



FEDERAL ELECTION COMMISSION
Washington, DC 20463

William J. McGinley, Esq.
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037

JUL 03 2013

RE: MUR 6522
Blue Fox Enterprises, Inc.
All Star Therapy, LLC
Apple Health Care, Inc.

Dear Mr. McGinley:

On January 26, 2012, the Federal Election Commission notified your clients, Blue Fox Enterprises, Inc., and All Star Therapy, LLC, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. On April 23, 2012, the Commission notified your client, Apple Health Care, Inc., of the complaint. On June 25, 2013, 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 Blue Fox Enterprises, Inc., or Apple Health Care, Inc., violated 2 U.S.C. § 441b(a), and no reason to believe that All Star Therapy, LLC, violated 2 U.S.C. §§ 441b(a) or 441a(a). 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 Mark Ahen, 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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BEFORE THE FEDERAL ELECTION COMMISSION

RESPONDENTS: Lisa Wilson-Foley for Congress **MUR 6522**
and William M. Kolo in his official
capacity as treasurer¹
Lisa Wilson-Foley
All Star Therapy, LLC
Blue Fox Enterprises, Inc.
Apple Health Care, Inc.

FACTUAL AND LEGAL ANALYSIS

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Sean Murphy alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Respondents.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The Complaint alleges that Lisa Wilson-Foley, a candidate for the U.S. House of Representatives in the Connecticut Fifth Congressional District, violated the Federal Election Campaign Act of 1971, as amended, (the "Act") by receiving in-kind contributions from her businesses.² According to the Complaint, Wilson-Foley's appearance in television advertisements for Apple Health Care, Inc., ("Apple Health"), which were also posted on YouTube, constitutes a corporate contribution from Apple Health to Wilson-Foley and her committee, Lisa Wilson-Foley for Congress (the "Committee"). The Complaint also alleges that postings featuring Wilson-Foley, the Committee, or both, on the Facebook pages of All Star Therapy, LLC, ("All Star") and

¹ On April 12, 2012, Lisa Wilson-Foley for Congress amended its Statement of Organization to name William M. Kolo as treasurer.

² Wilson-Foley lost the August 14, 2012, primary election.

1 Blue Fox Enterprises, Inc., (“Blue Fox”), and on All Star’s website, are unlawful
2 corporate contributions from those companies to Wilson-Foley and the Committee. After
3 reviewing the available information, the Commission finds no reason to believe that
4 respondents violated the Act and closes the file.

5 **B. Facts**

6 The Complaint alleges that three of Wilson-Foley’s businesses — Apple Health,
7 All Star, and Blue Fox — made impermissible in-kind corporate contributions to Wilson-
8 Foley and the Committee.³

9 The Complaint points to ads aired on television by Apple Health, and posted on
10 YouTube, in which Wilson-Foley makes the following statements:

11 I’m Lisa Wilson-Foley. Our family has been providing quality health
12 care for over 20 years. At Apple Rehab you’ll have a private room and
13 gourmet meals. As a physical therapist I’ll make sure our staff is top
14 notch to get you healthy in a hurry.

15
16 Apple your way back.

17
18 See Committee Resp. (Oct. 25, 2012); “Apple Rehab Golf,”

19 <http://www.youtube.com/watch?v=bfUx9kWzaXs&feature=youtu.be> (uploaded April 20,
20 2011); see also Aff. of Janet Peckinpugh, Apple Health Media Consultant, Wilson-Foley
21 & Committee Resp., Ex. B ¶¶ 6-7, 9-12 (March 12, 2012).⁴

22 Wilson-Foley and the Committee acknowledge in their response that Apple
23 Health aired television advertising featuring Wilson-Foley. Wilson-Foley & Committee

³ Apple Health is a Connecticut corporation whose president is Brian Foley, the husband of Wilson-Foley. All Star is a Connecticut LLC whose sole member is LWF Holdings, Inc., whose sole officer is Wilson-Foley. Blue Fox is a Connecticut corporation whose president is Wilson-Foley. See <http://www.concord-sots.ct.gov/CONCORD/online?sn=PublicInquiry&eid=9740>.

