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December 20, 2010

BY HAND

Jeff S. Jordan

Supervisory Attorney

Complaints Examination & Legal Administration

Federal Election Commission

999 E Street N.W.

Washington, D.C. 20463

Re: MUR 6410

Dear Mr. Jordan:

We are writing this letter on behalf of Senator-elect Richard Blumenthal, Blumenthal for Senate (the "Committee") and Ellen Camhi, as treasurer, (collectively referred to as the "Respondents") in response to the Complaint filed in the above-referenced matter by the Connecticut Republican Party (the "Complainant"). The Complaint falsely asserts that the Committee accepted prohibited corporate in-kind contributions in the form of coordinated communications paid for by Planned Parenthood Action Fund, Inc. ("Planned Parenthood").

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act. See 11 C.F.R. § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. See Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. See *id.* For the reasons set forth below, the facts do not support a reason to believe finding in this matter and the Complaint should be dismissed.

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FACTUAL DISCUSSION

The sole evidence for the Complaint's assertion that Respondents accepted prohibited coordinated contributions is an internal Committee email dated October 22, 2010, in which a Committee staffer states, "Grossman is looking for misogynistic photos of women and WWE. Planned Parenthood wants to hit LM hard on it. What do we got?" ("October 22 email"). Although not addressed in the Complaint, there is no evidence that Planned Parenthood used images similar to those referred to in the October 22 email for any purpose other than unpaid Internet communications. This is consistent with the Committee's understanding, at the time the email was sent, that the photos referred to in the email would be used for unpaid Internet activity only, and would not be used for public communications.

According to reports filed with the Commission, the only independent expenditures paid for by Planned Parenthood in connection with Senator-elect Blumenthal's election *after* the October 22 email were for phone calls both in opposition to Senator-elect Blumenthal's opponent, Linda McMahon, and in support of Senator-elect Blumenthal, and for political mail in support of Senator-elect Blumenthal. See Itemized Independent Expenditures of Planned Parenthood Action Fund, Inc., Oct. 26, 2010, available at <http://query.nictusa.com/cgi-bin/dcdev/forms/C90005471/512041/f57>; Itemized Independent Expenditures of Planned Parenthood Action Fund, Inc., Oct. 28, 2010, available at <http://query.nictusa.com/cgi-bin/dcdev/forms/C90005471/513252/f57>. The only other public communications paid for by Planned Parenthood that were identified in reports to the Commission as being in opposition to Ms. McMahon were distributed *before* October 22 – and therefore could not have been affected in any way by the October 22 email. See, e.g., Itemized Independent Expenditures of Planned Parenthood Action Fund, Inc., Oct. 22, 2010, available at <http://query.nictusa.com/cgi-bin/dcdev/forms/C90005471/510211/f57>.

LEGAL ANALYSIS

To determine whether a communication is coordinated with a candidate, authorized committee, political party committee, or any agent of the foregoing, Commission regulations provide a three-pronged test: (1) the communication must be paid for by a person other than that candidate, authorized committee, or political party committee; (2) one or more of the content standards set forth in 11 C.F.R. § 109.21(c) must be satisfied; and (3) one or more of the conduct standards set forth in 11 C.F.R. § 109.21(d) must be satisfied. See 11 C.F.R. § 109.21(a).

Here, the Complaint presents no evidence that Planned Parenthood actually paid for communications that satisfied both the content and conduct standards set forth in 11 C.F.R. § 109.21. Instead, Complainant merely speculates that Planned Parenthood *must* have paid for a coordinated communication – and therefore Respondents must have received a prohibited

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corporate in-kind contribution – solely because of the October 22 email. Yet the October 22 email, by itself, is not conclusive evidence of a coordinated communication.

First, in order to satisfy any of the content standards set forth in 11 C.F.R. § 109.21(c), the communication must be either an electioneering communication or a form of public communication. The term "public communication" is defined as a "communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or other form of general public political advertising." See 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. The term does not include "communications over the Internet, except for communications placed on a site on another person's Web site." See 11 C.F.R. § 100.26.

Here, while it is true that Planned Parenthood paid for certain public communications that were identified in reports filed with the Commission after October 22, 2010 as independent expenditures in connection with Senator-elect Blumenthal's election, it does not appear that any of the public communications identified in the reports would have used photos similar to the ones referred to in the October 22 email. According to the independent expenditure reports, Planned Parenthood paid for political mail in support of Senator-elect Blumenthal on October 26, 2010, and phone calls both in support of Senator-elect Blumenthal and in opposition to Ms. McMahon on October 27, 2010. See Itemized Independent Expenditures of Planned Parenthood Action Fund, Inc., Oct. 26, 2010, available at <http://query.nictusa.com/cgi-bin/dcdev/forms/C90005471/512041/f57>; Itemized Independent Expenditures of Planned Parenthood Action Fund, Inc., Oct. 28, 2010, available at <http://query.nictusa.com/cgi-bin/dcdev/forms/C90005471/513252/f57>. There is no indication that Planned Parenthood paid for any political mail – or any other form of visual public communication – that was identified as being in opposition to Ms. McMahon after October 22, 2010. Accordingly, even if the Committee did provide photos to Planned Parenthood, there is no reason to believe that the photos were used in any public communications paid for by Planned Parenthood.

Second, the Complaint alleges that Respondents satisfied the conduct prong of the coordination test either by assenting to Planned Parenthood's suggestion that it pay for the creation, production, or distribution of a certain communication, see 11 C.F.R. § 109.21(d)(1), or by being materially involved in decisions regarding the content of a communication paid for by Planned Parenthood. See *id.*, § 109.21(d)(2). Yet the Complaint presents no evidence that Respondents assented to the creation, production, or distribution of any communication paid for by Planned Parenthood that would have satisfied any of the content standards described in § 109.21(c). Nor is there any evidence that Respondents were materially involved in decisions regarding the content of any communication paid for by Planned Parenthood that would have satisfied the content standards described in § 109.21(c). The "material involvement" standard is met if the candidate or committee shares plans, projects, activities, or sends with the person making the communication, but only if this information is found to be material to any of [certain]

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enumerated decisions related to the communication." Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed.Reg. 432, 434 (Jan. 3, 2003). Here, not only does the Complaint fail to present any evidence that Respondents actually provided photos or other "plans, projects, activities, or needs" to Planned Parenthood, but there is no indication that Planned Parenthood ever paid for a communication for which such information was "material."

In sum, the Complaint amounts to no more than "mere speculation" regarding a single email. The October 22 email does not, by itself, support any inference of coordination between Respondents and Planned Parenthood. The Complainant has not even identified any public communication paid for by Planned Parenthood that used images similar to the photos referred to in the October 22 email. Furthermore, the fact that Planned Parenthood did not report any public communications after October 22, 2010 that would have used images similar to the photos referred to in the October 22 email is consistent with the Committee's understanding that the photos referred to in the email were to be used only for unpaid Internet communications. Because unpaid Internet communications, by definition, do not meet any of the content standards described in § 109.21(c), any such communications could not have been coordinated communications under § 109.21(a) – and therefore would not have been a prohibited corporate in-kind contribution. Thus, for the reasons set forth above, the Committee respectfully requests that the Commission find no reason to believe that Respondents have violated the Act, and dismiss this matter immediately.

Very truly yours,



Marc Erik Elias
Kate Sawyer Keane
Counsel to Respondents

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