

SANDLER, REIFF & YOUNG, P.C.

August 28, 2009

Via E-Mail and First Class Mail

Wanda D. Brown, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

OFFICE OF GENERAL
COUNSEL

2009 SEP -8 PM 1:44

RECEIVED
FEDERAL ELECTION
COMMISSION

Re: RR 09L-22

Dear Ms. Brown:

The undersigned serves as counsel to MoveOn .org Political Action and Wes Boyd, as Treasurer ("MoveOn"). A signed designation of counsel is attached to this letter. We are writing in response to your letter of August 4, 2009 in connection with the above-referenced referral from the Commission's Reports Analysis Division. For the reasons set forth below, MoveOn respectfully requests that OGC recommend that no further action be taken in this matter or, in the alternative, that this matter be referred to the Alternative Dispute Resolution Division for further proceedings.

This matter relates to four 24-hour and 48-hour reports of independent expenditures, that were required to be filed by MoveOn during the 2008 calendar year pursuant to 11 C.F.R. §104.4.

By way of background, MoveOn is a non-connected federal political committee that registered with the Commission in October of 1998. It is believed that, in terms of aggregate receipts and disbursements, MoveOn is one of the largest non-connected committees registered with the Commission. MoveOn has disclosed tens of millions of dollars of receipts and disbursements since its inception. During the 2008 election cycle, MoveOn reported approximately \$40 million each of receipts and disbursements. Included in this amount were over \$6.6 million dollars in independent expenditures, in support of and opposition to federal candidates.

MoveOn's record of compliance with the Commission's rules with respect to recordkeeping and reporting has been exemplary. In 11-year history, this PAC has never been referred to the Office of General Counsel for any reporting violation. We also believe that MoveOn is the largest user of the Commission's reporting software, "FECFile."

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MoveOn has retained our law firm to prepare and file all required disclosure reports, with the Commission. Since 1996, all MoveOn filings with the Commission have been prepared and uploaded by my partner, Neil Reiff. Mr. Reiff has almost 20 years of experience in filing of campaign finance reports with the Commission.

In 2008, MoveOn timely filed fifty-two 24-hour and 48-hour independent expenditure reports with the Commission. As noted, this matter stems from four 24-hour and 48-hour reports. Although these four reports were timely prepared and queued up for filing by our office, it appears as though three of the reports did not successfully upload with your office. The fourth filing did upload but apparently, for reasons unknown, contained data from a different filing. The four filings are summarized below:

Filing 1 - Prepared on August 22, 2008 and included the following expenditures

Kinko's - 8/14/08 - \$4,122.51
Print Liberation - 8/19/08 - \$3,000.00
Facebook - 8/21/08 - \$150,000.00
Fine Designs - \$2,529.25
Google - \$60,000.00

Total - \$219,651.76

Filing 2 - Prepared on September 10, 2008 and included the following expenditures

ParcelPort - 9/8/08 - \$19,800.00
Zuse, Inc. - 9/8/08 - \$154,230.00
Change the Thought - 9/9/08 - \$900.00
Fine Designs - 9/10/08 - \$130,117.49

Total - \$304,147.49

Filing 3 - Prepared on October 1, 2008

Print Liberation - 9/30/08 - \$1,100.00
Air Extreme - 9/30/08 - \$30,000.00
Fulfillment Concepts - 9/30/08 - \$1,283.11
Planet Vox - 10/1/08 - \$4,378.05
PTV.com - 10/1/08 - \$4,715.00

Total - \$41,476.16

Filing 4 - Prepared on October 17, 2008

Moonlight Design - 10/17/08 - \$250.00

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80/20 Consulting – 10/17/08 - \$15,000.00
Fenton Communications – 10/17/08 - \$45,899.02
Planet Vox – 10/17/08 - \$1,500.00
Buying Time, LLC - \$4,444.00
750 Industries – 10/17/08 - \$20,000.00
Americablog – 10/17/08 - \$7,800.00
Fine Designs – 10/17/08 - \$60,000.00

Total - \$154,899.02¹

With respect to Filings 1, 3 and 4, although the reports were prepared and closed in FEC File for filing, it appears as though the filings did not successfully transmit to the Commission. Until the receipt of a letter from the Commission regarding these filings, neither MoveOn nor our law firm was aware that these filings did not successfully transmit to the Commission. We can demonstrate that that the reports were timely prepared for filing; however, we do not know the reasons why the Commission did not successfully receive these reports. Our office has previously provided to RAD an electronic copy of the committee's .dcl file (FEC Data File) that conclusively demonstrates that the reports were prepared for filing contemporaneously with the dates that the reports were due. This is verified by the automatic assignment of sequential ID numbers to the affected transactions by the FECFile software. (A copy of this computer file will be e-mailed to you separately).

