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December 23, 2010

VIA Facsimile and First Class Mail  
Jeff S. Jordan, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

Re: MUR 6411— BlueGreen Alliance

Dear Mr. Jordan:

This letter is submitted on behalf of the BlueGreen Alliance in response to the complaint filed by Let Freedom Ring, Inc. ("Complainant") in Matter Under Review 6411. BlueGreen Alliance is a national partnership between labor unions and environmental organizations dedicated to expanding the number and quality of jobs in the green economy. The Complaint alleges illegal coordination between Democratic Congressional leadership and approximately 25 organizations, including BlueGreen Alliance. The Complaint fails as a matter of law and fact. The allegations are so vague and unsupported by specific facts that the Complaint does not provide a basis for a finding of reason to believe. Moreover, as more specifically discussed in this response, BlueGreen Alliance did not coordinate with Speaker Pelosi, Representative Larson or any other Member of Congress or candidate mentioned in the Complaint regarding the independent expenditures and electioneering communications the organization made in the 2010 Congressional races. Accordingly, we request that the Commission find no reasons to believe and take no further action.

**I. Complainant's Allegations of Coordination**

The Complaint cites several news reports as evidence that groups engaged in independent expenditure campaigns at the request or suggestion of Speaker Pelosi and Representative Larson in violation of the Federal Election Commission's regulations at 11 CFR § 109.21. *Roll Call* and *Politico* report House Democrats demanded that Speaker Pelosi "do something" to support Democrats who were being attacked by pro-Republican organizations. The news stories rely on unnamed individuals who reportedly attended the "closed-door" meeting at which Speaker Pelosi "vowed to pressure liberal groups to do

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more—and quickly.” The Complaint goes on to list independent expenditures by outside groups during the pre-election period. Without attempting to provide factual support for its conclusion, Complainant tries to connect these two unrelated events by stating, “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.” (Emphasis added). There is no indication of why the listed organizations, and not the many other organizations that ran ads in the pre-election period, were selected. And, specifically, there is no evidence of any contacts or communications between the named, or unnamed, Members of Congress and representatives of BlueGreen Alliance. As discussed below, the Complaint fails to meet the threshold requirements for the Commission to find “reason to believe” a violation of the Federal Election Campaign Act (the “Act”) occurred.

**II. The Complaint Does Not Provide a Basis for the Commission to Find Reason to Believe the Act Has Been Violated.**

In order to initiate 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 Act. 2 U.S.C. § 437g(a)(2). 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). Accordingly, the Commission has stated that it will not find “reason to believe” if a “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).

“[P]urely 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 (Hillary Rodham Clinton For U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas at 3; MUR 6056, Statement of Reasons of Vice Chairman Peterson and Commissioners Hunter and McGahn at 6 (To meet the reason to believe standard, a complainant “must provide specific facts,” unrefuted by the respondent, demonstrating the alleged violation.). Similarly, in MUR 4850, Commissioners Wold, Mason and Thomas wrote: “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.” Statement of Reasons at 2 (emphasis in the original).

Based on the Commission’s standards articulated above, there is no reason to believe the Act has been violated. Complainant provides no evidence that communications

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occurred between Speaker Pelosi, Representative Larson or any other unnamed Member of Congress and BlueGreen Alliance regarding independent expenditures or, for that matter, any other subject. Moreover, although the Complaint appears to rely on the "request or suggestion" prong of the conduct standard, there is no evidence provided in the Complaint that BlueGreen Alliance made expenditures "at the request or suggestion of any candidate, authorized committee, political party or any agent thereof." 11 C.F.R. § 109.21.

Complainant's only "evidence" of a 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. The more credible reason for running an independent expenditure campaign in mid-October is that is the time when most campaign spending generally occurs.<sup>1</sup> Particularly for organizations with limited resources, such as BlueGreen Alliance, it would be highly unusual not to concentrate expenditures to take advantage of the heightened public and media attention immediately before the election. Thus, Complainant's allegations are purely speculative and cannot sustain a finding of reason to believe.

### **III. BlueGreen Alliance Specifically Denies any Coordination with Respect to its Independent Expenditures**

Even assuming that the Complaint provides facts that are sufficiently specific to require refutation, BlueGreen Alliance denies any violation of the Act. The mere fact that Democratic Representatives met with one another and discussed their rising frustration that outside groups were doing too little, with nothing more, or Politico's report of "an internal spreadsheet" tracking expenditures by outside groups, does not provide a sufficient basis for a reason-to-believe finding that coordination may have occurred. BlueGreen Alliance did not coordinate the independent expenditures cited in the Complaint, or any of its independent expenditures or electioneering communications, with any candidate, authorized committee, political party committee or any agents of these entities. Specifically, BlueGreen Alliance did not make any expenditure at the request or suggestion of Speaker Pelosi, Representative Larson, Representative Schauer<sup>2</sup> or any candidate, campaign, political party committee or any agents of the foregoing. The timing of the Alliance's expenditures was dictated by proximity to Election Day and the most effective use of available funds.

### **IV. 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*

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<sup>1</sup> The Commission's own 2006 independent expenditure rulemaking was premised on the fact that most election-related advertising occurs in the weeks immediately preceding the election. See Coordinated Communications, 71 Fed. Reg. 33190, 33191 (June 8, 2006).

<sup>2</sup> The only BlueGreen Alliance expenditures identified in the Complaint and its appendices are those made in the race for Michigan's seventh congressional district.

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constitute a "request or suggestion" to the BlueGreen Alliance and other organizations regarding campaign-related advertising. If this were the case, any independent expenditures conducted by BlueGreen Alliance or any other organization 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 "requests or suggestions."

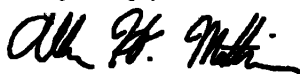
A request or suggestion encompasses the most *direct* form of coordination, given that the candidate or political party committee communicates desires to another person who effectuates them. ... The 'request or suggestion' conduct standard in paragraph (d)(1) is intended to cover requests or suggestions 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).

#### V. Conclusion

Presenting no specific facts credibly alleging a violation of the Act, the Complaint does not provide the Commission with sufficient evidence to warrant conducting an investigation into the activities of the BlueGreen Alliance. As such, we request that the Commission find no reason to believe that BlueGreen Alliance violated the Act and take no further action.

Very truly yours,



B. Holly Schadler  
Allen H. Mattison  
Counsel to BlueGreen Alliance

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

**MUR # 8411**

**NAME OF COUNSEL: B. Holly Schadler and Allen H. Mattson**

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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.

12-21-10

[Signature]

Executive Director

Date Respondent/Agent Signature  
 Title (Treasurer/Candidate/Owner)

**RESPONDENT: BlueGreen Alliance, David Foster, Executive Director**  
**(Committee Name, Company Name, or Individual Named in Notification Letter)**

**MAILING ADDRESS: 2828 University Avenue SE Suite 200, Minneapolis, MN 55414**  
**(Please Print)**

**TELEPHONE- HOME: \_\_\_\_\_**

**BUSINESS: (612) 466-4466**

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. § 4375(a)(2)(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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