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FIRST GENERAL COUNSEL'S REPORT

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DATE COMPLAINT FILED: October 25, 2010
DATE OF NOTIFICATION: November 1, 2010
LAST RESPONSE RECEIVED: January 19, 2011
DATE ACTIVATED: February 15, 2011

EXPIRATION OF SOL:
September 16, 2015 (earliest)
November 2, 2015 (latest)

COMPLAINANT:

Let Freedom Ring, Inc.

RESPONDENTS:

Representative Nancy Pelosi
Representative John Larson
2010 Leadership Council and Andrew Horne, in his
official capacity as treasurer
Advancing Wisconsin
Accountability 2010 and Brooke Coleman, in his
official capacity as treasurer
America's Families First Action Fund and David
Rudd, in his official capacity as treasurer
American Federation of State, County & Municipal
Employees PEOPLE and Lee A. Saunders, in his
official capacity as treasurer
American Federation of Teachers, AFL-CIO
Committee on Political Education and Antonia M.
Cortese, in her official capacity as treasurer
Blue America PAC Independent Expenditure
Committee and Howie Klein, in his official
capacity as treasurer
Blue Green Alliance
Campaign Money Watch
Citizens for Strength and Security
Citizens for Strength and Security Action Fund
Communications Workers of America Working
Voices and Jeffrey Rechenbach, in his official
capacity as treasurer
Defenders of Wildlife
Defenders of Wildlife Action Fund
League of Conservation Voters, Inc.

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Majority Action PAC and Judy Zamore, in her official capacity as treasurer
Matthew 25 Network and Christopher Korzen, in his official capacity as treasurer
National Wildlife Federation Action Fund
NEA Fund for Children and Public Education and John Wilson, in his official capacity as treasurer
Planned Parenthood Votes and Aaron Samulcek, in his official capacity as treasurer
Service Employees International Union Committee on Political Education and Gerald Hudson, in his official capacity as treasurer
Sierra Club Political Committee and Debbie Sease, in her official capacity as treasurer
The American Worker, Inc. and Chuck Rocha, in his official capacity as treasurer
VoteVets.org Action Fund
WOMEN VOTE! and Ellen Malcolm, in her official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 437g(a)
2 U.S.C. § 441a
2 U.S.C. § 441b
11 C.F.R. § 109.20
11 C.F.R. § 109.21
11 C.F.R. § 111.4

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter involves allegations that Representative Nancy Pelosi, Representative John Larson, and other unidentified members of Congress,¹ coordinated communications with twenty-four organizations, including Democratic-leaning nonprofit organizations and political committees, which resulted in excessive or prohibited in-kind contributions to federal candidates

¹ We did not generate any additional members of Congress as respondents in this matter as there were no specific allegations in the complaint concerning any other members besides Representatives Pelosi and Larson.

1 in violation of the Federal Election Campaign Act of 1971, as amended ("Act"). The allegations
2 set forth in the complaint and a supplement are based on news articles and spending reports filed
3 with the Commission by the Respondent organizations. The news articles attached to the
4 complaint cite statements attributed to Representatives Pelosi and Larson that were purportedly
5 made during closed-door Congressional meetings in September 2010 in which they
6 "specifically" requested that these "organizations make public communications in support of
7 Democratic candidates for Congress." Complaint at 2. In response to these requests, the outside
8 organizations allegedly increased their spending on behalf of Democratic congressional
9 candidates in September and October 2010.

10 Representatives Pelosi and Larson, and each of the Respondent organizations, submitted
11 responses to the complaint denying that any coordination took place, that the Representatives
12 made a request or suggestion for the broadcast of certain communications, or that there were
13 discussions between the organizations and members of Congress in connection with any of the
14 organizations' communications. As discussed in further detail below, there are no facts to
15 support the allegation that there was a request or suggestion, as that term is described in the
16 Commission's coordination regulations, that any of these organizations make independent
17 expenditure advertisements or electioneering communications. Therefore, we recommend that
18 the Commission find no reason to believe that Representatives Pelosi and Larson violated the
19 Act in connection with these allegations or that the Respondent organizations violated 2 U.S.C.
20 §§ 441a or 441b.

