

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

MUR 6522

Lisa Wilson-Foley and
Lisa Wilson-Foley for Congress
Committee

March 12, 2012

**RESPONSE OF LISA WILSON-FOLEY AND
LISA WILSON-FOLEY FOR CONGRESS COMMITTEE**

On January 20, 2012, the Federal Election Commission (FEC) received a Complaint from Sean Murphy (Complaint), which purports to allege that certain actions by Lisa Wilson-Foley (LWF) and the Lisa Wilson-Foley for Congress Committee (Committee) "are potentially violating federal election laws". The Complaint purports to allege: (1) that certain television advertising which ran in Connecticut for a company known as Apple Rehabilitation (Apple), which advertising included the likeness and voice of Lisa Wilson-Foley, who is a candidate for Federal Office in Connecticut 5th Congressional District, was a prohibited contribution from Apple to the Lisa Wilson-Foley for Congress Committee; (2) that Lisa Wilson-Foley used her Committee's Facebook page (rather than her personal Facebook page) to post a comment to AllStar Therapy's employees, clients, patients and families. AllStar Therapy, in the Complaint, is alleged to be owned by LWF; (3) that on the AllStar Therapy Facebook page, AllStar Therapy posted that "Owner Lisa Wilson-Foley will join Janet Peckinpaugh on the Mary Jones Show tomorrow at 10:30 am"; and (4) that Blue Fox Run Golf Course asked, on its Facebook page, for its "friends" to "like" the Committee's Facebook page.

The Lisa Wilson-Foley for Congress Committee was formed on April 5, 2011, and the FEC Form 1 was received by the Federal Election Commission (FEC) on April 7, 2011. (Exhibit A, FEC Form 1 Statement of Organization for the Lisa Wilson-Foley for Congress Committee).

1. ANY TELEVISION ADVERTISING PRODUCED AND AIRED BY APPLE REHABILITATION WHICH ADVERTISING IS SOLELY DESIGNED TO PROMOTE THE BUSINESS OF APPLE REHABILITATION DOES NOT VIOLATE ANY PROVISION OF THE FEDERAL ELECTION LAW.

The portion of the television ad referenced in the Complaint, which contains LWF voice and likeness, was produced on or about January 27, 2011 (Exhibit B, Affidavit of Janet Peckinpaugh, of Peckinpaugh Media), prior to LWF becoming a candidate in April, 2011. The advertising time was booked both prior to and after LWF becoming a candidate for Federal office. (Exhibit C, Affidavit of Kevin Bauer). The advertisement in question is an advertisement for Apple Rehabilitation's facilities, which are located throughout the state of Connecticut.

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The gist of the Complaint, in regards to the First issue, is that Apple, by virtue of paying to produce the advertisement and paying for the advertising time on certain television channels which ran on certain cable television systems in Connecticut, was an improper contribution to the Committee from a business entity. The Complaint relies upon 11 C.F.R. §§114.1(a) & 114.2.

Section 114.1(a) states:

For purposes of part 114 and section 12(h) of the Public Utility Holding Company Act (15 U.S.C. 791(h))

- (1) The terms contribution and expenditure shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, if such loan is made in accordance with 11 CFR 100.82(a) through (d)) to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to in 11 CFR 114.2 (a) or (b) as applicable.

Section 114.2 sets for the prohibition on contributions from corporations and labor unions. Subsection (2) of §114.2 sets forth the specific types of expenditures that a corporation or labor union is prohibited from making. Subdivision (ii) states that a corporation or labor union shall not make an expenditure, "outside the restricted class that expressly advocates the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party". (Emphasis added).

First, and most importantly, there is nothing in the advertisement which expressly, or even implicitly, advocates for the election or defeat of any candidate for any office or of any political party. This fact, in and of itself, defeats the first allegation of the Complaint, and on this fact alone, the Complaint should be dismissed.

There are, however, other reasons that would require that the first issue raised in the Complaint be dismissed.

Subsection (3) of §114.2 states that "corporations and labor organizations are prohibited from making payments for an electioneering communication to those outside the restricted class unless permissible under 11 CFR 114.10 or 114.15." (emphasis added).

