

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7460

DATE COMPLAINT FILED: August 7, 2018

DATE OF LAST NOTIFICATION: Not Applicable

DATE OF LAST RESPONSE: Not Applicable

DATE ACTIVATED: October 31, 2019

EXPIRATION OF SOL: November 1, 2023

ELECTION CYCLE: 2018

COMPLAINANT:

Jordan P. Kahle

RESPONDENT:

Fair People for Fair Government

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(4), (17), (22), (23)

52 U.S.C. § 30102

52 U.S.C. § 30103

52 U.S.C. § 30104(b), (c), (g)

52 U.S.C. § 30120(a)

11 C.F.R. § 100.5

11 C.F.R. § 100.17

11 C.F.R. § 100.22

11 C.F.R. § 100.26

11 C.F.R. § 100.27

11 C.F.R. § 104.4

11 C.F.R. § 109.10

11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:**I. INTRODUCTION**

The Complaint alleges that an entity calling itself Fair People for Fair Government (“Fair People”), which has not registered or reported to the Commission as a political committee, distributed mailers that used misinformation to expressly advocate the defeat of two candidates in

1 the 2018 Republican primary election for Florida's 18th Congressional District.¹ Although the
2 mailers, which appear to have been professionally prepared and transmitted under a U.S. Post
3 Office bulk mailer permit, include the statement "Paid for by Fair People for Fair Government,"
4 they do not provide the group's address, telephone number, or website.² This office has been
5 unable to find an address for Fair People to notify it of the Complaint. Further, Fair People is not
6 registered with the Internal Revenue Service or the State of Florida, and it did not file independent
7 expenditures reports with the Commission for these mailers.

8 Based on the available information, we recommend that the Commission find reason to
9 believe that Fair People for Fair Government violated 52 U.S.C. §§ 30120(a) and (c) and
10 30104(b), (c), and (g) by failing to include complete disclaimer information and by failing to
11 report the cost of these independent expenditures to the Commission. Given the current lack of
12 any information as to the group's major purpose, however, we make no recommendation at this
13 time as to the allegation that Fair People failed to register and report to the Commission as a
14 political committee.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. The Mailers Expressly Advocated for the Defeat of Clearly Identified Candidates**

17
18 The mailers, which were distributed in Florida's 18th Congressional District in July 2018,
19 approximately one month before the August 28, 2018, primary election, attack the character and
20 fitness of Republican primary candidates Dave Cummings and Brian Mast.³ The first mailer

¹ Compl. at 1 (Aug. 7, 2018)

² Compl. Attach. 1 and 2.

³ *Id.*

1 attached to the Complaint asks “Is this Congressional candidate a fraud?”⁴ It further purports to
2 debunk various aspects of Cummings’s background, including his military record, his business
3 background, and other personal claims.⁵ Specifically, the mailer challenges Cummings’s military
4 status and background by analyzing a military photo of Cummings and declaring that Cummings
5 fraudulently claimed to be a Special Forces operative.⁶ Further, the mailer claims that Cummings
6 was fired from a position with a financial institution when he became a suspect related to missing
7 funds.⁷ Finally, the mailer questions Cummings’s claim that he stopped a school shooting, his
8 financial status based on a suit by his mortgage company, and his ability to pay the \$10,400 filing
9 fee as a Florida Congressional candidate despite reporting no income or assets.⁸ According to
10 news reports, Cummings disputes the accuracy of the mailers.⁹

11 The second mailer questions Brian Mast’s background and fitness for office. The mailer
12 states that Mast claims he went to Harvard, but he only took an online course through the school.¹⁰
13 Further, the mailer claims that Mast defrauded investors in his company of \$26 million.¹¹ Finally,
14 the mailer questions Mast’s Congressional voting record, stating that “If you voted for Brian Mast

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Ali Schmitz, *Illegal Mailer Attacks Dave Cummings, Who's Running for U.S. Rep. Brian Mast's Seat*, TCPalm.com, Jul. 13, 2018, <https://www.tcpalm.com/story/news/politics/elections/2018/07/13/illegal-mailer-attacks-dave-cummings/766331002/>.

