



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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**MEMORANDUM**

TO: The Commission

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FILE: MUR 6721 (Beth Steele; Women Advocating Respect)

SUBJECT: Intent to Name and Notify Additional Respondents

**I. INTRODUCTION**

On December 3, 2013, the Commission found reason to believe that Beth Steele and an unincorporated entity known as Women Advocating Respect ("WAR") violated 2 U.S.C. §§ 434(c) and 434(g) and 11 C.F.R. § 109.10(d) by failing to file independent expenditure reports in connection with automated telephone calls or "robocalls" expressly advocating the defeat of Representative Alan Grayson, a candidate in 2012 for the Ninth Congressional District of Florida. Certification ¶ 2.a, MUR 6721 (Steele/WAR) (Dec. 3, 2012). The Commission further voted unanimously to authorize "a limited investigation to discern the amount of the expenditure at issue." *Id.* ¶ 2.b.<sup>1</sup>

This Memorandum summarizes the evidence gathered to date and specifically Steele's assertion that her payments for the robocalls were not independent expenditures because they

<sup>1</sup> Todd Long was Grayson's opponent in the 2012 election. The Complaint alleged that WAR is merely the alter ego of Steele, who it characterizes as Todd Long's girlfriend. Comp. at 2. Steele did not contest the truth of the allegations. Steele Resp. at 1. The Commission divided 3-3 as to whether there was reason to believe that the disclaimer contained in the robocalls violated the Act as a result of its failure to state whether a candidate had authorized the robocalls. Certification ¶ 1.b.

were coordinated with candidate Todd Long and Todd Long for Congress (the "Committee"), Long's principal campaign committee.<sup>2</sup> As discussed below, Long's involvement in the production of the robocalls suggests that Long and his Committee may have violated the Act. Long and the Committee, however, are not currently respondents in this matter. We believe that Long and the Committee should be notified of the Complaint and the potential violations suggested by the facts now before the Commission and provided an opportunity to respond. Because the Commission limited the scope of its investigation specifically "to discern the amount of the expenditure at issue," however, we are providing the Commission with this notice of our intent to identify Long and the Committee as respondents and provide them notice and an opportunity to respond.

## II. STATUS OF INVESTIGATION

In January 2014, we sought to obtain documents from and interview Steele concerning the cost of the robocalls she apparently narrated. Steele is represented in this matter by counsel, Sean McDonough. When we commenced our discussion with McDonough, he asserted that Steele "did a favor for a friend who was a candidate" against Grayson and that the candidate "put her in that position" and he "should have known" the law. McDonough agreed to arrange an interview with Steele.

At the outset of Steele's interview, McDonough stated that Steele, not WAR, made \$700 in expenditures to produce the robocalls, and again volunteered that Steele made that payment only because Todd Long, Rep. Grayson's opponent, told her to do so.<sup>3</sup> McDonough also transmitted four documents to us: (1) a temporary check for \$250 issued to Luz Rivera with "Women Advocating Respect" handwritten at the top and dated October 3, 2012; (2) a temporary check for \$100 issued to Christina Colon with "Women Advocating Respect" handwritten at the top and also dated October 3, 2012; (3) a \$350 invoice issued to Women Advocating Respect dated October 16, 2012 from a company called Brave Designs; and (4) a check from "Women Advocating Respect" for \$350 issued to Jeremy Chambers and dated November 6, 2012. McDonough explained that the check to Chambers (owner of Brave Designs) was for recording the call and that the two other checks were to persons who provided Spanish translation services in connection with a Spanish-language version of the same robocall script.

<sup>2</sup> Todd Long is the Committee's treasurer. See Todd Long for Congress Misc. Report to FEC at 1 (May 20, 2013). It appears that Long was attempting to file a termination report and wrote his own name in the space for the Committee's name. Accordingly, the Commission's database now lists the Committee's name as Long, Todd William, and its filings may be found under that name. For ease of reference, we will continue to refer to the Committee as Todd Long for Congress.

<sup>3</sup> McDonough also represented that Steele's \$700 expenditure for the robocalls was not included among an additional \$2,399 in in-kind contributions from Steele that the Committee had disclosed in reports filed with the Commission.

