



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**JUN 18 2012**

Thomas J. Josefiak, Esq.  
Michael Bayes, Esq.  
Holtzman Vogel PLLC  
45 North Hill Drive, Suite 100  
Warrenton, VA 20186

Re: MUR 6443  
Americans for Common Sense Solutions

Dear Messrs. Josefiak and Bayes:

On June 14, 2012, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. §§ 434(f) and 441d, provisions of the Federal Election Campaign Act of 1971, as amended. The Commission also approved a revised Factual & Legal Analysis and substituted it for the F&LA previously approved in this matter. Accordingly, the file has been closed in this matter.

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). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the Factual and Legal Analysis and fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

*Dominique Dillenseger*

Dominique Dillenseger  
Attorney

Enclosures  
Factual and Legal Analysis  
Conciliation Agreement

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Americans for Common Sense Solutions      **MUR:** 6443

**I.      INTRODUCTION**

        This matter was generated by a complaint filed with the Federal Election Commission (the "Commission") alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Americans for Common Sense Solutions. Specifically, the complaint in this matter alleges that Americans for Common Sense Solutions ("ACSS" or "Respondent") funded and distributed television and radio advertisements attacking David Cicilline, a candidate for Rhode Island's 1<sup>st</sup> Congressional District, and distributed them in the district within 60 days before the 2010 general election, but failed to file electioneering communications notices, as required by 2 U.S.C. § 434(f). Complaint at 1. The complaint included a copy of a television advertisement and a radio advertisement funded by ACSS, but included no further information regarding the distribution or broadcast of the advertisements in question.

        For the reasons discussed below, the Commission found reason to believe that Americans for Common Sense Solutions violated 2 U.S.C. §§ 434(f) and 441d by failing to timely file notices of electioneering communications and by failing to include an adequate disclaimer in its radio advertisement.

**II.      FACTUAL AND LEGAL ANALYSIS**

**A. Factual Summary**

        ACSS is an unincorporated association registered with the Internal Revenue Service ("IRS") as a Section 527 political organization. *See* IRS Charities and Non-Profits Database, <http://forms.irs.gov/politicalOrgsSearch>. In 2010, ACSS funded two television ads and one

1 radio ad that "raise questions about the policy preferences and legislative records of David  
2 Cicilline." Response at 1. The television ads were disseminated on October 8, 2010, and  
3 October 26, 2010, and the radio ad was disseminated on October 21, 2010, all within 60 days  
4 before the November 2, 2010, general election. In addition, in its response to the complaint  
5 ACSS acknowledges that it funded two television advertisements regarding Lois Capps, a  
6 candidate for California's 23<sup>rd</sup> Congressional District. *Id.* Those ads were disseminated on  
7 September 3, 2010, and October 21, 2010, and thus also made within 60 days before the  
8 November 2, 2010, general election.

9 ACSS admits that it did not file electioneering communication notices with the  
10 Commission disclosing these communications, but claims that its failure to file the notices was  
11 inadvertent, and that after it received notification of the complaint, it reviewed its activities and  
12 filed the necessary electioneering communication notices. *Id.* It emphasized that even though  
13 the complaint addressed only those communications associated with Cicilline, it was self-  
14 disclosing the Capps electioneering communications as well. *Id.* ACSS states that it had not  
15 previously produced or distributed electioneering communications and states that the  
16 electioneering reporting requirement is "not easy to find" and is "imprecise and unclear."  
17 Response at 2. Respondent asserts that "if one cannot find those [reporting] requirements, their  
18 supposed simplicity is a moot point." *Id.*

19 In its response, Respondent also acknowledges that the disclaimer in its radio ad was not  
20 compliant with 2 U.S.C. § 441d. March 10, 2011 Supplemental Response at 1. Finally,  
21 Respondent requests that this matter be dismissed because all reports have now been filed. In the  
22 alternative, Respondent declares its willingness to conciliate or settle this matter, either through  
23 ADR or through enforcement. Response at 3.

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On February 15, 2011, after learning of the complaint, ACSS filed five FEC Form 9, "24-Hour Notice of Disbursements/ Obligations for Electioneering Communications" disclosing donations received and disbursements made in connection with the electioneering communications. The information contained in those reports follows:

Date of Public Distribution	Candidate/ Purpose	Total Donations	Total Disbursements
09/03/2010	Lois Capps "Health Care Risk"	\$15,000	\$13,638.90
10/8/2010	David Cicilline "Worst Shape"	\$25,000	\$30,923.54
10/21/2010	Lois Capps "Constitution"	\$50,000	\$38,988.63
10/21/2010	David Cicilline "Meagan's Law" (Radio Advertisement)	\$0	\$9,112.35
10/26/2010	David Cicilline "Question"	\$75,000	\$28,770.80
	Total:	\$165,000	\$121,434.22

**B. Legal Analysis**

**1. Electioneering Communication Reporting Requirements**

An electioneering communication is a "broadcast, cable or satellite communication" that: (1) refers to a clearly identified candidate for Federal office; (2) is made within 60 days before a general election or 30 days before a primary election; and (3) is targeted to the relevant electorate. 2 U.S.C. § 434(f)(3)(A)(i); 11 C.F.R. § 100.29(a). A clearly identified candidate means that the candidate's name, nickname, photograph or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference. 11 C.F.R. § 100.29(b)(2). A communication is "targeted to the relevant electorate" when it can be received by 50,000 or more persons in the district the candidate seeks to represent. 11 C.F.R. § 100.29(b)(5).

