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Jeffrey G. Weil

CELA

Kathryn A. Young Galla

Re: MUR 7216 – Costello Constituent Action Group

CCAG is a loosely affiliated non-partisan idea network, comprising residents of the Sixth Congressional District of Pennsylvania. The network is social media based, and it was formed in January of 2017, as a way to spread action items among like-minded citizens. Its stated mission is "[T]o resist the dismantling of our environmental and social protection." See Exhibit A attached herein. The actions of the network thus far have been to encourage citizens to voice their opinions and questions to their elected representative, Congressman Ryan Costello, either through letters, phone calls, visits to his office, or through organized rallies. CCAG's largest event to date was a town hall where citizens gathered to ask Representative Costello questions. Representative Costello, however, declined to attend this event, despite the CCAG inviting him multiple times.

The Complaint alleges that CCAG is a “nonconnected political committee” and that through various omissions it is violating the Federal Election Campaign Act (hereinafter, the “Act”). The Complaint alleges the CCAG has committed five violations of the Act. However, CCAG is not a political committee as defined by the Act and the attendant case law. Therefore, CCAG is exempt from the Act and all of its requirements and prohibitions.

The Act defines a "political committee" as:

(A) any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year; or

(B) any separate segregated fund established under the provisions of section 30118(b) of this title;

or

(C) any local committee of a political party which receives contributions aggregating in excess of \$5,000 during a calendar year, or makes payments exempted from the definition of contribution or expenditure as defined in paragraphs (8) and (9) aggregating in excess of \$5,000 during a calendar year, or makes contributions aggregating in excess of \$1,000 during a calendar year or makes expenditures aggregating in excess of \$1,000 during a calendar year.

52 U.S.C.A. § 30101 (West). Provisions (B) and (C) do not apply because CCAG is not affiliated with any corporation, labor organization, cooperative, or political party. Provision (A) also does not apply for two reasons: 1) CCAG is itself not under the jurisdiction of the Act, as its purpose is not the election of a specific candidate, and 2) CCAG's contributions and expenditures are not the type anticipated under the Act, as their purpose is not to elect a specific candidate.

CCAG Is Not a Political Committee

CCAG is not subject to the registration and reporting requirements of the Act, because it is not a political committee under the Act. It is well settled that the Act is designed to regulate federal elections and electioneering activity related to such elections. As such, the Act only applies to organizations whose "major purpose" is the nomination or election of candidates." See, e.g., *The Real Truth About Abortion, Inc. v. Fed. Election Comm'n*, 681 F.3d 544, 555 (4th Cir. 2012). Courts have further determined that an organization is not a political committee under the Act unless and until it supports a "clearly identified candidate." See, e.g., *Unity08 v. F.E.C.*, 596 F.3d 861 (App. D.C. 2010).

CCAG's "major purpose" is issue-based advocacy, *not* the nomination or election of a candidate. CCAG has not advocated for the support of any candidate in any election; nor has it advocated against any candidate in any election. CCAG has taken no position – pro or con – on any candidate running for federal office. CCAG did not exist at the time of the 2016 election, and it has not taken any position on any candidate who may run for office in the future. To the contrary, CCAG is a loose organization of people who communicate through the internet and social media about current events and issues of importance to the general public.

The group's activities have been organized around issues, among others, like healthcare and immigration, and the group's goal has been to convey questions, concerns, and thoughts on such issues to its current elected representative, Congressman Ryan Costello.

Because the CCAG's major purpose is not the nomination or election of any candidate, it is not a political committee and is not subject to the requirements or prohibitions of the Act.

CCAG's Expenditures and Contributions Are Exempt Under the Act

Beyond CCAG being exempt under the Act because it is not engaged in federal electioneering for any candidate, CCAG does not have expenditures or contributions as understood under the Act. CCAG's expenses are not expenditures as defined by the Act and do not require CCAG to report as required by the Act. An "expenditure" includes, according to the Act, "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 52 U.S.C.A. § 30101 (West) (Emphasis added).

None of CCAG's expenses was for the purpose of influencing any election for Federal office. No emails, website materials, or CCAG event contained any electioneering for or against

any candidate. Any expense by CCAG was to assist constituents in contacting their existing representative to communicate questions and views on pending legislation and issues of public concern. Further, CCAG had two types of expenses: communication expenses and event expenses, which fit into specific exceptions under the Act or related FEC advisory opinions.

Communication Expenses

Many of CCAG's expenses have been for communicating with individuals interested in similar advocacy events. These expenses are detailed in the attached affidavit but include items like a post office box and a website server. See Exhibit B attached herein. These are exempt expenses under the Act, which states that an expenditure does *not* include:

(iii) any communication by any membership organization or corporation to its members, stockholders, or executive or administrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office...

52 U.S.C.A. § 30101 (West). See also *Fed. Election Comm'n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 248, 107 S. Ct. 616, 623, 93 L. Ed. 2d 539 (1986). Because, as discussed above, CCAG is not an organization organized primarily to influence an election, these communication expenses are not expenditures under the Act.

Event Expenses

CCAG has also had event-related expenditures. The largest CCAG expense has been the cost of using the Phoenixville High School auditorium for CCAG's town hall. CCAG also coordinates weekly rallies. These expenditures are also exempt because they were not for the purpose of electing or removing from office any specific candidate. The events were for the purpose of communicating constituent opinions and questions to their elected representative, whether or not he physically appeared at the event.

