



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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

**OCT 12 2011**

Lynnelle Kummelehne

Bandm, OR 97411

RE: MUR 6446  
DeFazio

Dear Ms. Kummelehne:

On October 4, 2011, the Federal Election Commission reviewed the allegations in your complaint dated December 21, 2010, and found that on the basis of the information provided in your complaint, and information provided by the respondents, there is no reason to believe that Congressman Peter DeFazio or the Coos Bay – North Bend Rotary Club violated 2 U.S.C. § 441b(a) of the Federal Election Campaign Act of 1971, as amended (“the Act”), or that DeFazio for Congress and Robert Aokerman, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) or 2 U.S.C. § 434(b). Accordingly, on October 4, 2011, the Commission closed the file in this matter.

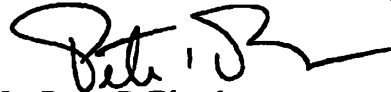
Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel’s Reports on the Public Record, 74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

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

Sincerely,

Anthony Herman  
General Counsel



BY: Peter G. Blumberg  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

11044304195

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS: DeFazio for Congress and Robert Ackerman,  
in his official capacity as treasurer  
Congressman Peter DeFazio**

**MUR 6446**

**I. GENERATION OF MATTER**

This matter was generated by a complaint filed with the Federal Election Commission by Lynnelle Kummelehne. *See* 2 U.S.C. § 437g(a)(1).

**II. FACTUAL SUMMARY**

This complaint concerns the appearance of Congressman Peter DeFazio, a federal officeholder and federal candidate, at the October members-only meeting of the Rotary Club of Coos Bay-North Bend, Oregon, ("the Club") a 501(c)(4) corporation, shortly before the 2010 general election. The complaint states that on "October 12, 2010, Rep. Peter DeFazio was the special speaker and appeared to be a willing participant at a partisan event/luncheon where he was sponsored, endorsed, and/or promoted by The Coos Bay-North Bend, OR, Rotary International Club, with a 501(c)(3) status." *See* Complaint at 2. The complaint asserts that the Club is a 501(c)(3) organization and that Rep. DeFazio's appearance before the Club was campaign-related, and therefore alleges that hosting Rep. DeFazio's appearance was prohibited by the Internal Revenue Code. *See* Complaint at 1. While the complaint does not cite any portions of the Federal Election Campaign Act of 1971, as amended, ("the Act"),<sup>1</sup> it generally alleges that the Club made a political contribution to Rep. DeFazio. *See* Complaint at 2.

<sup>1</sup> The complaint appears to rely on information from an Alliance for Justice webpage as the basis for the allegation that respondents violated the Act. *See* <http://www.afj.org/assets/resources/nap/election-year-advocacy-candidate-forums.pdf>, (last visited October 3, 2011.) The complaint quoted the Alliance for Justice Fact Sheet, in which the AFJ advised that "a 501(c)(3) may NOT host a *federal* candidate's appearance that is campaign-related because doing so would provide a beneficial opportunity for the candidate to address the public, equal to an in-kind contribution, which is impermissible for a (501)(c)(3)." Complaint at 1 (emphasis in the original).

1 Congressman Peter DeFazio has represented the congressional district that encompasses  
2 Coos Bay and North Bend, Oregon, from the time of his initial election in 1986. In virtually  
3 identical responses, Rep. DeFazio and the Committee state that Rep. DeFazio often speaks at  
4 Rotary meetings throughout his district, and that he has "attended 43 Rotary Club gatherings  
5 including at the Bay Area Rotary in the last 10 years." See Committee Response at 1. Rep.  
6 DeFazio notes that the Club contacted his congressional office regarding his availability to speak  
7 in early October 2010, that his district scheduler confirmed his availability with the Club on  
8 October 8, 2010, and that his presentation on October 12, 2010 focused on transportation  
9 projects, including a six-year transportation reauthorization bill Rep. DeFazio authored. See  
10 DeFazio Response at 1. Local news coverage of his presentation notes the transportation focus  
11 of Rep. DeFazio's remarks. See Erica Rush, "DeFazio: Timing is everything for Rail Service,"  
12 posted on the website of KCBY 11 on October 12, 2010 (Attachment A to the DeFazio  
13 Response.) Rep. DeFazio and the Committee also state that the Club did not "display Mr.  
14 DeFazio's campaign signs, distribute information about my candidacy, or treat this as a  
15 campaign event," and the Responses included photos indicating the lack of campaign materials at  
16 the event. See Committee Response at 2 and Attached Photos 1-4, (showing lunch tables, the  
17 speaker's podium, and a display screen.)

