



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUN 06 2011

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Cleta Mitchell, Esq.  
Foley & Lardner, LLP  
3000 K Street, NW  
Suite 600  
Washington, DC 20007

RE: MUR 6411  
Representative Nancy Pelosi, *et al.*

Dear Ms. Mitchell:

On May 31, 2011, the Federal Election Commission ("Commission") reviewed the allegations in your complaint dated October 22, 2010, and found that on the basis of the information provided in your complaint, as well as information provided by the respondents, there is no reason to believe that Representative Nancy Pelosi and Representative John Larson violated the Act. The Commission also found there is no reason to believe that the following Respondents violated 2 U.S.C. §§ 441a(a) or 441b and accordingly, closed the file in this matter:

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. Costese, 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.; Majority Action PAC and Judy Zamore, in her official capacity as treasurer; Matthew 25 Network and Christopher Korzun, 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

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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 Rock, in his official capacity as treasurer; VoteVets.org Action Fund; and WOMEN VOTE! and Ellen Malcolm, in her official capacity as treasurer.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Christopher Hughey  
Acting General Counsel



BY: Peter G. Blumberg  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

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**RESPONDENTS:**

**MUR: 6411**

- 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 Expedition Committee and Hawie 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.
- 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 Samuleek, in his official capacity as treasurer
- Service Employees International Union Committee on Political Education and Gerald Hudson, in his

1 official capacity as treasurer  
2 Sierra Club Political Committee and Debbie Sease,  
3 in her official capacity as treasurer  
4 The American Worker, Inc. and Chuck Racha, in  
5 his official capacity as treasurer  
6 VoteVets.org Action Fund  
7 WOMEN VOTE! and Ellen Malcolm, in her official  
8 capacity as treasurer  
9

10 I. INTRODUCTION

11 This matter was generated by a complaint filed with the Federal Election  
12 Commission ("the Commission") by Let Freedom Ring, Inc. See 2 U.S.C. § 437g(a)(1).  
13 The complaint alleged that Representative Nancy Pelosi, Representative John Larson, and  
14 other unidentified members of Congress,<sup>1</sup> coordinated communications with twenty-four  
15 organizations, including Democratic-leaning nonprofit organizations and political  
16 committees, which resulted in excessive or prohibited in-kind contributions to federal  
17 candidates in violation of the Federal Election Campaign Act of 1971, as amended  
18 ("Act"). The allegations set forth in the complaint and a supplement were based on news  
19 articles and spending reports filed with the Commission by the Respondent organizations.  
20 The news articles attached to the complaint cited statements attributed to Representatives  
21 Pelosi and Larson that were purportedly made during closed-door Congressional  
22 meetings in September 2010 in which they "specifically" requested that these  
23 "organizations make public communications in support of Democratic candidates for  
24 Congress." Complaint at 2. In response to these requests, the outside organizations  
25 allegedly increased their spending on behalf of Democratic congressional candidates in  
26 September and October 2010.

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<sup>1</sup> The complaint did not make any specific allegations regarding any other members of Congress besides Representatives Pelosi and Larson.

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1           Representatives Pelosi and Larson, and each of the Respondent organizations,  
2 submitted responses to the complaint denying that any coordination took place, that the  
3 Representatives made a request or suggestion for the broadcast of certain  
4 communications, or that there were discussions between the organizations and members  
5 of Congress in connection with any of the organizations' communications.

6   **II.   FACTUAL AND LEGAL ANALYSIS**

7       **A.   Factual Summary**

8           The complaint in this matter alleged coordination between members of Congress,  
9 specifically, Representatives Nancy Pelosi and John Larson, and twenty-four  
10 organizations. These organizations include the following political committees,  
11 independent expenditure committees, 527 organizations, 501(c)(4) groups, and labor  
12 union political action committees ("PACs") (collectively "Respondent organizations"):