During her interview, Steele represented that she never incorporated WAR and that the WAR bank account she used to make her payments for the robocalls was open for only two months. She explained that it was Long's idea to make the robocalls, that he asked her to do them but she did not know why, and that she participated in producing the robocalls simply as a favor to Long. Steele represented that she and Long are no longer friends. Ms. Steele also confirmed her attorney's representation that her payments for the calls were not related to other in-kind contributions from her to Long's campaign that the Committee had disclosed in its reports to the Commission. She stated that she was not reimbursed for the costs of the robocalls and that she spent only \$700 in connection with them. Steele said that she did not know about the Act's independent-expenditure filing requirements, and that Long did not tell her about them.

According to Steele, Long gave her instructions concerning the two payments she made in connection with the translation of the robocalls into Spanish. She claims he asked her to write the checks, gave her the names of the payees, and told her what amounts to pay. She did not speak with either of the women to whom she wrote checks for the Spanish version of the robocall, but understood that one translated the text of the robocalls into Spanish, while the other provided voice narration for the Spanish-language version.<sup>4</sup>

Steele further asserted that Long provided the script for the robocalls. She explained that Jeremy Chambers of Brave Designs came to her office with his equipment to record the calls. On January 30, 2014, we conducted a telephone interview of Chambers. He stated that Steele requested his services and paid him \$350, that he simply recorded the robocall, and that he provided the recording to Steele. Steele's attorney stated in a subsequent email that Steele sent the recording to Long or one of his campaign workers by e-mail and that she did not know how the recording became a robocall. See E-mail from Sean McDonough, Counsel to Steele, to Michael Columbo, Attorney, FEC (Jan. 30, 2014). According to counsel, Steele no longer has access to the relevant e-mails. *Id.*

During our interview of Steele, we inquired also about the number of robocalls and who received them. Steele represented that Long or his campaign determined who would be called. She said that she did not have a list of numbers, but that she understood that the calls would be made to certain counties based on "who they were going after." She could not quantify how many robocalls were placed except to say that they were not in the "millions."

Following our interview, we received an additional correspondence from McDonough asking that the Commission enter into pre-probable cause conciliation with Steele and confirming in writing Steele's representations that "Mr. Long asked her to participate in a robocall and help pay for them," describing Steele's involvement in the recording and narration

<sup>4</sup> Steele did not remember how she sent the checks to the translator and interpreter and had no contact information for them. See Email from McDonough, Counsel to Steele, to Michael Columbo, FEC Attorney (Feb. 19, 2014).

of the robocalls, and her payments in connection with them. *See* Letter from Sean M. McDonough to Michael A. Columbo (Jan. 16, 2014) (attached).

### III. ANALYSIS

#### A. Steele's Payments in Connection with the Robocalls Do Not Appear to Constitute Independent Expenditures

The Commission authorized an investigation to identify the value of the independent expenditures made for the robocalls. According to Steele and her counsel, Steele spent \$700 to produce the English and Spanish language voice recordings used for the robocalls. But this amount likely does not represent the total value of the expenditures in connection with the robocalls, as it does not include any costs for obtaining the list of recipient telephone numbers or for actually transmitting the robocalls.<sup>5</sup>

More significantly, if we credit Steele and her counsel's unsworn statements, Steele did not violate the Act by failing to file independent expenditure reports as alleged. Her expenditures for the robocalls were not "independent" — they were made "in cooperation, consultation, or concert with, or at the request or suggestion of a candidate," namely, Long. *See* 11 C.F.R. § 100.16(a).

Steele's statements nonetheless suggest that she made excessive in-kind contributions to Long, which he and the Committee in turn accepted. She has confirmed that the \$700 she allegedly spent on the robocalls was unrelated to an additional \$2,399.05 in in-kind contributions that the Committee reported concerning her 2012 general election limit for Long. Steele therefore may have exceeded the then-applicable \$2,500 individual contribution limit by \$599.05, a possible violation of 2 U.S.C. § 441a(1)(A).<sup>6</sup>

#### B. Long and His Committee May Have Violated the Disclaimer and Reporting Provisions of the Act

Long and the Committee are not respondents in this matter and have not received formal notice of the Complaint. The evidence gathered to date, however, suggests that there may be reason to believe that Long and the Committee violated the Act.