¹⁰ Compl. Attach. 1 and 2

¹¹ *Id.*

1 in 2016, he has betrayed you.”¹² According to news reports, Mast’s campaign also disputes the
2 truth of the mailers.¹³

3 Commission regulations provide that a communication expressly advocates the election or
4 defeat of a clearly identified candidate when it uses certain phrases or uses campaign slogans or
5 individual words “which in context can have no other reasonable meaning than to urge the election
6 or defeat of one or more clearly identified candidate(s).”¹⁴ Commission regulations also state that
7 a communication constitutes express advocacy if “[w]hen taken as a whole and with limited
8 reference to external events, such as the proximity to the election, [the communication] could only
9 be interpreted by a reasonable person as containing advocacy of the election or defeat of one or
10 more clearly identified candidate(s) because — (1) [t]he electoral portion of the communication is
11 unmistakable, unambiguous, and suggestive of only one meaning; and (2) [r]easonable minds
12 could not differ as to whether it encourages actions to elect or defeat one or more clearly identified
13 candidate(s) or encourages some other kind of action.”¹⁵

14 In its explanation and justification for section 11 C.F.R. §100.22(b), the Commission
15 stated, “communications discussing or commenting on a candidate’s character, qualifications or
16 accomplishments are considered express advocacy under new section 100.22(b) if, in context, they

¹² *Id.*

¹³ Ali Schmitz, *Illegal Mailer Attacks U.S. Rep Brian Mast; Second One to Surface in District 18 Race*, TCPalm.com, Jul. 16, 2018, <https://www.tcpalm.com/story/news/politics/elections/2018/07/16/u-s-rep-brian-mast-attacked-2nd-illegal-mailer-district-18/788289002/>.

¹⁴ 11 C.F.R. § 100.22(a). The Commission explained that the phrases enumerated in 11 C.F.R. § 100.22(a), such as “Smith for Congress” and “Bill McKay in ‘94,” have no other reasonable meaning than to urge the election or defeat of a clearly identified candidate. *See* Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294 (July 6, 1995) (“Express Advocacy E&J”); *see also* *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (a communication is express advocacy when “it provides, in effect, an explicit directive” to vote for the named candidates).

¹⁵ 11 C.F.R. § 100.22(b).

1 can have no other reasonable meaning than to encourage actions to elect or defeat the candidate in
2 question.”¹⁶ In MUR 5024R, the Commission concluded that, in context, the brochures
3 constituted express advocacy under 11 C.F.R. § 100.22(b), because the electoral portions of the
4 brochure, including the phrase “Tell Tom Kean Jr...New Jersey Needs New Jersey Leaders,”
5 were “unmistakable, unambiguous and suggestive of only one meaning” — to vote against Tom
6 Kean.¹⁷ In MURs 5511/5525, the Commission concluded that attacks on John Kerry’s character,
7 fitness for public office, and capacity to lead, including phrases such as “JOHN KERRY
8 CANNOT BE TRUSTED” and “unfit for command” were “unmistakable, unambiguous and
9 suggestive of only one meaning” — and had no reasonable meaning other than to encourage
10 actions to defeat him in the upcoming election.¹⁸ Similarly, in MUR 5831, the Commission
11 concluded that, in context, the ad attacking Bob Casey’s qualifications and stating “Can we really
12 risk Bob Casey learning on the job?” constituted express advocacy under 11 C.F.R. § 100.22(b),
13 because the electoral portions were “unmistakable, unambiguous and suggestive of only one
14 meaning” — to vote against Bob Casey.¹⁹ The Commission concluded that outside the context of
15 the upcoming election, these advertisements were virtually meaningless.²⁰

16 The mailers’ attacks on candidates Cummings and Mast approximately one month before
17 the 2018 Florida Republican primary election are very similar to the attacks the Commission
18 found to be express advocacy for the defeat of the specified candidates in MURs 5024R,

¹⁶ EA E&J, 60 Fed. Reg. at 35,295.

¹⁷ MUR 5024R (Council for Responsible Government) Factual and Legal Analysis at 14-15.

¹⁸ MUR 5511/5525 (Swift Boat Veterans) Conciliation Agreement at IV.25-28.

¹⁹ MUR 5831 (Softer Voices) Factual and Legal Analysis at 6-8.

