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FIRST GENERAL COUNSEL'S REPORT

MUR: 6816
DATE COMPLAINT FILED: May 7, 2014¹
DATE OF NOTIFICATION: May 14, 2014
DATE OF LAST RESPONSE: July 8, 2014
DATE ACTIVATED: July 7, 2014

EXPIRATION OF STATUTE OF LIMITATIONS:
August 12, 2015-February 7, 2017
ELECTION CYCLE: 2010

COMPLAINANT:

Citizens for Responsibility and Ethics in
Washington
Melanie Sloan

RESPONDENTS:

American Future Fund
Sandy Greiner, President of AFF

Americans for Job Security
Stephen DeMaura, President of AJS

The 60 Plus Association, Inc.
Amy Frederick, President of 60 Plus

Center to Protect Patient Rights, Inc., a.k.a.
American Encore
Sean Noble, Executive Director of CPPR

**RELEVANT STATUTES:
AND REGULATIONS**

52 U.S.C. § 30104(c)²
52 U.S.C. § 30104(f)
11 C.F.R. § 104.20
11 C.F.R. § 109.10

INTERNAL REPORTS CHECKED:

Disclosure Reports; Commission Indices

FEDERAL AGENCIES CHECKED:

None

¹ The first paragraph of the Complaint describes the document as "an amended complaint," but we have no record of any related complaint filed before May 7, 2014.

² On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

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1 organizations contend they could have used such funds, not funds from CPPR, to pay for the
2 advertisements in question.⁸

3 Despite Respondents' assertions, the fact that Sean Noble decided both which
4 organizations received CPPR funds and also which advertisements would be broadcast by those
5 same groups suggests that CPPR contributed or donated funds for the purpose of furthering
6 specific advertisements. Thus, there is information indicating that AFF, AJS, and 60 Plus as the
7 recipient organizations should have disclosed CPPR as the donor on the independent expenditure
8 and electioneering communication disclosure reports filed with the Commission. Accordingly,
9 as set forth below, we recommend that the Commission find reason to believe that AFF, AJS,
10 and 60 Plus violated 52 U.S.C. § 30104(c)(2)(C) and (f)(2) (formerly 2 U.S.C. § 434(c)(2)(C)
11 and (f)(2)) and 11 C.F.R. § 109.10(e)(1)(vi) and authorize an investigation.⁹

12 II. FACTUAL BACKGROUND

13 A. CPPR and Sean Noble

14 CPPR is a non-profit corporation organized under section 501(c)(4) of the Internal
15 Revenue Code ("IRC").¹⁰ According to its 2010 Form 990 filed with the Internal Revenue
16 Service, CPPR describes its mission as "building a coalition of like-minded organizations and
17 individuals, and educating the public on issues, related to health care with an emphasis on
18 patients rights. Engaging in issue advocacy and activities to influence legislation related to
19 health care."¹¹ Sean Noble is the owner and sole member of Noble Associates, a consulting firm

⁸ CPPR Resp. at 5; AFF Resp. at 2; AJS Resp. at 4; 60 Plus Resp. at 5.

⁹ As discussed below, *see infra* Part III.B, we make no recommendation as to 11 C.F.R. § 104.20(c)(9), which the U.S. District Court for the District of Columbia vacated in a ruling that currently is the subject of an appeal. *See Van Hollen v. FEC*, No. 11-0766, 2014 WL 6657240 (D.D.C. Nov. 25, 2014), *appeals docketed* (D.C. Cir. Jan. 9 and 12, 2015).

¹⁰ CPPR Resp. at 2. CPPR changed its name to American Encore in February 2014. *Id.*

¹¹ Compl., Ex. D.

1 retained by CPPR to provide management consulting services in 2009 and 2010.¹² As part of the
2 agreement, Noble served as the Executive Director of CPPR.¹³

3 According to CPPR's Form 990 filing, CPPR received over \$61 million in contributions
4 and grants from unnamed sources and disbursed over \$44 million in contributions and grants to
5 other organizations in 2010.¹⁴ All of the organizations to which CPPR disbursed funds
6 sponsored independent expenditures and/or electioneering communications prior to the 2010
7 federal elections. CPPR did not sponsor any independent expenditures or electioneering
8 communications under its own name. Of the \$44 million in grants, CPPR gave \$11,685,000 to
9 AFF, \$4,828,000 to AJS, and \$8,990,000 to 60 Plus.¹⁵ CPPR did not distribute the funds in one
10 lump sum to each organization but sent them throughout the year as funds became available.¹⁶

11 CPPR contends that none of the grants awarded to the recipient organizations were
12 "earmarked for any particular project, purpose, or advertisement," and that the grants were
13 explicitly made as "unrestricted, general support grants."¹⁷ CPPR claims that in 2010, it
14 included with every grant a transmittal letter that informed each recipient that CPPR was
15 "pleased to make a general support grant."¹⁸ CPPR asserts that the recipient organizations AFF,

¹² CPPR Resp. at 2.