18 Complainant states that she attended the Club's meeting on October 12, 2010, though  
19 available information indicates that she is not a Club member, nor was she a guest of a Rotarian,  
20 and the meeting was not open to the public. It appears that Complainant attended the meeting  
21 because she was concerned about Rep. DeFazio's appearance, as she had previously contacted  
22 the Club's president, Jim Molitor, regarding her frustration about the Club's rejection of a

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1 campaign appearance by a surrogate for Art Robinson, Rep. DeFazio's opponent in the general  
2 election. Complainant states in her complaint that

3 It is my understanding that The Coos Bay-North Bend Rotary International Club  
4 Board had committed to share their September 14, 2010 meeting with "The  
5 American Exceptionalism Tour" with renowned Astronaut Scott Carpenter  
6 campaigning for Art Robinson for Congress. ... However, just days before the  
7 scheduled event, President Jim Molitor called and cancelled due to 'the Board and  
8 Rotary's Bi-Laws [sic] state they cannot be involved in anything political.'

9  
10 Complaint at 3-4.

11 The complaint states generally that there were "several partisan acclamations in support  
12 of Rep. DeFazio from the Rotary Board, members and guests during the partisan event," but  
13 gives no indication of what these "acclamations" were.<sup>2</sup> See Complaint at 3. The complaint also  
14 acknowledges that "as a sitting Congressman, [Rep. DeFazio] could have spoken ... to 'share his  
15 expertise on another subject,' but states complainant's perspective that "[t]he whole meeting was  
16 all about Rep. DeFazio! He applauded himself for the great work he's done and is now doing  
17 and why it is so important for him to continue his progress next term. He clearly implied 'VOTE  
18 FOR ME!'" See Complaint at 3.

19 After leaving the meeting, Complainant wrote a letter to Rep. DeFazio regarding her  
20 concerns about his appearance at the Club's meeting. See Complaint at 4 and Complaint  
21 Attachment 1, "My Letter," dated October 17, 2010. Subsequently, Complainant filed the  
22 complaint in this matter.

23 Available information indicates that the Coos Bay-North Bend Rotary Club is not a  
24 501(c)(3) organization, it is in fact a 501(c)(4) organization, and indicates that the October 12,

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<sup>2</sup> Complainant asserted in the Complaint that she voice-recorded the meeting, but did not include a recording with her submission or quote from the alleged recording in her Complaint. See Complaint at 5.

1 2010 Club meeting was not open to the public.<sup>3</sup> In addition, DeFazio's response states that  
2 DeFazio's presentation to the Club related to transportation topics that affected the region. See  
3 DeFazio Response at 1. *See also* Club Response at 2 and Molitor Aff. at 1 (explaining that Rep.  
4 DeFazio presented his annual non-partisan legislative update). The Committee's response states  
5 that the Club did not display the Committee's campaign signs, distribute information about Rep.  
6 DeFazio's candidacy or treat the event as a campaign event. See Committee Response at 2.  
7 DeFazio's response also explicitly denies that the Club endorsed his candidacy. See DeFazio  
8 Response at 1-2.

9 **III. LEGAL ANALYSIS**

10 The complaint generally alleges that the Club "violated Federal Election Laws and  
11 blatantly disregarded (501)(c)(3) Election Regulations," and appears to suggest, by citing to the  
12 Alliance for Justice webpage, that the Club made contributions when it allegedly endorsed  
13 DeFazio and provided facilities and resources for a campaign-related appearance at the  
14 members' meeting. *See* Complaint at 1-3. It is unlawful for any corporation to make a  
15 contribution in connection with any election to any political office, or for any candidate [or]  
16 political committee to knowingly accept or receive any corporate contribution. 2 U.S.C.  
17 § 441b(a). Further, each disclosure report required by the Commission shall disclose the total  
18 amount of all receipts, including the identification of each person who makes a contribution to  
19 the reporting authorized committee, whose contributions have an aggregate value in excess of  
20 \$200 per election cycle. 2 U.S.C. § 434(b). Therefore, because the Club is incorporated, if the  
21 Club made, and Rep. DeFazio and the Committee accepted, in-kind contributions in connection  
22 with the event, each would have violated 2 U.S.C. § 441b(a) by making and accepting,

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<sup>3</sup> DeFazio's campaign's response suggests that the Coos Bay-North Bend Rotary Club is a 501(c)(6) organization, which is the I.R.S. designation for business leagues and Chambers of Commerce.