Under 2 U.S.C. § 434(f) and 11 C.F.R. § 104.20, every person who makes aggregate disbursements exceeding \$10,000 for the cost of producing and airing electioneering communications during any calendar year must, within 24 hours of each disclosure date,<sup>2</sup> disclose information regarding the communication. *Id.* This disclosure must include the identity of the person making the disbursement; the identity of any person sharing or exercising direction or control over the activities of such person; the amount and the identity of the recipient of each disbursement over \$200; and the names and addresses of contributors who give \$1,000 or more in the calendar year to the person making the disbursement. *Id.*

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<sup>2</sup> Disclosure date is defined as the first date on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of \$10,000; or any other date during the same calendar year on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements or has executed one or more contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of \$10,000 since the most recent disclosure date during such calendar year. 11 C.F.R. § 104.20(a)(i) and (ii).

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1 The Respondent acknowledges that the advertisements in question were electioneering  
2 communications. Response at 1. The advertisements clearly identify, by name and by  
3 photograph, federal candidates David Cicilline and Lois Capps. See 2 U.S.C. § 434(f)(3)(A)(i)  
4 and 11 C.F.R. § 100.29. In addition, as reported by the Respondent, the ads were publicly  
5 distributed between September 3, 2010 and October 26, 2010, within 60 days before the  
6 November 2, 2010, general election. *Id.* The complaint asserts that the Cicilline ads were  
7 broadcast in the congressional district where he was a candidate. Complaint at 1. Although we  
8 do not have specific information regarding the distribution of the ads, we can infer that the ads  
9 were targeted to the relevant electorate based on ACSS's admission that the ads were  
10 electioneering communications. See 2 U.S.C. § 434(f)(3)(A)(i) and 11 C.F.R. § 100.29. Finally,  
11 it does not appear that any exemptions from the definition of electioneering communication at 11  
12 C.F.R. § 100.29(c) apply in this matter.<sup>3</sup> *Id.*

13 Therefore, the advertisements in question are electioneering communications, and the  
14 Respondent was subject to electioneering communication reporting requirements. Therefore,  
15 Respondent violated the reporting requirements of the Act by failing to file the required notices  
16 within 24 hours of each disclosure date. Accordingly, the Commission found reason to believe  
17 that the Respondent violated 2 U.S.C. § 434(f).

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<sup>3</sup> The following communications are exempt from the definition of electioneering communication. Any communication that: (1) Is publicly disseminated through a means of communication other than a broadcast, cable, or satellite television or radio station; (2) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcast, cable, or satellite television or radio station; (3) Constitutes an expenditure or independent expenditure provided that the expenditure or independent expenditure is required to be reported under the Act or the Commission's regulations; (4) Constitutes a candidate debate or forum conducted pursuant to 11 C.F.R. § 110.13, or that solely promotes such a debate or forum; and (5) Is paid for by a candidate for State or local office in connection with an election to State or local office, provided that the communication does not promote, support, attack, or oppose any Federal candidate.

**2. Disclaimer Requirements**

The Act requires that when any person makes a disbursement for the purpose of financing an electioneering communication, the communication shall include a disclaimer that clearly states whether it was paid for or authorized by a candidate or a candidate's authorized political committee. 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(4) and (b). If the communication is not paid for or authorized by a candidate or the candidate's authorized political committee, the disclaimer must clearly state the full name and permanent address, telephone number, or World Wide Web address of the person who paid for the communication, and a statement that it is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3) and 11 C.F.R. § 110.11(b)(3).

While the Cicilline and Capps television communications contain adequate disclaimers, the disclaimer in the radio advertisement associated with Congressman Cicilline, did not include "the full name and permanent address, telephone number or World Wide Web address of the person who paid for the communication, and a statement that the communication is not authorized by any candidate or candidate's committee." 2 U.S.C. § 441d(a)(3) and 11 C.F.R. § 110.11(b)(3). Accordingly, the Commission found reason to believe that the Respondent violated 2 U.S.C. § 441d by failing to include a proper disclaimer in its radio advertisement.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )

Americans for Common Sense Solutions )

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint. The Federal Election Commission ("Commission") found reason to believe that Americans for Common Sense Solutions ("ACSS" or "Respondent") violated 2 U.S.C. §§ 434(f) and 441d of the Federal Election Campaign Act of 1971, as amended (the "Act").