¹³ *Id.*

¹⁴ Compl., Ex. D. The Complaint cites various news reports which suggest that CPPR obtained substantial funding from organizations, which in turn, are purported to have either been controlled by or received funds from David and Charles Koch. *See id.* at 7-8, Ex. A, B, C.

¹⁵ CPPR Resp. at 3.

¹⁶ *Id.* CPPR does not elaborate on exactly when it made each payment to each organization, but provided some documentation indicating that it made a \$400,000 grant to 60 Plus on January 21, 2010, a \$150,000 grant to AFF on February 22, 2010, and a \$1 million grant to AJS on August 24, 2010. *Id.*, Attach. A, B, C.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 3-4.

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1 AJS, and 60 Plus raised or received substantial funding from other sources and could have spent
2 those funds on the advertisements for the 2010 House races at issue in the Complaint.¹⁹

3 **B. Recipient Organizations**

4 1. AFF

5 Founded in 2007, AFF is also a section 501(c)(4) social welfare organization.²⁰ AFF
6 states that its mission is “to promote conservative free market principles to the citizens of
7 America.”²¹ Sandy Greiner is the President of AFF and served in that capacity during the
8 relevant time period in this matter.²² Nicholas Ryan is a strategist for and consultant to AFF and
9 has served in that capacity since 2007.²³

10 AFF admits receiving \$11,685,000 in grants from CPPR in 2010 but asserts that the
11 grants were “unrestricted, general support grants.”²⁴ In his sworn affidavit, Ryan recalls that
12 Elissa Scannell, of Noble Associates, “acting on behalf of CPPR,” contacted him from “time to
13 time” to inform him that CPPR had funds available to make grants if AFF sought to make a grant
14 request.²⁵ Ryan would subsequently submit a written request on behalf of AFF, but Ryan avers
15 that he “never specified any project or activity for which the grant funds would be spent.”²⁶

16 CPPR’s grants of \$11,685,000 were roughly half of AFF’s gross receipts, which totaled
17 \$23,304,826 in 2010.²⁷ AFF’s total expenses were \$21,352,090,²⁸ and its expenses on both

¹⁹ *Id.* at 5.

²⁰ AFF Resp. at 2.

²¹ AFF 2010 IRS Form 990.

²² AFF Resp. at 2.

²³ *Id.*

²⁴ *Id.*

²⁵ Aff. of Nicholas Ryan ¶ 4 (June 19, 2014) (“Ryan Aff.”); AFF Resp., Ex. C.

²⁶ *Id.*

²⁷ AFF Resp. at 2.

1 Upon becoming a member of AJS in August 2010, CPPR subsequently paid AJS
2 \$4,800,000 in dues.³⁶ CPPR's dues payment was almost 40% of the total funds that AJS
3 received for its 2009 fiscal year, which runs from November 1, 2009 to October 31, 2010.³⁷ AJS
4 also spent a combined total of \$4,506,513.63 in independent expenditures (\$4,406,901.63) and
5 electioneering communications (\$99,672) targeting House races in 2010. AJS spent almost all of
6 this money, except \$45,100, in September and October of 2010.³⁸

7 3. 60 Plus

8 60 Plus is a section 501(c)(4) social welfare organization, founded in 1992, that
9 "advocates for free enterprise, less government, and lower tax solutions to public policy issues
10 affecting senior citizens."³⁹ Amy Noone Frederick has been the President of 60 Plus since
11 January 2010.⁴⁰

12 Like AJS, 60 Plus states that it has "a longstanding policy of not soliciting or accepting
13 donations that are earmarked, designated, or encumbered for any particular program or activity,
14 including electioneering communications and independent expenditures."⁴¹ In accordance with
15 this policy, 60 Plus claims that it neither solicited nor accepted funds specifically or generally
16 earmarked or designated by a donor to pay for electioneering communications or independent
17 expenditures in 2010.⁴²

³⁶ *Id.* at 2.

³⁷ *See id.*, Ex. 3.

³⁸ *See* Attach. B, AJS 2010 Independent Expenditure and Electioneering Communication Spending.

³⁹ 60 Plus Resp. at 1.

⁴⁰ *Id.*

⁴¹ *Id.* at 4 (citing Aff. of Amy Noone Frederick ¶ 11 (June 30, 2014) ("Frederick Aff."))