1 respectively, the prohibited contributions. Further, the Committee would have been required to  
2 report those contributions pursuant to 2 U.S.C. § 434(b). However, here, where it appears that  
3 Rep. DeFazio attended the Club's monthly member's meeting, which was closed to the public  
4 and served as a meeting for members to interact with their sitting Member of Congress regarding  
5 legislative issues, and Rep. DeFazio's non-partisan presentation related to transportation topics  
6 that affected the region and was not treated by the Club as a campaign event, the available  
7 information indicates that Rep. DeFazio's presentation to the Club was a permissible  
8 officeholder appearance, that the Club did not endorse Rep. DeFazio during his appearance, and  
9 therefore Rep. DeFazio's appearance did not generate an impermissible in-kind corporate  
10 contribution from the Club to the DeFazio Committee.

11 With regard to the alleged endorsement, Rep. DeFazio and the Committee deny that the  
12 Club endorsed Rep. DeFazio during his appearance, and the available information appears to  
13 support that assertion. See DeFazio Response at 1-2 and at Attachment A. Separate from the  
14 endorsement argument, the complaint suggests that the Club made a more general in-kind  
15 contribution to the DeFazio Committee by using Club resources to host his appearance. The  
16 complaint states the Club "made a political contribution to a candidate, Rep. Peter DeFazio.  
17 (TIME=CONTRIBUTION=MONEY). ... [The Club] used facilities for candidate, Rep. Peter  
18 DeFazio's endorsement." See Complaint at 2. However, as discussed above, the available  
19 information indicates Rep. DeFazio appeared before the Club in his capacity as an officeholder  
20 and not as a candidate.<sup>4</sup>

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<sup>4</sup> The Commission does not reach the issue here of how the Supreme Court's decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), affects the Commissions' regulations at 11 CFR Part 114 governing the circumstances under which corporations may sponsor Federal candidate appearances or endorse Federal candidates.

1           Therefore, despite the complaint's general allegations that Rep. DeFazio's appearance at  
2           the Club's meeting resulted in a contribution, the available information indicates that Rep.  
3           DeFazio's presentation to the Club was a permissible officeholder appearance and did not  
4           generate an impermissible in-kind corporate contribution to the DeFazio Committee.  
5           Accordingly, the Commission finds no reason to believe that Peter DeFazio or DeFazio for  
6           Congress and Robert Ackerman, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a)  
7           when Rep. DeFazio made a non-campaign-related officeholder appearance at the Club's October  
8           2010 membership meeting, or that DeFazio for Congress and Robert Ackerman, in his official  
9           capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to report a contribution.

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Rotary Club of Coos Bay-North Bend, Oregon      MUR 6446**

**I.      GENERATION OF MATTER**

This matter was generated by a complaint filed with the Federal Election Commission by Lynnelle Kunmelehne. *See* 2 U.S.C. § 437g(a)(1).

**II.      FACTUAL SUMMARY**

This complaint concerns the appearance of Congressman Peter DeFazio, a federal officeholder and federal candidate, at the October members-only meeting of the Rotary Club of Coos Bay-North Bend, Oregon, ("the Club") a 501(c)(4) corporation, shortly before the 2010 general election. The complaint states that on "October 12, 2010, Rep. Peter DeFazio was the special speaker and appeared to be a willing participant at a partisan event/luncheon where he was sponsored, endorsed, and/or promoted by The Coos Bay-North Bend, OR, Rotary International Club, with a 501(c)(3) status." *See* Complaint at 2. The complaint asserts that the Club is a 501(c)(3) organization and that Rep. DeFazio's appearance before the Club was campaign-related, and therefore alleges that hosting DeFazio's appearance was prohibited by the Internal Revenue Code. *See* Complaint at 1. While the complaint does not cite any portions of the Federal Election Campaign Act of 1971, as amended, ("the Act") it generally alleges that the endorsement and the costs associated with the "endorsement" Club meeting were in-kind contributions to DeFazio for Congress and Robert Ackerman, in his official capacity as treasurer, ("the Committee") by the Rotary Club.