- 13       • 2010 Leadership Council and Andrew Horne, in his official capacity as treasurer;
- 14       • Advancing Wisconsin;
- 15       • Accountability 2010 and Brooke Coleman, in his official capacity as treasurer;
- 16       • America's Families First Action Fund and David Rudd, in his official capacity as  
17       treasurer ("America's Families First");
- 18       • American Federation of State, County & Municipal Employees PEOPLE and Lee  
19       A. Saunders, in his official capacity as treasurer ("AFSCME PEOPLE");
- 20       • American Federation of Teachers, AFL-CIO Committee on Political Education  
21       and Antonia M. Cortese, in her official capacity as treasurer ("American  
22       Federation of Teachers");
- 23       • Blue America PAC Independent Expenditure Committee and Howie Klein, in his  
24       official capacity as treasurer ("Blue America");
- 25       • Blue Green Alliance;
- 26       • Campaign Money Watch;<sup>2</sup>
- 27       • Citizens for Strength and Security ("CSS");
- 28       • Citizens for Strength and Security Action Fund ("CSS Action Fund");
- 29       • Communications Workers of America Working Voices and Jeffrey Rechenbach,  
30       in his official capacity as treasurer ("Communications Workers");
- 31       • Defenders of Wildlife;

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<sup>2</sup> 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 • Defenders of Wildlife Action Fund;
- 2 • League of Conservation Voters, Inc.;
- 3 • Majority Action PAC and Judy Zamore, in her official capacity as treasurer;
- 4 • Matthew 25 Network and Christopher Korzen, in his official capacity as treasurer;
- 5 • National Wildlife Federation Action Fund;
- 6 • NEA Fund for Children and Public Education and John Wilson, in his official
- 7 capacity as treasurer ("NEA");
- 8 • Planned Parenthood Votes and Aaron Samulcek, in his official capacity as
- 9 treasurer;
- 10 • Service Employees International Union Committee on Political Education and
- 11 Gerald Hudson, in his official capacity as treasurer (SEIU-COPE");
- 12 • Sierra Club Political Committee and Debbie Sease, in her official capacity as
- 13 treasurer;
- 14 • The American Worker Inc. and Chuck Rocha, in his official capacity as treasurer;
- 15 • VoteVetn.org Action Fund; and
- 16 • WOMEN VOTE! and Ellen Malcolm, in her official capacity as treasurer.

17  
18 The complaint alleged that Representatives Pelosi and Larson made statements  
19 during closed-door Congressional meetings that took place during the weeks of  
20 September 13 and 20, 2010, in which they expressed frustration about "the 'absence' of  
21 third-party spending in support of Democratic candidates seeking election" and the  
22 disparity in spending between pro-Republican third-party organizations and Democratic-  
23 leaning groups. Complaint at 2 and Attachments 1-2. According to the complaint, these  
24 statements amounted to a "request or suggestion" that third-party organizations make  
25 public communications in support of Democratic candidates. Complaint at 7. The  
26 complaint stated that "[a]ll expenditures by the third-party Respondents following the  
27 demands of Pelosi and her henchmen are illegal in-kind corporate and union  
28 contributions to the campaigns of the referenced Democratic candidates." *Id.*

29 The coordination allegations were based on statements cited in two news articles  
30 attached to the complaint, and one additional news article attached to a supplement to the  
31 complaint. According to a *Roll Call* article, an unnamed leadership aide stated that at  
32 Representative Pelosi's weekly meeting with freshman Democrats, she addressed the

1 frustration of Democratic House members that liberal groups were not doing enough for  
2 Democratic candidates. Anna Palmer, *Democrats Angry that Liberal Groups Aren't*  
3 *Helping*, ROLL CALL, September 17, 2010, [http://www.rollcall.com/news/49939-](http://www.rollcall.com/news/49939-1.html?CMP=OTC-RSS)  
4 [1.html?CMP=OTC-RSS](http://www.rollcall.com/news/49939-1.html?CMP=OTC-RSS). According to the same article, Representative Larson also  
5 stated that “we hope and trust that people who are inclined to support us get out there and  
6 do the job that’s going to need to be done” and explained that “they [members of  
7 congress] ask groups on a ‘regular basis’ to get involved in the effort to support  
8 Democrats this election.” *Id.*

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

20 The complaint argued that Pelosi’s and Larson’s statements amounted to a  
21 “request or suggestion” for outside organizations to make expenditures on behalf of  
22 Democratic candidates, thereby satisfying the conduct prong of the Commission’s

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<sup>3</sup> 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.