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1 **II. FACTUAL BACKGROUND**

2 The complaint in this matter alleges coordination between members of Congress,
3 specifically, Representatives Nancy Pelosi and John Larson, and twenty-four organizations.²

4 These organizations include the following political committees, independent expenditure
5 committees, 527 organizations, 501(c)(4) groups, and labor union political action committees
6 ("PACs") (collectively "Respondent organizations"):

- 7 • 2010 Leadership Council and Andrew Horn, in his official capacity as treasurer;
- 8 • Advancing Wisconsin;
- 9 • Accountability 2010 and Brooke Coleman, in his official capacity as treasurer;
- 10 • America's Families First Action Fund and David Rudd, in his official capacity as
11 treasurer ("America's Families First");
- 12 • American Federation of State, County & Municipal Employees PEOPLE and Lee A.
13 Saunders, in his official capacity as treasurer ("AFSCME PEOPLE");
- 14 • American Federation of Teachers, AFL-CIO Committee on Political Education and
15 Antonia M. Cortese, in her official capacity as treasurer ("American Federation of
16 Teachers");
- 17 • Blue America PAC Independent Expenditure Committee and Howie Klein, in his official
18 capacity as treasurer ("Blue America");
- 19 • Blue Green Alliance;
- 20 • Campaign Money Watch;³
- 21 • Citizens for Strength and Security ("CSS");
- 22 • Citizens for Strength and Security Action Fund ("CSS Action Fund");
- 23 • Communications Workers of America Working Voices and Jeffrey Rechenbach, in his
24 official capacity as treasurer ("Communications Workers");
- 25 • Defenders of Wildlife;
- 26 • Defenders of Wildlife Action Fund;
- 27 • League of Conservation Voters, Inc.;
- 28 • Majority Action PAC and Judy Zamore, in her official capacity as treasurer;
- 29 • Matthew 25 Network and Christopher Korzen, in his official capacity as treasurer;
- 30 • National Wildlife Federation Action Fund;
- 31 • NEA Fund for Children and Public Education and John Wilson, in his official capacity as
32 treasurer ("NEA");
- 33 • Planned Parenthood Votes and Aaron Samulcek, in his official capacity as treasurer;

² This Report addresses twenty-five (25) Respondent organizations. Because the complaint was not clear as to whether it was referring to "Defenders of Wildlife" or "Defenders of Wildlife Action Fund," both were generated as separate respondents in this matter. These entities submitted a joint response to the complaint.

³ Campaign Money Watch is a project maintained by Public Campaign Action Fund for the purpose of engaging in electioneering communications. See Campaign Money Watch Response at 1.

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- 1 • Service Employees International Union Committee on Political Education and Gerald
- 2 Hudson, in his official capacity as treasurer (SEIU-COPE”);
- 3 • Sierra Club Political Committee and Debbie Sease, in her official capacity as treasurer;
- 4 • The American Worker Inc. and Chacis Rocha, in his official capacity as treasurer;
- 5 • VoteVets.org Action Fund; and
- 6 • WOMEN VOTE! and Ehen Malcolm, in her official capacity as treasurer.

7
8 The complaint alleges that Representatives Pelosi and Larson made statements during
9 closed-door Congressional meetings that took place during the weeks of September 13 and 20,
10 2010, in which they expressed frustration about “the ‘absence’ of third-party spending in support
11 of Democratic candidates seeking election” and the disparity in spending between pro-
12 Republican third-party organizations and Democratic-leaning groups. Complaint at 2 and
13 Attachments 1-2. According to the complaint, these statements amounted to a “request or
14 suggestion” that third-party organizations make public communications in support of Democratic
15 candidates. Complaint at 7. The complaint states that “[a]ll expenditures by the third-party
16 Respondents following the demands of Pelosi and her henchmen are illegal in-kind corporate and
17 union contributions to the campaigns of the referenced Democratic candidates.” *Id.*

18 The coordination allegations are based on statements cited in two news articles attached
19 to the complaint, and one additional news article attached to a supplement to the complaint.
20 According to a *Roll Call* article, an unnamed leadership aide stated that at Representative
21 Pelosi’s weekly meeting with freshman Democrats, she addressed the frustration of Democratic
22 House members that liberal groups were not doing enough for Democratic candidates. Anna
23 Palmer, *Democrats Angry that Liberal Groups Aren’t Helping*, ROLL CALL, September 17, 2010,
24 <http://www.rollcall.com/news/49939-1.html?CMP=OTC-RSS>. According to the same article,
25 Representative Larson also stated that “we hope and trust that people who are inclined to support
26 us get out there and do the job that’s going to need to be done” and explained that “they