⁴² *Id.*

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1 60 Plus acknowledges that beginning in January 2010, it received a series of payments
2 from CPPR totaling \$8,990,000 in 2010 but contends that the funds were “unrestricted, general
3 support” grants.⁴³ In 2010, 60 Plus spent \$7,096,131 on both independent expenditures
4 (\$6,698,293) and electioneering communications (\$397,838) targeting House races.⁴⁴

5 4. Summary

6 The following amounts were raised and spent by the organizations that received grants
7 from CPPR in this matter:

	2010 CPR Grant Total	Total 2010 House Spending	2010 Gross Receipts	2010 Total Expenses
AFF	\$11,685,000	\$8,313,866.00	\$23,304,826	\$21,352,090
AJS	\$4,828,000	\$4,506,513.63	\$12,411,684 ⁴⁵	\$12,417,809 ⁴⁶
60 Plus	\$8,990,000	\$7,096,131.00	\$34,584,571 ⁴⁷	\$33,848,211

8
9 C. **Respondents' Advertising Campaign Targeting 2010 House Races**

10 The Complaint's allegations regarding the earmarking of CPPR funds relies almost
11 entirely upon a *National Review* article published on March 31, 2014.⁴⁸ Noble himself appears
12 to have been the primary source for the article.⁴⁹

⁴³ *Id.*

⁴⁴ Attach. C, 60 Plus 2010 Independent Expenditure and Electioneering Communication Spending.

⁴⁵ This amount reflects the gross receipts that AJS received during FY 2009, which covered the time period from November 1, 2009 through October 31, 2010.

⁴⁶ This amount reflects AJS's total spending during FY 2009, which covered the time period from November 1, 2009 through October 31, 2010.

⁴⁷ The gross receipts and total expenses figures for 60 Plus span a two year time period because its fiscal year 2009 ran from July 1, 2009 to June 30, 2010 and fiscal year 2010 ran from July 1, 2010 to June 30, 2011. Because CPPR's grants appeared to have only spanned a one year time period, the proportion of CPPR's grants in relations to 60 Plus' total receipts was likely greater than the chart reflects.

⁴⁸ See Compl. ¶ 28 (citing Eliana Johnson, *Inside the Koch-Funded Ads Giving Dems Fits*, NAT'L REV. (Mar. 31, 2014) [hereinafter Johnson, *Inside the Ads*] (attached as Exhibit C of Complaint)).

⁴⁹ *Id.*

1 According to the article, beginning in March 2010, CPPR and Noble decided to focus on
2 the struggle for control of the House of Representatives and sought to produce dozens of
3 advertisements targeting hundreds of congressional candidates in the 2010 midterm elections.⁵⁰
4 The article indicates that Noble and his team prepared an Excel spreadsheet identifying over 100
5 House members prioritized by likelihood of defeat and allotted their resources accordingly.⁵¹

6 Noble then "coordinated the disbursement of over \$50 million to several other groups
7 that paid to put the ads on the air: Americans for Prosperity, the 60 Plus Association, Americans
8 for Job Security, Americans for Limited Government, and the American Future Fund."⁵² The
9 article states, "CPPR funneled money to multiple groups, Noble says, both to protect the
10 anonymity of donors and because IRS regulations prohibit any individual (c)(4) group from
11 spending more than 50 percent of its time on candidate-related political activity."⁵³

12 In particular, the article identifies several advertisements, which were produced by Noble
13 and CPPR and aired by one of the recipient organizations. Based on polling research, Noble
14 determined that aligning Democratic candidates with Nancy Pelosi would be an effective way to
15 persuade voters to vote Republican.⁵⁴ Consequently, 60 Plus, AFF, and AJS aired
16 advertisements linking Democratic members of Congress to Nancy Pelosi.⁵⁵

⁵⁰ Johnson, *Inside the Ads, supra*, at 5.

⁵¹ *Id.*

⁵² *Id.* at 3.

⁵³ *Id.* The article further notes that in 2012, California officials levied a \$1 million fine on CPPR for failing to disclose intermediary sources of independent expenditures it made to oppose two ballot propositions. *Id.* According to California state court records, one of the intermediary sources was AFF. See Stipulation for Entry of Judgment, *Fair Political Practices Commission v. Center to Protect Patient Rights*, Civ. No. 12/784 (Cal. Super. Ct. Oct. 24, 2013).

⁵⁴ Johnson, *Inside the Ads, supra*, at 5.

