



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 19 2012

Matthew Sanderson
Caplin & Drysdale
1 Thomas Circle
Suite 1100
Washington, D.C. 20005

RE: MUR 6514
Rickperry.org and Salvatore Purpura
in his official capacity as Treasurer

Dear Mr. Sanderson:

On December 22, 2011, the Federal Election Commission notified your client, Rickperry.org and Salvatore Purpura in his official capacity as Treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint and information supplied by counsel, the Commission, on November 8, 2012, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed.

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. 70426 (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).

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548.

Sincerely,

Roy Q. Lockett
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: RickPerry.org, Inc. and MUR: 6514
Salvatore Purpura in his official capacity
as Treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Campaign Legal Center and Democracy 21. See 2 U.S.C. § 437g(a)(1). The complaint alleges that Make Us Great Again, Inc. and Paul Kilgore in his official capacity as Treasurer ("MUGA"), an independent expenditure-only political committee, gave video footage to RickPerry.org and Salvatore Purpura in his official capacity as Treasurer (the "Committee"), that the Committee used in a television commercial. The Committee is the principal campaign committee of former presidential candidate Rick Perry. Citing Advisory Op. 2010-11 (Commonsense Ten), the complaint asserts that such a contribution violates the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations because independent expenditure-only committees are prohibited from making contributions to candidates. The complaint also alleges that the contribution is excessive because the video footage likely cost more than \$2,500.¹

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

MUGA registered as an independent expenditure-only committee with the Commission on July 28, 2011. MUGA's purpose was to support and promote Governor Rick Perry's

¹ The complaint does not allege that there was unlawful coordination between MUGA and the Committee, and based on the available facts, there is no record evidence to suggest that there was any coordination relating to the video footage at issue. See 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.21.

1 candidacy for President. MUGA paid camera crews to shoot footage of Governor Perry at public
2 events, which was used in certain MUGA ads, including the 31-second ad entitled
3 “Conservative” at issue. Jamestown Associates, Inc., a political consulting firm, obtained and
4 created the footage for the MUGA ad at issue, which appears to have been distributed in early
5 November 2011. *See* Ben Smith, *MUGA’s Great-Looking Ad*, POLITICO, Nov. 3, 2011.

6 The Committee incorporated the MUGA footage from “Conservative” in its two-minute,
7 45-second-long ad entitled “Securing the American Dream (Marcus’ [sic] Story).” The
8 Committee’s ad reportedly was distributed in late November 2011, around Thanksgiving. *See*
9 Ben Smith, *Perry Ad Features Super PAC Footage*, POLITICO, Nov. 26, 2011. The less than 10
10 seconds of footage at issue consists of a Governor Perry handshake, a Governor Perry headshot
11 partially framed by an American flag, and a second headshot. *See id.* The Committee does not
12 dispute that its ad contains video footage drawn from MUGA’s ad. *See* Committee Response.

13 The Committee asserts that its advertisement was created in-house by Committee
14 employees “without ANY consultation, coordination, or discussion with any other political
15 entity, specifically [MUGA].” Committee Resp. at 1 (uppercase in original). The Committee
16 claims that it obtained the video footage that is the subject of the complaint from YouTube, and
17 that the footage was uploaded to the site by someone unknown to the Committee. *Id.* at 2.

18 B. Legal Analysis

19 The complaint asserts that MUGA’s conveyance of the video footage to the Committee
20 constituted an excessive or prohibited contribution because MUGA provided the footage either
21 without charge or at less than the normal rate for such footage. Compl. ¶ 2; *see* 2 U.S.C.
22 § 431(8)(A)(i). In supporting its allegation, the complaint cites Advisory Op. 2010-11
23 (Commonsense Ten) for the proposition that an independent expenditure-only group is

1 prohibited from making contributions, “whether direct, in-kind, or via coordinated
2 communication, to federal candidates or committees.” Advisory Op. 2010-11 at 2-3.²

3 The complaint and attached sources conclude that MUGA gave video footage to the
4 Committee because the Committee’s ad contained some of the same footage that aired in
5 MUGA’s ad. The Committee denies that MUGA gave video footage to the Committee or
6 otherwise coordinated with MUGA.

7 Here, the footage at issue was a minimal part of the advertisement (less than ten seconds
8 of the Committee’s almost three-minute-long advertisement) and was used as an incidental part
9 of the advertisement. Given the facts presented in this matter, the Commission exercises its
10 prosecutorial discretion and dismisses the complaint that RickPerry.org, Inc. and Salvatore
11 Purpura in his official capacity as Treasurer violated 2 U.S.C. § 441a(f) by accepting an unlawful
12 contribution. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

² An independent expenditure-only committee can make contributions, subject to the statutory source and amount limits, to federal candidates if the committee maintains a separate bank account. *See FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account* (Oct. 5, 2011). The Commission does not know whether MUGA maintains such a separate contribution account.