



November 19, 2010

BY HAND DELIVERY

Jeff S. Jordan
Supervising Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E. Street, NW
Washington, DC 20463

Re: MUR 6411
Defenders of Wildlife / Defenders of Wildlife Action Fund

Dear Mr. Jordan:

I am writing on behalf of Defenders of Wildlife ("Defenders") and Defenders of Wildlife Action Fund ("DAF") in response to the complaint filed by Let Freedom Ring, Inc. on October 25, 2010 (the "Complaint") in the above referenced matter.

The Complaint alleges that Defenders, among other organizations, paid for certain reported public communications in response to demands by Speaker of the House Nancy Pelosi, Congressman John Larson, and their aides. As proven by the enclosed sworn declarations, the allegations are false. Therefore, the Commission should find no reason to believe that either Defenders or DAF violated the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations, and it should dismiss this matter.

Factual and Legal Analysis

Defenders is a nonprofit corporation dedicated to the protection of all native animals and plants in their natural communities. It is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code ("IRC") of 1986, as amended, and therefore may "not participate in or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."¹

DAF is a nonprofit corporation that advocates for laws and lawmakers that protect wildlife and wild lands. It is exempt from taxation under IRC Section 501(c)(4) and maintains a bank account that is separately tax-exempt under IRC Section 527. Unlike Defenders of Wildlife, the tax code allows DAF to engage in activities for the purpose of influencing elections. DAF is the

¹ 26 U.S.C. § 501(c)(3).

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organization that paid for the creation, production, and distribution of those advertisements listed in the schedule of expenditures attached to the Complaint that the Complainant and the Commission appear to have attributed to Defendants.

The Complaint alleges that the communications listed on the schedule of expenditures attached to it violated the Act and Commission regulations because they were made at the request or suggestion of Speaker of the House Nancy Pelosi, Representative John Larson, and their aides. The only evidence offered by the Complainant supporting its allegations, besides the fact that the reported communications were indeed made in September and October of 2010, consists of statements attributed to Mr. Larson and Ms. Pelosi in press accounts that they were asking (or even demanding) that unspecified "liberal groups" increase their spending on electoral advertising.

To determine whether a communication is coordinated, 11 C.F.R. § 109.21 sets forth a three-pronged test: (1) the communication must be paid for by a person other than a Federal candidate, a candidate's authorized committee, or political party committee, or any agent of any of the foregoing (the payment prong); (2) one or more of the four content standards set forth in 11 C.F.R. § 109.21(c) must be satisfied (the content prong); and (3) one or more of the five conduct standards set forth in 11 C.F.R. § 109.21(d) must be satisfied (the conduct prong).² If any one of the three prongs of the test is not satisfied, coordination does not exist.

The first prong of the coordination test requires that a person who is claimed to have made a coordinated communication paid for the communication in question. This prong is not satisfied with respect to Defendants because Defendants did not pay for any of the communications described in the Complaint. This fact is proven not only by the enclosed sworn declaration of Rodger Schliakewitz, President of Defendants, but also by the information provided in the Complaint itself. Defendants is not one of the entities listed on the schedule of expenditures offered by the Complainant as support for its false allegations. As the schedule of expenditures and the Commission's own records clearly demonstrate, the communications attributed to Defendants were paid for and reported by DAF as independent expenditures. Therefore, the payment prong of the coordination test is not satisfied with respect to Defendants.

Because both the payment and content prongs of the coordination test are satisfied with respect to DAF, whether DAF made the coordinated communications alleged in the Complaint turns on whether the conduct prong was satisfied. The Commission's regulations set forth five types of conduct.³ Under the first of these standards, the communication is coordinated if it is "created, produced, or distributed at the request or suggestion of a candidate, an authorized committee, or a political party committee," or if the communication is created, produced, or distributed at the suggestion of the payor and the candidate or committee assents to the suggestion.⁴ This is the conduct that the Complaint alleges occurred with respect to DAF's reported independent expenditures.

