



Planned Parenthood[®]
Action Fund, Inc.

RECEIVED
FEDERAL ELECTION
COMMISSION

2010 DEC 20 PM 4:33

OFFICE OF GENERAL
COUNSEL

December 17, 2010

Jeff S. Jordan
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: MUR 6410—Planned Parenthood Action Fund, Inc.

Dear Mr. Jordan:

This letter constitutes the response of Planned Parenthood Action Fund, Inc. ("the Action Fund") to the complaint filed by Christopher C. Healy, Chairman, Connecticut Republican Party ("Complainant") in MUR 6410. The Complainant alleges illegal coordination between the Action Fund and the campaign of Richard Blumenthal, candidate for U.S. Senate. These allegations are groundless and we request that the Commission find no reason to believe the Federal Election Campaign Act ("FECA") has been violated and take no further action.

I. Allegations of the Complaint

The complaint arose out of an October 22, 2010 email from a Blumenthal campaign staffer, which stated: "[Andrew] Grossman is looking for misogynistic photos of women and WWE [World Wrestling Entertainment]. Planned Parenthood wants to hit LM [Linda McMahon] hard on it. What do we got?" Although the staffer intended the email to go to her fellow campaign workers, she apparently misaddressed it to a domain name that had been obtained by the McMahon campaign. Consequently, the McMahon campaign received the email and forwarded it to the Complainant, who filed this complaint.

From this single misaddressed email, and no other evidence, Complainant makes a number of broad and factually incorrect assertions: (1) that the email indicates that the Action Fund was engaging in illegal coordination with the Blumenthal campaign through the Action Fund's "agent," Andrew Grossman, and (2) that this single email gives rise to an inference that the Action Fund's independent expenditure communications, distributed both before and after the date of the email in question, were coordinated with the Blumenthal campaign. As set forth below, these allegations are baseless.

II. Background: Structure of Planned Parenthood Action Fund and Planned Parenthood Federal PAC

The Action Fund is a qualified non-profit corporation, tax-exempt under IRC section 501(c)(4), that undertakes independent expenditures in federal elections (FEC ID C90005471). The Action Fund operates Planned Parenthood Federal PAC ("the PAC") as

11044300545

a separate segregated fund (FEC ID C00314617). The PAC makes both cash and in-kind contributions to federal candidates. Some of those in-kind contributions involve communications that are uncoordinated with federal candidates.¹

In order to ensure that the Action Fund's independent expenditures are not coordinated with candidates or parties, the Action Fund instituted a policy creating a firewall between employees working on independent expenditures ("Independent Staff") and those working on coordinated expenditures for the PAC² ("Coordinated Staff") and setting forth rules of conduct for both. See Exhibit A, Rules and Certification Regarding Independent Expenditures and Firewall, 2010 Election Season (hereafter, "Firewall Policy"). Specifically, under the Firewall Policy, only Independent Staff may work on the Action Fund's independent expenditures and only Coordinated Staff may work on coordinated expenditures. Moreover, Coordinated Staff may not share with Independent Staff information about candidates' or parties' plans, projects activities or needs that they have gathered in the course of working on coordinated activities. In addition, all staff are prohibited from discussing the Action Fund's independent expenditures or plans for these expenditures with any candidate, campaign or party. Coordinated and Independent Staff must sign certifications stating that they understand and agree to abide by the Firewall Policy.

III. No illegal coordination occurred between the Action Fund and the Blumenthal Campaign in the 2010 elections.

A. The Action Fund's independent expenditures were not coordinated with any candidate, campaign or political party.

Because the 2010 Connecticut Senatorial race involved issues of primary concern to the Planned Parenthood mission, the Action Fund undertook an independent expenditure campaign in the general election. Significantly, contrary to the Complainant's allegations, Andrew Grossman, the individual named in the October 22 email that gave rise to this complaint, at no time acted as the Action Fund's or the PAC's agent in any matter.³ Declaration of Amy Taylor, ¶ 8.

¹ The PAC reports coordinated communications as in-kind contributions to the candidates involved.

² Coordinated membership communications are also covered by the Firewall Policy.

³ Complainant's sole evidence that Grossman was the Action Fund's agent is his recruitment of candidates to fill a position at Planned Parenthood Federation of America (PPFA), the Action Fund's related 501(c)(3) organization. However, PPFA's contract with Grossman for employee search services terminated on May 31, 2010. Declaration of Amy Taylor, ¶ 8. He has not acted as an agent or employee of PPFA, the Action Fund or the PAC since then and has not been retained by the Action Fund, the PAC or PPFA to advise on political programs. *Id.* As explained in section III.B., below, Grossman, in fact, represented to the Action Fund that he was working for the Blumenthal campaign.