²⁰ *Id.*

1 5511/5525 and 5831. Most notably, the mailers' allegations that Cummings and Mast committed
2 fraud are akin to the allegations that candidate Kerry could not be trusted and was unfit for
3 command. Further, Fair People cannot avoid a finding of express advocacy simply by phrasing its
4 mailer in the form of a question ("Is this Congressional candidate a fraud?"). The Commission
5 found that the only reasonable interpretation of "can we really risk Bob Casey learning on the
6 job?" was to vote against Casey, and the Commission should make a similar finding here.

7 **B. The Mailers Required Disclaimers with Identifying Information**

8
9 The Act requires that all public communications that expressly advocate the election or
10 defeat of a clearly identified candidate include a disclaimer.²¹ "Public communications" include
11 "mass mailings," which are mailings of more than 500 pieces of mail of an identical or
12 substantially similar nature within any 30-day period.²² Where required, disclaimers must be
13 "presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate
14 notice of the identity of the person or political committee that paid for, and where required, that
15 authorized the communication."²³ If a communication is not authorized by a candidate's
16 authorized committee, it must clearly state the name and permanent address, telephone number or
17 website address of the person who paid for the communication and state that the communication is
18 not authorized by any candidate or candidate's committee.²⁴

19 The mailers are public communications advocating against the election of these candidates,

²¹ 52 U.S.C. § 30120(a); *see* 11 C.F.R. § 110.11(a)(2).

²² 52 U.S.C. § 30101(22), (23); 11 C.F.R. §§ 100.26, 100.27.

²³ 11 C.F.R. § 110.11(c). For printed communications, disclaimers must be clear and conspicuous, be of sufficient type size to be clearly readable, be contained in a printed box set apart from the other contents of the communication, and must clearly state who paid for the communication. *Id.* § 110.11(c)(2).

²⁴ *Id.* § 110.11(b)(3).

1 and as such, required a full disclaimer, including the address, phone number and website
2 information as to the sponsoring person or entity. They did not. Accordingly, we recommend that
3 the Commission find reason to believe that Fair People for Fair Government violated 52 U.S.C.
4 § 30120(a) and (c) by failing to include a disclaimer compliant with the Act's requirements on a
5 public communication.

6 **C. Reporting of Independent Expenditures**

7 Any person other than a political committee that makes expenditures that expressly
8 advocate the election or defeat of a federal candidate that exceed \$250 must file an independent
9 expenditure report with the Commission pursuant to 52 U.S.C. § 30104(c).²⁵ In addition, a person
10 (including a political committee) that makes or contracts to make independent expenditures
11 aggregating \$10,000 or more at any time up to and including the 20th day before the date of an
12 election shall file a report describing the expenditures within 48 hours.²⁶ Similarly, political
13 committees and other persons that make independent expenditures aggregating \$1,000 or more
14 made after the 20th day, but more than 24 hours before, the date of an election, must report the
15 expenditures by filing a 24-hour notice.²⁷

16 The available information indicates that mailers purportedly distributed by Fair People
17 constituted express advocacy, and expenditures for the mailers likely exceeded \$250. As noted
18 above, the mailers appear to have been professionally prepared and transmitted under a U.S. Post

²⁵ The Act defines "independent expenditure" as "an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate; and that is not made in concert or cooperation with or at the request or suggestion of such a candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents." 52 U.S.C. § 30101(17).

²⁶ 52 U.S.C. § 30104(g)(2)(A).

²⁷ See 52 U.S.C. § 30104(g)(1)(A). Political committees and other persons must file 24-hour notices by 11:59 p.m. on the day following the date on which the independent expenditure communication is publicly distributed. See 11 C.F.R. §§ 104.4(c), 109.10(d).

1 Office bulk mailer permit. Therefore, whether these communications were made by a political
2 committee or as independent expenditures, they should have been disclosed to the Commission.
3 Accordingly, we recommend that the Commission find reason to believe that Fair People for Fair
4 Government violated 52 U.S.C. § 30104(b) and (c) by failing to report expenditures made in
5 connection with the mailers. Further, information in the Complaint indicates that 24- or 48-hour
6 reports may have been required. Accordingly, we recommend that the Commission find reason to
7 believe that Fair People for Fair Government violated 52 U.S.C. § 30104(g).

