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June 19, 2014

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Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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Re: Response of American Future Fund (AFF) and Sandy Greiner in MUR 6816

Dear Mr. Jordan,

This response is submitted by the undersigned counsel on behalf of American Future Fund and Sandy Greiner, in her capacity as President of American Future Fund, in the above-referenced matter. For the reasons set forth below, the Commission should quickly dismiss this frivolous complaint.

In its complaint, Citizens for Responsibility and Ethics in Washington ("CREW") contends that three organizations (American Future Fund ("AFF"), Americans for Job Security ("AJS"), and the 60 Plus Association ("60 Plus")) distributed certain independent expenditures and/or electioneering communications, but failed to identify the Center to Protect Patients Rights, Inc., ("CPPR") as a contributor or donor on reports filed with the Commission regarding those independent expenditures and/or electioneering communications. According to CREW, this alleged omission "denied the public important information about who paid for the advertisements broadcast by AFF, AJS, and 60 Plus." Complaint at ¶ 2.¹ While CREW alleges a

¹ CREW has always refused to disclose its own donors, and its founder and executive director, Melanie Sloane, once explained, "I wouldn't have any donors if I revealed all my donors." Jennifer Rubin, *Left-wing front group doesn't like public employee study*, Washington Post (Feb. 24, 2011), <http://voices.washingtonpost.com/right-turn/2011/02/union-front-groups-dont-like-p.html>; see also Rick Berman, *The CREW farce*, Daily Caller (Aug. 14, 2012), <http://dailycaller.com/2012/08/14/the-crew-farce/> ("Sloan often attacks 501(c)(3) and 501(c)(4) organizations for declining to disclose their donors, yet she refuses to disclose CREW's — also a 501(c)(3)."); Michael Warren, *Disclose As We Say, Not As We Do; CREW's hypocrisy on donor disclosure goes ignored*, The Weekly Standard (Mar. 24,

criminal conspiracy, *see* Complaint at ¶¶ 65-67, the Complaint concerns only a minor reporting matter.

Generally speaking, the story CREW presents in its Complaint bears no resemblance to AFF's experience in 2010. Neither AFF, nor any officer, director, agent, or representative of AFF ever solicited, accepted, or received an earmarked grant or contribution from CPPR.

I. Factual Background

AFF was founded and organized in 2007 as an independent, Section 501(c)(4) social welfare organization that works to provide Americans with a voice to communicate on important conservative and free market issues. Sandra (Sandy) Greiner serves as the President of AFF, and served in that capacity at all times relevant to this matter. *See* Affidavit of Sandy Greiner ("Greiner Affidavit") at ¶ 2. Nicholas Ryan serves as a strategist for, and consultant to, AFF, and has served in that capacity at all times relevant to this matter. *See* Affidavit of Nicholas Ryan ("Ryan Affidavit") at ¶ 2.

AFF received \$11,685,000 in unrestricted, general support grants from CPPR in 2010. *See* Ryan Affidavit at ¶ 3. In addition to CPPR's grants, AFF also received roughly the same amount (\$11,619,826) from other sources during 2010. AFF's gross receipts in 2010 totaled \$23,304,826, and AFF's total expenses in 2010 were \$21,352,090.²

Mr. Ryan recalls that Elissa Scannell, of Noble Associates, LLC, and acting on behalf of CPPR, contacted him from time to time to inform him that CPPR had funds available to make grants, if AFF wished to submit a request for a grant. Mr. Ryan would then submit a grant request on behalf of AFF, and these requests never specified any project or activity for which the funds would be spent. Every grant request submitted to CPPR by Mr. Ryan on behalf of AFF was a request for an unrestricted, general support grant, and Mr. Ryan never sought funding from CPPR for specific projects or advertisements. *See* Ryan Affidavit at ¶ 4.

Attached to this Response is a sample grant request letter used by AFF in 2010, and each grant request submitted by AFF to CPPR in 2010 mirrored the attached template. Each grant request read in pertinent part: "I am writing to you on behalf of American Future Fund to formally request a grant in the amount of \$[amount] from your organization to enable American Future Fund to educate Americans about free enterprise and economic freedom issues." *See* Attachment A and Ryan Affidavit at ¶ 9.

2011), http://www.weeklystandard.com/blogs/disclose-we-say-not-we-do_555442.html ("CREW does not discuss its donors," said communications director Garrett Russo.").

² These figures were reported on AFF's 2010 IRS Form 990 tax return, which is publicly available.