With respect to Filing 2 (the largest of the four reports), our office *did* successfully transmit a 48 Hour Report on September 10, 2008. A copy of the email receipt from the Commission is attached to this response. For reasons unknown, however, the FEC software submitted data from an earlier 48-hour filing from May 2008 rather than the data prepared for the September 10th filing. Until notification from the Commission, MoveOn believed that the proper data had been uploaded to the Commission via the FECFile software.

MoveOn does not have sufficient information to determine whether the failures to upload filings 1, 3 or 4 was due to human or computer error. As noted, Mr. Reiff, on behalf of MoveOn, made a good faith effort to prepare and file these reports and accordingly, MoveOn understood that it had timely filed the reports. In the future, MoveOn will create a redundant cross check procedure to ensure that the FEC electronic receipts are forwarded to multiple persons for all future filings. Each person involved in this procedure will be responsible for ensuring that any filings required by MoveOn are, in fact, timely received by the Commission.

¹ MoveOn acknowledges that one independent expenditure for \$5,000 to Hotjob.com on October 20, 2008 was inadvertently omitted from its 24 Hour filings.

MoveOn also does not have sufficient information to explain how or why the September 10th filing contained data from an earlier filed 48 Hour report. In any event, the Commission should review its software to ensure that a previously filed report cannot be resubmitted under any circumstance unless it is specifically designed to do so (i.e. as an amended report).

In the circumstances described above, MoveOn respectfully submits that the Commission should take no further action with respect to this matter. The failure to properly upload these four reports was inadvertent and possibly caused by technical problems in using the Commission's software. Nevertheless, MoveOn intends to continue to use the Commission's software to upload reports in the future and will take steps to ensure that all future reports are successfully and accurately received by the Commission. Based on MoveOn's good faith effort to comply with the Act's reporting requirements, its exemplary compliance record, the unusual technical circumstances surrounding this matter and MoveOn's commitment to ensure that this does not happen in the future, we request that the Commission close this matter without taking further action.

If the Commission considers this matter further, it should first disregard, as part of any potential violation, the amount required to be filed on September 10, 2008, since MoveOn successfully filed a timely report on that date which should have contained the information noted above. This would be a \$304,147.49 reduction to any potential violation amount. Without the September 10, 2008 report, the total amount of expenditures included in reports that were not timely filed would total \$261,127.92 in 48-hour and \$159,893.02 in 24-hour reports. It should be noted that all independent expenditures includible in the 48-hour reports were publicly disclosed with the Commission by October 15, 2008 or October 23, 2008 as applicable. Further, these amounts reflect a small fraction of the approximately \$6.6 million dollars of independent expenditures timely disclosed by MoveOn during the 2008 election cycle.

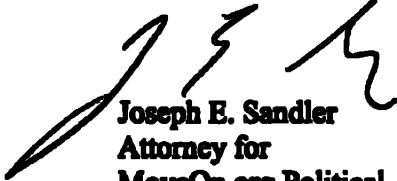
We further respectfully suggest that, if the Commission finds reason to believe a violation has occurred with respect to these amounts, that were included in the three reports not successfully transmitted, the Commission should either send an admonishment letter to MoveOn and close this matter, or, based upon the amount of the filings and the percentage of the violation, refer this matter to the Commission's Alternative Dispute Resolution department.

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If you have any further questions, please contact myself or Neil Reiff at (202)
479-1111.

Respectfully submitted,



Joseph E. Sandler
Attorney for
MoveOn.org Political Action

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FEDERAL ELECTION COMMISSION
889 E Street, NW
Washington, DC 20463

Statement of Designation of Counsel
(Respondent/Witness)

MUR: RR OTL-22

Name of Counsel: Neil Reiff, Esq. Sandler

Firm: Sandler Reiff & Young

Telephone: (202) 479-1111

Fax: ()

The above named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

8/18/09
Date

[Signature]
Signature

Name (Print): Wes Boyd

Address: PO Box 9218
Berkeley, CA 94709

Telephone: Home ()

Business (510) 918-1952

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(2)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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