8 **D. Registration and Reporting as a Political Committee**

9 The Act and Commission regulations define a “political committee” as “any committee,
10 club, association or other group of persons which receives contributions aggregating in excess of
11 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
12 during a calendar year.”²⁸ Political committees must register with, and report their receipts and
13 disbursements to, the Commission.²⁹ In *Buckley v. Valeo*,³⁰ the Supreme Court observed that the
14 term “political committee” “need only encompass organizations that are under the control of a
15 candidate or the major purpose of which is the nomination or election of a candidate.”³¹
16 Based on the apparent professional preparation of the mailers and the use of the U.S. Post Office
17 bulk mailer permit, the record contains sufficient information to infer that the cost of the mailers

²⁸ *Id.* § 30101(4)(A); 11 C.F.R. § 100.5. *See also* Political Committee Status, 72 Fed. Reg. 5596, 5597 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“When applied to communications made independently of a candidate or a candidate's committee, the term ‘expenditure’ includes only ‘expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.’ *Buckley v. Valeo*, 424 U.S. 1, 44, 80 (1976).”).

²⁹ 52 U.S.C. §§ 30101(4) and 30104(a).

³⁰ 424 U.S. 1 (1976).

³¹ *Id.* at 79.

1 exceeded the \$1,000 statutory threshold. There is, however, insufficient information at this point
2 to determine whether the sponsor's major purpose was the nomination or election of a federal
3 candidate. We have no further information about Fair People for Fair Government.³²

4 Accordingly, we recommend that the Commission take no action at this time as to the
5 allegations that Fair People violated the Act with regard to the Act's requirement that a political
6 committee register with and report its receipts and disbursements to the Commission. Should the
7 investigation described below shed light on Fair People's status as a political committee, we will
8 make the appropriate recommendation.

9 **III. PROPOSED INVESTIGATION**

10 During the investigation, we intend to identify the parties responsible for the mailers at
11 issue, determine how many mailers were sent, how much they cost, when they were disseminated,
12 and whether the responsible parties sponsored additional similar communications. We
13 recommend that the Commission authorize compulsory process in order to complete our
14 investigation.

15 **IV. RECOMMENDATIONS**

- 16 1. Find reason to believe that Fair People for Fair Government violated 52 U.S.C.
17 § 30120(a) and (c) by failing to include disclaimers on mailers that contained express
18 advocacy;
19
- 20 2. Find reason to believe that Fair People for Fair Government violated 52 U.S.C.
21 § 30104(b), (c), and (g) by failing to timely and accurately disclose the cost of the
22 mailers;
23
- 24 3. Take no action at this time as to the allegations that Fair People for Fair Government
25 violated 52 U.S.C. §§ 30102, 30103 and 30104 by failing to register and report as a
26 political committee;
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³² We asked the USPS offices to identify the holders of the bulk mail permit and learned that it is registered to a bulk printing and mailing facility.

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- 4. Authorize the use of compulsory process;
- 5. Approve the attached Factual and Legal Analysis; and
- 6. Approve the appropriate letters.³³

Lisa J. Stevenson
Acting General Counsel

1.29.20

Date



Stephen Gura
Deputy Associate General Counsel



Mark Shonkwiler
Assistant General Counsel



Wanda D. Brown
Attorney

Attachment
Factual and Legal Analysis

³³ We will send notification letters to the entities associated with Fair People once we learn their identities.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Fair People for Fair Government MUR 7460

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”) by Jordan P. Kahle.¹ The Complaint alleges that an entity calling itself Fair People for Fair Government (“Fair People”), which has not registered or reported to the Commission as a political committee, distributed mailers that used misinformation to expressly advocate the defeat of two candidates in the 2018 Republican primary election for Florida’s 18th Congressional District.² Although the mailers, which appear to have been professionally prepared and transmitted under a U.S. Post Office bulk mailer permit, include the statement “Paid for by Fair People for Fair Government,” they do not provide the group’s address, telephone number, or website.³ The Commission has been unable to find an address for Fair People to notify it of the Complaint. Further, Fair People is not registered with the Internal Revenue Service or the State of Florida, and it did not file independent expenditures reports with the Commission for these mailers.