When a grant request was fulfilled by CPPR, in whole in or in part, the grant would be accompanied by a letter indicating that the grant was made for the "general support" of AFF. Each grant transmittal letter from CPPR read as follows:

Dear Mr. Nick Ryan,

The Center to Protect Patient Rights, Inc. is pleased to make a general support grant in the amount of \$[amount] to support American Future Fund. Our federal tax ID number is [xx-xxxxxxx]. The Center to Protect Patient Rights is a 501(c)(4) organization.

Sincerely,
/s/
Sean Noble
Executive Director

See Attachment B and Ryan Affidavit at ¶ 9. AFF never received funds from CPPR that were conditioned on, or restricted to, specific activities or advertisements. See Ryan Affidavit at ¶ 5.

Most of AFF's 2010 television advertisements were created and produced by AFF's retained media consulting firm, McCarthy, Marcus, Hennings Ltd. ("MMH"), and placed by Mentzer Media Services. Mr. Ryan had substantial input with respect to the creation, production, and placement of advertising, and recalls speaking with a representative of MMH on a more or less daily basis during much of 2010. *See Ryan Affidavit at ¶ 6.* However, AFF also utilized other vendors, including Nebo Media, Ten Capitol, SRCP Media, and On Message Inc. For example, AFF distributed an electioneering communication referencing U.S. House candidate Steve Moak in August 2010; this advertisement was produced and placed by On Message Inc.

Mr. Ryan remembers having relatively little contact with Sean Noble in 2010. Mr. Ryan recalls they spoke on occasion, but those conversations were not regular or extensive, and they did not discuss the detailed plans or projects of AFF or any other organization. *See Ryan Affidavit at ¶ 7.*

Mr. Ryan does not recall having discussions regarding advertising strategy with representatives of AJS or 60 Plus in 2010. *See Ryan Affidavit at ¶ 8.*

II. Relevant Law

The question presented for the Commission is whether CPPR “earmarked” grants to AFF in a manner that would require AFF to report CPPR as either (i) a “a person who made a contribution ... for the purpose of furthering an independent expenditure” pursuant to 2 U.S.C. § 434(c)(2)(C), as interpreted by the Commission at 11 C.F.R. 109.10(e)(1)(vi), or (ii) a “contributor” pursuant to 2 U.S.C. § 434(f)(2), as interpreted by the Commission at 11 C.F.R. § 104.20(c)(9).

Commission regulations provide that an independent expenditure report must include “[t]he identification of each person who made a contribution in excess of \$200 to the person filing such report, *which contribution was made for the purpose of furthering the reported independent expenditure.*” 11 C.F.R. § 109.10(e)(1)(vi) (emphasis added).³ There is no question that, with respect to any independent expenditure report filed by AFF, no disclosure of any contributor is required unless the “contribution was made for the purpose of furthering the reported independent expenditure.” *Id.*

With respect to electioneering communications, the precise scope and application of the donor disclosure requirement is currently disputed by the Commissioners. Commission regulations require the reporting of “the name and address of each person who made a donation aggregating \$1,000 or more to the corporation or labor organization, aggregating since the first day of the preceding calendar year, *which was made for the purpose of furthering electioneering communications.*” 11 C.F.R. § 104.20(c)(9) (emphasis added). Three Commissioners have interpreted this provision in a manner that makes it consistent with the corresponding independent expenditure provision. *See* Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn in MUR 6002 (“we interpret 11 C.F.R. § 104.20(c)(9) as requiring a corporation or labor union to disclose the persons who make donations that meet or exceed the \$1,000 threshold only if such donations are made for the purpose of furthering the electioneering communication that is the subject of the report”).⁴ Two Commissioners disagreed with this reading, and would instead hold that “[n]either the statute nor

³ CREW complains about the Commission’s interpretation of Act, but Section 109.10(e)(1)(vi) and other Commission guidance speaks for itself and remains the law. Despite CREW’s invitation, the Commission cannot change the meaning of this long-standing regulation without undertaking a formal rulemaking.

⁴ *See also McConnell v. FEC*, 540 U.S. 93, 196 n.81 (2003) (“The disclosure requirements that BCRA § 201 added to FECA § 304 are actually somewhat less intrusive than the comparable requirements that have long applied to persons making independent expenditures. For example, the previous version of § 304 required groups making independent expenditures to identify donors who contributed more than \$200. 2 U.S.C. § 434(c)(2)(C) (2000 ed.). The comparable requirement in the amendments applies only to donors of \$1,000 or more. 2 U.S.C. §§ 434(f)(2)(E), (F) (Supp. 2003).”).

the regulation requires that specific donations be explicitly tied to specific communications.” Statement of Reasons of Vice Chair Cynthia L. Bauerly and Commissioner Ellen L. Weintraub in MUR 6002.