11 C.F.R. §100.29(a) defines "electioneering communication" to mean, any broadcast, cable or satellite communication that

(1) Refers to a clearly identified candidate for Federal office; (2) Is publicly distributed within 60 days before a general election for the office sought by the candidate; or within 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate, and the candidate referenced is seeking the nomination of that political party; and (3) Is targeted to the relevant electorate, in the case of a candidate for Senate or the House of Representatives.

In the instant matter, the television advertisement which is the subject of this complaint, was produced in January, 2011, some three months prior to Lisa Wilson-Foley announcing (and submitting the appropriate Statement of Organization with the FEC) that she was a candidate for the Republican nomination for the U.S. House of Representatives in the 5th Congressional District of Connecticut. The advertisement aired at various times, on various channels and on various cable franchise systems throughout the state of Connecticut, including on cable franchise systems that have a customer base both within and outside of the 5th Congressional District. The advertisement included video footage and audio tracks of Lisa Wilson-Foley, as well as other individuals, and her name appeared on the screen.

It is undisputed that the advertisement contains no reference to any election, any party, or any office. Nor does the advertisement contain any reference to the election, defeat or support of any candidate or political party. The advertisement is simply an advertisement advertising the services of a health care organization with multiple locations in the state of Connecticut.

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Although the advertisement ran on cable systems which have subscribers in the 5th Congressional District (as well as outside the 5th Congressional District), with the limited number of cable systems and even more limited channels that it ran on, it is clear that the ad was not targeted to the relevant electorate in the 5th Congressional District.

Even if the Commission were to determine that the ad was, in fact, targeted to the relevant electorate in the 5th Congressional District, the ad did not run within thirty (30) days of the Republican Nominating Convention, which, is scheduled for May 18, 2012. Nor did it run within 30 days of the primary, scheduled in Connecticut for August 14, 2012, or within 60 days of the general election to be held on November 6, 2012. As such, the advertisement, which is the subject of this Complaint, does not meet the definition of an electioneering communication, as it was not publicly distributed to the relevant electorate within the time period prohibited by 11 C.F.R. §100.29(a)(2). Nor does the advertisement expressly advocate the election or defeat of a clearly identified candidate or the candidates of a political party. 11 C.F.R. §114.2(b)(2)(ii). See also Advisory Opinion 2004-33.

Since this advertisement does not meet the definition of an electioneering communication, it cannot be considered as such, and again, the Complaint fails to articulate a valid claim of a violation of the Federal Election Laws.

In addition, this advertisement cannot be construed as a "Coordinated Communication". Pursuant to 11 C.F.R. § 109.21(a) that a coordinated communication is:

A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication:

- (1) Is paid for, in whole or in part, by a person other than that candidate, authorized committee, or political party committee;
- (2) Satisfies at least one of the content standards in paragraph (c) of this section; and
- (3) Satisfies at least one of the conduct standards in paragraph (d) of this section.

11 C.F.R. § 109.21(c), which is comprised of 5 subparagraphs, sets forth the content standards to be applied to the determination of whether a communication is coordinated with a candidate, committee, political committee or agent.

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- (1) If the communication is an "electioneering communication", as set forth in 11 C.F.R. 100.29, it would meet the content standard.

As shown above, the advertisement, which is the subject of the complaint, does not meet the requirements of an electioneering communication as set forth in 11 C.F.R. §100.29(a). Therefore the provisions of subparagraph (1) are not met.

- (2) A communication that distributes, disseminates or redistributes campaign materials prepared by the candidate or the committee.

This advertisement was, as stated in the Affidavit of Janet Peckinpugh, (Exhibit B) prepared and paid for by Apple Rehabilitation. Nothing in the communication was prepared by the LFW or the Committee. The provisions of subparagraph (2) are not met.

- (3) A communication that expressly advocates the election or defeat of a clearly identified candidate for federal office.

This advertisement discusses a private business and never mentions the election or advocates that any candidate should be elected or defeated in any election. Nowhere in the advertisement does LWF state that she is a candidate for any office, nor does the advertisement identify her as a candidate. Nowhere in the advertisement is any other candidate mentioned or is there any reference to the election or defeat of any candidate for federal office. The provisions of subparagraph (3) are not met.