Based on the available information, the Commission finds reason to believe that Fair People for Fair Government violated 52 U.S.C. §§ 30120(a) and (c) and 30104(b), (c), and (g) by failing to include complete disclaimer information and by failing to report the cost of these independent expenditures to the Commission. Given the current lack of any information as to

¹ See 52 U.S.C. § 30109(a)(1).

² Compl. at 1 (Aug. 7, 2018)

³ Compl. Attach. 1 and 2.

1 the group’s major purpose, however, the Commission makes no findings at this time as to the
2 allegation that Fair People failed to register and report to the Commission as a political
3 committee.

4 II. FACTUAL AND LEGAL ANALYSIS

5 A. The Mailers Expressly Advocated for the Defeat of Clearly Identified 6 Candidates

7
8 The mailers, which were distributed in Florida’s 18th Congressional District in July 2018,
9 approximately one month before the August 28, 2018, primary election, attack the character and
10 fitness of Republican primary candidates Dave Cummings and Brian Mast.⁴ The first mailer
11 attached to the Complaint asks “Is this Congressional candidate a fraud?”⁵ It further purports to
12 debunk various aspects of Cummings’s background, including his military record, his business
13 background, and other personal claims.⁶ Specifically, the mailer challenges Cummings’s
14 military status and background by analyzing a military photo of Cummings and declaring that
15 Cummings fraudulently claimed to be a Special Forces operative.⁷ Further, the mailer claims
16 that Cummings was fired from a position with a financial institution when he became a suspect
17 related to missing funds.⁸ Finally, the mailer questions Cummings’s claim that he stopped a
18 school shooting, his financial status based on a suit by his mortgage company, and his ability to

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

1 pay the \$10,400 filing fee as a Florida Congressional candidate despite reporting no income or
2 assets.⁹ According to news reports, Cummings disputes the accuracy of the mailers.¹⁰

3 The second mailer questions Brian Mast's background and fitness for office. The mailer
4 states that Mast claims he went to Harvard, but he only took an online course through the
5 school.¹¹ Further, the mailer claims that Mast defrauded from investors in his company of \$26
6 million.¹² Finally, the mailer questions Mast's Congressional voting record, stating that "If you
7 voted for Brian Mast in 2016, he has betrayed you."¹³ According to news reports, Mast's
8 campaign also disputes the truth of the mailers.¹⁴

9 Commission regulations provide that a communication expressly advocates the election
10 or defeat of a clearly identified candidate when it uses certain phrases or uses campaign slogans
11 or individual words "which in context can have no other reasonable meaning than to urge the
12 election or defeat of one or more clearly identified candidate(s)."¹⁵ Commission regulations also
13 state that a communication constitutes express advocacy if "[w]hen taken as a whole and with

⁹ *Id.*

¹⁰ Ali Schmitz, *Illegal Mailer Attacks Dave Cummings, Who's Running for U.S. Rep. Brian Mast's Seat*, TCPalm.com, Jul. 13, 2018, <https://www.tcpalm.com/story/news/politics/elections/2018/07/13/illegal-mailer-attacks-dave-cummings/766331002/>.

¹¹ Compl. Attach. 1 and 2

¹² *Id.*

¹³ *Id.*

¹⁴ Ali Schmitz, *Illegal Mailer Attacks U.S. Rep Brian Mast; Second One to Surface in District 18* TCPalm.com, Jul. 16, 2018, <https://www.tcpalm.com/story/news/politics/elections/2018/07/16/u-s-rep-brian-mast-attacked-illegal-mailer-district-18/788289002/>.

¹⁵ 11 C.F.R. § 100.22(a). The Commission explained that the phrases enumerated in 11 C.F.R. § 100.22(a), such as "Smith for Congress" and "Bill McKay in '94," have no other reasonable meaning than to urge the election or defeat of a clearly identified candidate. *See* Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294 (July 6, 1995) ("Express Advocacy E&J"); *see also* *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (a communication is express advocacy when "it provides, in effect, an explicit directive" to vote for the named candidates).

