



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**JUL 13 2011**

**Via Facsimile and First Class Mail**

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Mark Kirk Elias, Esq.  
Kate Sawyer Keane, Esq.  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2003

RE: MUR 6410  
Blumenthal for Senate and Judith  
Zamore, in her official capacity  
as treasurer  
Senator Richard Blumenthal

Dear Mr. Elias and Ms. Keane:

By letters dated November 2, 2010, the Federal Election Commission notified your clients, Blumenthal for Senate and its treasurer, and Senator Richard Blumenthal, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On July 11, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Blumenthal for Senate and Judith Zamore, in her official capacity as treasurer, or Senator Richard Blumenthal, violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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Mark Kirk Elias, Esq.  
Kate Sawyer Keane, Esq.  
MUR 6410  
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If you have any questions, please contact Thomas J. Andersen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark D. Shonkwiler', with a long horizontal flourish extending to the right.

Mark D. Shonkwiler  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Blumenthal for Senate and Judith Zamore, MUR 6410  
in her official capacity as treasurer  
Senator Richard Blumenthal

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Christopher C. Healey, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Blumenthal for Senate and Senator Richard Blumenthal.

**II. FACTUAL AND LEGAL ANALYSIS**

This matter involves allegations that Planned Parenthood Action Fund, Inc. ("Action Fund") coordinated communications with, and thus made a prohibited contribution to, Senator Richard Blumenthal and his principal campaign committee, Blumenthal for Senate ("Blumenthal Committee" or "Committee") during the 2010 election for U.S. Senate in Connecticut. Upon review of the complaint and responses, there appears to be no basis for concluding that the Action Fund coordinated with Blumenthal or his campaign regarding public communications paid for by the Action Fund.

**A. Factual Background**

The Action Fund, a domestic not-for-profit corporation registered in the State of New York, describes itself as "the nonpartisan advocacy and political arm of Planned Parenthood Federation of America." <http://www.plannedparenthoodaction.org/about-us/about-us.htm>. It engages in "educational and electoral activity, including legislative advocacy, voter education, and grassroots organizing to promote the Planned Parenthood mission." *Id.* The Action Fund is registered with the Commission as a "qualified non-profit corporation," *see* 11 C.F.R.

1 § 114.10(c), and has, for many years, filed independent expenditure notices and reports  
2 disclosing expenditures on behalf of, or in opposition to, federal candidates.

3 The Action Fund also operates Planned Parenthood Action Fund Inc. PAC ("Action Fund  
4 PAC"), which is registered with the Commission as a separate segregated fund. The Action  
5 Fund PAC makes both cash and in-kind contributions to federal candidates, some of which  
6 involve communications that are coordinated with federal candidates. Action Fund Response at  
7 1-2. In 2010, the Action Fund PAC contributed \$4,500 to the Blumenthal Committee, consisting  
8 of a \$2,500 contribution on June 10, a \$130 in-kind contribution on August 19 (for "Web hosting  
9 for fundraising"), a \$1,370 contribution on September 27, and a \$500 contribution on  
10 October 14, 2010. See Action Fund PAC 2010 July Monthly, September Monthly, October  
11 Monthly and Post-General Reports.

12 Richard Blumenthal was a successful candidate in the 2010 general election for  
13 U.S. Senator from Connecticut, and the Blumenthal Committee serves as his principal campaign  
14 committee. Ellen Camhi served as the Committee's treasurer during the activities at issue.<sup>1</sup>  
15 Blumenthal's main opponent in the general election was Linda McMahon.

16 The complaint, noting that the Action Fund ran "an independent expenditure campaign in  
17 opposition to Linda McMahon," alleges that there is reason to believe that the Action Fund and  
18 the Blumenthal Committee "may have coordinated past public communications and may be  
19 continuing to coordinate future public communications." Complaint at 2. In 2010, the Action  
20 Fund reported a total of \$26,060.31 in independent expenditures on the Connecticut Senate race,  
21 consisting of \$22,651.29 for mailers, \$3,373.67 for get-out-the-vote phone calls, and \$35.35 for

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<sup>1</sup> Camhi also served as treasurer at the time of the filing of the complaint and thus received notice of the complaint. On April 15, 2011, the Blumenthal Committee filed an Amended Statement of Organization listing Judith Zamore as the current treasurer.