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<sup>5</sup> As to those questions, other than to seek further information from Long, we have exhausted our currently known investigative leads. And given our intent to provide Long with notice and an opportunity to respond as described here, we have not yet undertaken to speak to him in his capacity as a fact witness concerning the amount of the expenditures.

<sup>6</sup> And for the same reason, the Committee may have knowingly accepted that excessive contribution in violation of 2 U.S.C. § 441a(f). *See infra* Part III.B.

If a communication is authorized and paid for by a candidate, a candidate's authorized committee, or an agent of either, it must clearly state that the communication has been paid for by the authorized political committee. 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(b)(1). If a communication is authorized by the candidate but paid for by another person, the disclaimer must state that the communication is paid for by such other person and is authorized by the candidate, his committee, or their agents. 2 U.S.C. § 441d(a)(2); 11 C.F.R. § 110.11(b)(2). Communications not authorized by a candidate, his committee, or their agents, must include a disclaimer that identifies, among other things, the person who paid for the communication and state that it 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)

Steele's statements that Long asked her to make the robocalls, provided her with a script, directed her to pay vendors, received from her the recording, and then apparently arranged for the robocalls to be transmitted, if true, suggest that Long authorized the robocalls and that their disclaimer should have identified him as such. *See id.* § 110.11(b).

The information Steele provided also suggests that the disclaimer's assertion that WAR paid for the robocalls was inaccurate. Although Steele used WAR checks to pay for her voice to be recorded and for a translator and narrator to create a Spanish version of the robocalls, we have not identified who paid for access to the list of telephone numbers that received robocalls or for their transmission. Given Steele's description of Long's substantial involvement in the effort, it appears likely that Long, the Committee, or another person in coordination with Long or the Committee covered those additional expenses and should have been identified in the disclaimer.

Moreover, in addition to the possibility that Steele made and Long and the Committee accepted an excessive contribution as a result of Steele's payments in connection with the robocalls, *see supra* n.6, Steele's assertion that Long materially assisted in their production and substantially discussed them with Steele, if true, would indicate that Long and the Committee received a \$700 in-kind contribution from Steele as a result of a coordinated communication that Long and the Committee failed to disclose. *See* 11 C.F.R. § 109.21.

We recognize that, based on the information currently in our possession, it appears that the amount of any such coordinated in-kind or excessive contribution from Steele may be minimal. Nonetheless, the circumstances here also raise the possibility that Long or the Committee may have intentionally disregarded a known legal obligation, *i.e.*, knowing and willful conduct. For instance, the 2012 campaign was Long's third federal campaign, and the robocall script — which Steele asserts Long provided — included a partial disclaimer, suggesting familiarity with disclosure obligations; the disclaimer in turn apparently misidentified the advertisement's sponsor as WAR — nothing more than a name and a temporary bank account — instead of Steele, Long, or both, suggesting the possibility of an intent to evade. And at this time we do not know the total amount spent on these calls. Given these facts, their

potential gravity, and the unknown potential amount in violation, we believe it would be premature to dispose of Steele's claims before the record is fully developed and before affording Long and the Committee notice and the opportunity to respond if they so chose.<sup>7</sup>

#### IV. CONCLUSION

The Commission previously limited the scope of the investigation in this matter to determining the amount of the expenditures at issue. In connection with that investigation, Steele has represented that her expenditures were not independent, but were instead coordinated with and authorized by Long, a candidate. We therefore intend to notify Todd Long and Todd Long for Congress and Todd Long in his official capacity as treasurer of the Complaint and the potential violations summarized here and offer them an opportunity to respond if they wish to do so. We will then proceed with any further recommendations to the Commission that we conclude are warranted.

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<sup>7</sup> As to Steele and WAR, if Steele's allegations concerning Long's involvement in the robocall effort are credited, it would appear that Steele did not violate the Act in the manner alleged. Further, based on the information currently before the Commission, the amount of Steele's apparent excessive in-kind contribution to the Committee would be *de minimis*. That information presently consists only of Steele's arguably self-serving and unsworn representations, however, and we may need to seek additional information from her and others in connection with our investigation of this matter. Consequently, we defer making any dispositive recommendations about those Respondents at this time.