1 limited reference to external events, such as the proximity to the election, [the communication]
2 could only be interpreted by a reasonable person as containing advocacy of the election or defeat
3 of one or more clearly identified candidate(s) because — (1) [t]he electoral portion of the
4 communication is unmistakable, unambiguous, and suggestive of only one meaning; and
5 (2) [r]easonable minds could not differ as to whether it encourages actions to elect or defeat one
6 or more clearly identified candidate(s) or encourages some other kind of action.”¹⁶

7 In its explanation and justification for section 11 C.F.R. §100.22(b), the Commission
8 stated, “communications discussing or commenting on a candidate’s character, qualifications or
9 accomplishments are considered express advocacy under new section 100.22(b) if, in context,
10 they can have no other reasonable meaning than to encourage actions to elect or defeat the
11 candidate in question.”¹⁷ In MUR 5024R, the Commission concluded that, in context, the
12 brochures constituted express advocacy under 11 C.F.R. § 100.22(b), because the electoral
13 portions of the brochure, including the phrase “Tell Tom Kean Jr....New Jersey Needs New
14 Jersey Leaders,” were “unmistakable, unambiguous and suggestive of only one meaning” — to
15 vote against Tom Kean.¹⁸ In MURs 5511/5525, the Commission concluded that attacks on John
16 Kerry’s character, fitness for public office, and capacity to lead, including phrases such as
17 “JOHN KERRY CANNOT BE TRUSTED” and “unfit for command” were “unmistakable,
18 unambiguous and suggestive of only one meaning” — and had no reasonable meaning other than
19 to encourage actions to defeat him in the upcoming election.¹⁹ Similarly, in MUR 5831, the

¹⁶ 11 C.F.R. § 100.22(b).

¹⁷ EA E&J, 60 Fed. Reg. at 35,295.

¹⁸ MUR 5024R (Council for Responsible Government) Factual and Legal Analysis at 14-15.

¹⁹ MUR 5511/5525 (Swift Boat Veterans) Conciliation Agreement at IV.25-28.

1 Commission concluded that, in context, the ad attacking Bob Casey’s qualifications and stating
2 “Can we really risk Bob Casey learning on the job?” constituted express advocacy under
3 11 C.F.R. § 100.22(b), because the electoral portions were “unmistakable, unambiguous and
4 suggestive of only one meaning” — to vote against Bob Casey.²⁰ The Commission concluded
5 that outside the context of the upcoming election, these advertisements were virtually
6 meaningless.²¹

7 The mailers’ attacks on candidates Cummings and Mast approximately one month before
8 the 2018 Florida Republican primary election are very similar to the attacks the Commission
9 found to be express advocacy for the defeat of the specified candidates in MURs 5024R,
10 5511/5525 and 5831. Most notably, the mailers’ allegations that Cummings and Mast committed
11 fraud are akin to the allegations that candidate Kerry could not be trusted and was unfit for
12 command. Further, Fair People cannot avoid a finding of express advocacy simply by phrasing
13 its mailer in the form of a question (“Is this Congressional candidate a fraud?”). The
14 Commission found that the only reasonable interpretation of “can we really risk Bob Casey
15 learning on the job?” was to vote against Casey, and the Commission makes a similar finding
16 here.

17 **B. The Mailers Required Disclaimers with Identifying Information**

18 The Act requires that all public communications that expressly advocate the election or
19 defeat of a clearly identified candidate include a disclaimer.²² “Public communications” include
20 “mass mailings,” which are mailings of more than 500 pieces of mail of an identical or

²⁰ MUR 5831 (Softer Voices) Factual and Legal Analysis at 6-8.

²¹ *Id.*

²² 52 U.S.C. § 30120(a); *see* 11 C.F.R. § 110.11(a)(2).

1 substantially similar nature within any 30-day period.²³ Where required, disclaimers must be
2 “presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate
3 notice of the identity of the person or political committee that paid for, and where required, that
4 authorized the communication.”²⁴ If a communication is not authorized by a candidate’s
5 authorized committee, it must clearly state the name and permanent address, telephone number,
6 or website address of the person who paid for the communication and state that the
7 communication is not authorized by any candidate or candidate’s committee.²⁵

8 The mailers are public communications advocating against the election of these
9 candidates, and as such, required a full disclaimer, including the address, phone number and
10 website information as to the sponsoring person or entity. They did not. Accordingly, the
11 Commission finds reason to believe that Fair People for Fair Government violated 52 U.S.C.
12 § 30120(a) and (c) by failing to include a disclaimer compliant with the Act’s requirements on a
13 public communication.

