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FIRST GENERAL COUNSEL'S REPORT

CELA

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SOURCE:

Sua Sponte Submission

RESPONDENTS:

Steve Womack for Congress and Mike Eldredge, in
his official capacity as treasurer
Arkansas House Leadership PAC

MUR: 6489

DATE COMPLAINT FILED: August 15, 2011

DATE OF NOTIFICATION: August 18, 2011

LAST RESPONSE RECEIVED: October 5, 2011

DATE ACTIVATED: October 26, 2011

EXPIRATION OF SOL: June 28, 2016

COMPLAINANT:

Steve Womack for Congress and Mike Eldredge, in
his official capacity as treasurer

RESPONDENT:

Arkansas House Leadership PAC

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441h(b)

2 U.S.C. § 441i(e)

11 C.F.R. § 300.60

11 C.F.R. § 300.61

11 C.F.R. § 300.64

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

On July 25, 2011, Steve Womack for Congress and Mike Eldredge, in his official
capacity as treasurer ("the Committee") submitted a *sua sponte* submission reporting a potential

1 violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), in connection
2 with Rep. Womack's name appearing on an invitation to a fundraiser sent by the Arkansas House
3 Leadership PAC ("AHL PAC"), a state political action committee.¹
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10 Additionally, on August 17, 2011, the Committee filed a complaint against AHL PAC
11 alleging the use of Representative Womack's name in the fundraiser invitations was
12 "unapproved," suggesting that AHL PAC may have violated 2 U.S.C. § 441h(b).

13 As discussed below, it does not appear that Representative Womack approved,
14 authorized, agreed to, or consented to the use of his name in the event publicity. It also does not
15 appear that AHL PAC is an agent of Representative Womack or is directly or indirectly
16 established, financed, maintained or controlled by, or acting on behalf of Representative
17 Womack.
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19

20 We also recommend that the Commission find

¹ According to Arkansas state disclosure filings, AHL PAC, which was formerly called the Arkansas Conservative Legislative PAC, was founded by four Arkansas state representatives.

1 no reason to believe the Arkansas House Leadership PAC violated 2 U.S.C. § 441h(b) and close
2 the file in MUR 6489.

3 **II. FACTS**

4 Steve Womack is a U.S. Congressman representing Arkansas's Third Congressional
5 District. On June 28, 2011, AHL PAC held a fundraiser to benefit AHL PAC at the home of two
6 supporters. Prior to the fundraiser, AHL PAC distributed an invitation stating that "You are
7 cordially invited to a reception benefitting the House Leadership PAC." See Attachment 1
8 (Fundraiser Invitation). The invitation identifies Representative Womack and Mark Darr,
9 Arkansas Lieutenant Governor, as "Honorary Co-Hosts."

10 The invitation also contains information about the timing of the event, requests an RSVP
11 via email, and states that checks should be made payable to AHL PAC. The bottom portion of
12 the invitation is a tear-off card to RSVP to the event. The recipient has two options on the tear-
13 off portion: 1) "YES! I/WE WILL ATTEND THE RECEPTION AT THE FOLLOWING
14 LEVEL: \$50 A COUPLE (2 TICKETS) or \$25 INDIVIDUAL, and 2) I AM UNABLE TO
15 ATTEND, BUT WOULD LIKE TO MAKE A CONTRIBUTION IN THE AMOUNT OF
16 \$ _____." The tear-off portion also gives space for the recipient's name, address, phone, e-
17 mail, occupation and employer. The bottom of the flyer states, "PAID FOR BY HOUSE
18 LEADERSHIP PAC, P.O. BOX 2459, LITTLE ROCK, AR, 72203." Finally, the invitation lists
19 several corporations that sponsored the event.

20 The Committee asserts in its complaint that the use of Representative Womack's name as
21 a "co-host" in the invitation was "unapproved." According to the Committee, AHL PAC simply
22 asked Representative Womack to give a "greeting from Washington," and neither Representative
23 Womack nor his staff discussed the contents of the invitation with AHL PAC. The Committee

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1 maintains that other than Representative Womack's scheduler, the Committee did not have any
2 communication with the fundraiser planners or AHL PAC before the event. The Committee also
3 states that while he spoke at the fundraiser, neither Representative Womack nor his agents or
4 staff members agreed to raise funds in conjunction with the fundraiser, nor did they solicit any
5 funds at the event. The Committee asserts that it was not involved in the distribution of the
6 invitation and learned of the invitation nearly two weeks after the fundraiser. Finally, the
7 Committee avers that it asked AHL PAC to refund the money raised at the event, which
8 AHL PAC agreed to do.

