



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Tim Edson
Campaign Manager
Allen West for Congress
735 S. Colorado Avenue, Suite #9
Stuart, FL 34994

MAR -7 2014

RE: MUR 6633
Republican Majority Campaign
PAC, *et al.*

Dear Mr. Edson:

On February 25, 2014, the Federal Election Commission reviewed the allegations in your complaint dated August 28, 2012, and found that on the basis of the information provided in your complaint, and information provided by Republican Majority Campaign PAC, there is no reason to believe that Republican Majority Campaign PAC, and Randy G. Goodwin, or Gary Kreep in their official capacities as officers violated 2 U.S.C. § 441h(b) and 11 C.F.R. § 110.16(b). In addition, the Commission dismissed with caution violations of 2 U.S.C. § 441d and 11 C.F.R. § 110.11. Accordingly, the Commission closed the 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 more fully explains the Commission's findings, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,

Daniel A. Petalas
Associate General Counsel for Enforcement

BY: William A. Powers
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Republican Majority Campaign PAC, Randy G. Goodwin **MUR 6633**
in his official capacity as Officer, and
Gary Kreep in his official capacity as Officer

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I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission") by Allen West for Congress ("West"), alleging violations of the Federal Election Campaign Act of 1971, as amended, (the "Act") by the Republican Majority Campaign PAC, Randy G. Goodwin in his official capacity as Officer, and Gary Kreep in his official capacity as Officer (collectively, the "Respondent" or "Republican Majority"). The Complainant alleges that Republican Majority disseminated an email solicitation that references West and directs readers, among other things, to visit a support website for West that in turn solicits donations. Yet West did not authorize that website, and little, if any, of the solicited donations were directed to West. West therefore asserts that the Respondent fraudulently misrepresented itself in solicitations and in other communications as acting on behalf of West, in violation of 2 U.S.C. § 441h(b) of the Act and 11 C.F.R. § 110.16(b).

The record leaves little doubt that the Respondent sought to use Representative West's likeness to raise funds independently to support his candidacy. Moreover, it appears that the Respondent spent very little of the money it raised to support West. Rather, the funds appear to have been spent primarily on additional fundraising and other operating expenditures. Nonetheless, the Commission cannot agree with Complainant that this conduct constitutes a fraud within the reach of the Act or Commission regulation. Whether it is prohibited by laws beyond the Act, criminal or otherwise, is not a matter within the Commission's jurisdiction. The

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1 Commission therefore finds no reason to believe that the Respondent violated 2 U.S.C. § 441h(b)
2 or 11 C.F.R. § 110.16(b).

3 In addition, Republican Majority failed to include the appropriate disclaimers in its email
4 solicitation and on its website. But because the partial disclaimers contained sufficient
5 information to identify Republican Majority as the source of the communications, the
6 Commission nonetheless exercises its prosecutorial discretion to dismiss Republican Majority's
7 violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11. *See Heckler v. Chaney*, 470 U.S. 821
8 (1985).

9 **II. FACTUAL AND LEGAL ANALYSIS**

10 **A. Parties**

11 **1. Allen West for Congress**

12 Allen West was the U.S. Representative from Florida's 22nd Congressional District from
13 2011 to 2013. In a closely contested election in 2012, Allen West unsuccessfully ran for U.S.
14 Representative in Florida's newly redistricted 18th Congressional District. Allen West for
15 Congress is Allen West's principal campaign committee. Gregory Wilder is Treasurer.

16 **2. Republican Majority Campaign PAC**

17 Republican Majority Campaign PAC registered with the Commission on December 17,
18 2007, as a nonconnected committee. Randy G. Goodwin is the National Chairman and
19 Treasurer, and Gary Kreep was its Executive Director, Chairman, or President, or all three, until
20 February 2012, when he became a candidate for a state judicial position and was required to
21 resign from all PACs. Resp. at 1 (Sept. 17, 2012).

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1 **B. Background**

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3 West alleges that the Respondent's solicitations and other materials violated section 441h
4 of the Act for four reasons. First, West alleges that a "reasonable person could easily conclude
5 that [the solicitation's language] indicates that the solicitation is either from Congressman West's
6 campaign or that the solicitor is working with the West campaign."¹ Second, West claims that
7 the vast majority of Republican Majority's disbursements and expenditures has been for
8 operating expenses and additional fundraising communications.² Third, West points out that
9 Respondent has primarily received unitemized contributions, which has prevented West from
10 contacting the donors pursuant to Advisory Opinion 1984-02 (Gramm) to ensure that they
11 wished to contribute to the Respondent instead of to West directly.³ Fourth, West compares the
12 actions of the Respondent to those of the respondent in MUR 5385 (Groundswell Voters PAC), a
13 matter where the Commission found reason to believe that the respondent violated
14 2 U.S.C. § 441h(b) by mailing a fundraising letter requesting contributions to fund a grassroots
15 effort to benefit Richard Gephardt's presidential campaign.⁴

