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CONFIDENTIAL

Via Hand Delivery

Jeff Jordan, Supervisory Attorney, CELA
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Matter Under Review 6661

Dear Mr. Jordan:

This is in response to the complaint filed in the above-captioned matter by Citizens for Responsibility and Ethics in Washington (CREW) indirectly alleging improper fundraising practices by Murray Energy Corporation, and also naming Mr. Robert E. Murray (President, CEO, and Chairman of the Board) and Murray Energy Corporation PAC (MECPAC). As will be demonstrated herein, the allegations of improper fundraising practices—which are based on hearsay and anonymous sources referenced in a *New Republic* article plus a few copies of normal solicitation materials—should be roundly rejected by the Federal Election Commission.

Introduction

It should be apparent to the Commission that CREW has a clear bias against Republican candidates and supporters. A quick look at the CREW website demonstrates that the vast majority of its FEC complaints have been against Republicans or Republican-leaning persons or groups.[1] Accordingly, CREW's complaint in this matter should be viewed with heavy skepticism.

[1] The CREW website boasts of its complaints against: Republican Karl Rove's group, American Crossroads GPS; former Republican Senator Norm Coleman's group, American Action Network; Commission on Hope, Growth and Opportunity, which supports Republican candidates and opposes Democratic candidates; Republican Rep. Paul Broun; Americans for Job Security, which supports Republicans and opposes Democrats; the Republican Party of Minnesota; Republican Newt Gingrich's presidential campaign; Democratic Rep. Rob Andrews; Republican presidential candidate Herman Cain and supporting group Prosperity USA; Republican candidate Christine O'Donnell; fringe Democratic Senate candidate Alvin Greene; Republican Sen. David Vitter; Democratic Sen. Mary Landrieu; a supporter of Republican Senate candidate Michael Steele; Republican Sen. John Ensign; Republican House candidate Ted Poe's committee; 3 Republicans and 2 Democrats regarding personal use of campaign funds;

Further, because CREW is simply relaying a news story that it became aware of, it is apparent that CREW is attempting to initiate the FEC enforcement process without any personal knowledge of the facts and without having added anything to support purported claims of anonymous sources that lie behind the *New Republic* assertions. CREW's effort to just fling accusations against the wall and hope something sticks should be stopped in its tracks for this reason alone.

The CREW complaint claims (occasionally based on double hearsay) that some Murray Energy employees "feel this constant pressure" about making contributions to the company PAC or to candidates for whom funds occasionally have been raised. But the second-hand assertions made by the anonymous sources fall far short of coercion or threats under the applicable legal standards, and really reflect nothing more than the normal discomfort some people have when periodically asked to make a contribution.

The various letters and memos referred to in the complaint and the *New Republic* piece likewise do not cross any legal lines. They are sometimes direct, disparaging of Obama Administration policies, and ominous regarding the impact of those policies on jobs for the coal industry, and they occasionally reflect disappointment about participation levels; however, they stop well short of any threat of job discrimination or financial reprisal. The CREW complaint takes anonymous comments about "feelings," and written fundraising pitches that raise the specter of losing jobs if the coal industry cannot survive, and twists this into an assertion that Robert E. Murray "personally threatened employees of Murray Energy Corporation with loss of their jobs if they failed to contribute to the Murray Energy Corporation Political Action Committee." This distortion and exaggeration on the part of CREW—and the *New Republic* for that matter—should be rejected as the basis for finding reason to believe any violation occurred.

Perhaps even more insidious is the "Hail Mary" charge by CREW that Murray Energy Corporation and Mr. Murray "reimbursed employees for their contributions to the PAC by giving bonuses Mr. Murray personally approved." This distorted assertion does not even follow from