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1 [members of Congress] ask groups on a 'regular basis' to get involved in the effort to support
2 Democrats this election." *Id.*

3 An article published by *Politico* five days later also addressed these closed-door
4 meetings. See Jonathan Martin, *Dems lag badly in outside spending*, POLITICO, September 22,
5 2010. Without directly quoting her, the article attributes statements to Rep. Pelosi that she
6 "vowed to pressure liberal groups to do more – and quickly" and that she "assured the
7 Democrats that, while organized labor was helping with field operations, she was trying get
8 allied liberal groups to give House Democrats some air cover, too." A source "familiar" with the
9 meeting said that Representative Pelosi told a group of members of Congress that "I'm saying
10 get out there" . . . "[w]e need more." According to the *Politico* article, "a top House Democratic
11 aide" referred to these third-party groups as being "AWOL" and suggested that "their absence
12 from the campaign could have 'long term ramifications.'" *Id.*⁴

13 The complaint argues that Pelosi's and Larson's statements amounted to a "request or
14 suggestion" for outside organizations to make expenditures on behalf of Democratic candidates,
15 thereby satisfying the conduct prong of the Commission's coordination regulations. Complaint
16 at 6 and 7. The complaint points to increased spending by these third-party organizations
17 starting in late September 2010, after the news articles were published, as evidence of the alleged
18 coordination. In support of these allegations, Complainant attaches charts listing the
19 independent expenditures and electioneering communications made by these groups in the
20 period following the closed-door meetings. *Id.* at 3, Attachments 3 and 4. The charts list the
21 Respondent organizations and the expenditures and electioneering communications they made in

⁴ The third article, published on October 22, 2010, identifies another Respondent, America's Families First, that Complainant alleges was formed to carry out Representative Pelosi's "demands." See Exhibit to Supplement to Complaint.

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1 September and October 2010 in connection with the 2010 general election, as well as the
2 candidate that each communication supported or opposed. *Id.* at Attachments 3 and 4. Neither
3 Representative Pelosi nor Representative Larson is listed on the charts as having received
4 support from any of the Respondent organizations. In addition, the complaint does not
5 specifically name any other member of Congress who may have been involved with the alleged
6 coordinated communications or may have been present at the closed-door Congressional
7 meetings. Instead, the complaint generally alleges that "other members of Congress identified,
8 but not named, in press reports" also participated in the coordination. *Id.* at 1. Further, because
9 these closed-door meetings appear to have taken place at House offices, the complaint raises the
10 issue of whether these discussions may have also violated House ethics rules prohibiting the use
11 of House facilities for political purposes. *Id.* at 2, fn. 1. However, it does not indicate whether a
12 complaint had also been filed with the House Standards of Official Conduct ("House Ethics
13 Committee"), the entity with jurisdiction over such potential violations.

14 Representatives Pelosi and Larson and the Respondent organizations all submitted
15 responses to the complaint, some of which included sworn statements by representatives of the
16 organizations.⁵ Most of the Respondents argue that the statements allegedly made by Pelosi and
17 Larson did not amount to a "request and suggestion" as set forth in the Commission's
18 regulations, arguing that there was no request made directly to the organizations by any member
19

⁵ See, e.g., Responses submitted by 2010 Leadership Council, Accountability 2010, AFSCME PEOPLE, American Federation of Teachers, Blue America, Campaign Money Watch, CSS Action Fund, Defenders of Wildlife, Defenders of Wildlife Action Fund, NEA, and VoteVets.org.

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1 of Congress.⁶ Some Respondent organizations specifically deny that any discussions took place
2 between them and any member of Congress concerning their expenditures.⁷ A number of the
3 Respondent organizations also describe firewall procedures that they had in place during the
4 2010 election cycle as further evidence that there was no coordination.⁸

5 The Respondents also attempt to contradict the allegations in the complaint by clarifying
6 the facts at issue. For instance, a number of the Respondent organizations specifically noted that
7 their respective groups were not present at any of the closed-door meetings where a "request or
8 suggestion" may have been allegedly made.⁹ Similarly, some of the Respondent organizations
9 described their spending during past election cycles in an attempt to demonstrate that their
10 spending during the 2010 election cycle did not differ from their past practices.¹⁰ For example,
11 Sierra Club described its post-September 1st spending during the 2006, 2008, and 2010 election
12 cycles to demonstrate that "the organization continued its historical practice of saving its
13 resources to optimize impact." Sierra Club Response at 3. Finally, others generally cited to
14 factual information that most election advertising takes place within sixty days of an election in

