



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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APR 04 2019

RE: MUR 6828
Cal Voters for Honest Government and
Johnny Diaz in his official capacity as treasurer

Dear Mr. Aykan:

On May 23, 2014, the Federal Election Commission (the "Commission") notified your clients, Cal Voters for Honest Government and Johnny Diaz in his official capacity as treasurer, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information provided by you on behalf of your clients, the Commission, on March 26, 2019, found that there is reason to believe Cal Voters for Honest Government and Johnny Diaz in his official capacity as treasurer violated 52 U.S.C. §§ 30120 and 30124(b), and voted to dismiss allegations of violations of 52 U.S.C. §§ 30104(a)(4) and 30116. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

Troy Aykan, Esq.
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Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondents.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that your clients wish the investigation to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosure
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** Cal Voters for Honest Government and **MUR 6828**
6 Johnny Diaz Jr. in his official capacity
7 as treasurer
8

I. INTRODUCTION

9
10 This matter was generated by a Complaint filed with the Federal Election Commission
11 (the "Commission") alleging violations of the Federal Election Campaign Act of 1971, as
12 amended, (the "Act") by Cal Voters for Honest Government and Johnny Diaz Jr. in his official
13 capacity as treasurer ("Cal Voters"). The Complaint concerns whether a series of mailers, a
14 website with the internet address www.veteranjoebaca.com, and a billboard, each supporting
15 congressional candidate Joe Baca, may have violated certain provisions of the Act and
16 Commission regulations. The Complaint asserts that these communications were apparently
17 funded by Cal Voters, an independent expenditure-only committee, and that each of them either
18 lacked or contained inadequate disclaimers. It also asserts that the website may have misled
19 potential contributors and fraudulently solicited funds in Baca's name without his authorization.
20 The Complaint further contends that Cal Voters satisfies the Commission's coordination
21 regulations by having republished in one of the mailers what appears to be a campaign-related
22 letter bearing Baca's signature.

23 The current record indicates that Cal Voters funded the mailers at issue. Cal Voters
24 disavows any involvement with the website, however, and is silent concerning the billboard.
25 Baca and his campaign committee, Friends of Joe Baca (the "Committee"), represent that the
26 letter that appears to be reproduced in one of the mailers was not created by the campaign.

1 As explained below, based on the current record, the Commission finds reason to believe
2 that Cal Voters failed to include proper disclaimers on public communications and fraudulently
3 solicited funds in violation of 52 U.S.C. §§ 30120 and 30124(b).¹ Further, the Commission
4 exercises its prosecutorial discretion and dismisses the allegations that Cal Voter violated
5 52 U.S.C. §§ 30104(a)(4), (g) and 30116.

6 **II. FACTUAL AND LEGAL ANALYSIS**

7 **A. Factual Background**

8 Joe Baca was a candidate for the U.S. House of Representatives in the 2014 primary
9 election for California's 31st Congressional District. The Committee appears to maintain a
10 website at the address, <http://www.workingjoebaca.com>.² The campaign website displays the
11 phrase "Working Joe Baca" in all capital letters at the top left corner of each page of the website,
12 along with the text "Candidate for Congress. California's 31st Congressional District." In each
13 instance, the caption includes an image of a mechanical gear as the letter "o" in the name "Joe."

14 Cal Voters filed its Statement of Organization with the Commission on February 19,
15 2014, and on March 25, 2014 submitted a notice to the Commission that it intended to make

¹ The Complaint references Title 2 of the United States Code. However, on September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code. This Factual and Legal Analysis references the new statutory sections in Title 52.

² The website displays the phrases "Working Joe Baca" and "US Congress 2014" at the bottom of the page and identifies a mailing address, phone numbers, and e-mail address as points of contact for "Friends of Joe Baca." See <http://www.workingjoebaca.com/contact-us.html>. That mailing address is the same address that Baca provided the Commission in his Statement of Candidacy for the 2014 election cycle. Other social media accounts associated with Baca's campaign also link to the "Working Joe Baca" website as the official campaign website for Baca. See <https://twitter.com/workingjoebaca>.