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Republican Senate candidate Mel Martinez; Republican Vice Presidential candidate Sarah Palin; Republican Rep. Vern Buchanan; Republican Rep. Marsha Blackburn; Republican Presidential candidate Duncan Hunter; 3 Republican Members for failing to report contributors; 1 Democratic and 1 Republican Senate candidate in connection with Bacardi USA fundraising; Republican Sen. Rick Santorum's staffers; Republican Speaker Dennis Hastert; Republican Rep. Tom DeLay; Republican Sen. Majority Leader Frist; Republican Alan Keyes, Republican group The November Fund and Republican committee Bush-Cheney '04; Republican leaning group Citizens for A Sound Economy; independent candidate Ralph Nader; Republicans Grover Norquist and Ken Mehlman; and Republican Senate candidate Mel Martinez. See CREW, Legal Filings - FEC Complaints, http://www.citizensforethics.org/index.php/legal-filings/c/fec-complaints2/index_ee.php (visited Dec. 18, 2012). Further, the *New Republic* itself has been labeled as "leftist" by its former owner and editor-in-chief. *See* Dylan Byer, "Peretz: TNR has gone from 'liberal' to 'leftist,'" Politico (2/13/13), *available at* http://www.politico.com/blogs/media/2013/02/marty-peretz-tnr-has-become-leftist-157009.html.

the cited quote by a single unnamed "source" in the *New Republic* piece. The story claims that at the time of hiring, supervisors tell employees that they are expected to contribute to the company PAC by payroll deduction—typically 1 percent of their salary. But the lone anonymous source is quoted as saying merely: "In the interview . . . I was told that I would be expected to make political contributions . . . that [Murray] just expected that . . . [b]ut I was told not to worry about it, because my bonuses would more than make up what I would be asked to contribute."

Note that the source does *not* indicate that he/she actually was ever hired and does *not* indicate knowledge that any bonus was in fact tied to contributions. The *New Republic* story's mystery source could be a completely unreliable disgruntled employee, or a person philosophically opposed to and angry about the way Mr. Murray runs his business. The purported reference to a one percent giving level could represent a typical suggested contribution amount in full compliance with the FEC's regulations. A casual comment that bonuses may be paid by a company in excess of what employees happen to have contributed would be hardly remarkable and might just reflect a PAC "sales pitch" that coincides with a good incentive bonus program. CREW's effort to create a presumption of guilt (A) using an anonymous recollection of what someone unnamed purportedly said was expected, and (B) distorting what most logically would have been an innocent reference to a permissible contribution guideline and a generous employee bonus plan, should be given zero credence.

Applicable Legal Standards

1. The complaint and "reason to believe" standards

As the Commission knows, Congress designed the complaint process so that, to the extent possible, investigations and enforcement consequences would not ensue from anonymous sources. The statute requires that a complaint be signed and sworn by the person filing the complaint, and it then emphasizes: "The Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission." 2 U.S.C. § 437g(a)(1). Thus, for example, if the few examples of solicitation letters included in the *New Republic* story do not provide the basis for a proper finding of threats of job discrimination or financial reprisal, and the only other sources for such claims are anonymous, the Commission arguably does not have legal authority to find reason to believe a violation occurred. Since CREW does not proffer any personal knowledge of the facts, and since the individuals who allegedly voiced concerns about "feelings" of "pressure" and "coercion" are the *de facto* "complainants" in the current situation, the underlined language above can be deemed dispositive.

The Commission's regulations include other guidelines indicating that complainants who file based only on "information and belief" are in a different class, especially if they do not identify

the source of the information being regurgitated. The applicable provisions are at 11 C.F.R. § 111.4(b) and (c):

> (b) A complaint shall comply with the following:
> (1) It shall provide the full name and address of the complainant; and
> (2) The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.
> (c) All statements made in a complaint are subject to the statutes governing perjury and to 18 U.S.C. 1001. The complaint should differentiate between statements based upon personal knowledge and statements based upon information and belief.
> (d) The complaint should conform to the following provisions:
> (1) It should clearly identify as a respondent each person or entity who is alleged to have committed a violation;
> (2) Statements which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainants belief in the truth of such statements;
> (3) It should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction; and
> (4) It should be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

Together, the foregoing statutory and regulatory provisions should place a bar on launching an investigation or taking enforcement actions if the only real source of an allegation that would amount to a violation ("There's a lot of coercion, said one source.") is anonymous.