1 on-line voter guides. *See* Action Fund 2010 October Quarterly Report and 2010 Year End  
2 Report. The Action Fund reported two mailings in opposition to McMahon, both of which cost  
3 \$7,750.43 (\$15,500.86 total). The Action Fund mailed the first piece on October 18, 2010 and  
4 the second piece on October 21, 2010, both of which included images of McMahon alongside  
5 statements critical of her association with WWE, Inc., a privately controlled entertainment  
6 company where she served as CEO just prior to her candidacy. *See* Action Fund Response,  
7 Exhibits B & C. On October 27, 2010, the Action Fund also reported a \$1,686.84 independent  
8 expenditure for phone calls in opposition to McMahon; the script contained statements such as  
9 “we cannot forget [McMahon] is funding her campaign with the millions she earned using sex,  
10 violence and the exploitation of women in her business.” *Id.*, Exhibit E.

11 In alleging coordination, the complaint primarily relies on an October 22, 2010 email  
12 from a Blumenthal Committee “press staffer” that was sent to several other Committee staffers.  
13 Complaint at 1. The email, a copy of which is attached to the complaint, states: “Hey all –  
14 Grossman is looking for misogynistic [sic] photos of women and WWE. Planned Parenthood  
15 wants to hit LM hard on it. What do we got?” *Id.*, Exhibit 1. The complaint asserts that the  
16 individual referenced in the email is Andrew Grossman and identifies him as an “agent” of the  
17 Action Fund who was heavily involved in the organization’s political strategy. *Id.* at 1. The  
18 complaint asserts that Grossman “reached out” to the Blumenthal Committee staffer who sent the  
19 email and requested that the Committee “assist him in finding images to use in a communication  
20 opposing Linda McMahon.” *Id.* at 2. The complaint argues that, as an “agent” of the Action  
21 Fund, Grossman “suggested” that the Action Fund create, produce, or distribute such a  
22 communication, and the Blumenthal Committee “assented” to the suggestion “by willingly  
23 looking for images to provide . . . .” *Id.* Further, the complaint argues that the Blumenthal

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1 Committee, by “assisting” Grossman in finding such images, was “materially involved” in the  
2 communication. *Id.*

3 On October 26, 2010, the complainant filed a supplement to the complaint along with a  
4 copy of an Action Fund independent expenditure notice dated October 22, 2010. The  
5 complainant alleges in the supplement that, on October 22, 2010, the “same day” that the  
6 Blumenthal Committee assented to the Action Fund’s “suggestion” that the Action Fund  
7 disseminate public communications opposing Linda McMahon and the “same day” that the  
8 Committee was “materially involved” in the content of such communications, the Action Fund  
9 “continued its independent expenditure mail campaign in opposition to Linda McMahon.”

10 Complaint Supplement at 2.

11 The Action Fund’s response denies the complaint’s assertion that Andrew Grossman was  
12 acting as its agent, and states instead that Grossman was in fact working on behalf of the  
13 Blumenthal Committee. While the Action Fund acknowledges that Grossman previously worked  
14 as an independent contractor for Planned Parenthood Federation of America to recruit candidates  
15 to fill a vacant position, it asserts that his contract ended on May 31, 2010 and that since then,  
16 Grossman has not acted as an agent or employee of, or been retained to work on political  
17 programs for, Planned Parenthood Federation of America, the Action Fund or the Action Fund  
18 PAC. Action Fund Response at 2. Amy Taylor, who managed the PAC and oversaw “all  
19 communications that are coordinated with federal candidates,” states in an affidavit that  
20 Grossman had informed her he was working for Blumenthal when he suggested that the Action  
21 Fund “highlight, on social media sites like Twitter,” statements concerning the WWE. Action  
22 Fund Response, Affidavit of Amy Taylor at 1 (“Taylor Aff.”). Grossman “offered to supply the  
23 Action Fund with stills and videos that showed abuse of women to use in the suggested

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1 communication.” *Id.* Taylor states that she “understood” that any communication made by the  
2 Action Fund PAC at Grossman’s suggestion would be considered an in-kind contribution from  
3 the PAC, which would have been permissible up to \$500, the amount remaining within its  
4 \$5,000 calendar year limit. *Id.* at 1-2; 2 U.S.C. § 441a(a)(2)(A). However, in order to avoid  
5 further speculation and negative publicity following news coverage of the October 22 email, “we  
6 abandoned any further consideration of Grossman’s suggestions . . . .” *Id.* at 2.

7 The Action Fund also provided an affidavit from Jordan Fitzgerald, who managed the  
8 Action Fund’s “independent expenditure” program and was involved in “all aspects of the  
9 planning, creation and execution of the communications involved in those expenditures.” Action  
10 Fund Response, Affidavit of Jordan Fitzgerald at 1 (“Fitzgerald Aff.”). Fitzgerald states that the  
11 Action Fund decided, in early October 2010, to target a small group of “persuadable women  
12 voters in Fairfield County, Connecticut,” with two “negative” mail pieces highlighting  
13 McMahon’s positions, followed by a phone call. *Id.* at 2. In designing and implementing these  
14 communications, Fitzgerald states that he “did not act on the request or suggestion of the  
15 Blumenthal Campaign; present suggestions regarding a communication to the Blumenthal  
16 Campaign to which it gave assent; [or] create, produce or distribute a communication after  
17 material, or any, involvement by the Blumenthal Campaign . . . .” *Id.* at 3. The Action Fund  
18 claims that the design, content, timing and audience for its independent expenditure program was  
19 in place “well before the October 22 email that gave rise to this complaint.” Action Fund  
20 Response at 3.