- (4) (i) A communication that refers to a clearly identified House or Senate candidate and is distributed or disseminated in the candidate's jurisdiction 90 days or less prior to the candidate's nominating convention (May 18, 2012) primary election (August 14, 2012) or general election (November 6, 2012).

There is no mention of any candidate for the House or Senate nor was the advertisement distributed or disseminated in the 5th Congressional District within 90 days of any election or nominating convention.¹ (See Exhibit C of Kevin Bauer, setting forth the dates the advertisements were aired). The requirements of subdivision (i) are not met.

(ii) Only applies to Presidential and Vice-Presidential candidates, and as such is not applicable to this matter.

(iii) The communication refers to a political party, not to a candidate, and is publicly disseminated in jurisdiction where one or more candidates of that political party will be on the ballot.

As stated and shown previously, the advertisement in question does not reference any political party, and therefore, does not meet the requirements of subdivision (iii) of this subparagraph.

(iv) Requires that the communication reference both a political party and a candidate for office.

Although the advertisements in question were paid for by Apple Healthcare, Inc. the advertisements do not meet the requirements of Paragraph (c) of 11 C.F.R. § 109.21, as it does not reference a political party or any candidate for political office, as such, it is not a coordinated communication.

(5) A public communication which is the functional equivalent of express advocacy, which is defined to mean that the communication "is susceptible of no other reasonable interpretation other than an appeal to vote for or against a clearly identified federal candidate".

The advertisement is for the health care services of health care provider, with no mention or inference of any political, election, candidacy, or advocacy for a party and/or candidate. The only reasonable interpretation that can be made is that the advertisement is discussing the quality of care provided by Apple Rehabilitation facilities and staff. Subparagraph 5 is not applicable.

¹ The 90th day prior to the May 18, 2012 Connecticut Republican State Convention where the Republican party will nominate a candidate for the 5th Congressional District February 17, 2012.

Since the advertisement in question does not meet the content standards set forth in 11 C.F.R. 100.29(c), the advertisement cannot be a coordinated communication between Lisa Wilson-Foley, as a candidate for Federal office, Lisa Wilson-Foley for Congress Committee and Apple.

Finally, as this advertisement is clearly an advertisement designed to advertise and market an ongoing business venture, of which LWF is associated, the provisions of 11 C.F.R. 100.29(i) are controlling.

11 C.F.R. 100.29(i) provides a "safe harbor for commercial transactions". This provision states that a communication in which a federal candidate is clearly identified only in their capacity as the owner or operator of a business venture that existed prior to the owner or operator's candidacy is not a coordinated communication with respect to the candidate so long as:

- (1) The medium, timing, content, and geographic distribution of the public communication are consistent with public communications made prior to the candidacy; and
- (2) The public communication does not promote, support, attack, or oppose that candidate or another candidate who seeks the same office as that candidate.

Again, as has been stated and shown numerous times above, the advertisement in question was produced prior to LWF becoming a candidate for federal office. The advertisement was publicly aired prior to LWF becoming a candidate for Federal office and was aired in various geographic areas both within and outside of the 5th Congressional District. In addition, the advertisement in question is similar with other broadcast advertising that was produced and aired by Apple prior to this advertisement being produced and aired. Further, other advertisements produced by Apple aired in similar manners and in the same or similar geographic areas of Connecticut.

Finally, the advertisement does not, in any way, promote LWF's candidacy or her Committee. It does not advocate, oppose, attack or support any other candidate who is also seeking Federal office, nor does it advocate for or against any political party.

Therefore, because the advertisement does not meet the content requirements as set forth in 11 C.F.R. 100.29(c) and because the advertisement is purely a commercial venture, promoting a private, commercial business that LWF is associated with, as allowed in 11 C.F.R. 100.29(i), the advertisement is not a coordinate communication.

As has been shown, the advertisement is not an electioneering communication by Apple, nor is it a coordinated communication between LWF and/or the Committee and Apple. Further, the advertisement meets the requirement of the safe harbor provision set forth in 11 C.F.R. 100.29(i), in that it is purely a commercial transaction involving a business entity of which LWF is associated with.

Based on the foregoing, that part of the Complaint which purports to allege that Apple made a contribution to the Lisa Wilson-Foley for Congress Committee or to Lisa Wilson-Foley as a candidate for Federal office, or that LWF and/or the Committee accepted a contribution from Apple is completely unfounded and should be dismissed.