The Commission can and should apply the proper filter by using the legal threshold built into the enforcement process—the requirement that there be "reason to believe that a person has committed . . . a violation." 2 U.S.C. § 437g(a)(2). Commissioners have used many different descriptive terms over the years to explain the basic shortcomings of complaints that spew out allegations stemming from anonymous or unreliable sources: "speculative," "complainant provided no evidence," "fails to allege specific, documented facts," "complainant did not know," "no basis to support," "mere 'official curiosity' will not suffice," "unwarranted legal conclusions from asserted facts," and "evidence is inadequate."[2] Where a complainant like CREW has

[2] *See* precedents cited in MUR 6296 (Kenneth R. Buck et al.) Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen (June 14, 2011), pp. 4-6. As noted in that Statement of Reasons at n. 21, the "reason to believe" standard is higher than the standard for sustaining a civil

simply forwarded a magazine piece that in turn is based on, apparently, two anonymous sources who appear to be weary of being asked to make contributions and assert no actual evidence of threats of job discrimination or financial reprisal, all of these descriptive terms can be applied by the Commission.

2. ***The coercion standard, which depends on a "threat of force, job discrimination, or financial reprisal"***

The proper analysis for whether any PAC solicitation process or any solicitation of contributions for candidates is impermissibly coercive requires a factual predicate far beyond mere follow-ups, ominous statements about how election results can lead to job losses in an industry, or suggested giving guidelines. The statute governing PAC solicitations, 2 U.S.C. § 441b(b)(3), reads as follows:

> It shall be unlawful—
> (A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal;[3] or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction;
> (B) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee of the political purposes of such fund at the time of such solicitation; and
> (C) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee at the time of such solicitation, of his right to refuse to so contribute without any reprisal. [emphasis added]

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complaint in the context of a motion to dismiss for failure to state a claim. This makes sense because the "reason to believe" determination reflects at least some assessment that the complaint-filing standards quoted above have been met, that there has been adequate identification of the source of the allegations, that the facts alleged would constitute a violation if true, and that there is sufficient reliability and credibility in the complaint such that the investigatory and enforcement power of the federal government should be unleashed against participants in the political process. In the matter at hand, anonymous claims about "feelings of pressure" and being told "not to worry because my bonuses would more than make up what I would be asked to contribute" almost certainly would not even survive the motion to dismiss for failure to state a claim test. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level.").

[3] Because the anonymous sources and standard fundraising documents relied on by the complainant make no allegations whatsoever suggesting any actual instances of force, job discrimination, or financial reprisal related to contribution activity, only the "threat" part of the statute (and regulations) is relevant for the Commission's analysis of this matter.

The Commission's regulations at 11 C.F.R. § 114.5(a) parrot the foregoing PAC solicitation rules, and add an additional allowance for suggesting specific giving levels:

> (a) *Voluntary contributions to a separate segregated fund.*
> (1) A separate segregated fund is prohibited from making a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment or by monies obtained in any commercial transaction. For purposes of this section, fees or monies paid as a condition of acquiring or retaining membership or employment are monies required as a condition of membership or employment even though they are refundable upon request of the payor.
> (2) A guideline for contributions may be suggested by a corporation or a labor organization, or the separate segregated fund of either, provided that the person soliciting or the solicitation informs the persons being solicited--
> (i) That the guidelines are merely suggestions; and
> (ii) That an individual is free to contribute more or less than the guidelines suggest and the corporation or labor organization will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.
> A corporation or labor organization or the separate segregated fund of either may not enforce any guideline for contributions.
> (3) Any person soliciting an employee or member for a contribution to a separate segregated fund must inform such employee or member of the political purposes of the fund at the time of the solicitation.
> (4) Any persons soliciting an employee or member for a contribution to a separate segregated fund must inform the employee or member at the time of such solicitation of his or her right to refuse to so contribute without any reprisal.
> (5) Any written solicitation for a contribution to a separate segregated fund which is addressed to an employee or member must contain statements which comply with the requirements of paragraphs (a) (3) and (4) of this section, and if a guideline is suggested, statements which comply with the requirements of paragraph (a)(2) of this section. [emphasis added]

With regard to "coercion" when using corporate resources or facilities to solicit contributions for candidates, the only applicable legal standard appears at 11 C.F.R. § 114.2(f):