⁵⁵ *Id.* at 6. For example, 60 Plus apparently aired advertisements in Florida stating, "'Alan Grayson and Suzanne Kosmas are putting Nancy Pelosi's liberal agenda ahead of seniors.'" *Id.* In addition, it spent \$100,000 to air an advertisement in Minnesota's eighth congressional district aligning incumbent Jim Oberstar with Pelosi. *Id.* Further, AFF aired an advertisement in South Dakota similarly attacking Stephanie Herseth Sandlin for voting with

1 Respondents contend that the *National Review* article is not entirely accurate. CPPR
2 argues that it was not CPPR, but Noble Associates as a subcontractor to media firms hired by the
3 recipient organizations, that helped produce the advertisements in question.⁵⁶ Noble's use of the
4 term "we" in the article did not consistently refer to CPPR but generally to the various
5 individuals and groups who worked with Noble, including AFF, AJS, and 60 Plus.⁵⁷ Noble
6 Associates participated in various working groups, which included representatives from each of
7 the recipient organizations, as well the organizations' pollsters, media vendors, and media
8 buyers.⁵⁸ Further, Noble Associates "helped to produce advertisements and determine
9 advertisement strategy for American Future Fund, Americans for Job Security and the 60 Plus
10 Association."⁵⁹

11 Noble nevertheless argues that he, in his capacity as Executive Director of CPPR,
12 provided grants as "general organization support," and never earmarked funds for any particular
13 purpose.⁶⁰ He adds, "I never instructed any individual representing American Future Fund,
14 Americans for Job Security, or The 60 Plus Association that any grant provided by CPPR in
15 2010 should or must be used in connection with any particular project, advertisement, or
16 advertisements."⁶¹ He further states that "[n]either CPPR nor any individual acting as an agent

Nancy Pelosi more than 90 percent of the time. *Id.* AJS aired another advertisement informing North Carolina's second district that Congressman Bob Etheridge "voted for Nancy Pelosi's health-care plan." *Id.*

⁵⁶ CPPR Resp. at 2-3.

⁵⁷ *Id.* at 9; Noble Aff. ¶ 11.

⁵⁸ Noble Aff. ¶ 5.

⁵⁹ *Id.*

⁶⁰ *Id.* ¶ 7.

⁶¹ *Id.* ¶ 9.

1 of CPPR, to the best of my knowledge earmarked any grant to pay for, or further, the specific
2 advertisements referenced in CREW's Complaint at Paragraph 36."⁶²

3 None of the recipient organizations deny that they disseminated the advertisements in
4 question during the 2010 mid-term elections as described in the *National Review* article. They
5 also admit to using the same media consultants, McCarthy, Marcus, Hennings Ltd. ("MMH"),
6 which produced the advertisements, and Mentzer Media Services ("MMS"), which placed the
7 advertisements, although AFF and AJS claim they also used other vendors.⁶³ The recipient
8 organizations also do not deny that Noble played a key role both in choosing the Democratic
9 House candidates to target and in determining the content of their ads, in his role as a subvendor
10 to their media vendor. Neither Noble nor the recipient organizations offer any explanation as to
11 how he was hired to serve as a subcontractor on each of their media campaigns.

12 The recipient organizations deny, however, that they solicited or used any earmarked
13 funds from CPPR to pay for those advertisements. AFF's consultant, Nick Ryan, claims that he
14 never had discussions with Noble regarding detailed plans or projects of AFF.⁶⁴ AJS and 60 Plus
15 state that while they hired MMH and MMS to manage their television advertising, they and their
16 staff retained sole discretion over the content, timing, and placement of the advertising.⁶⁵ AJS's
17 Stephen DeMaura states that AJS was actively involved in the development of its advertising and
18 that he reviewed scripts and made substantive edits; he and AJS's outside counsel also reviewed
19 and gave final approval before each advertisement was publicly disseminated.⁶⁶ Amy Noone

⁶² *Id.* ¶ 10.

⁶³ AFF Resp. at 3; AJS Resp. at 4; 60 Plus Resp. at 2.

⁶⁴ Ryan Aff. ¶ 7.

⁶⁵ AJS Resp. at 4; 60 Plus Resp. at 2-3.

⁶⁶ DeMaura Aff. ¶ 12.

1 person filing such report which contribution was made for the purpose of furthering *the reported*
2 independent expenditure.”⁷²

3 This Office previously addressed the scope of disclosure required under section 30104(c)
4 (formerly section 434(c)) of the Act and Section 109.10(e)(1)(vi) of the Commission's
5 implementing regulations in

6 and another currently pending before the Commission, MUR 6696 (Crossroads GPS).