1 coordination regulations. Complaint at 6 and 7. The complaint points to increased  
2 spending by these third-party organizations starting in late September 2010, after the  
3 news articles were published, as evidence of the alleged coordination. In support of these  
4 allegations, Complainant attaches charts listing the independent expenditures and  
5 electioneering communications made by these groups in the period following the closed-  
6 door meetings. *Id.* at 3, Attachments 3 and 4. The charts list the Respondent  
7 organizations and the expenditures and electioneering communications they made in  
8 September and October 2010 in connection with the 2010 general election, as well as the  
9 candidate that each communication supported or opposed. *Id.* at Attachments 3 and 4.  
10 Neither Representative Pelosi nor Representative Larson is listed on the charts as having  
11 received support from any of the Respondent organizations. In addition, the complaint  
12 did not specifically name any other member of Congress who may have been involved  
13 with the alleged coordinated communications or may have been present at the closed-  
14 door Congressional meetings. Instead, the complaint generally alleged that "other  
15 members of Congress identified, but not named, in press reports" also participated in the  
16 coordination. *Id.* at 1. Further, because these closed-door meetings appear to have taken  
17 place at House offices, the complaint raised the issue of whether these discussions may  
18 have also violated House ethics rules prohibiting the use of House facilities for political  
19 purposes. *Id.* at 2, fn. 1. However, it did not indicate whether a complaint had also been  
20 filed with the House Standards of Official Conduct ("House Ethics Committee"), the  
21 entity with jurisdiction over such potential violations.

22           Representatives Pelosi and Larson and the Respondent organizations all submitted  
23 responses to the complaint, some of which included sworn statements by representatives



1 of the organizations.<sup>4</sup> Most of the Respondents argued that the statements allegedly made  
2 by Pelosi and Larson did not amount to a “request and suggestion” as set forth in the  
3 Commission’s regulations, arguing that there was no request made directly to the  
4 organizations by any member of Congress.<sup>5</sup> Some Respondent organizations specifically  
5 denied that any discussions took place between them and any member of Congress  
6 concerning their expenditures.<sup>6</sup> A number of the Respondent organizations also  
7 described firewall procedures that they had in place during the 2010 election cycle as  
8 further evidence that there was no coordination.<sup>7</sup>

9 The Respondents also attempted to contradict the allegations in the complaint by  
10 clarifying the facts at issue. For instance, a number of the Respondent organizations  
11 specifically noted that their respective groups were not present at any of the closed-door  
12 meetings where a “request or suggestion” may have been allegedly made.<sup>8</sup> Similarly,  
13 some of the Respondent organizations described their spending during past election

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<sup>4</sup> 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.

<sup>5</sup> 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!

<sup>6</sup> See Responses submitted by 2010 Leadership Council, Accountability 2010, American Federation of Teachers, Blue America, Blue Green Alliance, Campaign Money Watch, Citizens for Strength and Security, CSS Action Fund, Communications Workers, Defenders of Wildlife, Defenders of Wildlife Action Fund, Matthew 25 Network, Planned Parenthood, and VoteVets.org.

<sup>7</sup> 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!

<sup>8</sup> See Responses submitted by 2010 Leadership Council, Accountability 2010, American Federation of Teachers, Blue America, SEIU-COPE, and VoteVets.org.

1 cycles in an attempt to demonstrate that their spending during the 2010 election cycle did  
2 not differ from their past practices.<sup>9</sup> For example, Sierra Club described its post-  
3 September 1<sup>st</sup> spending during the 2006, 2008, and 2010 election cycles to demonstrate  
4 that “the organization continued its historical practice of saving its resources to optimize  
5 impact.” Sierra Club Response at 3. Finally, others generally cited to factual information  
6 that most election advertising takes place within sixty days of an election in support of  
7 their arguments that there was nothing unusual about their spending activity.<sup>10</sup>  
8 Specifically, Matthew 25 Network explained that it “conducted its independent  
9 expenditures close to the election because that is when voters are paying attention and  
10 making their voting decisions.” League of Conservation Voters echoed this statement  
11 and added that “[w]aiting until later in the election allows LCV to better project which  
12 elections will be close and where its limited resources can be maximized.” League of  
13 Conservation Voters Response at 3. Blue Green Alliance indicated that concentrating  
14 expenditures in mid-October was especially important “for organizations with limited  
15 resources.” These Respondent organizations also cited to the Commission’s *Explanation*  
16 *and Justification for Coordinated Communications*, which recognized that “nearly all  
17 Senate and House candidate advertising takes place within 60 days of an election.” See  
18 71 Fed. Reg. 33194 (June 8, 2006).