⁶ See Responses submitted by 2010 Leadership Council, Accountability 2010, AFSCME PEOPLE, America's Families First, American Federation of Teachers, Blue America, Blue Green Alliance, Campaign Money Watch, CSS, CSS Action Fund, Communications Workers, Defenders of Wildlife, Defenders of Wildlife Action Fund, League of Conservation Voters, Majority Action, Matthew 25 Network, NEA, Planned Parenthood, Rep. Larson, Rep. Pelosi, SEIU-COPE, Sierra Club, The American Worker, VoteVets.org, and WOMENVOTE!

⁷ See Responses submitted by 2010 Leadership Council, Accountability 2010, American Federation of Teachers, Blue America, Blue Green Alliance, Campaign Money Watch, CSS, CSS Action Fund, Communications Workers, Defenders of Wildlife, Defenders of Wildlife Action Fund, Matthew 25 Network, Planned Parenthood, and VoteVets.org.

⁸ See Responses submitted by AFSCME PEOPLE, American Federation of Teachers, Campaign Money Watch, Communications Workers, League of Conservation Voters, National Wildlife Federation, NEA, Planned Parenthood, SEIU-COPE, and WOMENVOTE!

⁹ See Responses submitted by 2010 Leadership Council, Accountability 2010, American Federation of Teachers, Blue America, SEIU-COPE, and VoteVets.org.

¹⁰ See Responses submitted by AFSCME PEOPLE, America's Families First, League of Conservation Voters, NEA, SEIU-COPE, and Sierra Club.

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1 support of their arguments that there was nothing unusual about their spending activity.¹¹
2 Specifically, Matthew 25 Network explained that it "conducted its independent expenditures
3 close to the election because that is when voters are paying attention and making their voting
4 decisions." League of Conservation Voters echoed this statement and added that "[w]aiting until
5 later in the election allows LCV to better project which elections will be close and where its
6 limited resources can be maximized." League of Conservation Voters Response at 3. Blue
7 Green Alliance indicated that concentrating expenditures in mid-October was especially
8 important "for organizations with limited resources." These Respondent organizations also cited
9 to the Commission's *Explanation and Justification for Coordinated Communications*, which
10 recognized that "nearly all Senate and House candidate advertising takes place within 60 days of
11 an election." See 71 Fed. Reg. 33194 (June 8, 2006).

12 **III. LEGAL ANALYSIS**

13 Generally, the Respondents deny the coordination allegations and argue that the
14 information presented in the complaint is too speculative to support a finding of reason to
15 believe.¹² As discussed in further detail below, there is no information presented in the
16 complaint or that is publicly available to demonstrate that there was any coordination between

¹¹ See Responses submitted by America's Families First, Blue Green Alliance, Defenders of Wildlife, Defenders of Wildlife Action Fund, League of Conservation Voters, Majority Action, Matthew 25 Network, National Wildlife Federation, NEA, Planned Parenthood, Rep. Pelosi, SEIU-COPE, Sierra Club, The American Worker, and WOMENVOTE!.

¹² Several Respondents also question the sufficiency of the complaint because it fails to "contain a clear and concise recitation of the facts which describe a violation," "through its reliance o[n] unnamed aides and general statements." See, e.g., Responses submitted by 2010 Leadership Council, Accountability 2010, Blue America, Communication s Workers, Sierra Club and VoteVets.org. However, the complaint filed in this matter complied with the Commission's statutory and regulatory requirements for legal sufficiency. The Act requires that a complaint be "signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under the penalty of perjury and subject to the provisions of section 1001 of title 18." 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.4(h)(2) and (c). The Commission's regulations require the complaint to identify the alleged respondents, state the source of information giving rise to the allegations, and include a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction. See 11 C.F.R. § 111.4(d). The complaint in this matter was signed before a notary public, the Complainant is identified by name, title and business

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1 the Respondent organizations and federal candidates or to support a finding of reason to believe
2 that a violation of the Act occurred.¹³