2. ANY ALLEGATION THAT THE USE OF FACEBOOK BY ANY ENTITY, INCLUDING LISA WILSON-FOLEY, IS A VIOLATION OF THE FEDERAL ELECTION LAWS IS COMPLETELY MISPLACED.

The second matter in the Complaint is an allegation that " Allstar Therapy, a company owned by Lisa Wilson-Foley had posted on its Facebook account:

1. Lisa Wilson-Foley (using her candidate Facebook account, as opposed to her personal Lisa Foley) posted "Wishing all the Allstar employees, clients, patients and families a safe and wonderful New Year!"

First, and foremost, 11 C.F.R. §100.26 specifically exempts communications over the internet, unless the communication requires the payment of a fee on another person's website.

In this case, all messages posted by any entity on Facebook are done so without the payment of a fee by the posting entity. As such, any allegations raised in the Complaint, that purport to allege an improper contribution because of a posting on Facebook is considered and exempt communication and therefore is permissible.

It must be further noted that the Complaint misstates the facts. The posting on the Allstar Therapy Facebook account was posted by Lisa Wilson-Foley using her personal Facebook account.

A review of both LWF and the Committee's Facebook pages, show that on December 29, 2011 LWF, using her personal Facebook account, posted on the AllStar Therapy page, the above stated post. There is no posting from the Committee's Facebook page.

The allegation is factually untrue, and as such, must be dismissed.

The Complaint also purports to allege that AllStar Therapy and the Committee engaged in improper activity when AllStar Therapy posted on its Facebook account that its owner, Lisa Wilson-Foley would be appearing on a radio show in Connecticut. The posting does not identify LWF as a candidate for office, in fact it identifies her as the owner of AllStar Therapy. The post does not have political connotation and, most importantly, it does not advocate the support or opposition to any candidate or political party. Further, as set forth in Exhibit B (Affidavit of Janet Peckinpugh), there was no political discussion by LWF during the radio broadcast.

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The post, which had no cost to produce, and is free to post, is merely a statement from a business entity that its owner would be appearing on a radio show the following day, a radio show that has all types of guests, including business owners and community leaders.

There is nothing in the post to in any way suggest that there was a coordinated activity between Allstar and the Committee for the purpose of disseminating a political message or to show support or opposition to a candidate or political party.

The final allegation seems to imply that Blue Fox Run Golf Course (Blue Fox), by posting on its Facebook page to "like" Lisa Wilson-Foley for Congress, provide a contribution or made an expenditure on behalf of LWF and/or the Committee.

Again 11 C.F.R. §100.26 is controlling.

Any post made by Blue Fox Run Golf Course on its free Facebook page, is not considered a public communication as there was no cost incurred by Blue Fox to post the "like" comment on its own Facebook page.

Finally, even though LWF is associated with Blue Fox, posting "Like" Lisa Wilson-Foley for Congress on the Blue Fox Facebook page is not a coordinated communication as the requirement set forth in 11 C.F.R. §109.21(a) requires, among other things, that the communication be "paid for" by a party other than the candidate, committee or political party. A communication which requires no payment, which is free, by definition, cannot be a coordinated communication.

Therefore, the posting by Blue Fox Run Golf Course on its Facebook page, asking its Facebook "friends" to "like" Lisa Wilson-Foley for Congress, is not a coordinated communication, nor is it an electioneering communication nor is it a public communication and as such is not a contribution or expenditure by Blue Fox Run Golf Course and is not prohibited.

The Complaint fails to allege any act by any entity, including Lisa Wilson-Foley as a Candidate for Federal Office or the Lisa Wilson-Foley for Congress Committee, which violates any provision of the Federal Election laws. Therefore, the all of the allegations in the Complaint of Sean Murphy should be **DISMISSED**.

Respectfully submitted

The Respondents

Benjamin S. Proto, Jr.