> *Facilitating the making of contributions.*
> (1) Corporations and labor organizations (including officers, directors or other representatives acting as agents of corporations and labor organizations) are prohibited from facilitating the making of contributions to candidates or political committees, other

> than to the separate segregated funds of the corporations and labor organizations. Facilitation means using corporate or labor organization resources or facilities to engage in fundraising activities in connection with any federal election, such as activities which go beyond the limited exemptions set forth in 11 CFR part 100, subparts B and C, part 100, subparts D and E, 114.9(a) through (c) and 114.13. . . .
> (2) Examples of facilitating the making of contributions include but are not limited to—
> . . . .
> (iv) Using coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee. [emphasis added]

In view of the statutory and regulatory standards quoted above, it is clear that (A) no violation of law stems from letters or comments merely saying bad election results can lead to elimination of the coal industry and jobs in that industry, and (B) no violation stems from tracking who has responded to solicitations and following-up with those who can give more. These practices are widespread and quite normal in the fundraising world. That a person is annoyed by ongoing solicitations or "feels" pressure, or that a person is asked to give a specified percentage of salary to support the company PAC, likewise does not constitute a violation of law. There has to be an actual threat of job discrimination (detrimental job action) or financial reprisal.

3. The bonus payment standard

There is no provision of law that prevents a company from paying bonuses to workers if those same workers happen to have made contributions to the company PAC, or that makes it illegal for some person to allude to a generous company bonus plan when encouraging new management employees to contribute, say, 1% of salary to the company PAC.[4]

Where a complainant with no personal knowledge merely forwards a magazine story that contains one vague hearsay comment by an anonymous individual about his/her job interview ("I was told not to worry about it because my bonuses would more than make up what I would be

[4] The Commission has, on occasion, been presented with clear evidence that a particular bonus was tied to a particular political contribution, and has pursued it as an impermissible "contribution in the name of another" (2 U.S.C. § 441f and 11 C.F.R. § 110.4) and/or as a prohibited corporate contribution where someone is "paid for his or her contribution" (2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(b)(1), 114.5(b)). See, e.g., Conciliation Agreement, MUR 5357 (Centex Construction Group, Inc. et al.) (civil penalties stemming from clear, credible evidence of extra bonus payments tied to contribution amounts of employees), available on FEC website at. http://eqs.nictusa.com/eqs/searcheqs. But such cases are a far cry from standard company bonus programs that happen to compensate some of the same people who have made contributions, or innocuous PAC "pitch" comments about how generous the company bonus programs are.

asked to contribute."), a showing of a "contribution in the name of another" or "paid for his or her contribution" violation has *not* been made.

Factual Backgound

1. The PAC solicitation process

Like many companies, Murray Energy Corporation and its related subsidiaries have an ongoing practice of asking management personnel to make contributions to a political action committee that is administered by company managers and staff. And, like many companies, Murray Energy Corporation and its subsidiaries want to have success when trying to raise PAC contributions. Accordingly, it should not be surprising that letters seeking PAC contributions try to persuade prospective donors about the potential elimination of the coal industry—and related jobs—if certain politicians are elected.

The *New Republic's* example of a September 15, 2010 letter[5] from Mr. Murray ("We only have a little over a month left to go in this election fight. If we do not win it, the coal industry will be eliminated and so will your job, if you want to remain in this industry.") may seem overly dramatic to some, but that does not constitute coercion or a threat of job discrimination or financial reprisal. The heartfelt belief of Mr. Murray and many others in the coal industry is that without enough supporters of the coal industry in Congress and the White House, there will be a steady strangulation of the industry through over-regulation.[6]

The sentence in question ("If we do not win [this election fight], the coal industry will be eliminated and so will your job . . . .") is simply building the argument of how important the election process is. If the industry goes down, it is certainly true that jobs will be eliminated. The letter is not stating that a failure of the recipient to give to the PAC will lead the company to discriminate against him/her or engage in some form of reprisal. CREW and the *New Republic* apparently hope the Commission will misconstrue the letter and equate dramatic descriptions of the importance of winning certain elections with coercion or threats of job discrimination or

[5] *See* Exhibit 1.