² See 11 C.F.R. § 109.21(a).

³ See 11 C.F.R. § 109.21(d).

⁴ § 109.21(d)(1).

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It has long been the Commission's view that requests for electoral spending made in a public setting or appearing in the media are directed to the general public rather than a particular payor of a candidate-related communication and, therefore, are not governed by the request-or-suggestion standard of the conduct prong.⁵ However, the Complainant does not appear to rely on any requests for electoral spending found in the referenced articles as the sole basis for its charges. Rather, the Complainant uses the reported statements to leap to a flawed conclusion. It assumes that Representatives Pelosi and Larson and unnamed Democratic aides must have conveyed their reported demands to start spending in the general election directly to the organizations that made the expenditures referenced in the Complaint. But in the case of DAF, this simply did not happen. As evidenced by the enclosed sworn declarations of the three individuals who were responsible for DAF's independent electoral program, no such demands were ever made of them or anyone else connected with DAF. In fact, no one working for DAF or the consulting firm it used to assist with the creation, production, and distribution of its independent expenditures, Wild Bunch Consulting, had any communication with Representatives Pelosi or Larson or any of their employees or other agents about any aspect of DAF's candidate-related expenditures whatsoever. While Rodger Schlickeisen, President of DAF, was interviewed for the September 22, 2010 Politics article in which the alleged demands were reported, he was not even informed by the reporter, Jonathan Martin, that Democratic leaders were calling on third-party groups to increase their electoral spending.

The Complainant jumps to what can only be called a wild and irresponsible conclusion by inferring that DAF's candidate-related expenditures were coordinated with Democratic Party leaders by virtue of the fact that they were broadcast or mailed within the two months immediately preceding the November 2, 2010 general election. As the Commission discovered itself during one of its rule-makings resulting in the coordinated expenditure regulations at issue in this matter, the two months prior to an election is when the vast majority of candidate-related advertisements are made because that is when such communications are likely to influence voters.⁶ The fact that DAF chose to distribute its reported independent expenditures within the two months prior to the election is entirely consistent with the practice of experienced and knowledgeable political operators and does not suggest prohibited coordination even when Democratic Party leaders publicly call for such spending.

Conclusion

The Complaint does not present facts that are sufficient to demonstrate that either Defenders or DAF made prohibited coordinated communications, and the actual facts demonstrate that the allegations made in the Complaint are untrue. While DAF made a number of the candidate-related communications listed in the schedule of expenditures attached to the Complaint, no one who was involved in the creation, production, or distribution of those communications or who was an employee, vendor, or agent of Defenders, DAF, or DAF's political consultant had any contact with Representatives Pelosi and Larson or their aides with respect to any aspect of the communications. DAF, the payor of the communications, simply did

⁵ 68 Fed. Reg. 432 (2003).

⁶ See 71 Fed. Reg. 33193-94.

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not coordinate the communications with Democratic Party leaders and aides as alleged. The Complaint is without merit and should be dismissed.

Sincerely,

Paul J. Murphy

cc: Rodger Schlickeisen
William Lutz

Enclosures (4)

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FEDERAL ELECTION COMMISSION
 999 E Street, NW
 Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL
 Please use one form for each Respondent/Entity/Treasurer
 FAX (202) 219-3923

MUR # 6411

NAME OF COUNSEL: PAUL MURPHY

FIRM: HARMON CURRAN

ADDRESS: 1726 M ST NW, SUITE 600

WASHINGTON DC 20036

TELEPHONE- OFFICE (202) 328-3500

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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.

11/10/10
 Date

[Signature]
 Respondent/Agent-Signature

P. J. / CEO
 Title (Treasurer/Candidate/Owner)

NAMED RESPONDENT: DEFENDERS OF WILDLIFE (ACTION FUND)

MAILING ADDRESS: 1130 17th St NW
 (Please Print)

WASHINGTON DC 20036

TELEPHONE- HOME _____

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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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