FEC Advisory Opinion 1999-11 is directly relevant. That opinion states:

[E]vents in which Federal officeholders participate in their capacities as officeholders are not for the purpose of influencing a Federal election simply because the officeholders may be candidates for election to Federal office. Thus, payments associated with the expenses of such events are not contributions to that officeholder's campaign, absent any campaign activity at that event.

Because the CCAG-organized events were designed to communicate with an officeholder in his capacity as an officeholder, any expense associated with those events is exempt from reporting under the Act.

Contributions

CCAG does not have contributions as considered under the Act. Any money that CCAG has received has been for the purpose of covering the above-detailed expenses. Individuals involved with CCAG's advocacy efforts have paid for certain expenses for the group to engage in its advocacy efforts. There is no organized system to solicit and retain contributions, merely a payment of expenses as they occur.

CCAG's Name Now Conforms to the Act's Requirements

The Complaint alleges that CCAG is violating the Act by using Congressman Costello's last name in the organization's name. CCAG is not subject to this prohibition because of the

Jeff S. Jordan
March 29, 2017
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above-stated reasons that it is not a political committee. As a courtesy to the Congressman, however, the group has already changed its name to the Concerned Constituents Action Group. Therefore, even if the CCAG were under the purview of the Act (which is it not), it would no longer be in violation of that portion of the Act.

For the foregoing reasons, we ask the FEC to dismiss the Complaint and close this matter.

Sincerely,

COZEN O'CONNOR

By: Jeffrey G. Weil
Kathryn A. Young Galla

JGW

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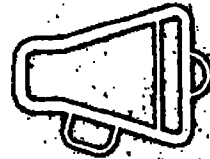
EXHIBIT A



WHO WE ARE

We are constituents of the
Pennsylvania 6th
Congressional District

[Read More >](#)



OUR MISSION

To resist the dismantling
of our environmental and
social protections

17064444007

EXHIBIT B

Item	Cost Thru 3/31/17	Who paid	Comments
Google Account	\$ 30.00	Tammy Harkness	Registered under Tammy Harkness
Wix Website Server	\$ 168.00	Melissa Geoghegan	Registered under Tammy Harkness
Domain Name	\$ 12.00	Melissa Geoghegan	Registered under Tammy Harkness
123Contact	\$ 19.00	Tammy Harkness	\$19/mo but only needed in Feb '17
Post Office Box	\$ 24.00	Tammy Harkness	\$24/6mo + \$6 for deposit on the keys
Contact Info Cards	\$ 20.00	Claire Witzlebin	
Exton Library for meeting s	\$ 17.50	Erica Z	
Misc materials	\$ 25.00	Multiple people	Supplies for rallies & townhall
PASD Auditorium Fees	\$ 1,149.00		
Total through 3/31/17	\$ 1,464.50		

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AFFIDAVIT OF TAMMY HARKNESS
IN THE MATTER OF
FEC MUR 7216

The undersigned affiant, being of majority age and a resident of the state of Pennsylvania, declares as follows:

1. I am Tammy Harkness, and I have personal knowledge of the facts set out below.
2. I have reviewed the correspondence sent to the Federal Election Commission, which is referenced as the complaint in MUR 7216, and I am familiar with the facts alleged herein.
3. I am involved with the Concerned Constituents Action Group ("CCAG"), and have been since its inception.
4. CCAG is not an electioneering group, and it is not designed to influence any federal election.
5. CCAG has not advocated for the support of any candidate in any election, nor has it advocated against any candidate in any election.
6. CCAG has taken no position – pro or con – on any candidate running for federal office.
7. CCAG did not exist at the time of the 2016 election, and it has not taken any position on any candidate who may run for office in the future.
8. To the contrary, CCAG is a loose organization of people who communicate through the internet and social media about current events and the issues of importance to the general public.
9. The group's activities have been organized around issues, among others, like healthcare and immigration, and the group's goal has been to convey concerns and thoughts on such issues to our current elected representative, Congressman Ryan Costello.
10. To that end, CCAG has tried to arrange meetings with Congressman Costello and attempted to open a dialogue with him. Although he has not been receptive to meeting with us, we remain committed to an open and productive dialogue with him. After all, Congressman Costello has been elected by us and others in his Congressional District, and he has some responsibility to represent the views of his electorate in Congress.
11. The expenditures that CCAG has incurred thus far, including the rental of the high school auditorium, have been for communicating with our members.
12. None of these expenditures was for the purpose of influencing a federal election.
13. CCAG has not received any contributions, only payments for expenditures, and none of those was for the purpose of influencing a federal election.

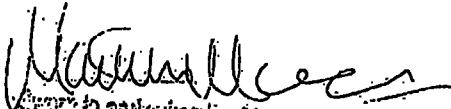
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14. The enclosed exhibit demonstrating a record of CCAG's expenditures and the name of the individual who paid for each expenditure is a true and correct representation of all of CCAG's expenditures as of March 24, 2017.

I swear, under the penalty of perjury, that to the best of my knowledge and belief that the foregoing is true and correct.


Signature

Mar 24, 2017
Date


I have read and understand the foregoing and the 24th day of March 2017.