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⁷² 11 C.F.R. § 109.10(e)(1)(vi) (emphasis added). In 2011, Rep. Chris Van Hollen petitioned the Commission to revise section 109.10(e)(1)(vi), arguing that it “requires disclosure only of those contributors who state a specific intent to fund a specific (‘the reported’) independent expenditure.” Rep. Chris Van Hollen, Petition for Rulemaking at 3 (Apr. 21, 2011) (“Van Hollen Petition”). In response, this Office submitted to the Commission a draft notice of proposed rulemaking proposing to amend section 109.10(e)(1)(vi). The proposal would have required disclosure of all contributors who make a contribution for the purpose of furthering “an” independent expenditure. *See* Draft Notice of Proposed Rulemaking for Independent Expenditure Reporting at 7 (Dec. 15, 2011). The Commission did not approve the proposal for publication in the *Federal Register*.

⁷³

⁷⁴

1 Similarly, in MUR 6696, we are recommending that the Commission find no reason to believe
2 that Crossroads violated the Act and Commission regulations where there was no information
3 indicating that the donor made contributions to further "the reported independent expenditure."⁷⁵

4 2. Electioneering Communications

5 "Electioneering communications" are defined as broadcast, cable or satellite
6 communications that refer to a clearly identified candidate for federal office, are publicly
7 distributed within sixty days before a general election or thirty days before a primary election,
8 and are targeted to the relevant electorate.⁷⁶ A communication is "targeted to the relevant
9 electorate" if it can be received by 50,000 or more persons in the district or state in which the
10 candidate is running.⁷⁷

11 The Act provides that a person that has made electioneering communications aggregating
12 in excess of \$10,000 in a calendar year must file a disclosure statement.⁷⁸ These statements must
13 disclose the identities of the persons making the electioneering communication, the cost of the
14 communication, the election in which that candidate is running for office, and the names and
15 addresses of all those who donated an aggregate amount of \$1,000 or more within a specified
16 time period.⁷⁹

17 11 C.F.R. § 104.20(c)(9) remained in effect at all times relevant to the conduct at issue in
18 this matter. This provision required corporations and labor organizations that make
19 disbursements for electioneering communications to disclose "the name and address of each

⁷⁵ First Gen. Counsel's Report at 11, MUR 6696.

⁷⁶ See 52 U.S.C. § 30104(f)(3)(A)(i) (formerly 2 U.S.C. § 434(f)(3)(A)(i)).

⁷⁷ *Id.* § 30104(f)(3)(C).

⁷⁸ See *id.* § 30104(f)(1) (formerly 2 U.S.C. § 434(f)(1)).

⁷⁹ See *id.* § 30104(f)(2) (formerly 2 U.S.C. § 434(f)(2)).

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1 person who made a donation aggregating \$1,000 or more to the corporation or labor
2 organization, aggregating since the first day of the preceding calendar year, which was made for
3 the purpose of furthering electioneering communications."⁸⁰ However, on November 24, 2014,
4 the district court vacated the regulation in *Van Hollen v. FEC*,⁸¹ finding its promulgation to be
5 arbitrary and capricious and an unreasonable interpretation of the Bipartisan Campaign Reform
6 Act.⁸² That decision is pending appeal.⁸³

7 Because the statute of limitations in this matter will begin to expire in August 2015, we
8 believe that the Commission should take action here without waiting for the outcome of the
9 appeal. While there is a question as to whether the Commission should give retroactive effect to
10 the *Van Hollen* decision,⁸⁴ we do not believe that the decision necessarily affects the outcome

⁸⁰ 11 C.F.R. § 104.20(c)(9).

⁸¹ No. 11-0766, 2014 WL 6657240 (D.D.C. Nov. 25, 2014). We note that the court had struck down section 104.20(c)(9) once before in 2012 on the grounds that the Commission had exceeded its authority in promulgating the regulation with a "purpose" requirement. *See Van Hollen v. FEC*, 851 F. Supp. 2d 69 (D.D.C. 2012). On appeal, the D.C. Circuit remanded the case for further consideration. *Ctr. For Individual Freedom v. FEC*, 694 F.3d 108, 112 (D.C. Cir. 2012)

⁸² *Van Hollen*, 2014 WL 6657240, at *1.

⁸³ Notices of Appeal, *Van Hollen v. FEC*, No. 11-0766 (Jan. 9 and 12, 2015).

⁸⁴ As a general rule, federal courts and agencies must give retroactive effect to new rules of law. *See, e.g., Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749, 752 (1995) ("[W]hen (1) the Court decides a case and applies the (new) legal rule of that case to the parties before it, then (2) it and other courts must treat that same (new) legal rule as 'retroactive,' applying it, for example, to all pending cases whether or not those cases involve predecision events."); *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86, 89 (1993) ("this Court's application of a rule of federal law to the parties before the Court requires every court to give retroactive effect to that decision."); *Nat'l Fuel Gas Supply Corp. v. FERC*, 59 F.3d 1281, 1289 (D.C. Cir. 1995) (requiring federal agency to give retroactive effect to ruling of federal court).