1 independent expenditures only and would not contribute to federal candidates or political
2 committees.³

3 The Complaint alleges that Cal Voters failed to include disclaimers on the billboards and
4 a website supporting Joe Baca, and that it included incomplete disclaimers on the mailers.
5 Specifically, the mailers failed to state that they were “not authorized by any candidate or
6 candidate’s committee” and to include the required “paid for” information in a printed box.⁴ The
7 Complaint concludes that Cal Voters funded the billboard, website, and mailers because the
8 billboard featured in Attachment A appears to display the same banner used on the “Veteran Joe
9 Baca” website⁵ and one of the mailers attached to the Complaint references the
10 “www.veteranjoebaca.com” website address.⁶

11 In addition to the disclaimer violations, the Complaint alleges that Cal Voters, an
12 unauthorized committee, improperly used the name of a candidate in its special project, the
13 www.veteranjoebaca.com website.⁷ The Complaint further argues that that website’s donation
14 page was misleading and “could trick Joe Baca supporters into donating to the PAC, thinking
15 that they were donating to Baca,” a potential violation of the prohibition against fraudulently
16 speaking on behalf of a candidate to solicit contributions.⁸ Finally, the Complaint also alleges

³ See Cal Voters, Statement of Organization (Feb. 19, 2014), <http://docquery.fec.gov/pdf/487/14031184487/14031184487.pdf>; Letter from Johnny Diaz, Treasurer, Cal Voters, to FEC (Mar. 18, 2014), <http://docquery.fec.gov/pdf/246/14031201246/14031201246.pdf>.

⁴ Compl. at 4, Attach. B - E.

⁵ Compl. at 2, Attach. A.

⁶ Compl., Attach. C.

⁷ 52 U.S.C. § 30102(e)(4); *see* Compl. at 4.

⁸ 52 U.S.C. § 30124(b)(1); *see* Compl. at 4.

1 that one of the mail pieces⁹ republished a campaign-related letter that Baca purportedly signed,
2 resulting in an excessive in-kind contribution to Baca.¹⁰

3 Cal Voters submitted a Response stating that the allegations were “unfounded” and
4 “based on certain assumptions” that are “false and incorrect.”¹¹ It acknowledges making
5 independent expenditures in support of Baca and represents that the cost of its mailers did not
6 exceed \$10,000 and contained the required “legal disclosure,”¹² but does not concede that Cal
7 Voters prepared or paid for the particular mailers attached to the Complaint. The Response
8 denies that Cal Voters was involved with the website, www.veteranjoebaca.com, and does not
9 address the billboards at issue in any way.¹³

10 Baca and the Committee have asserted that the letter pictured in one of the mailings was
11 not written by Baca, was not part of any campaign material disseminated by his campaign, and
12 they were not involved with that mailer.

⁹ Compl., Attach. D.

¹⁰ Based on information available on the Commission’s website at the time, the Complaint also alleges that Cal Voters violated the reporting provisions of the Act by failing to file any reports with the Commission. Compl. at 3 (Complainant signed the Complaint on May 16, 2014). However, it appears that Cal Voters started filing reports with the Commission shortly after that. Cal Voters filed its first quarterly report (*i.e.*, its 2014 April Quarterly Report) and 48-hour reports of independent expenditures with the Commission on May 20, 2014, one day before the Commission received the Complaint in this matter. It appears that Cal Voters may have filed these reports in response to a Request for Additional Information that the Commission’s Reports Analysis Division sent to them on May 2, 2014. Based on that information, the Commission exercises its prosecutorial discretion and dismisses the allegation contained in the Complaint that Cal Voters violated 52 U.S.C. § 30104(a)(4), (g) by failing to file its 2014 April Quarterly Report and independent expenditure reports. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Cal Voters has filed a number of subsequent reports but ceased filing reports with the Commission after July 2014.

¹¹ Cal Voters Resp. at 1.

¹² *Id.* at 1.

¹³ *Id.* at 2.