[6] *See* Neil W. McCabe, "Ohio Coal Miners Rally Against Obama's 'Absolute Lies,'" Human Events (Oct. 13, 2012), *available at* http://www.humanevents.com/2012/10/13/ohio-coal-miners-rally-against-obamas-absolute-lies/; "Sunday Sit-Down: Murray Energy CEO Robert Murray," The Intelligencer / Wheeling News-Register (Jan. 1, 2012), *available at* http://www.theintelligencer.net/page/content.detail/id/563687/Sunday-Sit-Down--Murray-Energy-CEO-Robert-Murray.html?nav=515.

financial reprisal.[7] A careful reading of the letter proves it does not contain coercion or any threat whatsoever.

Normally, according to Michael Ruble (Treasurer of MECPAC), care is taken to include notice to those solicited that the making of any PAC contribution is voluntary.[8] While the just-cited September 15, 2010 letter from Mr. Murray did not itself contain this notice, the attached prior letter did specify, "Your contributions are strictly voluntary."[9] As the other piece of evidence provided in the *New Republic* article about the PAC solicitation process shows, the standard disclaimer language has been fully integrated into MECPAC communications to solicitees. The June 27, 2008 letter from Mr. Ruble about resuming employees' previously authorized payroll deductions provided the following language: "We have previously identified one percent (1%) as a suggested contribution level. Of course, you may contribute more or less than the suggested guideline and all contributions are strictly voluntary. You will not be favored or disadvantaged in your employment based on the amount contributed or the decision not to contribute."[10]

Another piece of evidence showing that the PAC solicitation process is not coercive can be found in the number of management personnel who are solicited but do not contribute to the PAC. According to Mr. Ruble, in 2012 about 354 management personnel were solicited for the PAC, but only 151 were in fact contributors to the PAC. See Exhibit 2, para. 5. Thus, well over half of those asked to support the PAC declined. This plainly refutes the CREW claim and the purported quote of one anonymous source that "You're compelled to do this whether you want to or not." Again, the Commission should carefully weigh the low reliability of such anonymous assertions against (A) the solid evidence demonstrating the use of proper disclaimers and (B) the statistics showing that no one actually is compelled to do anything.

2. The process of soliciting contributions for candidates

The solicitation of contributions for various candidates is designed, for the most part, as a separate endeavor by Mr. Robert E. Murray himself. The Commission will note that the *New Republic* sample fundraising letters seeking candidate support are on personalized stationery not

[7] The September 15, 2010 letter (which CREW misidentifies as a September 15, 2012 letter), does make clear that a prior solicitation had been made the prior month and that the response to such letter "has been poor." It is very common, as the Commission surely knows, for those soliciting PAC funds to track whether solicitation efforts have been successful and to follow-up with additional solicitations in order to generate more contributions. Such efforts do not constitute coercion or threats of job discrimination or financial reprisal. That they may seem repetitive to some, or even annoying, is not the relevant standard..

[8] *See* Declaration of Michael Ruble, Exhibit 2.

[9] *See* Exhibit 3.

[10] *See* Exhibit 4.

using Mr. Murray's corporate title or address.[11] Contribution checks are to be sent to a separate P.O. Box so that the company's office and address are not used.[12] Mr. Murray normally distributes to solicitees a copy of the donor card provided by the benefitting candidate in order to gather necessary contributor information and help with the benefitting campaign's processing needs.[13] The fundraising letters from Mr. Murray include language making it clear that contributions are voluntary. The September 29, 2008 version stated: "We are requesting a $200.00 contribution from you. If you cannot afford the requested amount, please send whatever you can and join our gathering."[14] The August 27, 2011 version stated: "We are requesting a $2,500 contribution from each individual . . . . Hopefully, you will be able to contribute this amount. If you cannot afford the requested amount, be as generous as you can and join our gathering."[15] The April 6, 2012 version was virtually the same.[16]

In some cases, Mr. Murray has communicated to management personnel at Murray Energy Corporation or its subsidiaries that they should assist with trying to encourage contributions from other management personnel. For example, two internal memos described in the *New Republic* article indicate that Mr. Murray urged some of his managers to try harder to get other management employees to contribute to certain candidates or appear at candidate events.[17]

[11] *See* Exhibits 5, 6, and 7.