21 The Action Fund also provided a copy of its firewall policy for the “2010 Election  
22 Season,” which states that “Independent Staff” (i.e., staff working on independent expenditures)  
23 must not have any discussions or communications with “Coordinated Staff” (i.e., staff working

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1 on coordinated activities) or Action Fund consultants or vendors “about the plans, projects,  
2 activities or needs of a candidate on whose behalf the Action Fund is planning or conducting  
3 independent expenditures.” Action Fund Response, Exhibit A at 1 (“Firewall Policy”). The  
4 policy also prohibits “Coordinated Staff” from having conversations with campaigns about such  
5 expenditures or from planning or executing the Action Fund’s expenditure activities. Firewall  
6 Policy at 2. The response states that “Coordinated Staff” and “Independent Staff” must sign  
7 certifications stating that they understand and agree to abide by the policy. Action Fund  
8 Response at 2. Taylor and Fitzgerald each confirm in their affidavits that they “reviewed and  
9 agreed to abide by” the policy. Taylor Aff. at 1; Fitzgerald Aff. at 1.

10 The Blumenthal Committee’s response asserts that the content standard at 11 C.F.R.  
11 § 109.21(c) has not been met because public communications disseminated by the Action Fund  
12 after the October 22, 2010 email would not have used photos similar to those referenced in the  
13 email. Specifically, the Committee avers that, since the only post-October 22 independent  
14 expenditures by the Action Fund in opposition to McMahon were for phone calls occurring on  
15 October 27, 2010, there was no “visual public communication” by the Action Fund. Committee  
16 Response at 3. The Committee states that, “even if the Committee did provide photos to [the  
17 Action Fund], there is no reason to believe that the photos were used in any public  
18 communications paid for by” the Action Fund. *Id.* The Committee concludes that, not only does  
19 the complaint fail to present any information that the Committee provided photos or other “plans,  
20 project, activities, or needs” to the Action Fund, there is “no indication that [the Action Fund]  
21 ever paid for a communication for which such information was ‘material.’” *Id.* at 4.

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**B. Legal Analysis**

The Act prohibits corporations from making contributions in connection with any Federal election, and similarly prohibits candidates and political committees from knowingly accepting such contributions. 2 U.S.C. § 441b(a). The Act provides that an expenditure made by any person “in cooperation, consultation, or concert, with, or at the request or suggestion of,” a candidate or his authorized committee or agent is a contribution to the candidate. *See* 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(a).

A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication is (1) paid for, in whole or part by a person other than that candidate, authorized committee, or political party committee; (2) satisfies at least one of the content standards<sup>2</sup> described in 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the conduct standards described in 11 C.F.R. § 109.21(d). 11 C.F.R. § 109.21(a)(1) – (3). An independent expenditure is an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate’s authorized committee, or their agents, or a political party committee or its agents. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16.

In this matter, the first prong of the coordinated communication test is satisfied because the Action Fund is a third-party payor. 11 C.F.R. § 109.21(a)(1). The second prong of the test,

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<sup>2</sup> The Commission recently revised the content standard in 11 C.F.R. § 109.21(c) in response to the D.C. Circuit’s decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008). The Commission added a new standard to the content prong of the coordinated communications rule. 11 C.F.R. § 109.21(c)(5) covers communications that are the functional equivalent of express advocacy. *See Explanation and Justification for Coordinated Communications*, 75 Fed. Reg. 55947 (September 15, 2010). The effective date of the new content standard is December 1, 2010, after the events at issue in this matter. Even if applied, the new standard would not change the analysis in this Report.

1 the content standard, is satisfied when a public communication, *inter alia*, (1) expressly  
2 advocates the election or defeat of a clearly identified federal candidate, or (2) refers to a clearly  
3 identified federal candidate and is publicly disseminated in that candidate's jurisdiction within  
4 90 days of the general election.<sup>3</sup> 11 C.F.R. § 109.21(c)(3) and (4)(i). Here, the content standard  
5 appears to be satisfied by three of the communications reported by the Action Fund as  
6 independent expenditures. First, the two mailers, *see supra* at p. 3, appear to constitute public  
7 communications that refer to a clearly identified federal candidate (McMahon), and were  
8 distributed in Connecticut within 90 days of the November 2, 2010 general election. *See*  
9 11 C.F.R. § 109.21(c)(4)(i). In addition, the phone call script, *see supra* at p. 3, appears to  
10 contain express advocacy under 11 C.F.R. § 100.22(a), since it uses phrases similar to those cited  
11 in the regulation (e.g., "Can we count on your vote for Richard Blumenthal . . . ?"). *See*  
12 11 C.F.R. § 109.21(c)(3).