3 The Act provides that no person may make a contribution, including an in-kind
4 contribution, to a candidate and his authorized political committee with respect to any election
5 for Federal office which, in the aggregate, exceeds \$2,400. 2 U.S.C. § 441a(a)(1) (2010 cycle
6 limit); see 2 U.S.C. § 431(8)(A)(i), 11 C.F.R. § 100.52(d)(1). Under the Act, corporations are
7 prohibited from making contributions from their general treasury funds in connection with any
8 election of any candidate for federal office. 2 U.S.C. § 441b(a). The Act defines in-kind
9 contributions as, *inter alia*, expenditures by any person "in cooperation, consultation, or concert,
10 with, or at the request or suggestion of, a candidate, his authorized political committees, or their
11 agents" 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(a). A communication is
12 coordinated with a candidate, an authorized committee, a political party committee, or an agent
13 of any of the foregoing when the communication 1) is paid for, in whole or part, by a person
14 other than that candidate, authorized committee, or political party committee; 2) satisfies at least
15 one of the content standards¹⁴ described in 11 C.F.R. § 109.21(c); and 3) satisfies at least one of
16 the conduct standards described in 11 C.F.R. § 109.21(d). 11 C.F.R. § 109.21(a)(1) – (3). In

address, the complaint identifies the sources of information in support of the allegations (*i.e.*, press reports and reports filed with the Commission) and provides a recitation of facts that may give rise to a violation of the Act. The complaint identifies possible excessive or prohibited in-kind contributions to federal candidates by the Respondent organizations, which could potentially have resulted from coordinated communications between those organizations and members of Congress, and argues a legal basis for that conclusion.

¹³ The complaint speculates that the Respondents may also be in violation of House Ethics rules if the alleged discussions about campaign spending took place "at official meetings of the House Democratic caucus." Complaint at 2, fn. 1. The House Ethics rules prohibit the use of House buildings, rooms and offices "for the conduct of campaign or political activities" because they are considered official resources, supported with official funds. See *2008 House Ethics Manual*, Committee on Standards of Official Conduct, p. 127. In the past, the Commission has reported respondents to appropriate entities for possible ethics violations, pursuant to 2 U.S.C. § 437d(a)(9). See, e.g., MUR 5082 (Don Sherwood), MUR 4406 (Rep. Jim McDermott) and MUR 3972 (Charlie Wilson). Unlike those matters, a violation of a House Ethics rule is not apparent here; it is unclear from the available information that the discussions would have constituted apparent "campaign or political activities." Therefore, we are not recommending that the Commission take any action in connection with a potential House Ethics violation.

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1 contrast, an independent expenditure is an expenditure by a person for a communication
2 expressly advocating the election or defeat of a clearly identified candidate that is not made in
3 cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a
4 candidate's authorized committee, or their agents, or a political party committee or its agents.
5 2 U.S.C. § 431(17); 11 C.F.R. § 100.16.

6 The complaint alleges that Representatives Pelosi and Larson coordinated
7 communications with the Respondent organizations, which resulted in excessive and prohibited
8 contributions to various federal campaigns. The available information indicates that the first and
9 second prongs (payment and content) of the coordination regulations are met. The first prong is
10 satisfied because the third-party organizations paid for communications during September and
11 October 2010, the time period specified in the complaint. Based on information provided in
12 relevant reports filed with the Commission, it appears that at least most, and possibly all, of the
13 communications at issue may also satisfy the content prong as either electioneering
14 communications under 11 C.F.R. § 100.29 or public communications that expressly advocated
15 the election or defeat of a clearly identified candidate. 11 C.F.R. § 109.21(c)(1) and (3). Many
16 of the Respondent organizations admit that their communications satisfy the first two prongs of
17 the coordination provisions. The Respondents, however, dispute that the communications satisfy
18 any of the conduct prong standards.

19 The conduct prong of the coordinated communications regulation may be satisfied when,
20 *inter alia*, (1) a communication is created, produced, or distributed at the request or suggestion of

¹⁴ 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 (Sept. 15, 2010). The effective date of the new content standard is December 1, 2010, after the events at issue in this matter. The new standard would not change the analysis in this Report.