Congressman Peter DeFazio has represented the congressional district that encompasses Coos Bay and North Bend, Oregon, from the time of his initial election in 1986. Available

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1 information indicates that Rep. DeFazio often speaks at Rotary meetings throughout his district,  
2 and that his presentation to the Coos Bay-North Bend Rotary Club on October 12, 2010 focused  
3 on transportation projects, including a six-year transportation reauthorization bill Rep. DeFazio  
4 authored, rather than on the campaign. Complainant attended the Club's meeting on October 12,  
5 2010, though according to the Club's response, she is not a Club member, nor was she a guest of  
6 a Rotarian, and the meeting was not open to the public. See Club Response at 2. It appears that  
7 Complainant attended the meeting because she was concerned about Rep. DeFazio's appearance,  
8 as she had previously contacted the Club's president, Jim Molitor, regarding her frustration about  
9 the Club's rejection of a campaign appearance by a surrogate for Art Robinson, Rep. DeFazio's  
10 opponent in the general election. The Complainant states:

11 It is my understanding that The Coos Bay-North Bend Rotary International Club  
12 Board had committed to share their September 14, 2010 meeting with "The  
13 American Exceptionalism Tour" with renowned Astronaut Scott Carpenter  
14 campaigning for Art Robinson for Congress. ... However, just days before the  
15 scheduled event, President Jim Molitor called and cancelled due to 'the Board and  
16 Rotary's Bi-Laws state they cannot be involved in anything political.'  
17

18 Complaint at 3-4.

19 The complaint states generally that there were "several partisan acclamations in support  
20 of Rep. DeFazio from the Rotary Board, members and guests during the partisan event," but  
21 gives no indication of what these "acclamations" were.<sup>1</sup> See Complaint at 3. The complaint also  
22 acknowledges that "as a sitting Congressman, [Rep. DeFazio] could have spoken ... to 'share his  
23 expertise on another subject,' but states Complainant's perspective that "[t]he whole meeting  
24 was all about Rep. DeFazio! He applauded himself for the great work he's done and is now

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<sup>1</sup> Complainant asserted in the Complaint that she voice-recorded the meeting, but did not include a recording with her submission or quote from the alleged recording in her Complaint. See Complaint at 5.

1 doing and why it is so important for him to continue his progress next term. He clearly implied  
2 'VOTE FOR ME!'" See Complaint at 3.

3 After leaving the meeting, Complainant wrote a letter to the Club regarding her concerns  
4 about his appearance.<sup>2</sup> See Complaint at 4 and Complaint Attachment 1, "My Letter," dated  
5 October 17, 2010. Subsequently, Complainant filed the complaint in this matter.

6 In response to the Complaint, the Coos Bay-North Bend Rotary Club states that it is not a  
7 501(c)(3) organization, it is in fact a 501(c)(4) organization, and "it is not inconsistent with the  
8 purpose of the ... club ... for a local Rotary club to host a meeting for members during which a  
9 currently-serving legislator provides information to the membership on topics that concern the  
10 community, such as the status of current legislative activities. In doing so, the club does not  
11 advocate any particular position, though under the 501(c)(4) rules, it may." See Club Response  
12 at 1-2 and Exhibit 1 (a 1998 letter from Rotary International personnel stating that Rotary  
13 International is a 501(c)(4) organization and the Coos Bay Club has been a member club since  
14 1922). The Club's response states that the "October 12, 2010 Club meeting was not open to the  
15 public," and was a meeting for Club members. See Club Response at 2 and Affidavit of  
16 President James Molitor, attached to the Response as Exhibit 3.