9 In its response, AHL PAC generally confirms the Committee's statement of facts.
10 AHL PAC maintains that it invited Representative Womack to serve as a "guest speaker," but the
11 fundraiser invitation inaccurately identified Representative Womack as a host. AHL PAC also
12 states that while corporate contributions were raised at the event, AHL PAC voluntarily refunded
13 these contributions even though no state ethics laws were violated.

14 Under Arkansas state law, both individuals and corporations are permitted to contribute
15 up to \$5,000 per calendar year to political committees. *See* ARK. CODE ANN. § 7-6-201 (2011).
16 In campaign finance reports filed with the Arkansas Secretary of State, AHL PAC disclosed
17 receiving \$5,000 in corporate contributions on June 28, 2011, the day of the fundraiser, and
18 reported refunding the same contributions on July 26, 2011 (along with a previously unreported
19 \$500 contribution). However, at least one press account quotes AHL PAC as stating that it raised
20 about \$20,000 in corporate contributions at the fundraiser. *See* John Lyon, *After fundraiser*
21 *questioned, GOP group to return corporate donations*, ARKANSAS NEWS (July 21, 2011). In its
22 response, AHL PAC does not address how much it accepted in corporate contributions.
23 Nevertheless, the discrepancy apparently exists because AHL PAC physically accepted only

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\$5,500 in corporate contributions, with the remaining amount reportedly pledged but never received. *See* Attachment 2 (Letter from AHL PAC to Arkansas Secretary of State). In its letter, AHL PAC asserted that it refunded all corporate contributions received at the fundraiser and cancelled any corporate sponsorships still being processed. *Id.*²

III. LEGAL ANALYSIS

² *See also* Sarah D. Wire, *FEC rules spur return of \$5,500 by GOP PAC*, ARKANSAS DEMOCRAT-GAZETTE (October 13, 2011) (AHL PAC “asked companies who had pledged money at the fundraiser not to write the committee a check.”).

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B. MUR 6489

After the Committee filed a *sua sponte* submission, it re-submitted the *sua sponte* filing as a complaint against AHL PAC. The complaint alleges that the use of Representative Womack's name in the fundraiser invitations was "unapproved," suggesting that AHL PAC may have violated 2 U.S.C. § 441h(b). Section 441h(b) prohibits all persons from fraudulently misrepresenting themselves as speaking, writing, or otherwise acting for or on behalf of any candidate or candidate's agent for the purpose of soliciting contributions. 2 U.S.C. § 441h(b)(1). The limited legislative history of Section 441h(b) indicates that Congress intended the prohibition on fraudulent solicitation to apply to any entity that fraudulently raises donations or participates in a scheme intended to fraudulently raise donations by posing as a political committee or candidate. See 147 CONG. REC. S3122 (daily ed. Mar. 29, 2001) (Statement of Sen. Bill Nelson). Furthermore, past section 441h matters involved some type of obvious fraud

perpetrated by an unauthorized, unaffiliated organization. *See, e.g.*, MUR 6011 (Friends of Michael Jackson) (organization named "Friends of Michael Jackson" paid for robocalls urging African-Americans not to vote for Democratic nominee who had beaten Michael Jackson in Democratic primary, but group was unauthorized and not affiliated with Jackson).

Based on the available information, AHL PAC does not appear to have violated 2 U.S.C. § 441h(b) by fraudulently representing itself as speaking on behalf of Representative Womack. The identification of Representative Womack as a co-host appears to have been a mistake rather than a fraudulent scheme to raise donations; both AHL PAC and the Committee state that Representative Womack agreed to speak at the fundraiser, and AHL PAC asserts that it simply failed to identify him correctly in the invitations. Therefore, we recommend that the Commission find no reason to believe that the Arkansas House Leadership PAC violated 2 U.S.C. § 441h(b) and close the file in this matter.

IV. RECOMMENDATIONS


- 1.
2. Find no reason to believe that the Arkansas House Leadership PAC violated 2 U.S.C. § 441h(b) in MUR 6489;
3. Approve the attached Factual and Legal Analysis;
4. Approve the appropriate letters;

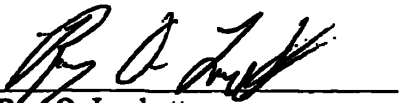
5. Close the file.


Anthony Herman
General Counsel

2-22-12
Date

BY:


Kathleen M. Guith
Acting Associate General Counsel
for Enforcement


Roy Q. Lockett
Acting Assistant General Counsel


Joshua Smith
Attorney

Attachments:

1. AHPAC Fundraiser Invitation
2. Letter from AHPAC to Arkansas Secretary of State
- 3.

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