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1 a candidate, authorized committee, or political party committee; or if the communication is
2 created, produced, or distributed at the suggestion of a person paying for the communication and
3 the candidate, authorized committee, or political party committee assents to such suggestion;
4 (2) the candidate, authorized committee, or political party committee is materially involved in
5 decisions regarding the communication; or (3) the communication is created, produced or
6 distributed after one or more substantial discussions about the communication between the
7 candidate, authorized committee, or political party committee and the payor and his or her
8 agents. See 11 C.F.R. § 109.21(d)(1)-(3).

9 The complaint specifically indicates that the Respondents' conduct satisfied the "request
10 or suggestion" standard of the coordination provisions when Representatives Pelosi and Larson
11 "requested" that outside organizations increase their spending supporting Democratic candidates.
12 However, a review of the available information fails to reveal any facts to support the allegation
13 that there was a "request or suggestion" as defined by Commission regulations. The
14 Commission has explained that the "request or suggestion standard encompasses the most direct
15 form of coordination, given that the candidate or political party committee communicates desires
16 to another person who effectuates them." Explanation and Justification, *Coordination and*
17 *Independent Expenditures*, 68 Fed. Reg. 421, 432 (January 3, 2003). As such, the standard
18 would not be satisfied by requests or suggestions made to the general public, but would only be
19 satisfied by requests or suggestions "directed to specific individuals or small groups." *Id.* For
20 instance, the standard "would not apply to a speech at a campaign rally," to "a request posted on
21 a web page that is available to the general public" or to a newspaper advertisement. *Id.* Further,
22 in its Explanation and Justification, the Commission indicated that "[n]either of the two prongs
23 of this conduct standard can be satisfied without some link between the request or suggestion

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1 and the candidate or political party who is, or that is clearly identified in the communication.”

2 *Id.* at 431.

3 Here, the complaint appears to allege that the “request or suggestion” was conveyed
4 through the publication of news articles that discussed statements made by Representatives
5 Pelosi and Larson during closed-door meetings, and that the Respondent organizations’
6 expenditures and electioneering communications were made in reaction to that “request.”
7 Complaint at 4 (noting that “[a]round the same time as these press reports emerged, spending by
8 outside organizations on behalf of Democratic candidates for Congress increased”). However,
9 publications of news articles are statements directed to the general public, and thus, they fail to
10 satisfy the conduct standard, even if they purportedly conveyed a “request.”

11 Similarly, a “request or suggestion” analysis also fails in this matter even if the same
12 statements discussed in the news articles were made to a small group during a closed-door
13 meeting. Any requests that Representatives Pelosi or Larson may have made were presumably
14 done in private meetings with other members of Congress. The complaint does not allege that
15 any individuals from the Respondent organizations were present at any of those meetings, and as
16 noted *supra*, a number of the Respondent organizations directly deny being present at those
17 meetings. Finally, according to the charts attached to the complaint, none of the Respondent
18 organizations paid for communications in support of Representatives Pelosi or Larson, the
19 alleged requestors, and the complaint does not indicate whether any of the candidates actually
20 supported by the organizations at issue were present at any of the Congressional closed-door
21 meetings referenced in the news reports.

22 While it appears that none of the communications at issue benefitted Representatives
23 Larson or Pelosi, the complaint can be construed to allege that Larson and Pelosi were acting as

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1 agents of other members of Congress in making the alleged "request or suggestion." However,
2 there is no information available to suggest such an agency relationship existed between either of
3 them and any other member of Congress. See 68 Fed. Reg. at 431-32 (providing example of how
4 coordination occurs where one candidate acts as an agent of another). Therefore, the alleged
5 coordination based on a request or suggestion is not supported by the available information.

6 Similarly, it would be difficult to meet the material involvement and substantial
7 discussion conduct standards of the coordination provisions without any information pointing to
8 the actions of specific candidates or their agents.¹⁵ Some of the Respondent organizations
9 specifically deny any communication concerning their expenditures with any members of
10 Congress or with the campaigns that they supported,¹⁶ and there is no available information to
11 contradict those statements. Additionally, several Respondents aver that they followed written
12

¹⁵ The "material involvement" standard is satisfied if the candidate, authorized committee, or political party committee is materially involved in decisions regarding 1) the communication's content; 2) the intended audience for the communication; 3) the means or mode of the communication; 4) the specific media outlet for the communication; 5) the timing or frequency of the communication; or 6) the size or prominence of the printed communication or the duration by broadcast, satellite, or cable. 11 C.F.R. § 109.21(d)(2). The "substantial discussion" standard, is satisfied if the communication is created, produced, or distributed after there are one or more discussions about the communication between the candidate or her committee and the person paying for the communication during which substantial information about the candidate's or political party committee's campaign plans, projects, activities, or needs is conveyed to the person paying for the communication, and that information is material to the creation, production, or distribution of the communication. 11 C.F.R. § 109.21(d)(3).