The design, content, timing and audience of the Action Fund's independent expenditure program was in place well before the October 22 email that gave rise to this complaint. In early October, Independent Staff made a decision that the program would target 6,500 female registered voters in Fairfield County, Connecticut, selected on the basis of their likelihood to be persuaded to vote for a pro-choice candidate. Declaration of Jordan Fitzgerald, ¶ 7. The independent expenditures would consist of: two mail pieces focusing on Linda McMahon's record on choice, including the sexist portrayal of women by World Wrestling Entertainment ("WWE"), the organization of which McMahon had been CEO, followed, closer to the election, by a positive mail piece focusing on Blumenthal's pro-choice record and a phone call. *Id.* ¶ 7.8.

The decision to focus on McMahon and the WWE was based on research by Independent Staff using public sources and wide reporting of the issue in the media and not at the request or suggestion of any candidate, party or their agents. *Id.* ¶ 8, citing *On the Trail in Connecticut*, aired 10/10/10⁴ and Huffington Post, 10/13/10.⁵ Significantly, despite the allegations of the Blumenthal staffer's email that Planned Parenthood was looking for pictures to use to "hit LM hard," Independent Staff made a decision *not* to use such graphic photos of sexist violence as they were viewed as being in poor taste and as distracting from the Action Fund's message. *Id.* ¶ 9. The first two mail pieces, which focused on McMahon and the WWE, therefore, contained no such images. See Exhibits B and C.

The first mail piece (Exhibit B) and the text of the phone script were completed by October 14. The first mail piece was placed in the mail on October 18.⁶ *Id.* ¶ 10. The second mail piece (Exhibit C) was mailed on October 21.⁷ *Id.* The third piece (Exhibit D) was mailed on October 26, but was completed in its final form by October 21.⁸ *Id.* According to the plans made in early October, the phone calls were made close to the election, on October 27, using the phone script (Exhibit E) that had been written in the first half of the month. *Id.*⁹

⁴ *On the Trail in Connecticut*, ABC News, Oct. 10, 2010, <http://abcnews.go.com/ThisWeek/video/trail-connecticut-1184492>

⁵ Jackson Katz, *Linda McMahon Smacks Down Women*, Huffington Post, Oct. 13, 2010, http://www.huffingtonpost.com/jackson-katz/linda-mcmahon-smacks-down_b_760465.html

⁶ The Action Fund's FEC Form 5 24-hour report, filed on October 15, reported this piece as mailed on October 16. However, the anticipated mailing date was delayed to October 18.

⁷ The complaint erroneously alleges that this piece was mailed after the events of October 22. In fact the piece was already in the mail when those events took place. See FEC Form 5 attached, filed October 22.

⁸ The entire expenditure on the mail program was \$22,651. The Action Fund reported a cumulative estimated cost for the mail program of \$27,000 on its 24-hour reports. The corrected data, based on actual invoices, will be reported on the Action Fund's year end Form 5.

⁹ The total expenditure on the phone program was \$3,373. The Action Fund's FEC Form 5 24-hour report filed on October 28 reported an estimated expenditure of \$7,000. The

11044300547

In designing and implementing the entire independent expenditure campaign, the Action Fund staff did not coordinate or communicate with Blumenthal, the Blumenthal Campaign, Andrew Grossman, the Democratic Party or any of their agents (collectively, "Blumenthal Campaign"). The Action Fund staff did not consult with or act at the request or suggestion of the Blumenthal Campaign, nor did the Blumenthal Campaign assent to the Action Fund's suggestion for the mailings or phone calls. Moreover, there was no involvement, material or otherwise, by the Blumenthal Campaign in the creation, production or distribution of the communications or in selecting their geographic venue or target audience. *Id.* ¶ 12 Pursuant to the Action Fund's Firewall Policy, only Action Fund Independent Staff worked on the independent expenditure communications and at no time did Coordinated Staff work on them or discuss the creation, production or distribution of the communications with Independent Staff. *Id.* ¶ 13; Declaration of Amy Taylor, ¶4.

Moreover, no Action Fund independent expenditures were undertaken in response to or as a consequence of any communications that the Blumenthal Campaign or Andrew Grossman had with Coordinated Staff. In fact, the Action Fund's entire independent expenditure campaign in Connecticut consisted of communications that had either been made or put in their final form prior to the October 22 events that gave rise to this complaint. The Complainant's allegations that the Action Fund's independent expenditures were coordinated with the Blumenthal Campaign are therefore utterly baseless.