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<sup>9</sup> See Responses submitted by AFSCME PEOPLE, America’s Families First, League of Conservation Voters, NEA, SEIU-COPE, and Sierra Club.

<sup>10</sup> 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!.

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1           **B.     Legal Analysis**

2           Generally, the Respondents denied the coordination allegations and argued that  
3 the information presented in the complaint is too speculative to support a finding of  
4 reason to believe.<sup>11</sup> As discussed in further detail below, there is no information  
5 presented in the complaint or that is publicly available to demonstrate that there was any  
6 coordination between the Respondent organizations and federal candidates or to support a  
7 finding of reason to believe that a violation of the Act occurred.<sup>12</sup>

8           The Act provides that no person may make a contribution, including an in-kind  
9 contribution, to a candidate and his authorized political committee with respect to any  
10 election for Federal office which, in the aggregate, exceeds \$2,400. 2 U.S.C.  
11 § 441a(a)(1) (2010 cycle limit); see 2 U.S.C. § 431(8)(A)(i), 11 C.F.R. § 100.52(d)(1).

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<sup>11</sup> Several Respondents also questioned the sufficiency of the complaint because it failed to “contain a clear and concise recitation of the facts which describe a violation,” “through its reliance of [n] unnamed aides and general statements.” See, e.g., Responses submitted by 2010 Leadership Council, Accountability 2010, Blue America, Communications 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(b)(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 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 identified 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 argued a legal basis for that conclusion.

<sup>12</sup> The complaint speculated that the Respondents might 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. § 437g(a)(9). See, e.g., MUR 5082 (Don Shawwood), MUR 4466 (Rep. Jim McDermott) and MUR 2572 (Charlie Wilson). Unlike these 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.”

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1 Under the Act, corporations are prohibited from making contributions from their general  
2 treasury funds in connection with any election of any candidate for federal office.  
3 2 U.S.C. § 441b(a). The Act defines in-kind contributions as, *inter alia*, expenditures by  
4 any person “in cooperation, consultation, or concert, with, or at the request or suggestion  
5 of, a candidate, his authorized political committees, or their agents . . . .” 2 U.S.C.  
6 § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(a). A communication is coordinated with a  
7 candidate, an authorized committee, a political party committee, or an agent of any of the  
8 foregoing when the communication 1) is paid for, in whole or part, by a person other than  
9 that candidate, authorized committee, or political party committee; 2) satisfies at least one  
10 of the content standards<sup>13</sup> described in 11 C.F.R. § 109.21(c); and 3) satisfies at least one  
11 of the conduct standards described in 11 C.F.R. § 109.21(d). 11 C.F.R. § 109.21(a)(1) –  
12 (3). In contrast, an independent expenditure is an expenditure by a person for a  
13 communication expressly advocating the election or defeat of a clearly identified  
14 candidate that is not made in cooperation, consultation, or concert with, or at the request  
15 or suggestion of a candidate, a candidate’s authorized committee, or their agents, or a  
16 political party committee or its agents. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16.

17 The complaint alleged that Representatives Pelosi and Larson coordinated  
18 communications with the Respondent organizations, which resulted in excessive and  
19 prohibited contributions to various federal campaigns. The available information  
20 indicates that the first and second prongs (payment and content) of the coordination

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<sup>13</sup> The Commission recently revised the content standards 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 Factual and Legal Analysis.

1 regulations are met. The first prong is satisfied because the third-party organizations paid  
2 for communications during September and October 2010, the time period specified in the  
3 complaint. Based on information provided in relevant reports filed with the Commission,  
4 it appears that at least most, and possibly all, of the communications at issue may also  
5 satisfy the content prong as either electioneering communications under 11 C.F.R.  
6 § 100.29 or public communications that expressly advocated the election or defeat of a  
7 clearly identified candidate. 11 C.F.R. § 109.21(c)(1) and (3). Many of the Respondent  
8 organizations admitted that their communications satisfy the first two prongs of the  
9 coordination provisions. The Respondents, however, disputed that the communications  
10 satisfy any of the conduct prong standards.