There are limited exceptions to the retroactivity rule. *See Hyde*, 514 U.S. at 759. The Supreme Court has raised the possibility that special circumstances, such as "grave disruption or inequity," may permit departures from the rule. *Ryder v. United States*, 515 U.S. 177, 185 (1995). In June 2012, after the district court first struck down section 104.20(c)(9) and ordered that the 2003 version of the regulation apply, *see Van Hollen*, No. 11-0766, slip op. at 3 (D.D.C. Apr. 27, 2012), this Office advised that the Commission likely had discretion not to enforce that ruling retroactively for electioneering communications aired before that decision. *See* Anthony Herman, Memorandum to the Commission (June 22, 2012). Subsequently, the Commission issued a statement on July 27, 2012, that the new disclosure rules for electioneering communications would be effective as of the date of the court's decision. *See* FEC Statement on *Van Hollen v. FEC* (July 27, 2012), (<http://www.fec.gov/pages/fecrecord/2012/august/commstatement.shtml>). Thus, the Commission did not retroactively apply the new rule to electioneering communications made prior to the date of the court's ruling.

1 with respect to the specific facts alleged in this matter. As described below, there is substantial
2 evidence sufficient to support a finding that there is reason to believe that CPPR may have been
3 required to disclose its donors, both under the Act standing alone as well as under the now-
4 vacated regulation.⁸⁵

5 **B. There is Reason to Believe that CPPR Made Contributions for the Purpose of**
6 **Furthering the Reported Independent Expenditures and Furthering**
7 **Electioneering Communications**

8
9 The record in this matter supports the inference that CPPR, through its Executive
10 Director and agent Sean Noble, gave funds to the recipient organizations *for the purpose of*
11 *furthering* both advertisements in general and specific advertisements based on Noble's
12 undisputed role in managing their advertising campaigns. Notwithstanding the Respondents'
13 denials, the circumstances indicate that CPPR's agent, Noble, significantly influenced the
14 advertising campaigns of AFF, AJS, and 60 Plus.

15 *First*, Noble admits that his solely-owned consulting firm, Noble Associates, "helped to
16 produce advertisements and determine advertisement placement strategy" for AFF, AJS, and 60
17 Plus.⁸⁶ CPPR's argument that there was no violation because Noble was acting in his capacity as

⁸⁵ As the law now stands, following the vacatur of section 104.20(c)(9), it appears that the statute alone governs the relevant disclosure obligations at issue. If so, arguably the Act would have required the Respondents to disclose all donors who gave at least \$1,000 during the time specified at 52 U.S.C. § 30104(f)(2)(F) (formerly 2 U.S.C. § 434(f)(2)(F)), regardless of whether the donors provided those funds for the purpose of furthering electioneering communications generally.

⁸⁶ The CPPR Response admits that Noble Associates was a subcontractor to MMH and MMS, which were the same media vendors for the recipient organizations. In addition, none of the Respondents deny that, as reported in the *National Review* article, Noble worked with Larry McCarthy who is the President of MMH in producing the advertisements targeting House Democrats. Accordingly, it is reasonable to presume that the MMH and MMS may have shared information about their client's advertising strategy and costs related to such strategy with Noble and Noble Associates. Respondents provide no information to rebut this presumption.

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1 a member of Noble Associates is unpersuasive given that an officer's knowledge may be
2 imputed to the corporation.⁸⁷

3 *Second*, Noble admits that Noble Associates participated in working groups that included
4 representatives from AFF, AJS, and 60 Plus, as well as pollsters, media vendors, and media
5 buyers. The CPPR Response also acknowledges that the strategy to link Democrats to Nancy
6 Pelosi, as reported in the *National Review* article, emerged from those working groups.⁸⁸ These
7 facts support the conclusion that participants in the working groups shared information regarding
8 the recipient organizations' advertising strategy, which in turn lends support to the Complaint's
9 allegation that Noble "coordinated" the distribution of funds. Indeed, Commission disclosure
10 reports confirm, and Respondents do not deny, that AFF, AJS, and 60 Plus targeted different
11 races in their television ad campaigns, and thus avoiding duplicating their efforts, which further
12 suggests concert of action.⁸⁹

13 *Third*, although the recipient organizations claim that they received sufficient
14 funds from other sources to pay for their ad campaigns, the assertion disregards the fact
15 that CPPR alone provided sufficient funds to pay for all of their advertisements relating

⁸⁷ Specifically, in Maryland, where CPPR is registered as a corporation, if an individual is an officer for two corporations, the "officer's knowledge of the affairs of one corporation will be imputed to the other when such knowledge is present in his mind and memory at the time he engages in a transaction on behalf of such other corporation, or when such knowledge comes to him while acting as an agent for such other corporation in his official capacity, or while acting as an agent of such corporation, and within the scope of his authority." *Mercy Med. Ctr., Inc. v. United Healthcare of the Mid-Atlantic, Inc.*, 815 A.2d 886, 904 (Md. Ct. Spec. App. 2003) (citation omitted).