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. ACSS is an unincorporated association registered with the Internal Revenue Service ("IRS") as a Section 527 political organization.

2. ACSS funded and distributed television and radio advertisements regarding David Cicilline, a candidate for Rhode Island's 1<sup>st</sup> Congressional District, and Lois Capps, a candidate for California's 23<sup>rd</sup> Congressional District, within 60 days before the November 2,

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1 2010 general election, but failed to disclose the communications and the associated contributions  
2 and disbursements as electioneering communications, as required by 2 U.S.C. § 434(f).

3 3. The Act defines an electioneering communication as a "broadcast, cable or  
4 satellite communication" that: (1) refers to a clearly identified candidate for Federal office; (2) is  
5 made within 60 days before a general election or 30 days before a primary election; and (3) is  
6 targeted to the relevant electorate. 2 U.S.C. § 434(f)(3)(A)(i); *see also* 11 C.F.R. § 100.29(a). A  
7 clearly identified candidate means that the candidate's name, nickname, photograph or drawing  
8 appears, or the identity of the candidate is otherwise apparent through an unambiguous reference.  
9 11 C.F.R. § 100.29(b)(2). A communication is "targeted to the relevant electorate" when it can  
10 be received by 50,000 or more persons in the district the candidate seeks to represent. 11 C.F.R.  
11 § 100.29(b)(5).

12 4. Under 2 U.S.C. § 434(f) and 11 C.F.R. § 104.20, every person who makes  
13 aggregate disbursements exceeding \$10,000 for the cost of producing and airing electioneering  
14 communications during any calendar year must, within 24 hours of each disclosure date, disclose  
15 information regarding the communication. *Id.* This disclosure must include the identity of the  
16 person making the disbursement; the identity of any person sharing or exercising direction or  
17 control over the activities of such person; the amount and the identity of the recipient of each  
18 disbursement over \$200; and the names and addresses of contributors who give \$1,000 or more  
19 in the calendar year to the person making the disbursement. 2 U.S.C. § 434(f)(2).

20 5. The Respondent, after receiving the Commission's notification of the  
21 complaint, self-disclosed the ads regarding Lois Capps, and filed electioneering communication  
22 notices disclosing \$165,000 in donations and \$121,434 in disbursements related to all five

1 electioneering communications. The advertisements clearly identify, by name and by  
2 photograph, federal candidates David Cicilline and Lois Capps. *See* 2 U.S.C. § 434(f)(3)(A)(i)  
3 and 11 C.F.R. § 100.29. In addition, based on the distribution dates reported by the Respondent,  
4 it appears that each of the advertisements was broadcast during the relevant communication  
5 period. *Id.* However, the Respondent violated the Act's reporting requirements by failing to file  
6 the required notices within 24 hours of each disclosure date.

7           6. The Act also requires that when any person makes a disbursement for the  
8 purpose of financing an electioneering communication, the communication shall include a  
9 disclaimer that clearly states whether it was paid for or authorized by a candidate or a candidate's  
10 authorized political committee. 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(4) and (b). If the  
11 communication is not paid for or authorized by a candidate or the candidate's authorized political  
12 committee, the disclaimer must clearly state the full name and permanent address, telephone  
13 number, or World Wide Web address of the person who paid for the communication, and a  
14 statement that it is not authorized by any candidate or candidate's committee. 2 U.S.C.  
15 § 441d(a)(3) and 11 C.F.R. § 110.11(b)(3).

16           7. While the Cicilline and Capps television communications contain adequate  
17 disclaimers, the disclaimer in the radio advertisement associated with Congressman Cicilline did  
18 not include the full name and permanent address, telephone number or World Wide Web address  
19 of the person who paid for the communication, and a statement that the communication is not  
20 authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3) and 11 C.F.R.  
21 § 110.11(b)(3).

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V. 1. ACSS violated 2 U.S.C. § 434(f) by failing to timely file notices of five electioneering communications.

2. ACSS violated 2 U.S.C. § 441d by failing to include an adequate disclaimer in its radio advertisement.

VI. 1. Respondents will cease and desist from violating 2 U.S.C. §§ 434(f) and 441d.

2. Respondents agree to pay a civil penalty to the Federal Election Commission in the amount of Nine Thousand Dollars (\$9,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

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1 X. This Conciliation Agreement constitutes the entire agreement between the parties on  
2 the matters raised herein, and no other statement, promise, or agreement, either written or oral,  
3 made by either party or by agents of either party, that is not contained in this written agreement  
4 shall be enforceable.

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6 FOR THE COMMISSION:

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8 Anthony Hernan  
9 General Counsel

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BY: Kathleen M. Guith  
Kathleen M. Guith  
Deputy Associate General Counsel  
for Enforcement

6-15-12  
Date

FOR THE RESPONDENTS:

Edward Cotugno  
(Name) Edward Cotugno  
(Position) Member

4-30-12  
Date

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