11 The conduct prong of the coordinated communications regulation may be satisfied  
12 when, *inter alia*, (1) a communication is created, produced, or distributed at the request or  
13 suggestion of a candidate, authorized committee, or political party committee; or if the  
14 communication is created, produced, or distributed at the suggestion of a person paying  
15 for the communication and the candidate, authorized committee, or political party  
16 committee assents to such suggestion; (2) the candidate, authorized committee, or  
17 political party committee is materially involved in decisions regarding the  
18 communication; or (3) the communication is created, produced or distributed after one or  
19 more substantial discussions about the communication between the candidate, authorized  
20 committee, or political party committee and the payor and his or her agents. See  
21 11 C.F.R. § 109.21(d)(1)-(3).

22 The complaint specifically indicated that the Respondents' conduct satisfied the  
23 "request or suggestion" standard of the coordination provisions when Representatives

1 Pelosi and Larson "requested" that outside organizations increase their spending  
2 supporting Democratic candidates. However, a review of the available information fails  
3 to reveal any facts to support the allegation that there was a "request or suggestion" as  
4 defined by Commission regulations. The Commission has explained that the "request or  
5 suggestion standard encompasses the most direct form of coordination, given that the  
6 candidate or political party committee communicates desires to another person who  
7 effectuates them." Explanation and Justification, *Coordination and Independent*  
8 *Expenditures*, 68 Fed. Reg. 421, 432 (January 3, 2003). As such, the standard would not  
9 be satisfied by requests or suggestions made to the general public, but would only be  
10 satisfied by requests or suggestions "directed to specific individuals or small groups." *Id.*  
11 For instance, the standard "would not apply to a speech at a campaign rally," to "a  
12 request posted on a web page that is available to the general public" or to a newspaper  
13 advertisement. *Id.* Further, in its Explanation and Justification, the Commission  
14 indicated that "[n]either of the two prongs of this conduct standard can be satisfied  
15 without some link between the request or suggestion and the candidate or political party  
16 who is, or that is clearly identified in the communication." *Id.* at 431.

17 Here, the complaint appears to allege that the "request or suggestion" was  
18 conveyed through the publication of news articles that discussed statements made by  
19 Representatives Pelosi and Larson during closed-door meetings, and that the Respondent  
20 organizations' expenditures and electioneering communications were made in reaction to  
21 that "request." Complaint at 4 (noting that "[a]round the same time as these press reports  
22 emerged, spending by outside organizations on behalf of Democratic candidates for  
23 Congress increased"). However, publications of news articles are statements directed to

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1 the general public, and thus, they fail to satisfy the conduct standard, even if they  
2 purportedly conveyed a "request."

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

15 While it appears that none of the communications at issue benefitted  
16 Representatives Larson or Pelosi, the complaint can be construed to allege that Larson  
17 and Pelosi were acting as agents of other members of Congress in making the alleged  
18 "request or suggestion." However, there is no information available to suggest such an  
19 agency relationship existed between either of them and any other member of Congress.  
20 See 68 Fed. Reg. at 431-32 (providing example of how coordination occurs where one  
21 candidate acts as an agent of another). Therefore, the alleged coordination based on a  
22 request or suggestion is not supported by the available information.

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1 Similarly, it would be difficult to meet the material involvement and substantial  
2 discussion conduct standards of the coordination provisions without any information  
3 pointing to the actions of specific candidates or their agents.<sup>14</sup> Some of the Respondent  
4 organizations specifically denied any communication concerning their expenditures with  
5 any members of Congress or with the campaigns that they supported,<sup>15</sup> and there is no  
6 available information to contradict those statements. Additionally, several Respondents  
7 averred that they followed written rules that comply with the Commission's firewall safe-  
8 harbor provision.<sup>16</sup> The Commission's regulations indicate that the coordination conduct  
9 standards are not met if the relevant entity satisfies the safe harbor provision for the  
10 establishment and use of a firewall and where there is no information showing that there  
11 was flow of material information regarding the candidate's plans, projects, activities or  
12 needs to the third party payor. 11 C.F.R. § 109.21(h). Here, there is no available  
13 information to show that the firewalls implemented by some of the Respondent  
14 organizations may have been breached.

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<sup>14</sup> 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 disclosure" 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).

<sup>15</sup> 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.

<sup>16</sup> 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!



**1           Accordingly, there is no reason to believe that Representative Pelosi and  
2   Representative Larson violated the Act in connection with the coordination allegations or  
3   that the twenty-five named Respondent organizations violated 2 U.S.C. §§ 441a(a) or  
4   441b.**

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