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***ALSO ADMITTED IN THE DISTRICT OF COLUMBIA**

November 15, 2010

**Federal Election Commission
999 E Street, NW
Washington, DC 20463**

Re: MUR 6407

**RESPONSE BY RESPONDENTS BUCK FOR COLORADO AND
KENNETH R. BUCK**

Kenneth Buck is the Weld County District Attorney and was the Republican nominee for United States Senate in Colorado in the November 2, 2010 general election. Buck for Colorado is Mr. Buck's principal campaign committee. Kenneth Salazar serves as Treasurer of Buck for Colorado. On or about November 2, 2010, respondents Salazar and Buck received a letter from Jeff Jortner notifying them that they had been named in a complaint filed with the Federal Election Commission by Pat Waak, Chair of the Colorado Democratic Party. It appears that the Colorado Democratic Party filed this frivolous complaint in an attempt to use the Commission's enforcement process for political gain. The respondents hereby request that this action be dismissed as it relates to them.

Factual Analysis

Based on the information provided in the complaint, it appears that Senator Jim DeMint, through his leadership PAC, Senate Conservatives Fund ("SCF"), made independent expenditures to support Mr. Buck. Senator DeMint also appears to have supported Mr. Buck's Senatorial campaign and campaigned with Mr. Buck.

Mr. Buck specifically denies that he cooperated with, consulted with, acted in concert with, requested, or suggested that Senator Jim DeMint or SCF make any public communications supporting his candidacy for United States Senate. To the best of Mr. Buck's knowledge, no person acting on his behalf or on behalf of Buck for Colorado engaged in this activity. See attached declaration.

Mr. Salazar specifically denies that he cooperated with, consulted with, acted in concert with, requested, or suggested that Senator Jim DeMint or SCF make any public communications supporting his candidacy for United States Senate. To the best of Mr. Salazar's knowledge, no

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person acting on behalf of Mr. Buck or Buck for Colorado engaged in this activity. See attached declaration.

Legal Analysis

The complaint alleges that independent expenditures made by SCF were coordinated with Mr. Buck and were therefore in-kind contributions to the Buck campaign. The complaint contains no evidence to support this assertion. Rather, the complaint identifies instances in which Senator DeMint and Mr. Buck met and spoke with each other. From here, the complainant leaps to the unsubstantiated conclusion that independent expenditures made by SCF were coordinated with Buck for Colorado.

The complaint is based on an erroneous interpretation of the Commission's regulations relating to independent expenditures. Pursuant to 11 CFR 109.21, a communication is coordinated with a candidate or authorized committee when the communication is paid for by a person other than the candidate or committee, satisfies the content prong of 109.21(c) and satisfies the conduct prong of 109.21(d). At issue in this complaint is whether the independent expenditures made by SCF satisfied the conduct prong of 109.21(d).¹

The law does not prohibit a person who makes independent expenditures in support of a candidate from interacting with and publicly endorsing that candidate. Rather, the law prohibits coordination only as it relates to communications that constitute independent expenditures. This is a critical distinction mandated by the Federal Election Campaign Act, which refers to specific expenditures, rather than general activity, in defining contributions and independent expenditures. See 2 U.S.C. 431(17) and 441a(a)(7). The interpretation proposed by the complainant would require the Commission to exceed its statutory authority by treating any payment as an independent expenditure merely because the person making the expenditure has a close relationship with the candidate.

The interpretation proposed by the complainant was also rejected by the Supreme Court in *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 518 U.S. 604 (1996). In that case, the Court was presented with the question of whether party expenditures could be presumed to be coordinated based on the close relationship between a party and its nominee. The Court held that:

"Notwithstanding the above testimony, the Government argued in District Court--and reiterates in passing in its brief to this Court, that the deposition showed that the Party had coordinated the advertisement with its candidates. It pointed to Callaway's statement that it was the practice of the party to "coordinat[e] with the candidate" "campaign strategy," and for Callaway to be "as involved as [he] could be" with the individuals seeking the Republican nomination by making available to them "all of the assets of the party." These latter statements, however, are general descriptions of party practice. *They do not refer to the advertising campaign at issue here or to its preparation.* Nor do they conflict with, or cast significant doubt

¹ This document responds to the complainant's primary allegation regarding the conduct prong of the coordination test. This should not be construed as a stipulation by the respondents that the other prongs of 109.21 have been met as they relate to the public communications by SCF.

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upon, the uncontroverted direct evidence that this advertising campaign was developed by the Colorado Party independently and not pursuant to any general or particular understanding with a candidate. We can find no "genuine" issue of fact in this respect. And we therefore treat the expenditure, for constitutional purposes, as an "independent" expenditure, not an indirect campaign contribution." 518 U.S. at 614. Internal citations omitted, emphasis added.

It is improper and unlawful for the Commission to open an investigation when the only facts contained in a complaint are evidence of lawful and constitutionally protected behavior. Under 11 CFR 111.4(d)(3), a complaint must contain a "recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." The facts contained in this complaint describe purely lawful conduct. The complaint even quotes Senator DeMint properly reciting the law relating to independent expenditures. See Complaint, page 4.

Conclusion

The complaint filed with the Commission contains no evidence of wrongdoing by the respondents. Therefore, we respectfully request that this matter be dismissed as it relates to Buck for Colorado/Kenneth Salazar and Kenneth R. Buck.

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STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Entity/Treasurer.
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MUR # 6407

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

11/16/10
Date

[Signature]
Respondent/Agent Signature

Treasurer
Title (Treasurer/Candidate/Owner)

NAMED RESPONDENT: Rick Fox Colorado / Kenneth Salazar, Treasurer

MAILING ADDRESS:
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Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

11/15/2010
Date

James A. Silverio
Respondent/Agent Signature

Candidate
Title (Treasurer/Candidate/Owner)

NAMED RESPONDENT: Buck for Colorado / Kenneth Salazar, Treasurer

MAILING ADDRESS:
(Please Print)

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BUSINESS ()

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(c)(2)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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