⁸⁸ CPPR Resp. at 12.

⁸⁹ Noble's admission as to the working groups also raise questions as to statements made in Nicholas Ryan's sworn affidavit, where Ryan claims that he did not have discussions about advertising strategy with AJS and 60 Plus in 2010. Ryan Aff. at ¶ 8. Even if Ryan did not communicate with these groups himself, then it appears at least that another individual may have participated in the working groups on behalf of AFF.

1 to the 2010 House races. In fact, CPPR's \$4.8 million dues payment to AJS closely
2 corresponds to the \$4.5 million AJS spent on the relevant advertisements in question.

3 CPPR disputes that it directly earmarked funds. Noble states he never told anyone acting
4 on behalf of AFF, AJS, or 60 Plus that they "should or must" use funds provided by CPPR in a
5 particular manner. But this does not preclude the possibility that Noble acting in his capacity as
6 a member of Noble Associates may have so directed a media vendor that in turn communicated
7 with one of the recipient organizations. Further, another agent of Noble Associates may have
8 communicated with a media vendor or directly with one of the recipient organizations regarding
9 the financing of the advertisements. Indeed, the Commission's regulations recognize that
10 earmarking may occur directly or indirectly. The transmittal letters indicating that CPPR was
11 providing general support grants are not dispositive as to whether there were no subsequent
12 discussions about the use of the funds. Finally, the fact that the recipient organizations
13 participated in the development of their advertisements and gave final approval for those
14 advertisements does not undercut the fact that Noble, too, was involved in the process.

15 Importantly, several substantial questions raised in this matter remain unaddressed by the
16 Responses and other information in the present record. How did CPPR come to select AFF,
17 AJS, and 60 Plus to receive over \$40 million in one year? CPPR and Noble do not explain how
18 they arrived at the decision to provide those funds and whether they communicated with anyone
19 before awarding the grants in question.

20 The recipient organizations also provide little information as to how they were able to
21 obtain such large donations from a donor without any discussion of how they planned to use the
22 funds. AFF's Ryan simply claims that Elissa Scannell of Noble Associates "acting on behalf of
23 CPPR" called him to inform him that CPPR had funds to distribute, and that he submitted letter

1 with a standard template requesting funds to “educate Americans about free enterprise and
2 economic freedom issues.”⁹⁰ AJS and 60 Plus claim that they never solicited earmarked funds
3 but provide no explanation as to how CPPR awarded them grants worth millions of dollars. AJS
4 has submitted the transmittal letter from CPPR enclosing a \$1 million payment and an unsigned,
5 form “thank you” letter to Noble indicating that allocation of membership dues is at the sole
6 discretion of AJS. But it has provided no other information regarding the process by which it
7 received \$4.8 million from CPPR. Further, the standard membership guidelines and agreement
8 reflecting AJS’s policy of not accepting earmarked funds do little to shed light on the specific
9 transactions in question. Indeed, the membership agreement does not bear Noble’s signature.
10 Finally, 60 Plus provides no information as to the circumstances in which it received almost \$9
11 million from CPPR besides a summary denial that it did not solicit or accept earmarked funds.

12 It also remains unclear how Noble came to be selected as the key subcontractor to work
13 on the recipient organizations’ ad campaigns. Was Noble hired as a subcontractor for the AFF,
14 AJS and 60 Plus advertising campaigns due to his role as CPPR’s Executive Director? If so, that
15 may undercut the argument that the knowledge Noble gained in one role should not be imputed
16 to the organizations that he was purporting to serve in another role. Significantly, neither CPPR
17 nor the recipient organizations provide any explanation for how Noble came to be retained by the
18 advertising vendors, or deny that the retention of Noble for the ad campaigns was an implicit
19 condition of receiving CPPR funds. Given that Noble states that CPPR provided funds to the
20 recipient organizations at various times throughout 2010, he may have awarded grants to each

⁹⁰ Ryan Aff. ¶ 4.