14 **C. Reporting of Independent Expenditures**

15 Any person other than a political committee that makes expenditures that expressly
16 advocate the election or defeat of a federal candidate that exceed \$250 must file an independent
17 expenditure report with the Commission pursuant to 52 U.S.C. § 30104(c).²⁶ In addition, a

²³ 52 U.S.C. § 30101(22), (23); 11 C.F.R. §§ 100.26, 100.27.

²⁴ 11 C.F.R. § 110.11(c). For printed communications, disclaimers must be clear and conspicuous, be of sufficient type size to be clearly readable, be contained in a printed box set apart from the other contents of the communication, and must clearly state who paid for the communication. *Id.* § 110.11(c)(2).

²⁵ *Id.* § 110.11(b)(3).

²⁶ The Act defines “independent expenditure” as “an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate; and that is not made in concert or cooperation with or at the request or suggestion of such a candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents.” 52 U.S.C. § 30101(17).

1 person (including a political committee) that makes or contracts to make independent
2 expenditures aggregating \$10,000 or more at any time up to and including the 20th day before
3 the date of an election shall file a report describing the expenditures within 48 hours.²⁷
4 Similarly, political committees and other persons that make independent expenditures
5 aggregating \$1,000 or more made after the 20th day, but more than 24 hours before, the date of
6 an election, must report the expenditures by filing a 24-hour notice.²⁸

7 The available information indicates that mailers purportedly distributed by Fair People
8 constituted express advocacy, and expenditures for the mailers likely exceeded \$250. As noted
9 above, the mailers appear to have been professionally prepared and transmitted under a U.S. Post
10 Office bulk mailer permit. Therefore, whether these communications were made by a political
11 committee or as independent expenditures, they should have been disclosed to the Commission.
12 Accordingly, the Commission finds reason to believe that Fair People for Fair Government
13 violated 52 U.S.C. § 30104(b) and (c) by failing to report expenditures made in connection with
14 the mailers. Further, information in the Complaint indicates that 24- or 48-hour reports may
15 have been required. Accordingly, the Commission finds reason to believe that Fair People for
16 Fair Government violated 52 U.S.C. § 30104(g).

17 **D. Registration and Reporting as a Political Committee**

18 The Act and Commission regulations define a “political committee” as “any committee,
19 club, association or other group of persons which receives contributions aggregating in excess of
20 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000

²⁷ 52 U.S.C. § 30104(g)(2)(A).

²⁸ See 52 U.S.C. § 30104(g)(1)(A). Political committees and other persons must file 24-hour notices by 11:59 p.m. on the day following the date on which the independent expenditure communication is publicly distributed. See 11 C.F.R. §§ 104.4(c), 109.10(d).

1 during a calendar year.”²⁹ Political committees must register with, and report their receipts and
2 disbursements to, the Commission.³⁰ In *Buckley v. Valeo*,³¹ the Supreme Court observed that the
3 term “political committee” “need only encompass organizations that are under the control of a
4 candidate or the major purpose of which is the nomination or election of a candidate.”³²

5 Based on the apparent professional preparation of the mailers and the use of the U.S. Post
6 Office bulk mailer permit, the record contains sufficient information to infer that the cost of the
7 mailers exceeded the \$1,000 statutory threshold. There is, however, insufficient information to
8 determine whether the sponsor’s major purpose was the nomination or election of a federal
9 candidate. The Commission has no further information about Fair People for Fair
10 Government. Accordingly, the Commission takes no action at this time as to the allegations that
11 Fair People violated the Act with regard to the Act’s requirement that a political committee
12 register with and report its receipts and disbursements to the Commission, but may reconsider
13 the issue as more information becomes available.

²⁹ *Id.* § 30101(4)(A); 11 C.F.R. § 100.5. *See also* Political Committee Status, 72 Fed. Reg. 5596, 5597 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“When applied to communications made independently of a candidate or a candidate’s committee, the term ‘expenditure’ includes only ‘expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.’ *Buckley v. Valeo*, 424 U.S. 1, 44, 80 (1976).”).

³⁰ 52 U.S.C. §§ 30101(4) and 30104(a).

³¹ 424 U.S. 1 (1976).

³² *Id.* at 79.