R. Communications that took place on October 22 did not constitute illegal coordination.

On the morning of October 22, Amy Taylor, a Coordinated Staff member, communicated by email with Andrew Grossman regarding his request for help from the Action Fund in highlighting, on social media sites like Twitter, statements made the day before by Rick Santorum that equated regulation of the WWE to "rape."¹⁰ Declaration of Amy Taylor, ¶ 5. Grossman explained that he was working for Richard Blumenthal. *Id.* ¶ 6. He offered to supply the Action Fund with WWE stills and videos that showed abuse of women to use in the suggested communication. *Id.* ¶ 5. Early in the afternoon of the same day, Politico posted an article reporting on the email that sparked this complaint.¹¹ In order to avoid further speculation and negative publicity, the Action Fund Coordinated

corrected data, based on actual invoices, will be reported on the Action Fund's year-end Form 5.

¹⁰Thomas Fitzgerald, *Conn. Senate Race a Real Body Slam with Ties to Pa.*, Philly.com, Oct. 22, 2010, http://www.philly.com/philly/news/politics/elections/20101022_Conn_Senate_race_a_real_body_slam_-_with_ties_to_Pa_.html.

¹¹Ben Smith, *Blumenthal and Planned Parenthood Seek 'Worst of WWE + women photos.'* Politico, Oct. 22, 2010, http://www.politico.com/blogs/bensmith/1010/Blumenthal_and_Planned_Parenthood_seek_Worst_of_WWE_women_photos.html?showall.

Staff abandoned any consideration of Grossman's suggestions after the article appeared. In fact, after these incidents, Coordinated Staff had no further communications with the Blumenthal Campaign or Grossman regarding the 2010 elections. *Id.* ¶ 7.

No violation of the FECA resulted from Grossman's preliminary contacts with Action Fund staff. Because Grossman represented himself as working for the Blumenthal campaign, pursuant to the Action Fund's Firewall Policy, the Action Fund's Coordinated Staff communicated with him. In any event, those conversations could not have influenced the Action Fund's independent expenditure campaign, as the entire campaign consisted of communications that were either made or put in their final form prior to October 22.

Even had Grossman's suggestions been implemented, there would have been no violation of the FECA. First, they would have been implemented by Coordinated Staff, pursuant to the Firewall Policy. Second, no corporate funds would have been used for the suggested communication, as staff time, the only nominal expense involved, would have been covered by PAC funds previously advanced to the Action Fund.¹² Third, even had corporate funds been used, there would have been no violation of the FECA because the communications were to be made on the Internet. See 11 CFR 109.21 (defining forbidden coordinated communications as "public communications" and 100.26 (defining public communications as excluding communications over the Internet). The allegations of the complaint are therefore incorrect.

IV. The Complaint does not warrant a finding of reason to believe the FECA has been violated.

In order to proceed with an investigation in this matter, the Commission must find "reason to believe that a person has committed, or is about to commit a violation" of the FECA. 2 U.S.C. 437g(a)(2). The Commission has stated that it will not find "reason to believe" if the "complaint, any response filed by the respondent, and any publicly available information, when taken together, fail to give rise to a reasonable inference that a violation has occurred, or even if the allegations were true, would not constitute a violation of the law." Statement of Policy Regarding Commission Action in Matters at the Initial Stages of Enforcement, 72 Federal Register 12545, 12546 (March 16, 2007). Moreover, purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred. MUR 4960 (*In re* Hillary Rodham Clinton for U.S. Senate Exploratory Committee, *et al.*); MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter

¹² As of October 22, the PAC could have made a \$500 in-kind contribution to Blumenthal without exceeding the contribution limit for the general election. This amount would have been ample to cover the nominal staff time involved in the discussion with Grossman and the postings on the internet. Moreover, at least this amount remained uncommitted in the funds the PAC had previously advanced to the Action Fund. Declaration of Amy Taylor, ¶ 6.

and Donald F. McGahn at 6 (To meet the "reason to believe" standard, "the complainant... must provide specific facts," unrefuted by the respondent, demonstrating the alleged violation.). "Mere official curiosity will not suffice as the basis for FEC investigations." *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981).