[12] The Commission will note that in-kind contributions from Mr. Murray to candidates do not often show up on reports filed by the benefitting candidates. This stems, in part, from application of exemptions in the law for Mr. Murray's own volunteer time (11 C.F.R. § 100.74), and for the invitation expenses involved (11 C.F.R. § 100.77). It stems also from the fact that, where a dinner event is involved, the candidate committees pay the restaurant or other vendors directly. See, e.g., $2,109.69 payment on 9/12/11 to "Undos St. Clairsville" by Wicker for Senate Committee, available in FEC database at p. 203 of committee's Q3 2011 report, and $2,100.69 payment on 9/15/11 to "Undos West" by Bob Corker for Senate 2012, available in FEC database at p. 506 of committee's Q3 2011 report.

[13] See Exhibits 6 and 7.

[14] *See* Exhibit 5.

[15] *See* Exhibit 6.

[16] *See* Exhibit 7.

[17] An August 3, 2011 interoffice memo from Mr. Murray noted an upcoming event for Senators Corker and Wicker, and contained the following: "I am asking you to rally all of your salaried employees and have them make their contribution to our event as soon as possible. We need both their contribution and their attendance on this special evening. . . . Please see that our salaried employees 'step up,' for their own sakes and those of their employees." *See* Exhibit 8. In a subsequent March 7, 2012 memo from Mr. Murray, he noted that "[p]articipation in the fundraising events. . . has always been very bad" and then asked, "What is so difficult about asking a well-paid salaried employee to give us three (3) hours of his/her time every two months?" See Exhibit 9. He went on to say, "We have been insulted by every salaried employee who does not support our efforts." And he concluded with, "I do not recall ever seeing the attached list of employees . . . at one of our fundraisers." The *New Republic* article also referenced a chart related to a planned fundraiser for Congressmen Griffith and Shimkus, which showed, by company or division, the respective percentages of solicitees who had made requested contributions. See Exhibit

While these kinds of internal communication messages from Mr. Murray to his managers urging that they get other managers to contribute or attend candidate appearances might be characterized as direct and argumentative, they do not constitute threats of job discrimination or financial reprisal.[18]

The CREW complaint, the *New Republic* article on which it is founded, and the anonymous sources occasionally referenced in the article, do not provide any reliable evidence of actual threats of job discrimination or financial reprisal—at any level. Follow-up requests regarding different fundraising events spread throughout the year, and cajoling managers to get them to do more to help, do not rise to the level of coercion contemplated in the law.[19]

3. The bonus program at Murray Energy Corporation

As noted earlier, the CREW complaint and the anonymously-sourced information it relies on are demonstrably unreliable and woefully inadequate regarding any proof that the existing bonus program is impermissible. The CREW complaint (paragraph 17) alludes to "reimbursing employees of Murray Energy Corporation for contributions to Murray Energy Corporation

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10. But Shawn Ray, a named source in the *New Republic* piece, stated this was "just a competition amongst the guys" and "so you know how you do against the other companies."

[18] Of course, as the Commission knows, there is nothing wrong or illegal about such corporate internal communication efforts. The statute at 2 U.S.C. § 441b(b)(2)(A) permits use of corporate resources for "communications by a corporation to its stockholders and executive or administrative personnel and their families . . . on any subject." As the Commission's regulations make clear, these communications can include express advocacy of a particular candidate's election and can be coordinated with a particular candidate's campaign operatives. 11 C.F.R. § 114.3(a)(1). Commission regulations—read in light of the *Citizens United v. FEC* decision (130 S.Ct. 876 (2010))—prohibit coordinated "facilitation" of the making of contributions that involves *more than* just communication to the restricted class. 11 C.F.R. § 114.2(f)(1) (facilitation restriction only reaches activities that "go beyond the limited exemptions set forth in 11 CFR part 100, subparts B and C, part 100, subparts D and E, 114.9(a) through (c), and 114.13," and thus does not reach internal communication activity covered in the exemptions at 11 C.F.R. §§ 100.81 and 100.134). Commission regulations also prohibit corporate personnel, acting in their official capacity, from functioning as a conduit that receives and forwards contributions to candidate committees (at least where there is some element of coordination, given the *Citizens United* decision). 11 C.F.R. § 110.6(b)(2)(ii). Taken together, though, these provisions clarify that using company personnel and resources to simply urge restricted class personnel to respond favorably to Mr. Murray's prior letters by mailing a check to a P.O. box or attending an event is well within the internal communication allowance. *See* 11 C.F.R. § 114.2(f)(4)(ii). Note that the complainant did not even raise any claim of impermissible "facilitation" or "conduit" activity.

