

SANDLER REIFF

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July 24, 2019

Jeff S. Jordan, Esq.
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

**Re: MUR 7536 – Response to Complaint
Coalition for a Safe Secure America**

Dear Mr. Jordan:

This response is filed on behalf of Coalition for a Safe Secure America, a dissolved non-profit entity that operated as a social welfare organization under 26 U.S.C. § 501(c)(4), to Mr. Mitchell V. Harper's initial and amended complaint that two issue advocacy mailings by CSSA did not include disclaimers.

Contrary to Mr. Harper's allegation, CSSA was not required to include a "paid for by" or "not authorized by any candidate or candidate's committee" disclaimer on its two mailings because CSSA is not a "political committee" and the mailings were not "independent expenditures" under the Federal Election Campaign Act of 1971, as amended (the "Act"). For these reasons, as discussed in more detail below, the Commission should find no reason to believe a violation occurred and close this matter.

I. Statement of Facts

CSSA was a 501(c)(4) non-profit organization. It was dissolved as of December 31, 2018. CSSA was not a political committee that subject to the registration, reporting, and disclaimer requirements under the Act.

CSSA's two mailings were issue advocacy communications, not independent expenditures. The first mailing opposing tax increases contained the following content:

Mike Braun voted to impose or raise taxes and fees 45 times in 2017.
Mike Braun: the tax hike king of Indiana.

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Mike Braun voted to raise taxes and fees on:

- Gas for your car
- Car registration fees
- Airplane fuel
- Teachers' background checks
- Immunization for students

Mike Braun even supported the largest tax increase in Indiana history – the gas tax, which went up by a whopping 55 percent and will take \$5 billion out of taxpayers' pockets in the first seven years.

Lucy Brenton – Opposed to tax hikes

Lucy Brenton strongly opposed the Mike Braun tax hikes. In fact, she has always opposed all taxes that take money from us to line the government's pockets.

Call tax hike Mike at (317)[xxx-xxxx] and tell him to stop raising our taxes.¹

The second mailing, also opposing more tax increases, contained the following content:

Mike Braun's tax hike will take \$5 billion dollars out of taxpayers' pockets.

Tax hike Mike Braun supported the largest tax increase in Indiana history.

Mike Braun raised taxes we pay on gas by a whopping 55% - the largest tax hike in Indiana's history. Thanks to Tax Hike Mike, this will cost us \$5 billion in the first seven years.

Mike voted to impose or raise taxes and fees 45 times in 2017 alone. Hoosiers are paying more for all sorts of things, from car registration fees to immunizations for students. Even our teachers must pay more their own required background checks.

Call tax hike Mike at (317)[xxx-xxxx] and tell him to stop raising our taxes.

¹ See Compl. at 1, mailing received Oct. 29, 2018

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Lucy Brenton: Opposed to all tax increases.

Lucy Brenton strongly opposed the Mike Braun tax hikes. In fact, she opposes all taxes that take money from our pockets.

Call Lucy Brenton at (317)[yyy-yyyy] and tell her to keep opposing new taxes.²

CSSA's mailings were not made in concert or coordination with, or at the request or suggestion of, a candidate, or his or her committee or agent, or a political party committee or its agent.

II. Legal Analysis

A. CSSA's mailings did not constitute independent expenditures

An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified Federal candidate and that is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his or her committee or agent, or a political party committee or its agent.³

In determining whether a communication contains express advocacy, the Commission analyzes the message under 11 C.F.R. § 100.22. A communication expressly advocates the election or defeat of a clearly identified candidate under 11 C.F.R. § 100.22(a)⁴ when it uses phrases such as "vote for the President," "re-elect your Congressman," or "Smith for Congress,"; or "'vote Pro-Life' or vote Pro-Choice' accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice" or uses campaign slogans or individual words, "which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc., which say

² See Compl. at 1, mailing received Oct. 31, 2018

³ 52 U.S.C. § 30101(17)