16 1. West Alleges that the Respondent Violated 2 U.S.C. § 441h(b) by
17 Referencing West in a Solicitation
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19 West alleges that a "reasonable person could easily conclude that [the solicitation's
20 language] indicates that the solicitation is either from Congressman West's campaign or that the
21 solicitor is working with the West campaign" and that therefore the Respondent violated section
22 441h(b) of the Act and 11 C.F.R. § 110.16(b). Compl. at 5. Because Respondent's solicitation

1 ¹ Compl. at 5 (Aug. 23, 2012).

2 ² *Id.* at 2-3.

3 ³ Compl. at 2.

4 ⁴ Compl. at 5.

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1 uses West's name without permission, West asserts that Respondent is "simply using
2 Congressman West's name to raise funds" in violation of the Act. *Id.* at 2, 4. The Complainant
3 also alleges that Respondent's communications "are intentionally designed to blur the line
4 between [Republican Majority's] and Allen West's own campaign committee, Allen West for
5 Congress." *Id.* at 4.

6 West received a copy of an email solicitation distributed by Republican Majority, on or
7 about August 20, 2012. Compl. at 1, Ex. A. The first page of the solicitation includes a large
8 banner with Republican Majority's logo and address. *Id.* at Ex. A. Near the top of the
9 solicitation is a large photo of Goodwin with a caption identifying him as Republican Majority's
10 Treasurer. The solicitation requests that the reader donate to support West's campaign for
11 reelection and includes links to Republican Majority's donation website. *Id.* at 1, 2, Exs. A, B.
12 The solicitation is signed by Goodwin and includes Republican Majority's street address. The
13 solicitation contains neither a web address for the entity, nor its phone number, nor a disclaimer.
14 *Id.* at Ex. A.

15 Republican Majority's referenced donation website, however, contains the following
16 disclaimer at the bottom of the page:

17 The Republican Majority Campaign is an Independent Expenditure Political
18 Action Committee. Accordingly, it makes on its own all decisions of how, when
19 and where funds are to be expended. Thus, RMC PAC's Campaign Efforts are
20 not endorsed by any Candidate or Candidate's Committee.

21 This is sponsored and paid for by Republican Majority Campaign PAC[.]
22 Compl., Ex. B. The disclaimer further includes Republican Majority's address. *Id.* This
23 disclaimer is set apart from the rest of the text, but its text is set in a far smaller font size than the
24 website's other content. *Id.*

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1 Respondent denies that its solicitation and website violated the Act. In its Response,
2 Republican Majority claims that “[i]t is highly unlikely that [its] donors would confuse our pro-
3 Allen West project with activities of the official Allen West campaign.” Resp. at 3. Rather,
4 Respondent asserts that the solicitation attached as Exhibit A to the Complaint was distributed
5 only to Republican Majority’s list of contributors (individuals who have contributed to
6 Republican Majority in the past and are therefore familiar with Republican Majority and
7 Goodwin), features Republican Majority’s letterhead prominently at the top of the email, and
8 provides all appropriate disclaimers to the potential donor. *Id.* at 2-3. Respondent states that,
9 contrary to the “implicit assumption” in the Complaint that Republican Majority’s solicitations
10 containing West’s name must be authorized by West, it “would be illegal to coordinate
11 [Republican Majority’s] independent expenditures with the Allen West campaign.” *Id.* at 3.

12 2. Respondent Used the Majority of Funds for Operating Expenditures

13 The Complaint further alleges that Respondent violated 2 U.S.C. § 441h(b) because its
14 “solicitations prey on civic-minded citizens who are led to believe that their contribution may
15 actually be used in support of Allen West, and who presumably have no idea that [Republican
16 Majority] simply engages in an endless cycle of fundraising that ultimately pays for little more”
17 than the officers’ own fees and benefits, and further fundraising efforts. Compl. at 4. West
18 alleges that, according to Republican Majority’s 2012 July Quarterly Report, “[v]irtually all of
19 the funds that [Republican Majority] raises are spent on ‘operating expenditures[,]’” which
20 include disbursements for fundraising (whether via email, direct mail, or telemarketing),
21 insurance, and disbursements to Goodwin and Kreep for salary, health insurance, or fees for
22 legal or managerial services. Compl. at 2-3.