1 **B. Legal Analysis**

2 The Act requires that any public communications that expressly advocate the election or
3 defeat of a clearly identified candidate or that solicit contributions through certain types of media
4 must include disclaimers.¹⁴ If the communication is not authorized by a candidate or candidate
5 committee, the disclaimer must say so, must further indicate who paid for the communication,
6 and must provide a physical address, phone number, or website address for that source.¹⁵ These
7 disclaimer requirements also apply to all websites of political committees.¹⁶ In its implementing
8 regulations, the Commission provided guidelines for disclaimers in printed materials, including
9 the required size of text and the need to frame the statement within a printed box.¹⁷

10 Finally, the Act also prohibits any person from fraudulently misrepresenting themselves
11 as speaking, writing, or otherwise acting for or on behalf of any candidate for the purpose of
12 soliciting contributions or donations.¹⁸

13 **1. There is Reason to Believe Cal Voters Violated the Disclaimer**
14 **Requirements of the Act**

15 Neither the website at issue nor the billboards contain any disclaimer. Because
16
17 each of them expressly advocates the election of Baca, a federal candidate, and the website

¹⁴ 52 U.S.C. § 30120.

¹⁵ *Id.*

¹⁶ *See* 11 C.F.R. § 110.11(a)(1).

¹⁷ 11 C.F.R. § 110.11(c)(2).

¹⁸ 52 U.S.C. § 30124(b)(1); 11 C.F.R. § 110.16(b)(1).

1 solicits funds for his candidacy, the failure to include disclaimers violates the relevant provisions
2 of the Act and Commission regulations.¹⁹

3 Concerning the website that is the subject of the Complaint, www.veteranjoebaca.com,
4 Cal Voters specifically denies any involvement in its creation. Nonetheless, certain record
5 evidence appears to undermine this denial. For example, a mailer attached to the complaint
6 identifies Cal Voters as having paid for that mailer while displaying the URL address of the
7 website at the bottom.²⁰ Further, the website includes a copyright notice for Cal Voters at its
8 foot. Moreover, a YouTube Channel associated with Cal Voters contains a link to what it
9 describes as the “Official Veteran Joe Baca site,” but which is in fact a link to a mirror-image of
10 the same website at issue with the same donation link.²¹ As to the billboard, while we lack
11 conclusive information at this stage regarding who funded it, there is evidence suggesting Cal
12 Voters’ potential involvement: specifically, the fact that Cal Voters reported disbursements to
13 the same vendor (Lamar Outdoor Advertising) displayed on the photo of the billboard provided
14 with the Complaint.²² Therefore, the Commission finds reason to believe that Cal Voters
15 violated 52 U.S.C. § 30120 by failing to include the necessary disclaimers on the website and
16 billboards.

¹⁹ 11 C.F.R. § 110.11(a)(2)-(3); see *Explanation and Justification for Internet Communications*, 71 Fed. Reg. 18,589, 18,600 (Apr. 12, 2006).

²⁰ Compl., Attach. C.

²¹ See https://www.youtube.com/channel/UCwupP3Oe2LVMz_qmab4sU5A.

²² See Cal Voters 2014 July Quarterly Report, <http://docquery.fec.gov/pdf/709/14031271709/14031271709.pdf>; Cal Voters 48-hour Independent Expenditure Report (May 20, 2014), <http://docquery.fec.gov/pdf/928/14031242928/14031242928.pdf#navpanes=0>; Compl., Attach. A.

1 **2. There Is Reason to Believe that Cal Voters Fraudulently Misrepresented the**
2 **Authority to Solicit Funds with Respect to the Website**

3 Because the website at issue solicits funds on a candidate's behalf apparently without
4 authorization, the website may violate the Act's prohibition against fraudulently misrepresenting
5 that a person is acting for or on behalf of a candidate for the purpose of soliciting contributions
6 or donations.

7 First, the name or title of the website, as well as the website address itself,
8 "www.veteranjoebaca.com," include the name of federal candidate Joe Baca and expressly
9 advocates Baca's election. Moreover, the message displayed at the top of the relevant webpage
10 states, "Join the Campaign for Congressional Veteran Joe Baca" — adopting a similar distinctive
11 gear logo "o" in the name "Joe" that appears in the official campaign materials of the candidate.

