



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Congressman Peter DeFazio
2134 Rayburn Building
Washington, D.C. 20515-3704

OCT 12 2011

RE: MUR 6446
Congressman DeFazio

Dear Congressman DeFazio:

On December 29, 2010, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On October 4, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that you violated 2 U.S.C. § 441b(a) of the Act. Accordingly, the Commission closed its 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 Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Andrea Hale-Maddox, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS: DeFazio for Congress and Robert Ackerman, MUR 6446**
6 **in his official capacity as treasurer**
7 **Congressman Peter DeFazio**
8

9 **I. GENERATION OF MATTER**

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

12 **II. FACTUAL SUMMARY**

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

¹ 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.² 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,

² 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.³ 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,

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

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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.⁴

⁴ 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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