[19] Though the CREW complaint doesn't refer to it, the *New Republic* story darkly asserts, using anonymous hearsay: "The Murray pressure, the sources say, extends to contractors as well." But a different source who is named (Jimmy Phillips, co-owner of Phillips Machine Service) states to the contrary, "Bob Murray's no different than if it was the Democratic or Republican Party—they're always encouraging you to support their candidates. . . . We are very free to do what we want to." Thus, on balance, there clearly is no reliable factual predicate in the complaint for any Commission finding in this regard—even if it had been raised by CREW.

Political Action Committee with monthly bonuses." Against this claim (based on a single anonymous individual's vague statement to the *New Republic* reporter) is the non-anonymous statement of the company's General Counsel, Mike McKown, in the article: "McKown says the two [sic] sources who suggest generous employees get bigger bonuses are just wrong. 'It's Mr. Murray's view of what the employee's contribution was to the company that month.'" As the Commission knows, it is hardly remarkable that a company would have a bonus program that attempts to recognize employees' value to the company.

That Murray Energy Corporation has a bonus program, that the company has a PAC that solicits some personnel, and that company bonus payments may to go to personnel who happen to have made contributions is *not* evidence of impropriety. The complainant should not be able to create a presumption of guilt that warrants any devotion of Commission or Murray Energy Corporation resources to an intrusive investigation about the bonus program.[20] Further, careful review of the anonymous claim provided in the *New Republic* story demonstrates that, at most, one job interviewee claimed, "I was told that I would be expected to make political contributions . . . [and] I was told not to worry about it, because my bonuses would more than make up what I would be asked to contribute." Even if an accurate quote, in the context of a hiring process at a company with an established, generous bonus program, this could and should be seen as an innocuous, legally inconsequential statement. It certainly is not evidence that improper bonus payments in fact were made.

Legal Analysis

1. The Commission should dismiss this complaint because it is founded on anonymous sources.

Given the statutory and regulatory provisions cited above indicating that the complaint process should not generate any Commission finding if the true source of allegations is anonymous, the CREW complaint should be dismissed. As described above, the written materials noted above do not provide evidence of any threat of job discrimination or financial reprisal, so the only real basis for the complaint is a sparse collection of anonymously-sourced hearsay snippets relayed by a *New Republic* reporter.

The Commission has dealt with this type of complaint before and, on more than one occasion, the Commission has not proceeded where it is apparent that anonymous sources are the linchpin of the allegations. *See* MUR 6002 (Freedom's Watch Inc.) Statement of Reasons of Chairman

[20] Further, as three members of the Commission recently articulated, "[T]he Act does not allow us to open an investigation to ask questions or to determine whether a reason to believe finding is warranted." MUR 6296 (Kenneth R. Buck *et al.*) Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen (June 14, 2011), p. 13.

Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn (Aug. 13, 2010), p. 6 ("reluctant to make a reason-to-believe finding based solely on [New York Times] information culled from sources whose credibility and accuracy are difficult to ascertain"); MUR 6056 (Protect Colorado Jobs Inc. et al.) Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn (June 2, 2009), pp. 8-9 ("the links in the chain of anonymous suppositions and hearsay set forth above are too weak to sustain an RTB finding and subject Respondents to a Federal investigation"); MUR 5977 and 6005 (American Leadership Project) Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn (May 1, 2009), p. 6, n. 20 ("adherence to the Commission's regulations regarding sources of information contained in complaints cautions against accepting as true the [*ABC News* and *Atlantic.com blog*] statements of anonymous sources"). The Commission should deal with the CREW complaint, which ultimately relies on anonymous sources in the *New Republic* story, in the same fashion.