12 Second, the website expressly solicits funds to "Send Joe Baca to the Top 100 of
13 Congress," with the hyperlink button "Donate Now." When selected, that button opens a
14 donation page on a website associated with ActBlue, which states that "Your generosity is
15 greatly needed to support the Cal Voters for Honest Government PAC who's [sic] goal is to send
16 a ranking member to Congress in 2015."²³ Although that secondary message could clarify to
17 some extent that Cal Voters would receive the requested contributions, the originating page
18 indicates that Baca or his campaign committee will receive them. Moreover, as the Complaint
19 notes, the ActBlue page also prominently states "Veteran Joe Baca for Congress — Donations,"
20 which further indicates the candidate as the recipient of the donations.²⁴ It is also not clear on
21 the present record whether the ActBlue contribution page in fact contained the same textual

²³ See <https://secure.actblue.com/contribute/page/vetjoe31>.

²⁴ Compl. at 2.

1 language at the time that the conduct challenged in the Complaint took place.²⁵ Thus, given this
2 lack of clarity and the preliminary nature of the record in this matter, the allegations indicate that
3 Cal Voters’s operation of the website www.veteranjoebaca.com violated the fraudulent
4 misrepresentation provisions of the Act.

5 Accordingly, the Commission finds reason to believe that Cal Voters violated 52 U.S.C.
6 § 30124(b)(1) by fraudulent misrepresenting campaign authority to solicit funds.

7 **3. The Commission Dismisses the Allegation that Cal Voters Republished**
8 **Campaign Materials of the Committee as Alleged**
9

10 Under the Act, “the financing by any person of the dissemination, distribution, or
11 republication, in whole or in part, of any broadcast or any written, graphic, or other form of
12 campaign materials prepared by the candidate, his campaign committees, or their authorized
13 agents shall be considered to be an expenditure.”²⁶ The republication of campaign materials
14 prepared by a candidate’s authorized committee is also “considered a[n in-kind] contribution for
15 the purposes of contribution limitations and reporting responsibilities of the person making the
16 expenditure.”²⁷ The Commission treats expenditures for republished campaign materials as in-
17 kind contributions because the person financing the republication “has provided something of

²⁵ Moreover, the language that currently appears on the ActBlue page further suggests that Cal Voters in fact was responsible for the website that is subject of the Complaint, despite the denial in the Response that Cal Voters submitted to the Commission.

²⁶ 52 U.S.C. § 30116. For republication, the Commission has concluded that “campaign materials” include any material belonging to or emanating from a campaign. *See, e.g.*, MUR 5743 (Betty Sutton) (candidate photo obtained from campaign website); MUR 5672 (Save American Jobs) (video produced and used by candidate’s campaign subsequently hosted on association’s website).

²⁷ 11 C.F.R. § 109.23 (a).

1 value to the candidate [or] authorized committee.”²⁸ The candidate who prepared the campaign
2 materials does not receive or accept an in-kind contribution, however, and is not required to
3 report an expenditure unless the dissemination, distribution, or republication of campaign
4 materials also satisfies the Commission’s definition of coordinated communications.²⁹

5 The Complaint alleges that Cal Voters distributed a mailer that republished Baca’s
6 campaign materials. Specifically, the mailer at issue includes what purports to be a copy of a
7 letter to Baca’s constituents as part of his campaign activities with what appears to be an
8 electronic version of Baca’s signature.³⁰ Baca denies writing the letter, and available
9 information indicates that it was not part of any campaign material disseminated by his campaign
10 and that neither Baca nor his Committee were involved with the mailer. Therefore, the
11 Commission exercises its prosecutorial discretion and dismisses the allegation that Cal Voters
12 distributed a mailer that republished Baca’s campaign materials in violation of 52 U.S.C.
13 § 30116.³¹

²⁸ See Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (explanation and justification). As the Commission there explained, “Congress has addressed republication of campaign material through 2 U.S.C. § 441a(a)(7)(B)(iii) [now 52 U.S.C. 30116(a)(7)(B)(iii)] in a context where the candidate/author generally views the republication of his or her campaign materials, *even in part*, as a benefit” and “can be reasonably construed only as for the purpose of influencing an election.” *Id.* at 443(emphasis added); see also Coordinated Communications, 71 Fed. Reg. 33,190, 33,191 (June 8, 2006) (explanation and justification) (communications “that disseminate, distribute, or republish campaign materials, no matter when such communications are made, can be reasonably construed only as for the purpose of influencing an election.”).

²⁹ 11 C.F.R. §§ 109.21, 109.23.

³⁰ Compl., Attach. D.

³¹ See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).