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December 21, 2010

VIA FACSIMILE AND FIRST CLASS MAIL

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OFFICE OF GENERAL  
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2010 DEC 21 PM 4:37  
GENERAL ELECTION  
COMMISSION

**RE: MUR 6411 – Sierra Club Political Committee and Debbie Sease, as Treasurer**

Dear Mr. Jordan:

This letter constitutes the response of the Sierra Club Political Committee ("SCPC") and Debbie Sease, as Treasurer ("Respondents"); to the complaint filed by Let Freedom Ring, Inc. in Matter Under Review 6411.

Complainant alleges that the SCPC and approximately twenty-five other organizations engaged in illegal coordinated expenditures in the 2010 congressional elections because, according to the Complaint, they were "following the demands of [House Speaker Nancy] Pelosi and her henchmen." Complaint at 7. Through innuendo and nothing more, the Complaint attempts to draw a connection between two unrelated events: comments by "Democratic leaders" and "unnamed aides" in the mass media and increased independent expenditure activity in the final weeks before an election. Relying solely on conjecture, the Complaint does not present any evidence to support an allegation of coordination. Moreover, there is a simpler (and factually accurate) explanation for why SCPC concentrates its independent expenditures close to the election: this is the period when voters are paying attention and making their voting decisions. For these reasons, and for those more specifically presented below, we respectfully request that the Commission find no reason to believe that Respondents violated the Federal Election Campaign Act, as amended (the "FECA") and take no further action.

**A. The Complaint Alleges No Facts Sufficient to Support a Finding of Reason to Believe**

The Complaint presents no evidence of coordination between SCPC and any candidate, campaign, political party or their agents. It does not present facts that any SCPC staff,

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contractors or agents ever communicated with any candidate, campaign, political party or their agents regarding SCPC's independent expenditures. Nor does it present facts or allege that House Speaker Pelosi or Representative John Larson ever communicated with any Sierra Club representative regarding SCPC's independent expenditures. Instead, the Complaint cites articles reporting about discussions that apparently occurred at closed House Democratic caucus meetings regarding candidate frustration with the inadequate level of support from outside groups. The Complaint rests on a single sentence that makes a remarkable and factually incorrect leap of logic:

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 leaders and staffers.

Complaint at 4. Contrary to Complaint's allegations, the two unrelated sets of events cited in the Complaint – Speaker Pelosi's and Representative Larson's public expressions of frustration about spending by outside groups in the election, on the one hand, and SCPC's pre-election expenditures on the other – do not provide any evidence of coordination.

Vague allegations with no supporting evidence do not satisfy the requirement that a complaint must "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(3). Consistent with this requirement, under the Commission's 2007 policy, a reason to believe a finding cannot be justified "when 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..." Statement of Policy Regarding Commission Action in Matters at the Initial State in the Enforcement Process, 72 Fed. Reg. 12545, 12546 (March 16, 2007). To meet this standard, a complainant "must provide specific facts," unrefuted by the respondent, demonstrating the alleged violation. MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Vice Chairman Petersen and Commissioners Hunter and McGahn at 6.

Under those standards, the Commission has found that a complaint that provides no specific facts of violation, relying instead purely on speculation, "th[is] not form an adequate basis to find reason to believe that a violation of the FECA has occurred." MUR 4960 (Hillary Rodham Clinton For U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners Mann, Sandstrom, Smith and Thomas at 3; see also, MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Commissioners Wold, Mason and Thomas ("A mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents. While a respondent may choose to respond to a complaint, complainants must provide the Commission with a reason to believe violations occurred.").

Specifically, although the Complaint appears to rely on the "request or suggestion" conduct standard of the amendment regulation, 11 CFR § 109.21(d)(1), there is no evidence in the Complaint or the attached articles that supports this allegation. The Complaint merely cites general statements of Speaker Pelosi, Representative Larson and unnamed others who reportedly commented on their frustration with outside groups and made general entreaties for unidentified

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groups to "get out there." Complaint at 3. Judged by the Commission's standard, the Complaint is wholly inadequate as a matter of law to support a minimal to boliteve finding with respect to Respondents.