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1 And West “can find no evidence that [Republican Majority] has spent any money on
2 actual, non-fundraising public communications since sometime in 2008.” *Id.* at 3. Attached as
3 Exhibit C to the Complaint is a report by FactCheck.org, which indicates a similar spending
4 pattern in the 2010 election cycle. *Id.* at 3, Ex. C. The FactCheck.org report states that
5 Republican Majority “spent almost \$3.9 million . . . [h]owever, only \$105,220 of that amount
6 was spent on activities such as independent expenditures or campaign ads that expressly
7 advocate the election or defeat of a particular candidate, according to the Center for Responsive
8 Politics.” *Id.* at 3, Ex. C. While Republican Majority contributed approximately \$20,600
9 directly to candidates, “the PAC spent the most money—nearly \$2.7 million—on services
10 described as ‘phone and mail communication’ through a firm called Political Advertising in
11 Arizona.” *Id.* at 3-4, Ex. C.

12 In response, Republican Majority claims that “our independent expenditures far outweigh
13 our operating expenditures” and states that “over 80 percent of our disbursements” in the 2008
14 election cycle were “made for the purpose of influencing the outcome of federal elections.”
15 *Resp.* at 2, 4.

16 Still, Republican Majority’s disclosure reports show that it spent many thousands of
17 dollars to compensate its officers, whether directly via legal fees or other benefits. According to
18 Republican Majority’s disclosure reports for the 2011-2012 election cycle, over 58% of
19 Republican Majority’s disbursements were for operating expenditures. *See Two-Year Summary,*
20 *Other Federal Operating Expenditures (2012).*⁵ These disbursements included over \$100,000 to
21 Kreep, Republican Majority’s Executive Director until February 2012, for “legal services” and

⁵ Republican Majority’s two-year summary, including itemized lists of operating expenditures, is available on the Commission’s public website at <http://www.fec.gov/fecviewer/CandCmteTransaction.do>.

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1 "office rent." *Id.* Republican Majority disbursed over \$80,000 in 2011-2012 to Goodwin,
2 Republican Majority's National Director and Treasurer, for "accounting services," "management
3 services," "medical insurance," "salary," and related purposes. *Id.*

4 3. Contributions Received by Republican Majority Were Overwhelmingly
5 Unitemized

6 As further support for a violation, the Complaint avers that approximately 98% of the
7 contributions reported in Republican Majority's 2012 July Quarterly Report are unitemized,
8 small dollar amount contributions. Compl. at 2. The names and addresses of these small-dollar
9 donors are not required to be reported to the Commission, so West was unable to correct any
10 confusion caused by the similarity of Respondent's website and solicitation. *See* 2 U.S.C.
11 § 434(b)(3)(A). The lack of identifying information therefore prevented West from sending
12 letters to those contributors to inform them that Republican Majority is not West's authorized
13 campaign committee, and to suggest that the contributors request a refund from Republican
14 Majority. *See* Advisory Op. 1984-02 (Gramm) at 2.

15 4. Analogous Prior Commission Decision
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17 The Complainant compares the instant matter to MUR 5385 (Groundswell Voters PAC).
18 Compl. at 5. In MUR 5385, the Commission found reason to believe that the respondent
19 violated 2 U.S.C. § 441h(b) "by mailing a fundraising letter requesting contributions to fund a
20 grassroots effort to benefit [Richard] Gephardt's Presidential campaign." Factual & Legal
21 Analysis at 1, MUR 5385 (Groundswell Voters PAC).

22 Republican Majority disagrees, reasoning that MUR 5385 involved activity that was
23 clearly fraudulent and therefore distinguishable, in that:

- 24 1.) Groundswell Voters PAC was not registered with the FEC; 2.) There was no
25 disclaimer stating that the PAC efforts were not authorized by any candidate or
26 candidate's committee; 3.) The Groundswell Voters PAC published a false IRS

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1 tax number to lend an air of legitimacy to their efforts; 4.) They asked that
2 donations be made out to "Ge[p]hardt for President, Inc."; and 5.) They illegally
3 appropriated names from official Ge[p]hardt for President FEC campaign reports,
4 and used them for their solicitations.

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6 Resp. at 3.

7 **C. Legal Analysis**

8 The Act and Commission regulations prohibit persons from "fraudulently
9 misrepresent[ing] the person as speaking, writing, or otherwise acting for on behalf of any
10 candidate or political party or employee or agent thereof for the purpose of soliciting
11 contributions or donations[.]" 2 U.S.C. § 441h(b)(1); 11 C.F.R. § 110.16(b)(1).

