



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Richard Rios, Esq.
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555 Capital Mall, Suite 400
Sacramento, CA 95814-4503

APR 04 2019

RE: MUR 6828
Joe Baca
Friends of Joe Baca 2014 and Joe Baca in
his official capacity as treasurer

Dear Mr. Rios:

On May 23, 2014, the Federal Election Commission (the "Commission") notified your clients, Joe Baca and Friends of Joe Baca 2014 and Joe Baca in his official capacity as treasurer (the "Committee") of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. 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, voted to dismiss the allegation that Joe Baca and the Committee violated 52 U.S.C. § 30116 in connection with republication violations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", with a long horizontal flourish extending to the right.

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Joe Baca **MUR 6828**
Friends of Joe Baca 2014
and Joe Baca in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”) alleging violations of the Federal Election Campaign Act of 1971, as amended, (the “Act”) in connection with a series of mailers supporting congressional candidate Joe Baca. The Complaint alleges that Cal Voters for Honest Government and Johnny Diaz Jr. in his official capacity as treasurer (“Cal Voters”) satisfies the Commission’s coordination regulations by having republished in one of the mailers what appears to be a campaign-related letter bearing Baca’s signature. The current record indicates that Cal Voters funded the mailers at issue, but Baca and his campaign committee, Friends of Joe Baca (the “Committee”), represent that the letter that appears to be reproduced in one of the mailers was not created by the campaign.

As explained below, the Commission exercises its prosecutorial discretion and dismisses the allegation that Baca and the Committee violated 52 U.S.C. § 30116 in connection with the republication allegations.¹

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.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 Joe Baca was a candidate for the U.S. House of Representatives in the 2014 primary
4 election for California's 31st Congressional District. Cal Voters filed its Statement of
5 Organization with the Commission on February 19, 2014, and on March 25, 2014 submitted a
6 notice to the Commission that it intended to make independent expenditures only and would not
7 contribute to federal candidates or political committees.²

8 The Complaint alleges that one of the mail pieces³ republished a campaign-related letter
9 that Baca purportedly signed, resulting in an excessive in-kind contribution to Baca. Cal Voters
10 acknowledges making independent expenditures in support of Baca and represents that the cost
11 of its mailers did not exceed \$10,000 and contained the required "legal disclosure," but does not
12 concede that Cal Voters prepared or paid for the particular mailers attached to the Complaint.
13 Baca and the Committee have asserted that the letter pictured in one of the mailings was not
14 written by Baca, was not part of any campaign material disseminated by his campaign, and they
15 were not involved with that mailer.

16 **B. Legal Analysis**

17 Under the Act, "the financing by any person of the dissemination, distribution, or
18 republication, in whole or in part, of any broadcast or any written, graphic, or other form of
19 campaign materials prepared by the candidate, his campaign committees, or their authorized

² 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>.

³ Compl., Attach. D.

1 agents shall be considered to be an expenditure.”⁴ The republication of campaign materials
2 prepared by a candidate’s authorized committee is also “considered a[n in-kind] contribution for
3 the purposes of contribution limitations and reporting responsibilities of the person making the
4 expenditure.”⁵ The Commission treats expenditures for republished campaign materials as in-
5 kind contributions because the person financing the republication “has provided something of
6 value to the candidate [or] authorized committee.”⁶ The candidate who prepared the campaign
7 materials does not receive or accept an in-kind contribution, however, and is not required to
8 report an expenditure unless the dissemination, distribution, or republication of campaign
9 materials also satisfies the Commission’s definition of coordinated communications.⁷

10 The Complaint alleges that Cal Voters distributed a mailer that republished Baca’s
11 campaign materials. Specifically, the mailer at issue includes what purports to be a copy of a
12 letter to Baca’s constituents as part of his campaign activities with what appears to be an
13 electronic version of Baca’s signature.⁸ Baca denies writing the letter, and available information
14 indicates that it was not part of any campaign material disseminated by his campaign and that

⁴ 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).

⁵ 11 C.F.R. § 109.23 (a).

⁶ *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.”).

⁷ 11 C.F.R. §§ 109.21, 109.23.

⁸ Compl., Attach. D.

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1 neither Baca nor his Committee were involved with the mailer. Therefore, the Commission
2 exercises its prosecutorial discretion and dismisses the allegation that Cal Voters distributed a
3 mailer that republished Baca's campaign materials and resulted in an excessive in-kind
4 contribution to Baca and the Committee, in violation of 52 U.S.C. § 30116.⁹

⁹ See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).