#### **B. The Timing of SCPC's Independent Expenditures is Not Evidence of Coordination**

Central to its allegation of coordination, Complainant lists independent expenditures made by approximately twenty-five organizations during the pre-election period shortly after the meetings reported in *Roll Call* and *Politico*. The fact that outside organizations conducted, and even perhaps increased, independent expenditures shortly before the election cannot be evidence of coordination. Although the SCPC concentrated its activities during the 60-day pre-election period, the timing was not, as the Complainant suggests, a response to any request or suggestion from "Democratic leaders and staffers." The SCPC has planned throughout the election cycle to conduct most of its independent expenditures during the final weeks before the election because that is when voters pay attention. This strategy is quite common. Indeed, the Commission itself based its 2006 coordination rules on this very practice, finding that "nearly all Senate and House candidate advertising takes place within 60 days of an election. ... The data show that a minimal amount of activity occurs between 60 and 90 days before an election, and that beyond 90 days, the amount of candidate advertising approaches zero." Coordinated Communications, 71 Fed. Reg. 33190, 33194 (June 8, 2006).

SCPC's spending in 2010 was naturally consistent with the Commission's 2006 finding, as well as SCPC's activities in prior election cycles. In 2010, SCPC spent approximately \$527,000 on independent expenditures, beginning on January 12, 2010. Of this amount, SCPC spent approximately \$3,000 from January through August 31, and \$524,000 from September 1 through Election Day. Similarly, in 2008, SCPC spent approximately \$391,000 on independent expenditures from January 1 through August 31, and approximately \$559,000 from September 1 through Election Day; in 2006, SCPC spent approximately \$99,000 on independent expenditures from January 1 through August 31, and approximately \$576,000 from September 1 through Election Day. Thus, the only reasonable inference to be drawn from SCPC's concentrated spending before Election Day is that the organization continued its historical practice of saving its resources to optimize impact.

#### **C. SCPC Specifically Denies Any Coordination with Respect to Its Independent Expenditures**

Contrary to Complainant's vague suggestions that Speaker Pelosi and Representative Larson may have contacted organizations regarding independent expenditures, Sierra Club representatives did not coordinate SCPC's independent expenditures with them or with any other candidates, campaigns, political parties or their agents. The Complaint implies that Speaker Pelosi and Representative Larson asked organizations to become involved in the election, which the Complaint alleges would constitute a "request or suggestion" under the Commission's coordinated communication combat standard. It offers no evidence, however, of actual contacts with any groups, the nature of these alleged contacts or which candidates they might have

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mentioned. The articles do no more than vaguely suggest that Speaker Pelosi and Representative Larson "vowed to pressure liberal groups" to do more.

Although as discussed above, these allegations fail to meet the specificity required to find reason to believe, the SCPC specifically denies any coordination took place with Speaker Pelosi, Representative Larson or their agents in conducting SCPC's independent expenditures. Also, Sierra Club representatives did not coordinate with Representative Schauer, his campaign, his political party or their agents, in conducting SCPC's independent expenditures listed in the Complaint. Therefore, even if the Complaint's allegations are treated as something more than "purely speculative," Respondents refute that any violation occurred. See MUR 4960; MUR 4850.

#### D. Commission Regulations are Clear that Communications Through News Reports Do Not Constitute Coordination

Lacking any specific facts of alleged coordination, the Complaint seems to suggest that statements by Speaker Pelosi and Representative Larson in *Politico* and *Roll Call* constitute a "request or suggestion" to the SCPC and other organizations regarding campaign-related advertising. If this were the case, any independent expenditures conducted by SCPC or any other PAC after reading these news reports would be made at the request or suggestion of Speaker Pelosi and Representative Larson. This theory of the Complaint also fails to provide a sufficient basis for reason to believe. The Commission has been clear that only communications to a "select audience," not the general public, may constitute "request[s] or suggestion[s]."

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).

#### E. Conclusion

Presenting no specific facts credibly alleging a violation of the FECA, the Complaint does not provide the Commission with sufficient evidence to warrant conducting an investigation

<sup>1</sup> Even if communications had occurred, asking organizations to become involved in the election does not necessarily give rise to illegal in-kind contributions. For example, the FECA permits a candidate and a membership organization to coordinate on express-advocacy communications to the candidate's members. 2 USC § 4411(b)(2)(A). Additionally, a PAC may coordinate its in-kind contributions with a candidate or political party. As provided in the Commission's regulations, Sierra Club has a firewall policy to ensure that no coordination with candidates, campaigns, political parties or their agents occurs with respect to its independent expenditures.

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into the activities of the SCPC. As such, we request that the Commission find no reason to believe that Respondents violated the FECA with respect to the Complaint's allegations.

Very truly yours,



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**MUR 6411**

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**DATE:** December 21, 2010

**ACCOUNT NAME/NUMBER:** Sierra Club Political Committee

**NUMBER OF PAGES (Including cover page):** 6

**COMMENTS OR INSTRUCTIONS:**

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