12 As the Commission has explained, section 441h(b) of the Act was enacted as part of the
13 Bipartisan Campaign Reform Act of 2002 to prevent others from misrepresenting that they were
14 raising funds on behalf of the candidate:

15 the Commission has historically been unable to take action in enforcement
16 matters where persons unassociated with a candidate or candidate's authorized
17 committee have solicited funds by purporting to act on behalf of a specific
18 candidate or political party. Candidates have complained that contributions that
19 contributors believed were going to benefit the candidate were diverted to other
20 purposes, harming both the candidate and contributor.

21 Explanation and Justificatinn, 11 C.F.R. § 110.16, 67 Fed. Reg. 76,962, 76,969 (Dec. 13, 2002).

22 Since its adoption, section 441h(b) of the Act has been enforced against respondents who
23 misled visitors to their websites by fashioning their sites to mimic the candidate's official
24 website, and by including on the website various statements that the websites were "paid for and
25 authorized by" the candidate's committee when the respondents knew that the website was
26 neither paid for nor authorized by the candidate or the candidate's authorized committee. *See,*
27 *e.g.,* First Gen. Counsel's Rpt. at 3, MURs 5443, 5495, 5505 (www.johnfkerry-2004.com).

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1 But “[e]ven absent an express misrepresentation, a representation is fraudulent if it was
2 reasonably calculated to deceive persons of ordinary prudence and comprehension.” *FEC v.*
3 *Novacek*, 739 F. Supp. 2d 957, 961 (N.D. Tex. 2010). *Cf. United States v. Thomas*, 377 F.3d
4 232, 242 (2d Cir. 2004) (citing, *inter alia*, *Silverman v. United States*, 213 F.2d 405 (5th Cir.
5 1954) (holding that, if the mails are used in a scheme devised with the intent to defraud, the fact
6 that there is no misrepresentation of a single existing fact makes no difference in the fraudulent
7 nature of the scheme)). For example, in MUR 5472 (Republican Victory Committee, Inc.), the
8 Commission found that respondents knowingly and willfully violated section 441h(b) of the Act
9 because their telephone and mail solicitations contained statements that, although making no
10 expressly false representation, falsely implied that respondents were affiliated with or acting on
11 behalf of the Republican Party. See Commission Certification ¶ 1, MUR 5472 (Republican
12 Victory Committee, Inc.) (Jan. 31, 2005); First Gen. Counsel’s Rpt. at 8, MUR 5472 (Republican
13 Victory Committee, Inc.). In MUR 5472, the Respondent had stated in its direct mailings:
14 “Contributions or gifts to the *Republican Party* are not deductible as charitable contributions.”
15 First Gen. Counsel’s Rpt. at 8, MUR 5472 (Republican Victory Committee, Inc.) (quoting direct
16 mailings from Republican Victory Committee, Inc.) (emphasis added). A reasonable person
17 reading that statement, which directly addresses the effect of the donation, would have believed
18 that the Republican Victory Committee, Inc. was soliciting contributions on behalf of the
19 Republican Party. *Id.*

20 The record here does not provide a reasonable basis to believe that Republican Majority
21 made fraudulent misrepresentations in violation of 2 U.S.C. § 441h(b) through its email
22 solicitation or website. To violate section 441h(b) of the Act, a person must fraudulently
23 misrepresent that the person speaks, writes, or otherwise acts *on behalf of or for a candidate*.

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1 Some of the language in Respondent's solicitations is ambiguous as to how the contributions will
2 be spent to support West. But ultimately, despite Respondent's attempts to use West's image
3 and name to raise funds, Respondent's solicitations were made expressly on behalf of
4 Republican Majority, not West.

5 Weighing against a finding of reason to believe that the Respondent violated 2 U.S.C.
6 § 441h(b) is the fact that Republican Majority is registered with the Commission and complies
7 with its reporting requirements, including disclosure of its expenditures and disbursements. As
8 explained in MUR 5472, "[f]ailure to file reports with the Commission indicating on what, if
9 anything, the money raised has been spent may be probative of the Committee's intent to
10 misrepresent itself to the public." *Id.* at 12.