13 The third prong of the coordination test, the conduct prong, may be satisfied when, *inter*  
14 *alia*, (1) a communication is created, produced, or distributed at the request or suggestion of the  
15 candidate or his or her authorized committee, or at the suggestion of the person paying for the  
16 communication, and the candidate or his or her committee assents to that suggestion; (2) the  
17 candidate or his or her authorized committee is materially involved in certain decisions regarding  
18 the communication; or (3) the communication is created, produced, or distributed after one or

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<sup>3</sup> A "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 any other form of general political advertising." 11 C.F.R. § 100.26. A "mass mailing" means a mailing of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. 2 U.S.C. § 431(23). The Action Fund states that its program was targeted to reach 6,500 female registered voters, *see* Action Fund Response at 3, and a news report indicates that the mailers were sent to "roughly 10,000 female independents." Steven Puoples, *Planned Parenthood Targets Women Voters With McMahon WWE Mailers*, CQ ROLL-CALL, Oct. 26, 2010. Accordingly, the mailings at issue appear to qualify as "mass mailings," and, therefore, are "public communications" under the Act. *See* 2 U.S.C. § 431(22) and (23).

1 more substantial discussions about the communication between the candidate and his or her  
2 authorized committee and the payor or his or her agents. 11 C.F.R. § 109.21(d)(1)-(3).

3 The conduct prong does not appear to be satisfied in this matter. The Action Fund has  
4 provided sworn affidavits from key individuals specifically rebutting any implication that its  
5 advertisements were created at the request or suggestion of, with the material involvement of, or  
6 after substantial discussions with, the candidate or his agents, thereby negating the existence of  
7 conduct at 11 C.F.R. § 109.21(d)(1)-(3). It also appears that the Action Fund had a firewall  
8 policy in place that would have prevented information from being transmitted and used in the  
9 subject communications, as it was designed and implemented to prohibit the flow of information  
10 between its employees and consultants and those of federal candidates, and it appears to have  
11 been distributed to relevant employees. See 11 C.F.R. § 109.21(h).

12 The complaint argues that Andrew Grossman contacted the Blumenthal Committee on  
13 behalf of the Action Fund to suggest a particular advertisement critical of McMahon, and that the  
14 Blumenthal Committee assented to the suggestion, and became materially involved in the  
15 advertisement, by assisting in finding pictures to include in the advertisement. In fact, it appears  
16 that Andrew Grossman was actually working for the Blumenthal Committee during the relevant  
17 time period and contacted the Action Fund to request that it disseminate communications  
18 regarding the WWE that he was creating for the Blumenthal Committee.<sup>4</sup> See Taylor Aff. at 1-2;  
19 Fitzgerald Aff. at 2. Although it is not clear when Grossman first made his request (Taylor only  
20 states that, on October 22, 2010, she communicated with Grossman regarding his request, see  
21 Taylor Aff. at 1), the request does not appear to have been transmitted to the Action Fund staff  
22 responsible for creating, producing, and disseminating any of the Action Fund's public

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<sup>4</sup> The Blumenthal Committee's response does not reference Andrew Grossman or state whether anyone contacted the Action Fund on the Committee's behalf.

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1 communications, all of which appear to have been created and disseminated through the Action  
2 Fund's independent expenditure program. *See* Taylor Aff. at 1; Fitzgerald Aff. at 2-3.  
3 Moreover, Taylor, who understood that Action Fund PAC communications based on Grossman's  
4 suggestion would be treated "as in-kind contributions from the PAC," states that the PAC made  
5 "no communication" based on "Grossman's suggestions." Taylor Aff. at 1-2. In sum, it appears  
6 that the Action Fund's "Independent Staff" worked on the public communications opposing  
7 McMallon without any input from the "Coordinated Staff," and the "Coordinated Staff" –  
8 although receiving a request or suggestion from Grossman about potential Twitter  
9 communications – never followed through by creating or disseminating any such  
10 communications.

11         Given the specific denials and the absence of any other information suggesting  
12 coordination, the conduct prong of the coordinated communications regulations has not been  
13 met, thus, there appears to be no resulting violation of the Act. Therefore, there is no reason to  
14 believe that Blumenthal for Senate and Judith Zamore, in her official capacity as treasurer; or  
15 Senator Richard Blumenthal violated 2 U.S.C. § 441b.

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