



Planned Parenthood
Action Fund, Inc.

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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 6411—Planned Parenthood Votes and Aaron Samulcek, as Treasurer

Dear Mr. Jordan:

This letter constitutes the response of Planned Parenthood Votes and Aaron Samulcek, as Treasurer, to the complaint filed by Clea Mitchell, Counsel to Let Freedom Ring., Inc. ("Complainant") in MUR 6411. The Complainant alleges illegal coordination between Democratic Congressional leadership and a host of progressive organizations, including Planned Parenthood Votes. These allegations are groundless. As more specifically discussed below, Planned Parenthood Votes did not coordinate any of its independent expenditures in the 2010 federal elections with Speaker Pelosi, Representative Larson or any other candidate, campaign or political party. Accordingly, we request that the Commission find no reason to believe the Federal Election Campaign Act ("FECA") was violated and take no further action.

I. Allegations of the complaint.

The complaint cites two articles in the media as evidence that liberal groups undertook independent expenditure campaigns at the request or suggestion of Speaker Pelosi and Representative Larson in violation of 11 CFR 109.21. The articles, appearing in Roll Call and Politico, on September 17 and 22 respectively, reported on "closed door meetings" where House Democrats demanded that speaker Pelosi "do something about Democrats' being crushed in the airwaves by pro-Republican spending. According to unnamed individuals present at the meetings, Pelosi "vowed to pressure liberal groups to do more—and quickly." An anonymous source said that Pelosi was "trying to get allied liberal groups to give House Democrats some air cover, too." An unnamed "top Democratic aide" is quoted as "firing a warning shot at liberal groups, suggesting that their absence from the campaign could have long-term ramifications."

According to Complainant "around the same time as these press reports emerged, spending by outside organizations on behalf of Democratic candidates for Congress increased, making it perfectly clear that several organizations yielded to the demands of Democratic legislators and staffers." The Complainant then goes on to list independent expenditures by outside groups, most of them commencing, like those of Planned Parenthood Votes, not "around the same time" as the press reports, but in mid-October.

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As explained below, the Complainant does not even make the threshold showing for the Commission to find "reason to believe" a violation has occurred.

II. The complaint fails to provide any basis for 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 USC 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).

Significantly, 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 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.). See also, MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Wold and Commissioners Mason and Thomas at 2 ("A mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents"). "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. The Complainant cites not a single shred of evidence that any communications actually took place between Democratic leadership and Planned Parenthood Votes regarding any subject, let alone any independent expenditure. Nor is there any evidence that Planned Parenthood Votes made any expenditure "at the request or suggestion" of any candidate, authorized committee, political party, or any agent thereof." 11 CFR 109.21.

Complainant's only "evidence" of any connection between these news reports and the spending of outside groups is timing: that "around the same time the press reports emerged," spending by outside groups increased. Even this factual assertion is erroneous. In the case of Planned Parenthood Votes, the earliest independent expenditure made was October 14, a full three weeks after the September 22 Politico article. Not only was this spending not "around the same time" as the articles, it was at the time when all campaign spending is expected to begin in earnest—approximately two weeks before the election. By Complainant's reasoning, every communication made in the general election after September 22 that is critical of Republicans or supportive of Democrats is

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suspect and a violation of the FECA.¹ This is the sort of pure speculation that cannot sustain a finding of reason to believe.

Moreover Planned Parenthood Votes can make a "direct refutation" to these "speculative chargea." MUR 4960. Planned Parenthood Votes is an independent expenditure committee (FEC ID. C00489799) established by Planned Parenthood Action Fund, Inc., on October 1, 2010. Planned Parenthood Votes did not coordinate the expenditures cited in the Complaint, or any of its expenditures with any candidate, authorized committee, political party committee or any agent of those entities (hereafter, "Campaign"). Specifically, Planned Parenthood Votes did not make any expenditure at the request or suggestion of a Campaign; nor did it present suggestions to any Campaign to which the Campaign assented. Moreover, Planned Parenthood Action Fund employees and independent contractors, who are the exclusive providers of services to Planned Parenthood Votes, work under written rules, which they must acknowledge and sign, setting forth the legal parameters relevant to independent expenditures.

¹ As a matter of law, a press report or other communication to the general public is not a "request or suggestion" covered by the regulations. In adopting the conduct standard in the regulations, the Commission clarified that:

A request or suggestion encompasses the most *direct* form of coordination, given that the candidate or political party committee communicates desires to another person who effectuates them.... The 'request or suggestion' conduct standard in paragraph (d)(1) is intended to cover requests or suggestions made to a *select audience*, but not those offered to the public generally. For example, a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the conduct standard in paragraph (d)(1).... Similarly, a request in a public campaign speech or a newspaper advertisement is a request to the general public and is not covered....

Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003)(emphasis added). Therefore, even if Respondent read the articles and increased its independent expenditures in response, which did not happen, there would be no coordination.

For all these reasons, the Commission should find that there is no reason to believe the FECA was violated and dismiss this matter with no further action.

Yours sincerely,



Dara Klassel
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cc: B. Holly Schadler

Enclosure:
Statement of Designation of Counsel

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 6410

NAME OF COUNSEL: Dara Klassel

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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.

10/16/10
Date


Signature Aaron Samuick *Assistant Treasurer*

RESPONDENT'S NAME: Planned Parenthood Action Fund

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