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<sup>2</sup> That letter (and the Complaint to the Commission) appears to rely on information Complainant obtained from a fact sheet published by the Alliance for Justice, an association of over 100 non-profit organizations involved in advocating for the rights of various groups. See <http://www.afj.org/about-afj/>, (last visited July 6, 2011.) In the letter, Complainant quotes a portion of the Alliance for Justice ("AFJ") Fact Sheet on which her allegations rely, in which the AFJ advised its non-profit member organizations that

A 501(c)(3) may NOT host a *federal* candidate's appearance that is campaign-related because doing so would provide a beneficial opportunity for the candidate to address the public, equal to an in-kind contribution, which is impermissible for a 501(c)(3). The only exception to this general rule ... is when the 501(c)(3) is hosting a candidate debate with at least two candidates and the debate is nonpartisan in nature. (Emphasis in original.)

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1 The Club noted that Rep. DeFazio's appearance was not campaign-related, but rather it  
2 focused on a general legislative update, not on the upcoming election. Club Response at 2. The  
3 Club also notes that, in contrast to the non-partisan officeholder appearance of Rep. DeFazio, it  
4 refused the previously-requested appearance by Art Robinson's campaign surrogate, astronaut  
5 Scott Carpenter, "after learning of the partisan nature of Mr. Carpenter's presentation." Club  
6 Response at 2.

7 **III. LEGAL ANALYSIS**

8 The complaint generally alleges that the Club "violated Federal Election Laws and  
9 blatantly disregarded (501)(c)(3) Election Regulations," and appears to suggest, by citing to the  
10 Alliance for Justice webpage, that the Club made contributions when it allegedly endorsed Rep.  
11 DeFazio and provided facilities and resources for a campaign-related appearance at the  
12 members' meeting. See Complaint at 1-3. It is unlawful for any corporation to make a  
13 contribution in connection with any election to any political office. 2 U.S.C. § 441b(a).  
14 Therefore, because the Club is incorporated, if the Club made in-kind contributions in  
15 connection with the event, it would have violated 2 U.S.C. § 441b(a) by making the prohibited  
16 contributions. However, here, where it appears that Rep. DeFazio attended the Club's monthly  
17 member's meeting, which was closed to the public and served as a meeting for members to  
18 interact with their sitting Member of Congress regarding legislative issues, and Rep. DeFazio's  
19 non-partisan presentation related to transportation topics that affected the region and was not  
20 treated by the Club as a campaign event, the available information indicates that Rep. DeFazio's  
21 presentation to the Club was a permissible officeholder appearance, that the Club did not endorse  
22 Rep. DeFazio during his appearance, and therefore Rep. DeFazio's appearance did not generate  
23 an impermissible in-kind corporate contribution from the Club to the DeFazio Committee.

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1 With regard to the alleged endorsement, Rep. DeFazio and the Committee deny that the  
2 Club endorsed Rep. DeFazio during his appearance, and the available information appears to  
3 support that assertion. See Club Response at 2. Separate from the endorsement argument, the  
4 complaint suggests that the Club made a more general in-kind contribution to the DeFazio  
5 Committee by using Club resources to host his appearance. The complaint states the Club "made  
6 a political contribution to a candidate, Rep. Peter DeFazio.  
7 (TIME=CONTRIBUTION=MONEY). ... [The Club] used facilities for candidate, Rep. Peter  
8 DeFazio's endorsement." See Complaint at 2. However, as discussed above, the available  
9 information indicates Rep. DeFazio appeared before the Club in his capacity as an officeholder  
10 and not as a candidate.<sup>3</sup>

11 Therefore, despite the complaint's general allegations that Rep. DeFazio's appearance at  
12 the Club's meeting resulted in a contribution, the available information indicates that Rep.  
13 DeFazio's presentation to the Club was a permissible officeholder appearance and did not  
14 generate an impermissible in-kind corporate contribution to the DeFazio Committee.  
15 Accordingly, the Commission finds no reason to believe that the Rotary Club of Coos Bay-North  
16 Bend, Oregon violated 2 U.S.C. § 441b(a) by permitting Rep. DeFazio to make a non-campaign-  
17 related officeholder appearance at the Club's October 2010 membership meeting.

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<sup>3</sup> The Commission does not reach the issue here of how the Supreme Court's decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), affects the Commissions' regulations at 11 CFR Part 114 governing the circumstances under which corporations may sponsor Federal candidate appearances or endorse Federal candidates.