The differences among the Commissioners regarding the proper scope and application of the electioneering communication reporting provision are not critical in this matter – AFF did not solicit, accept, or receive any funds from CPPR that were provided for the purpose of funding or furthering *specific* electioneering communications, or for the purpose of funding or furthering electioneering communications *in general*. No donor reporting was required under either standard.

As stated above, neither AFF, nor any officer, director, or representative of AFF ever solicited, accepted, or received an earmarked grant or contribution from CPPR. Accordingly, CREW’s legal conclusion that AFF failed to properly disclose CPPR as a contributor or donor on certain independent expenditure and/or electioneering communications reports filed with the Commission is incorrect.

III. Review of CREW’s Complaint

The Complaint identifies one advertisement aired by AFF that CREW claims was a CPPR ad “funneled through” AFF. See Complaint at ¶ 36. That advertisement, titled “Fork In The Road,” first aired in South Dakota on or about September 23, 2010, and referenced Stephanie Herseth Sandlin of South Dakota. As explained above, AFF received grants from CPPR, but none of these grants were earmarked for any specific advertisement, or for television advertising in general. AFF did not receive or use any funds from CPPR that were earmarked for the funding of this advertisement. See Ryan Affidavit at ¶ 10. CREW presents no evidence that CPPR earmarked any funding provided to AFF for the “Fork In The Road” advertisement.

CREW does not specifically identify any other AFF advertisements, and explains that “[i]t is not clear precisely which other advertisements were paid for by contributions CPPR gave to other organizations.” Complaint at ¶ 37. CREW misstates the legal inquiry. It makes no difference whatsoever if “advertisements were paid for by contributions CPPR gave to other organizations.” The relevant legal inquiry is whether the donor, CPPR, made a contribution “for the purpose of furthering the reported independent expenditure” or “for the purpose of furthering electioneering communications.”⁵ As explained above, neither AFF, nor any officer, director,

⁵ See Statement of Vice Chair Cynthia L. Bauerly and Commissioner Ellen L. Weintraub in MUR 6002 at 4 (“The only relevant inquiry is: did the donor make a donation for the purpose of furthering electioneering communications”).

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agent, or representative of AFF ever solicited, accepted, or received an earmarked grant or contribution from CPPR.

CREW alleges that none of AFF's "26 reports with the FEC disclosing independent expenditures made in 2010 to place campaign advertisements on television in House races ... identified any person who made a contribution to AFF for the purpose of furthering these independent expenditures." Complaint at ¶ 38. Similarly, CREW alleges that none of AFF's "seven reports (two initial and five amendments) with the FEC disclosing electioneering communications in 2010 in which money was spent to place campaign advertisements on television in House races ... identified any contributor or person who made a contribution or donation to AFF for the purpose of furthering these electioneering communications."⁶ Complaint at ¶ 39. CREW alleges that "[b]y failing to identify CPPR or any other person in each of those reports, AFF violated 2 U.S.C. § 434 and 11 C.F.R. §§ 104.20(c)(9), 109.10(b) – (e)" Complaint at ¶ 53, even though CREW admits in Paragraph 37 that it lacks the information required to credibly make this broad claim under oath.⁷ AFF did *not* "receive[] funds from CPPR for the purpose of furthering AFF's reported independent expenditures and electioneering communications in House races in 2010, including but not limited to" the "Fork In The Road" ad. See Complaint at ¶ 52.

Finally, Mrs. Greiner did not "unlawfully conspire[] to violate the FECA" with Mr. Noble, Mr. DeMaura, and Ms. Frederick. See Complaint at ¶ 65. Mrs. Greiner also did not "knowingly enter[] into unlawful agreements with Mr. Noble to intentionally violate any law." See Complaint at ¶¶ 66. In fact, Mrs. Greiner has never met, spoken with, or corresponded with Mr. Noble, Mr. DeMaura, or Ms. Frederick. See Greiner Affidavit at ¶¶ 3-5.

⁶ The number of reports referenced by CREW is not accurate.

⁷ At Paragraph 53 of its Complaint, CREW alleges that "AFF filed 33 reports disclosing independent expenditures and electioneering communications in House races in 2010. None of the reports identified CPPR or any other person who made contributions for the purpose of furthering those independent expenditures and electioneering communications." Complaint at ¶ 53 (emphasis added). CREW never identifies who "any other person" might be, and presents no other evidence that would justify a fishing expedition into who such "other person" might or could be. As explained, AFF did not solicit, accept, or receive earmarked funds in 2010.

IV. Conclusion

For the reasons set forth above, the Commission should find no reason to believe that any violation of the Act or Commission regulations occurred and quickly dismiss this matter.