⁴ The Complaint cites two Apple Health ads on YouTube that allegedly aired on television, Compl. at 1-2, but one of the links does not work. Counsel for Wilson-Foley and the Committee told the Commission in a telephone call that Wilson-Foley makes the same statements in both ads.

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1 Resp. at 1. According to respondents, however, the ads did not air after January 27,
2 2012, when the electioneering communication window was open. *See id.* at 4; Aff. of
3 Kevin Bauer, Apple Health Media Consultant, Wilson-Foley & Committee Resp., Ex. C
4 ¶ 8.

5 The Complaint also alleges that certain postings featuring Wilson-Foley, the
6 Committee, or both, on the Facebook pages of All Star and Blue Fox, and on All Star's
7 website, are corporate contributions from those companies to the Committee.

- 8 • A Wilson-Foley posting on her candidate Facebook account wishing All Star
9 "employees, clients, patients and families a safe and wonderful New Year!"⁵
10
- 11 • Posting that All Star owner Wilson-Foley will appear on a radio talk show that
12 "frequently has political candidates on as guests."
13
- 14 • All Star website identifying Wilson-Foley as its owner and referring to her
15 candidacy for Connecticut Lieutenant Governor in 2010.
16
- 17 • Blue Fox posting, "If you get the chance please follow Lisa Wilson-Foley on her
18 Facebook page wilsonfoley2012. She needs more friends."
19
- 20 • Blue Fox posting with the Committee and a picture of the candidate under
21 "Likes."
22
- 23 • Blue Fox posting titled "Lisa Wilson-Foley for Congress," with a picture of
24 Wilson-Foley and stating "Lisa Wilson-Foley is a proven job creator who will
25 fight for the families and small businesses of Connecticut's Fifth District!"
26
- 27 • Blue Fox website identifying Wilson-Foley as the owner and stating that "[i]n
28 2011 she announced her intentions to run for U.S. Congress from Connecticut's
29 5th Congressional District."
30

31 Compl. at 1-2, Exs. A-E.⁶

⁵ This posting appears to be from Wilson-Foley's personal Facebook account, not her candidate account. *See* Compl. at 1, Ex. A; Wilson-Foley & Committee Resp. at 8.

⁶ At the same time, the Complaint states that the Committee website does not mention any of Wilson-Foley's companies by name. Compl. at 1-2, Ex. F.

1 Respondents deny the allegations, asserting that all of these communications fail
2 the Commission's test for coordinated communications and therefore do not constitute
3 contributions to Wilson-Foley and the Committee. Wilson-Foley & Committee Resp.
4 at 6-9; All Star & Blue Fox Resp. at 2-3 (Mar. 15, 2012); Apple Health Resp. at 2-4
5 (June 4, 2012).

6 **C. Legal Analysis**

7 Under the Act, no person may make a contribution, including an in-kind
8 contribution, to a candidate and the candidate's authorized political committee with
9 respect to any election for Federal office that, in the 2012 election cycle, in the aggregate
10 exceeded \$2,500. 2 U.S.C. § 441a(a)(1)(A); *see* 2 U.S.C. § 431(8)(A); 11 C.F.R.
11 § 100.52(d)(1) (defining "contribution" to include in-kind contributions). No candidate
12 or political committee may knowingly accept a contribution in violation of section 441a.
13 2 U.S.C. § 441a(f). The Act and Commission regulations require political committees to
14 report all contributions received, whether monetary or in-kind, during a given reporting
15 period. *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. Corporations are prohibited from
16 making any contributions in connection with a federal election, and candidates and
17 political committees are prohibited from knowingly accepting corporate contributions.
18 2 U.S.C. § 441b(a). The Act defines in-kind contributions as, *inter alia*, expenditures by
19 any person "in cooperation, consultation, or concert, with, or at the request or suggestion
20 of, a candidate, his authorized political committees, or their agents" 2 U.S.C.
21 § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(a).

22 Under Commission regulations, a communication is coordinated with a candidate,
23 an authorized committee, a political party committee, or an agent thereof if it meets a

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1 three-part test: (1) it is paid for, in whole or in part, by a third party (a person other than
2 the candidate, authorized committee or political party committee); (2) it satisfies at least
3 one of the five “content” standards described in 11 C.F.R. § 109.21(c); and (3) satisfies at
4 least one of the six “conduct” standards described in 11 C.F.R. § 109.21(d). 11 C.F.R.
5 § 109.21(a).