2. *The Commission does not have reason to believe that the "threat of job discrimination or financial reprisal" standard has been met.*

The previous factual analysis of the PAC fundraising and candidate fundraising documents included in the *New Republic* story (and incorporated in the CREW complaint) demonstrates that none contained any threat of job discrimination or financial reprisal. It is true that some tracking takes place to ascertain who has responded to previous solicitations and that follow-up requests sometimes are made. But this is completely normal in the fundraising world (as anyone with a mailbox or an e-mail account can verify). It is true that Mr. Murray has made emotional pleas suggesting that coal industry jobs are on the line if candidates supporting extensive regulation are elected, but that is far from saying, "The Company will demote you and you will not get a bonus if you do not give money." Indeed, as the PAC solicitation regulations require, and as the examples provided in the *New Republic* piece demonstrate, the Company has provided proper notice about the voluntary nature of PAC contributions and the right to decline to contribute without reprisal. Further, when sending letters on his personal stationery seeking contributions to candidates, Mr. Murray has routinely included phrasing indicating that this is merely a "request" and that those who contribute less are nonetheless welcome to attend.

The internal memos that Mr. Murray occasionally has sent to managers asking that they urge solicitable people in their respective companies or divisions to make contributions to particular candidates—which qualify as internal communications under Commission regulations—likewise do not constitute "coercion" within the meaning of 11 C.F.R. § 114.2(f)(2)(iv). Using colorful language ("We have been insulted by every salaried employee who does not support our efforts."),[21] or industry-saving references ("Please see that our salaried employees 'step up', for

[21] *See* Exhibit 9.

their own sakes and those of their employees."),[22] does not rise to the level of "[u]sing coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force." The CREW complaint and the *New Republic* story on which it relies do not provide any concrete evidence that any manager receiving Mr. Murray's memos has been threatened in any fashion. A manager here or there may have been bothered, annoyed, frustrated, or philosophically or politically perturbed, but that does not constitute a violation of law, and the Commission should not launch a federal investigation just to allow a full airing of the drudgery of political fundraising.

3. The Commission does not have reason to believe the "contribution in the name of another" or "payment for [a] contribution" standard has been met.

A single anonymous source's purported comment describing a job interview ("I was told not to worry about it, because my bonuses would more than make up what I would be asked to contribute.") simply does not make out a violation of law. Further, the suggestion of improper bonuses is rebutted in the same story that forms the basis of the complaint by a statement from the company's General Counsel. The Commission should not let itself be dragged into a "reason to believe" finding based on a vague anonymous comment that does not provide evidence that any person in fact was ever reimbursed for a contribution.

Conclusion

Based on the foregoing, we respectfully submit that the Commission should dismiss the complaint filed by CREW. The complaint is not based on personal knowledge, and is really just a "please read this *New Republic* story" plea. The fundraising materials referenced in the *New Republic* piece do not cross any "coercion" lines, and the two anonymous individuals who purportedly complained ("People are very upset . . . ." "[Y]ou feel this constant pressure . . . ." "It's not a requirement, but they like you to go.") do not provide any plausible basis for finding "reason to believe" a violation of law occurred. Similarly, the lone anonymous source who purportedly was told at the interview stage that "bonuses would more than make up what I would be asked to contribute" provides no evidence that any improper bonuses in fact were made.

Murray Energy Corporation, of course, is concerned that any current or former employee might have been upset or felt pressure, and it will review and revamp its practices as needed to (A) assure that it is fully compliant with the law and (B) minimize any legitimate concerns that personnel may have regarding the fundraising process. If the Commission finds reason to believe that any violation of law occurred—in this matter or in MUR 6651 or 6659—Murray

[22] *See* Exhibit 8.

Energy Corporation stands ready to cooperate in resolving such concerns through the pre-probable cause conciliation process or Alternative Dispute Resolution process if appropriate.

Respectfully submitted,

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Attachments