1 organization with the knowledge that such funds would be used to pay for particular
2 advertisements.⁹¹

3 A reason to believe determination is not conclusive that Respondents violated the Act but
4 rather recognizes the seriousness of the allegations and provides an opportunity to conduct an
5 administrative fact-finding inquiry to resolve whether in fact a violation occurred.⁹² Thus, the
6 Commission previously has determined as a matter of policy that a reason to believe finding is
7 appropriate "in cases where the available evidence in the matter is at least sufficient to warrant
8 conducting an investigation."⁹³ Respondents claim that the Complaint fails to meet the "reason
9 to believe threshold" because it erroneously relies upon the *National Review* article and
10 "unsourced speculation" without facts supporting its allegations.⁹⁴

11 We disagree. The present record amply supports a reason to believe finding. Noble
12 admits that he was the source for the article and that certain key facts as reported by the article
13 are true. For example, Noble admits that while he was awarding grants to the recipient
14 organizations in 2010, he was also actively working on their ad campaigns as a subcontractor. In
15 addition, Noble acknowledges that representatives of AJS, AFF, and 60 Plus participated in

⁹¹ Further, we note the unusual circumstances in which Noble, as Executive Director of CPPR, donated millions of dollars to the recipient organizations while serving as a subcontractor to those same organizations that received payment for his services as the sole member of Noble Associates. The dual roles that Noble played raises a fair inference that Noble may have known when he dispersed CPPR funds that he would receive those funds through his vendor relationship to the recipient organizations — and thus, that he knew that those funds would be used in connection with the relevant advertisements.

⁹² See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007) (A reason-to-believe finding indicates "only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred.").

⁹³ See *id.* (reason-to-believe finding appropriate where complaint "credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope.").

⁹⁴ AJS Resp. at 11; 60 Plus Resp. at 10-11; CPPR Resp. at 8-13.

1 working groups with Noble Associates and the media firms to work on the 2010 House
2 advertising campaign. Such evidence supports an inference that CPPR, through its officer and
3 agent, Sean Noble, had knowledge of the particular ads that the recipient organizations planned
4 to run, and relevant information about the organizations' advertising campaigns may have been
5 shared between Noble Associates and the recipient organizations.

6 Accordingly, we believe that the undisputed facts in this matter warrant an investigation
7 to determine whether there was communication between Noble and the recipient organizations
8 about how funds should be spent. If the investigation uncovers evidence of such communication,
9 then AFF, AJS, and 60 Plus may have violated the Act and the Commission's regulations by
10 failing to identify CPPR as a donor in their independent expenditure and electioneering
11 communications reports.

12 For these reasons, we recommend that the Commission find reason to believe AFF, AJS,
13 and 60 Plus violated 52 U.S.C. § 30104(c)(2)(C) and (f)(2) (formerly 2 U.S.C. § 434(c)(2)(C)
14 and (f)(2)) and 11 C.F.R. § 109.10(e)(1)(vi).⁹⁵

15 **IV. INVESTIGATION**

16 We propose to investigate whether Sean Noble or any agent of Noble Associates
17 exchanged information with AFF, AJS, and 60 Plus relating to the 2010 advertising campaign
18 that is the subject of this allegation described here. In particular, we will seek information
19 concerning whether, when, and how Noble and the recipient organizations shared information
20 about the financing of their advertising campaigns, and information relevant to whether CPPR

⁹⁵ The complaint does not allege a specific violation of the Act by CPPR or Noble, and the currently available information does not provide a basis for a reason to believe finding as to any violation of the Act by these respondents. Given that CPPR's and Noble's activities will be the focus of our investigation into the possible reporting violations of AFF, AJS, and 60 Plus, we plan to defer making any recommendation as to CPPR and Noble until once we have established a complete factual record through the investigation.

1 provided its funds to any of the recipient organizations to further electioneering communications
2 generally or particular independent expenditures. We will seek to conduct our investigation
3 through voluntary means, but recommend that the Commission authorize the use of compulsory
4 process, including the issuance of appropriate interrogatories, document subpoenas, and
5 deposition subpoenas, as necessary.

6 **V. RECOMMENDATIONS**

- 7 1. Find reason to believe that American Future Fund violated 52 U.S.C.
8 § 30104(c)(2)(C) and (f)(2) (formerly 2 U.S.C. § 434(c)(2)(C) and (f)(2)) and 11
9 C.F.R. § 109.10(e)(1)(vi);
- 10 2. Find reason to believe that American for Job Security violated 52 U.S.C.
11 § 30104(c)(2)(C) and (f)(2) (formerly 2 U.S.C. § 434(c)(2)(C) and (f)(2)) and 11
12 C.F.R. § 109.10(e)(1)(vi);
- 13 3. Find reason to believe that the 60 Plus Association violated 52 U.S.C.
14 § 30104(c)(2)(C) and (f)(2) (formerly 2 U.S.C. § 434(c)(2)(C) and (f)(2)) and 11
15 C.F.R. § 109.10(e)(1)(vi);
- 16 4. Approve the attached Factual and Legal Analyses;
- 17 5. Authorize compulsory process; and

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