6 The content prong is satisfied if the communication at issue meets at least one of
7 the following content standards: (1) a communication that is an electioneering
8 communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates,
9 distributes, or republishes, in whole or in part, campaign materials prepared by a
10 candidate or the candidate’s authorized committee; (3) a public communication that
11 expressly advocates the election or defeat of a clearly identified candidate for federal
12 office; (4) a public communication, in relevant part, that refers to a clearly identified
13 House or Senate candidate, and is publicly distributed or disseminated in the clearly
14 identified candidate’s jurisdiction 90 days or fewer before the candidate’s primary
15 election; or (5) a public communication that is the functional equivalent of express
16 advocacy. *Id.* § 109.21(c)(1)-(5). The term “public communication” encompasses
17 broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising
18 facility, mass mailing or telephone bank, or any other form of general public political
19 advertising, and excludes communications over the internet, except for communications
20 placed for a fee on another person’s web site. *Id.* § 100.26.

21 The Apple Health television ads that feature Wilson-Foley were paid for by Apple
22 Health and therefore satisfy the payment prong. *See id.* § 109.21(a)(1); Wilson-Foley
23 & Committee Resp. at 6. The ads, however, fail the content prong.

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1 The record reflects that the ads aired more than 90 days before the May 14, 2012,
2 convention election⁷ and thus constitute neither electioneering communications nor
3 public communications satisfying section 109.21(c)(4)(i). *See* 11 C.F.R. § 109.21(c)(1),
4 (c)(4). Nor do the ads, which focus on Apple Health's services, contain express
5 advocacy or its functional equivalent. *See id.* §§ 100.22, 109.21(c)(3), (c)(5). Finally,
6 the ads do not appear to republish campaign materials. *See id.* § 109.21(c)(2).

7 Thus, because the Apple Health television ads fail the content prong, they are not
8 coordinated communications. *See id.* § 109.21(a).

9 Based on the available information, it also appears that the other communications
10 — YouTube postings of Apple Health ads, All Star and Blue Fox Facebook postings, and
11 All Star's website featuring Wilson-Foley and the Committee — fail the content prong.
12 These communications are internet communications that do not appear to have been
13 placed for a fee on another's website; are not public communications; and are not
14 electioneering communications. Thus, the communications also do not satisfy any of the
15 content standards. *See* 11 C.F.R. §§ 100.26, 109.21(c)(1)-(c)(5).⁸

16 Accordingly, it appears that the communications of Apple Health, All Star, and
17 Blue Fox do not constitute coordinated communications. Based on the facts before the
18 Commission, these companies did not make, and Wilson-Foley and the Committee did

⁷ According to respondents, the ads did not air after January 27, 2012. *See* Aff. of Kevin Bauer, Apple Health Media Consultant, Wilson-Foley & Committee Resp., Ex. C ¶ 8. Each Congressional district in Connecticut holds a party nominating convention that the Commission has recognized as an election separate from the primary and general elections. *See* Advisory Op. 1976-58 (Peterson); Advisory Op. 2004-20 (Farrell).

⁸ The Wilson-Foley & Committee response also argues that posting a "Like" of the Committee on the Blue Fox Facebook page is not a coordinated communication because there is no payment and thus it fails the payment prong. Resp. at 9.

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1 not receive, or fail to disclose, corporate or excessive contributions.⁹ The Commission
2 therefore finds no reason to believe that Apple Health or Blue Fox violated 2 U.S.C.
3 § 441b(a), that All Star violated 2 U.S.C. §§ 441b(a) or 441a(a), that Wilson-Foley
4 violated 2 U.S.C. §§ 441b(a) or 441a(f), or that the Committee violated 2 U.S.C.
5 §§ 441b(a), 441a(f) or 434(b), and closes the file.

⁹ All Star, as a limited liability company, may be considered a partnership or a corporation for purposes of making contributions, depending on how it elects to be treated by the IRS. *See* 11 C.F.R. § 110.1(g). The Commission has no information as to how All Star elects to be treated by the IRS.

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