11 On the other hand, although Republican Majority's email solicitation and website
12 included partial disclaimers, they lacked the complete disclaimers required by 2 U.S.C. § 441d
13 and 11 C.F.R. § 110.11.⁶ Both the solicitation and the website identified the communication as
14 coming from Republican Majority and provided an address. But the email failed to state

⁶ Whenever any person makes a disbursement to finance a communication that solicits any contribution through any mailing, the communication must contain a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a). If the communication is not authorized by a candidate, a candidate's authorized political committee, or any agent, the disclaimer must state the name and street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3). Political committees that send more than 500 substantially similar communications by email must include disclaimers in the communications. 11 C.F.R. § 110.11(a)(1). The disclaimer must be presented in a clear and conspicuous manner to give the reader adequate notice of the identity of the person or committee that paid for and authorized the communication. *Id.* § 110.11(c)(1). Among other things, the disclaimer in printed materials must be of sufficient type size to be clearly readable, and be contained in a printed box set apart from the other content of the communication. 2 U.S.C. § 441d(c); 11 C.F.R. § 110.11(c)(2)(i)-(ii). The disclaimer need not appear on the front or cover page of the communication. 11 C.F.R. § 110.11(c)(iv).

Although we cannot verify the number of email solicitations sent, Republican Majority stated in its Response that "the solicitation in dispute was sent to [Republican Majority's] 'in-house' donor list, which includes as many as 28,000 recipients, based on the amount of unitemized contributions that Republican Majority reported receiving to the Commission. Resp. at 2-3. Therefore, it is reasonable to infer that Republican Majority sent at least 500 similar communications, such that 11 C.F.R. § 110.11(a)(1) applies.

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1 explicitly that it was paid for by Republican Majority, while the website failed to state directly
2 that it was “not authorized” by a candidate. But those communications nonetheless contained
3 sufficient information for the recipients to identify Republican Majority as the sender or webhost
4 and payor. The Commission has previously dismissed several disclaimer matters on a similar
5 basis, and it should do so here as well.⁷

6 Republican Majority’s less-than-complete disclaimers do not, in the context here, provide
7 reason to believe that Republican Majority fraudulently misrepresented itself as acting on behalf
8 of West under section 441h(h). Republican Majority’s email solicitation was sent from “Randy
9 Goodwin, Treasurer: Republican Majority Campaign” with the address
10 “newsletter@americanpatriot.us.” Compl., Ex. A. The email solicitation was sent only to
11 persons who had previously donated to Republican Majority, and the solicitation itself was styled
12 as a letter from Republican Majority. *Id.*; Resp. at 2. It featured Republican Majority’s
13 letterhead at the top of the email, and Republican Majority’s Chairman’s signature at the bottom,
14 along with Republican Majority’s name and mailing address. Compl., Ex. A. Republican
15 Majority’s donation website also included its Chairman’s signature. *Id.* at Ex. B. Republican
16 Majority’s website also identified the committee as responsible for its content, and clarified that

⁷ In MUR 6438 (Arthur B. Robinson), the Commission exercised its prosecutorial discretion to dismiss an allegation that Robinson’s campaign did not comply with the disclaimer requirements for various emails sent by the Committee’s treasurer. See Factual & Legal Analysis at 19-21, MUR 6438 (Arthur B. Robinson). The Commission concluded that although the emails did not comply with the disclaimer requirements, they contained sufficient information for the recipients to identify the emails as authorized emails and to identify Robinson’s campaign as the payor. *Id.* In MUR 6270 (Rand Paul Committee), the Commission again exercised its prosecutorial discretion to dismiss an allegation that the Rand Paul Committee failed to include a disclaimer on certain communications, including an email signed by its political director. See Factual & Legal Analysis at 10-12, MUR 6270 (Rand Paul). In that matter, the Commission dismissed the allegations because, *inter alia*, there was sufficient information to identify the Committee payor. *Id.* Additionally, the Commission dismissed, under the Commission’s Enforcement Priority System, similar allegations in two other matters in which the committee included some identifying information. See MUR 6278 (Segura) (Commission dismissed allegations that campaign flyers lacked the requisite disclaimer where the campaign committee’s contact information was provided); MUR 6103 (Singh) (Commission dismissed the allegation that mailers did not include the requisite disclaimer where some information identifying the campaign committee was included).

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1 Republican Majority is not affiliated with or authorized by any candidate or candidate's
2 committee. Therefore, even without the required disclaimer, Republican Majority did not
3 fraudulently misrepresent that it acted on West's behalf.

4 Accordingly, the Commission finds no reason to believe that Republican Majority
5 violated 2 U.S.C. § 441h(b) and 11 C.F.R. § 110.16(b). And, although Republican Majority's
6 email solicitation and website did not include complete disclaimers, the communications were
7 clear about their source. The Commission therefore dismisses with caution Republican
8 Majority's violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11 in an exercise of prosecutorial
9 discretion as outlined in *Heckler v. Chaney*, 470 U.S. 821 (1985).

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