Counsel for

Lisa Wilson-Foley

Lisa Wilson-Foley for Congress Committee

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EXHIBIT A

FEC
FORM 1STATEMENT OF
ORGANIZATION

(See instructions)

RECEIVED

2011 APR -7 AM 10:08
FEC MAIL CENTER

Office use only

1. NAME OF
COMMITTEE (in full)☐(Check if name
is changed)Example: If typing, type
over the lines

12FE4M5

Lisa Wilson-Foley for Congress

ADDRESS (number and street)

228 S. Washington Street

(Check if address
is changed)

Suite 115

Alexandria

VA

22314

CITY ▲

STATE ▲

ZIP CODE ▲

COMMITTEE'S E-MAIL ADDRESS (Please provide only one e-mail address)

(Check if address
is changed)

mary.madara@gmail.com

COMMITTEE'S WEB PAGE ADDRESS (URL)

(Check if address
is changed)

www.wilsonfoley2012.com

2. DATE

04

08

2011

3. FEC IDENTIFICATION NUMBER

C

4. IS THIS STATEMENT

☒

NEW (N)

OR

☐

AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete

Type or Print Name of Treasurer

Mary Madara

Signature of Treasurer

Mary Madara

Date

04

05

2011

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS

Office
Use
OnlyFor further information contact:
Federal Election Commission
Toll Free 800-424-6630
Local 202-694-1100FEC FORM 1
(Revised 02/2009)13044340389
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FEC Form 1 (Revised 02/2000)

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5. TYPE OF COMMITTEE (Check One)

Candidate Committee:

- (a) ☒ This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) ☐ This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of
Candidate

Lisa A. Wilson-Foley

Candidate
Party Affiliation

REP

Office
Sought:☒

House

☐

Senate

☐

President

State

CT

District

05

- (c) ☐ This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of
Candidate

Party Committee:

- (d) ☐ This committee is a (National, State (or subordinate) committee of the (Democratic, Republican, etc.) Party.

Political Action Committee (PAC):

- (e) ☐ This committee is a separate segregated fund. (Identify connected organization on line 6.) Its connected organization is a:
- ☐ Corporation ☐ Corporation w/o Capital Stock ☐ Labor Organization
- ☐ Membership Organization ☐ Trade Association ☐ Cooperative
- ☐ In addition, this committee is a Lobbyist/Registrant PAC.
- (f) ☐ This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee. (i.e., nonconnected committee).
- ☐ In addition, this committee is a Lobbyist/Registrant PAC.
- ☐ In addition, this committee is a Leadership PAC. (Identify sponsor on line 8.)

Joint Fundraising Representative:

- (g) ☐ This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, at least one of which is an authorized committee of a federal candidate.
- (h) ☐ This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, none of which is an authorized committee of a federal candidate.

Committees Participating in Joint Fundraiser

- | | | | |
|----|----------------------|---------------|----------------------|
| 1. | <input type="text"/> | FEC ID number | <input type="text"/> |
| 2. | <input type="text"/> | FEC ID number | <input type="text"/> |
| 3. | <input type="text"/> | FEC ID number | <input type="text"/> |
| 4. | <input type="text"/> | FEC ID number | <input type="text"/> |

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FEO Form 1 (Revised 02/2009)

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Write or Type Committee Name

Lisa Wilson-Foley for Congress

6. Name of Any Connected Organization, Affiliated Committee, Joint Fundraising Representative, or Leadership PAC Sponsor

NONE

Mailing Address

CITY A

STATE A

ZIP CODE A

Relationship:

☐

Connected Organization

☐

Affiliated Committee

☐

Joint Fundraising Representative

☐

Leadership PAC Sponsor

7. Custodian of Records: Identify by name, address, (phone number - optional), and position of the person in possession of Committee books and records.

Full Name

Mailing Address

Title or Position

CITY A

STATE A

ZIP CODE A

Telephone number

8. Treasurer: List the name and address (phone number - optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name
of Treasurer

Mary Madara

Mailing Address

228 S. Washington Street

Suite 115

Alexandria

VA

22314

Title or Position

CITY A

STATE A

ZIP CODE A

Treasurer

Telephone number

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Full Name of
Designated
Agent

Mailing Address

Title or Position ▼

CITY ▲

STATE ▲

ZIP CODE ▲

Telephone number

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

TD North Bank

Mailing Address

255 West Main Street

Avon

CT

06001

CITY ▲

STATE ▲

ZIP CODE ▲

Name of Bank, Depository, etc.

Mailing Address

CITY ▲

STATE ▲

ZIP CODE ▲

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