMMISSION

2010 OCT -7 AM 10: 52

OFFICE OF GENERAL
COUNSEL

**BEFORE THE
FEDERAL ELECTION COMMISSION**

Jon Vogel,
Executive Director
Democratic Congressional Campaign Committee
430 South Capitol St., SE
Washington, DC 20003,

MUR # 6391

Complainant,

v.

Commission on Hope, Growth & Opportunity
1900 M Street, NW Suite 600
Washington, D.C. 200036
(202) 530-3332

Respondent.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against the Commission on Hope, Growth & Opportunity ("Respondent") for violations of the Federal Election Campaign Act ("Act"), as described below.

A. FACTS

Respondent is an organization that claims to be "registered under section 501(c)(4) of the IRS."¹ As of October 1, 2010, it was not a registered political committee.

Based on information and belief, from September 24, 2010 through September 30, 2010, Respondent disseminated broadcast television advertisements attacking Congressman John

¹ See <http://www.hopegrowthopportunity.com/> (last visited on October 1, 2010).

PAID FOR BY THE DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE • 430 SOUTH CAPITOL ST. SE • WASHINGTON, DC 20003
(202) 863-1500 • WWW.DCCC.ORG • NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE

CONTRIBUTIONS OR GIFTS TO THE DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE ARE NOT TAX DEDUCTIBLE

1-800-435-3000



Spratt (totaling in excess of \$200,000) and Congressman Dan Maffei (totaling in excess of \$100,000).² On September 30, 2010, Respondent disseminated broadcast television advertisements attacking Congressman Frank Kratovil,³ Congresswoman Kathy Dahlkemper, and Congressman Allan Boyd. Based on information and belief, these ads are expected to run through October 5, 2010, and will in excess of \$300,000, \$200,000, and \$100,000 respectively.

As Exhibits A and C demonstrate, the ads attacking Congressmen Spratt and Kratovil refer to both candidates by name and show their images. After attacking the candidates, the ad fades to pictorial images of the candidates' Republican opponents. The narrator then closes the ads by saying, "Join [name of Republican candidate] to fight against the big spenders in Congress," with an on-screen chyron that says, "Fight back. Join [name of Republican candidate]. Stop the big spenders in Congress." Neither ad states that the Respondent "is responsible for the content of this advertising" – either aurally or in writing.

As Exhibit B demonstrates, the ad attacking Congressman Maffei also refers to the candidate by name and shows his image. After attacking Congressman Maffei, the ad shows several images of his Republican opponent, Ann Marie Buerkle, touts her proposals, and then closes with the narrator saying, "Help Ann Marie Buerkle make America work again," with an on-screen chyron that says, "Help Anne [sic] Marie Buerkle Make America Work Again." The ad does not state that the Respondent "is responsible for the content of this advertising" – either aurally or in writing.

² See Exhibits A and B.

³ See Exhibit C.



As of October 1, 2010, Respondent had not reported any of these advertisements to the Federal Election Commission (the "Commission").

B. LEGAL BACKGROUND

Commission regulations define an "independent expenditure" as an "expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate" that is not coordinated with a Federal candidate or political party. 11 C.F.R. § 100.16(a). The term "expressly advocate" means any communication that either uses the so-called "magic words" set forth in 11 C.F.R. § 100.22(a) or "[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because – (1) [t]he electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) [r]easonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." *Id.*, § 100.22(b)

Commission regulations define an "electioneering communication" as any broadcast, cable, satellite communication that (1) refers to a clearly identified candidate for Federal office, (2) is publicly distributed within 60 days before a general election for the office sought by the candidate, and (3) is targeted to the relevant electorate, in the case of a candidate for the House of Representatives. *See* 11 C.F.R. § 100.29(a).



C. LEGAL ARGUMENT

1. Respondent Failed to File Independent Expenditure or Electioneering Communication Reports

Commission regulations require persons other than political committees that "make[] independent expenditures aggregating \$10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election" to report the independent expenditures by 11:59 p.m. on the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 109.10(c). Likewise, Commission regulations require persons other than political committees that make "an electioneering communication ... aggregating in excess of \$10,000 during any calendar year [to] file a statement with the Commission by 11:59 p.m. on the day following the disclosure date." *Id.* § 104.20(b).

The advertisements publicly disseminated by Respondent were either independent expenditures or electioneering communications. The advertisements expressly advocated for the election of the Republican candidates and the defeat of the Democratic candidates. Even if the Commission concludes that the advertisements did not contain express advocacy, they are clearly "electioneering communications," because they were broadcast, cable, or satellite communications that referred to clearly identified candidates for public office, were publicly distributed within 60 days of the general election, and were targeted to the relevant electorate.

However, as of October 1, 2010, Respondent had failed to file *any* independent expenditure or electioneering communication reports, even though the advertisements clearly



exceeded the \$10,000 threshold and qualified as either independent expenditures or electioneering communications. Therefore, Respondent violated either section 104.20(b) or 109.10(c) of the regulations.

2. Respondent Failed to Include Proper Disclaimers on the Advertisements

Commission regulations require certain television communications to have disclaimers. A television communication by a person other than a political committee is required to have a disclaimer if it expressly advocates the election or defeat of a clearly identified candidate or qualifies as an electioneering communication. *See id.* § 110.11(a)(2), (4). All such television communications must include the following audio statement: "XXXX is responsible for the content of this advertising," with the blank to be filled in with the name of the person paying for the communication. *See id.* § 110.11(c)(4)(i). The statement must be "spoken clearly" and "conveyed by an unobscured full-screen view of a representative of the ... person making the statement, or by a representative of such ... other person in voice-over." *Id.* § 110.11(c)(4)(ii). Furthermore, such a television communication must also "include a similar statement that must appear in clearly readable writing at the end of the communication." *Id.* § 110.11(c)(4)(iii).

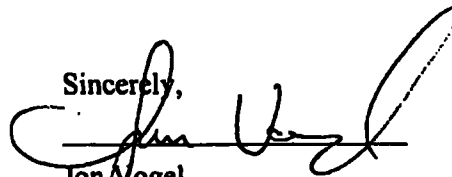
Because they were either independent expenditures or electioneering communications, Respondent's television advertisements were required to include the aural and written "stand by your ad" disclaimer. However, *none* of Respondent's advertisements contained the aural or written "stand by your ad" disclaimer. Therefore, Respondent violated section 110.11(c) of the regulations.



D. REQUESTED ACTION

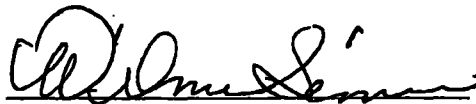
As we have shown, there is substantial evidence that Respondent has violated the Federal Election Campaign Act. We respectfully request the Commission to investigate these violations. Should the Commission determine that Respondents have violated FECA, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



Jon Vogel

SUBSCRIBED AND SWORN to before me this 24 day of October, 2010.



Notary Public

My Commission Expires:
~~Wanda Strang~~
Notary Public, District of Columbia
My Commission Expires 7/31/2012