



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL -9 2012

Scott B. Mackenzie, Treasurer
Freedom's Defense Fund
2776 S. Arlington Mill Dr., #806
Arlington, VA 22206

RE: MUR 6555
Freedom's Defense Fund

Dear Mr. Mackenzie:

On June 29, 2012, the Federal Election Commission ("Commission") accepted the signed conciliation agreement submitted on behalf of Freedom's Defense Fund and you, in your official capacity as treasurer, in settlement of violations of 2 U.S.C. § 434(b)(6)(B)(iii) and (g), and 11 C.F.R. § 104.4(b) and (c), provisions of the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations. Accordingly, the file has been closed 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). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Ana J. Peña-Wallace
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Freedom's Defense Fund and
Scott B. Mackenzie, in his official capacity
as treasurer

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MUR 6555

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COMMISSION

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OFFICE OF GENERAL
COUNSEL

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Freedom's Defense Fund and Scott B. Mackenzie, in his official capacity as treasurer, ("the Committee" or "Respondents") violated 2 U.S.C. § 434(b)(6)(B)(iii) and (g), provisions of the Federal Election Campaign Act of 1971, as amended, ("the Act") and 11 C.F.R. § 104.4(b) and (c), provisions of the Commission's regulations.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Freedom's Defense Fund is a political committee within the meaning of



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2 U.S.C. § 431(4), and is not the authorized committee of any candidate.

2. Scott B. Mackenzie is the Committee's treasurer.

3. An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified Federal candidate and that is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his or her committee or agent. 2 U.S.C. § 431(17). An advertisement contains express advocacy if it uses phrases such as "vote for the President" or "defeat" accompanied by a picture of one or more candidates, or if it contains campaign slogans or individual words, "which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)." 11 C.F.R. § 100.22(a).

4. A political committee must disclose on a Schedule E the name of a person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate. 2 U.S.C. § 434(b)(6)(B)(iii); 11 C.F.R. §§ 104.3(b)(3)(vii) and 104.4(a).

5. A political committee is also required to maintain records that provide information with sufficient detail so that the reports may be verified. 11 C.F.R. § 104.14(b)(1).

6. A political committee that makes or contracts to make independent expenditures aggregating \$10,000 or more in connection with a given election at any time during a calendar year up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours. 2 U.S.C. § 434(g)(2)(A) and 11 C.F.R.



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§ 104.4(b)(2). These reports, known as 48-Hour Notices, must be filed by the end of the second day "following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 104.4(b)(2). The committee shall file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000. *Id.*; 2 U.S.C. § 434(g)(2)(B).

7. A political committee that makes or contracts to make independent expenditures aggregating \$1,000 or more with a given election after the 20th day, but more than 24 hours before the date of an election, shall file a report describing the expenditures within 24 hours. 2 U.S.C. § 434(g)(1); 11 C.F.R. § 104.4(c). These reports, known as 24-Hour Notices, must be filed within 24 hours "following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 104.4(c). The committee shall file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000. *Id.*; 2 U.S.C. § 434(g)(1)(B).

8. During the 2008 election cycle, the Committee disbursed \$62,499 in connection with a television advertisement entitled "What Murtha Says, Out of Touch" ("Murtha ad"), which was broadcast in Pennsylvania from September 22, 2008 through November 3, 2008. The advertisement regards the 2008 Congressional election in the 12th Congressional District of Pennsylvania and the 2008 Presidential election. The ad contains audio clips of then Presidential candidate Senator Barack Obama and Congressional candidate Rep. John Murtha making negative statements about people from Western Pennsylvania and urges viewers, "On election day, tell Jack Murtha and Barack Obama what we think of them." The ad ends with a verbal and



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a printed statement to "Vote Republican," and displays a photograph of candidates John McCain and Sarah Palin.

9. The Murtha ad clearly identifies McCain and Palin by name and is accompanied by a photograph and by the exhortation to "Vote Republican Tuesday November 4th." The ad "provides in effect a specific directive: vote for these pictured candidates. The ad also identifies and advocates the defeat of Rep. John Murtha and then-Presidential candidate Barack Obama. Because the ad contains express advocacy, the Committee was required to report disbursements associated with it as independent expenditures

10. A Commission audit of the Committee's records determined that the Committee made \$62,499 in disbursements for the Murtha ad. Of the \$62,499 in costs for the ad, the Committee only disclosed \$19,001 as independent expenditures. Specifically, the Committee disclosed \$19,001 in disbursements on a 24-hour notice filed with the Commission on October 30, 2008 and later on a Schedule E (Itemized Independent Expenditure Form) attached to its 2008 Post-General Election Report filed with the Commission on December 4, 2008.

11. On January 11, 2011, the Committee amended its FEC reports by disclosing additional independent expenditures in the amount of \$31,629 on the Schedule E forms included with its 2008 Amended Pre-General, Post-General, and Year-End Reports. Of the \$43,498 identified as independent expenditures requiring reporting in amendments, the Committee still failed to disclose \$11,869 in these amendments.

12. The Committee failed to file the appropriate 24- or 48-hour notices for any of the \$43,498 in independent expenditures. In addition, because the Committee is unable to provide dissemination dates for all of these independent expenditures and failed to maintain



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sufficiently detailed documentation in order to associate the ad with the specific invoices, the number of 24-hour or 48-hour notices that should have been filed is unknown.

V. Respondents violated 2 U.S.C. § 434(b)(6)(B)(iii) and (g) and 11 C.F.R. § 104.4(b) and (c), by failing to disclose all independent expenditures in reports filed with the Commission and failing to file appropriate 24-Hour or 48-Hour Notices of Independent Expenditures.

VI. Respondents will take the following actions:

1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Three Thousand Seven Hundred Dollars (\$3,700), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondents will cease and desist from violating § 434(b)(6)(B)(iii) and (g) and 11 C.F.R. § 104.4(b) and (c).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.



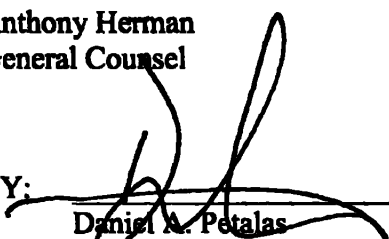
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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Anthony Herman
General Counsel

BY:

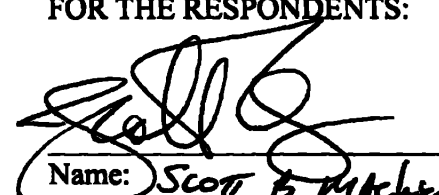

Daniel A. Petalas
Associate General Counsel
for Enforcement

Date

7/9/12

FOR THE RESPONDENTS:

Name:


Scott B. Mitchell
Position: MEASURE

Date

6/10/2012

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