Based on these standards, there is no reason to believe the FECA has been violated. Complainant's allegations that the Action Fund engaged in illegal coordination regarding its independent expenditures are purely speculative and directly refuted by the evidence stated in this Response. The Complainant's only "evidence" for coordination is the Blumenthal staffer's email of October 22 which indicated that an apparent agent of Richard Blumenthal (Grossman) was asking for pictures to supply to Planned Parenthood on Linda McMahon and the WWE. However, as explained above, the Action Fund's independent expenditures in Connecticut were undertaken without coordination with any candidates, campaigns or parties, and based on publicly available information. Moreover, they were undertaken pursuant to a Firewall Policy that segregated the work of Independent Staff from the Coordinated Staff that engaged in conversations with candidates and campaigns. Finally, and most significantly, the planning, targeting, timing and content of the Action Fund's independent expenditures in the Connecticut race were completed *before* the date of the alleged coordination: October 22.

Moreover, the communications between the Action Fund Coordinated Staff and Grossman on October 22 fall squarely into the category of facts that, even if true, "would not constitute a violation of the law." There are three reasons for this: (1) these communications did not influence the Action Fund's independent expenditures; (2) no coordinated communications were made by the Action Fund or the PAC as a result of Grossman's suggestions; (3) even if such coordinated communications had been made, they would have been lawful because they would have been made as an in-kind contribution paid by PAC funds or exempt under the Internet rules.

Therefore, the Commission should find that there is no reason to believe the FECA was violated and take no further action.

Yours sincerely,



Dara Klassel
Counsel to Respondent
Planned Parenthood Action Fund
434 West 33 Street
New York, New York 10001
212.261.4707
dara.klassel@ppfa.org

cc: B. Holly Schadler

Enclosures:
Statement of Designation of Counsel

Exhibit B: First Connecticut mail piece
Exhibit C: Second Connecticut mail piece
Exhibit D: Third Connecticut mail piece
Exhibit E: Connecticut phone script

11044300550

11044300551

Exhibit B: First Connecticut mail piece



For Women

For Connecticut

PLANNED PARENTHOOD 35 VOICES
CONNECTICUT

345 Whitney Avenue
New Haven, CT 06511
ppnneactionfund.org

Paid for by the Planned Parenthood Action Fund, www.plannedparenthoodaction.org.
Not authorized by any candidate or candidate's committee.

PPAF10038

NOT WHO YOU THINK SHE IS

Linda McMahon is an out-of-touch millionaire who made her fortune from sex, violence, and exploitation of women. Here's the truth:

- ▶ McMahon opposes federal funding for abortion in cases of rape and incest. (www.linda2010.com)
- ▶ McMahon advocates repealing health care reforms that will benefit Connecticut's women and families. (newcanen.patch.com, 10/5/10)
- ▶ Under McMahon, the WWE had multiple story lines featuring women being stripped, beaten, and forced to degrade themselves for entertainment. (abcnews.go.com, On the Trail in Connecticut, aired 10/10/10; The Huffington Post, 10/13/10)

**MCMAHON: WRONG FOR WOMEN
WRONG FOR CONNECTICUT**

11044300554


Exhibit C: Second Connecticut mail piece

PLANNED PARENTHOOD VOTES IN
CONNECTICUT

Planned Parenthood Votes! Connecticut
345 Whitney Avenue
New Haven, CT 06511
www.actforchoice.org

Paid for by the Planned Parenthood Action Fund, www.plannedparenthoodaction.org.
Not authorized by any candidate or candidate's committee.

LINDA MCMAHON IS



made millions
of dollars exploiting women
and selling unspeakable
sexual harassment and
violence as

Connecticut women deserve better.



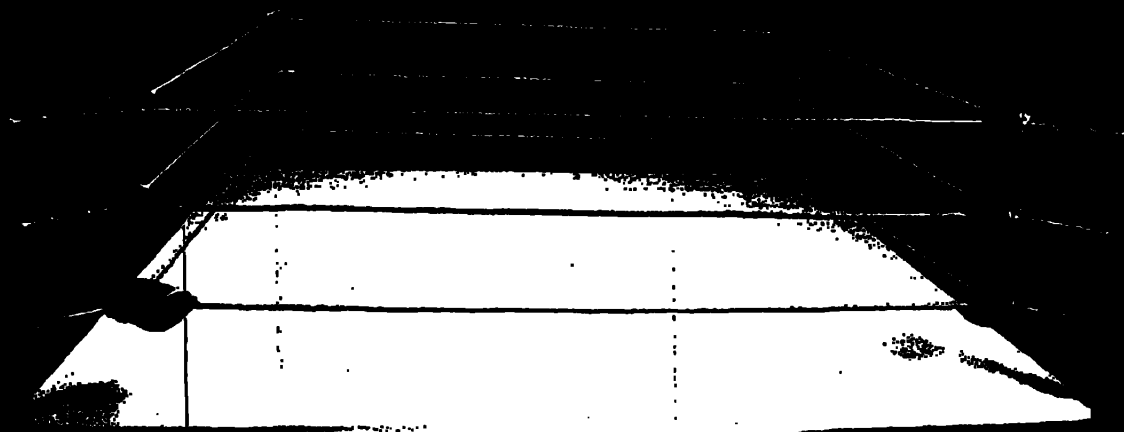
Watch an 11-minute video about Linda McMahon's
exploitation of women at