Sincerely,



Jason Torchinsky
Michael Bayes

Counsel to American Future Fund and
Sandy Greiner

Attachments

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1604700002600044061



American Future Fund

Advocating Conservative,
Free Market Ideals

DATE

NAME
ADDRESS

Dear NAME:

I am writing on behalf of American Future Fund to formally request a grant in the amount of \$AMOUNT from your organization to enable American Future Fund to educate Americans about free enterprise and economic freedom issues.

As you know, American Future Fund is a 501(c)(4) and was formed to provide Americans with a conservative and free market viewpoint a mechanism to participate and communicate regarding the policy issues that are important to them. American Future Fund believes it is imperative there be a voice for conservative principles that sustains free market ideals focused on bolstering America's global competitiveness across the country.

If you approve this grant request, funds may be wired to:

Bank:



Bank Branch Contact:

Account:

American Future Fund
4225 Fleur Drive, #142
Des Moines, IA 50321
Account #:
ABA #:

Thank you for your consideration of this grant request. If you have any questions, please feel free to contact me at () - .

Sincerely,

Nick Ryan
American Future Fund

11004100004440011

PATIENTS' RIGHTS

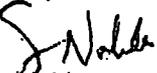
February 22, 2010

American Future Fund
Mr. Nick Ryan
4225 Fleur Drive #142
Des Moines, IA 50321

Dear Mr. Nick Ryan,

The Center to Protect Patient Rights, Inc. is pleased to make a general support grant in the amount of \$150,000 to support American Future Fund. Our federal tax ID number is 26-4683543. The Center to Protect Patient Rights is a 501(c)(4) organization.

Sincerely,


Sean Mohr
Executive Director

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a representative of McCarthy, Marcus, Hennings Ltd. on a more or less daily basis during much of 2010.

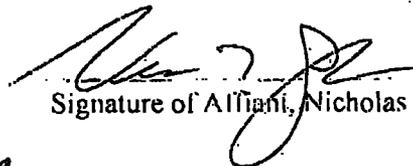
7. To the best of my recollection, I spoke with Sean Noble on occasion in 2010, but these conversations were not regular or extensive. We did not have discussions that involved the detailed plans or projects of American Future Fund or any other organization.

8. To the best of my recollection, I did not have discussions regarding advertising strategy with representatives of Americans for Job Security (AJS) or the 60 Plus Association in 2010.

9. AFF received an identical transmittal letter with each grant from CPPR. In each instance, the text of that letter read: "The Center to Protect Patient Rights, Inc. is pleased to make a general support grant in the amount of \$[amount] to support American Future Fund. Our federal tax ID number is [xx-xxxxxxx]. The Center to Protect Patient Rights is a 501(c)(4) organization." Each such letter was signed by Sean Noble, Executive Director.

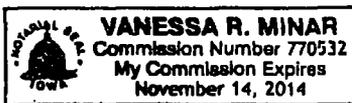
10. In 2010, AFF paid to produce and distribute a television advertisement, known as "Fork In The Road," that referenced Stephanie Herseht Sandlin of South Dakota. American Future Fund did not receive or use any funds from the Center To Protect Patient Rights that were earmarked for the funding of this advertisement.

DATED this the 19 day of June, 2014



Signature of Alliani, Nicholas Ryan

SWORN to subscribed before me, this 19 day of June, 2014



NOTARY PUBLIC

My Commission Expires:

11/14/14

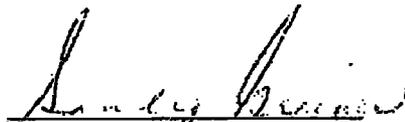
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AFFIDAVIT OF SANDY GREINER

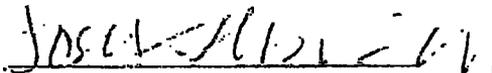
PERSONALLY came and appeared before me, the undersigned Notary, the within named SANDY GREINER. and makes this her Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Sandy Greiner. I currently reside in Riverside, Iowa.
2. I am the current President of American Future Fund, and I served in that capacity during the periods at issue (2009-2010) in the Complaint filed with the Federal Election Commission by Citizens For Responsibility And Ethics In Washington (CREW).
3. I have never met, spoken with, or corresponded with Sean Noble (President of the Center to Protect Patients Rights / American Encore).
4. I have never met, spoken with, or corresponded with Stephen DeMaura (President of Americans for Job Security).
5. I have never met, spoken with, or corresponded with Amy Frederick (President of The 60 Plus Association).

DATED this the 19 day of June, 2014


Signature of Affiant, Sandy Greiner

SWORN to subscribed before me, this 19 day of June, 2014


NOTARY PUBLIC

My Commission Expires:

2-3-15