¹⁶ See Responses submitted by 2010 Leadership Council, Accountability 2010, American Federation of Teachers, Blue America, Blue Grass Alliance, Campaign Money Watch, CIRS, CSS Action Fund, Communications Workers, Defenders of Wildlife, Defenders of Wildlife Action Fund, Matthew 25 Network, Planned Parenthood, and VoteVets.org.

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1 rules that comply with the Commission's firewall safe-harbor provision.¹⁷ The Commission's
2 regulations indicate that the coordination conduct standards are not met if the relevant entity
3 satisfies the safe harbor provision for the establishment and use of a firewall and where there is
4 no information showing that there was flow of material information regarding the candidate's
5 plans, projects, activities or needs to the third party payor. 11 C.F.R. § 109.21(h). Here, there is
6 no available information to show that the firewalls implemented by some of the Respondent
7 organizations may have been breached.

8 Accordingly, we recommend that the Commission find no reason to believe that
9 Representative Pelosi and Representative Larson violated the Act in connection with the
10 coordination allegations or that the twenty-five named Respondent organizations violated
11 2 U.S.C. §§ 441a(a) or 441b.

12 **IV. RECOMMENDATIONS**

- 13 1. Find no reason to believe that Representative Nancy Pelosi and Representative John
14 Larson violated the Act in connection with the allegations in this matter.
15
16 2. Find no reason to believe that 2010 Leadership Council and Andrew Horne, in his
17 official capacity as treasurer; Advancing Wisconsin; Accountability 2010 and Brooke
18 Coleman, in his official capacity as treasurer; America's Families First Action Fund
19 and David Rudd, in his official capacity as treasurer; American Federation of State,
20 County & Municipal Employees PEOPLE and Lee A. Saunders, in his official
21 capacity as treasurer; American Federation of Teachers, AFL-CIO Committee on
22 Political Education and Antoinia M. Cortese, in her official capacity as treasurer; Blue
23 America PAC Independent Expenditure Committee and Howie Klein, in his official
24 capacity as treasurer; Blue Green Alliance; Campaign Money Watch; Citizens for
25 Strength and Security; Citizens for Strength and Security Action Fund;
26 Communications Workers of America Working Voices and Jeffrey Rechenbach, in his
27 official capacity as treasurer; Defenders of Wildlife; Defenders of Wildlife Action
28 Fund; League of Conservation Voters, Inc.; Majority Action PAC and Judy Zamore, in
29 her official capacity as treasurer; Matthew 25 Network and Christopher Korzen, in his
30 official capacity as treasurer; National Wildlife Federation Action Fund; NEA Fund

¹⁷ See Responses submitted by AFSCME PEOPLE, American Federation of Teachers, Campaign Money Watch, Communications Workers, League of Conservation Voters, National Wildlife Federation, NEA, Planned Parenthood, SEIU-COPE, and WOMENVOTE!

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1 for Children and Public Education and John Wilson, in his official capacity as
2 treasurer; Planned Parenthood Votes and Aaron Samulcek, in his official capacity as
3 treasurer; Service Employees International Union Committee on Political Education
4 and Gerald Hudson, in his official capacity as treasurer; Sierra Club Political
5 Committee and Debbie Sease, in her official capacity as treasurer; The American
6 Worker, Inc. and Chuck Rucha, in his official capacity as treasurer; VoteVets.org
7 Action Fund; and WOMEN VOTE! and Ellen Malcolm, in her official capacity as
8 treasurer, violated 2 U.S.C. §§ 441a(a) or 441b.


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10 3. Approve the attached Factual and Legal Analysis.
11
12 4. Approve the appropriate letters.
13
14 5. Close the file.
15

16 Christopher Hughey
17 Acting General Counsel
18

19
20
21 5/16/11
22 Date

23 BY: 
24 Stephen Gura
25 Deputy Associate General Counsel for
26 Enforcement
27

28 
29 Peter G. Blumberg
30 Assistant General Counsel
31

32 
33 Ana J. Peña-Wallace
34 Attorney
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