A woman stands before thousands of cheering men while her employer commands her to get down on her hands and knees and bark like a dog, before she is

Another woman is seemingly
by a muscular man, and as he stands over her, he forces a kiss upon her lifeless face as a ring announcer claims that the woman "liked it."

Countless women are thrown through tables, hit with chairs and forced to disrobe as crowds roar.

And Linda McMahon says the WWE:



11044300557

Exhibit D: Third Connecticut mail piece

11044300558

A Message from Planned Parenthood

VOTE



VOTE FOR WOMEN'S HEALTH. VOTE FOR RICHARD ROBERTSON.

345 Whitney Avenue
New Haven, CT 06511
www.actforchoice.org

PLANNED PARENTHOOD VOICES
CONNECTICUT

Paid for by the Planned Parenthood Action Fund, www.plannedparenthoodaction.org.
Not authorized by any candidate or candidate's committee.

Richard Blumenthal:

MAKING WOMEN'S HEALTH A PRIORITY

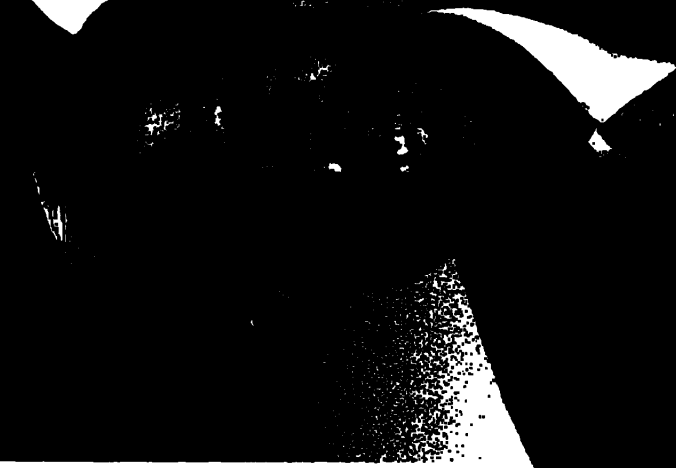
Richard Blumenthal has been a strong advocate for women and women's reproductive rights throughout his long career in public service.

He supports commonsense policies to improve access to quality health care, such as strengthening comprehensive sex education and investing in prevention programs, including family planning services and lifesaving breast cancer screenings.

**WE CAN TRUST RICHARD BLUMENTHAL TO
MAKE WOMEN'S HEALTH A PRIORITY
IN THE U.S. SENATE**

PPAF710030

NOV 2



11044300560

Exhibit E: Connecticut phone script

EXHIBIT E—CONNECTICUT PHONE SCRIPT

Hi, can I speak with _____?

Hi _____, my name is _____ and I am calling on behalf of Planned Parenthood Action Fund. We believe Linda McMahon is wrong for women and wrong for CT. McMahon advocates repealing health care legislation that would benefit thousands of women and families in our state. She supports cutting federal funding for abortion - even in the case of rape and incest. And we cannot forget she is funding her campaign with the millions she earned using sex, violence and the exploitation of women in her business.

That is why we support Richard Blumenthal for US Senate. Can we count on your vote for Richard Blumenthal on November 2nd?

If yes - Great! Polls are open on November 2 at 6am and close at 8pm. Thanks.

If no - Thank you for your time.

This call is paid for by Planned Parenthood Action Fund. www.plannedparenthoodaction.org.
Not authorized by any candidate or candidate's committee.

Have a great day.

11044300561

STATEMENT OF DESIGNATION OF COUNSEL

MUR 6411

NAME OF COUNSEL: Dara Klassel

FIRM: Planned Parenthood Action Fund

ADDRESS: 434 West 33rd Street


New York, NY 10001

TELEPHONE: (212) 261-4707

FAX: (212) 868-4677

The above-named individual 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.

12/16/10
Date


Signature Aaron Samuels
Assoc. Treasurer

RESPONDENT'S NAME: Planned Parenthood Votes

ADDRESS: 434 West 33rd Street

New York, NY 10001

TELEPHONE: HOME ()

BUSINESS (212) ² 261-4707

11044300562