⁴ The term "clearly identified" means "the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as 'the President,' 'your Congressman,' or 'the incumbent,' or through an unambiguous references to his or her status as a candidate such as 'the Democratic presidential nominee' or 'the Republican candidate for Senate in the State of Georgia.'" 11 C.F.R. § 100.17

‘Nixon’s the One,’ ‘Carter ’76,’ ‘Reagan/Bush,’ or ‘Mondale!’”⁵ This analysis is commonly referred to as the *Buckley* Magic Words test.⁶

In addition to the *Buckley* Magic Words test, FEC regulations also include a part (b) definition of express advocacy commonly referred to as the *Furgatch* test.⁷ Under 11 C.F.R. § 100.22(b), a communication is express advocacy if:

When taken as a whole and with limited reference to external events, such as the proximity to the election, could *only* be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because –

- (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestion of *only one* meaning; and
- (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages *some other kind of action*.⁸

CSSA’s mailings were not express advocacy under either the *Buckley* Magic Words or the *Furgatch* tests. First, as demonstrated in the content of the mailings stated about, neither mailing includes any of the *Buckley* Magic Words that have no other reasonable meaning than to urge the election or defeat of one or more clearly identified Federal candidate. Therefore, the mailings do not meet the definition of express advocacy under 11 C.F.R. § 100.22(a).

Second, even with limited reference to external events, such as the proximity to an election, CSSA’s mailings can be interpreted by a reasonable person as containing advocacy for something other than the election or defeat of a clearly identified candidate. The most reasonable interpretation of the mailings is exactly what they advocated for -- call Mike Braun at the phone number provided and tell him to stop raising our taxes.

The communications also did not meet the *Furgatch* Test because there was no electoral portion of either communication that was unmistakable, unambiguous, and suggestive of *only*

⁵ See Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294-95 (July 6, 1995)

⁶ See *Buckley v. Valeo*, 424 U.S. 1, n.52 (1976)

⁷ *Fed. Elec. Comm. v. Furgatch*, 807 F.2d 857, 864 (9th Cir. 1987)

⁸ 11 C.F.R. § 100.22(b)(emphasis supplied)

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one meaning. In addition, reasonable minds could differ as to whether the mailings encouraged actions to elect or defeat one or more clearly identified candidate or to take some other kind of action. Both mailings expressly encouraged people to make a phone call to tell Mike Braun to “stop raising our taxes.” That explicit message -- make a phone call, to this number, and deliver this message on the issue of taxes -- encourages some other kind of action than to elect or defeat a candidate. Therefore, the mailings also did not meet the part (b) definition of express advocacy under 11 C.F.R. § 100.22.

Accordingly, because CSSA’s mailings did not expressly advocate the election or defeat of a clearly identified federal candidate, they did not constitute independent expenditures.

B. CSSA’s mailings did not require disclaimers

The only communications that require disclaimers under the Act are: (1) public communications by a political committee, (2) public communications that expressly advocate the election or defeat of a clearly identified candidate, (3) public communications that solicit any contribution, and (4) electioneering communications.⁹

First, CSSA was not a political committee. It was a 501(c)(4) organization. And it did not engage in any activity that required registration as a political committee. Therefore, a political committee disclaimer was not required on CSSA’s mailings.

Second, as analyzed above, CSSA’s mailings did not expressly advocate the election or defeat of a clearly identified candidate. Therefore, an independent expenditure disclaimer was not required on CSSA’s mailings.

Third, CSSA’s mailings did not solicit any contributions and, therefore, it was not required to include a solicitation disclaimer.

Finally, CSSA’s mailings were not electioneering communications. The only types of communications that meet the definition of “electioneering communications” are those that are “publicly distributed by a television station, radio station, cable television system, or satellite system.”¹⁰ CSSA’s mailings were not broadcast, cable, or satellite communications, therefore, they did not require an electioneering communication disclaimer.

CSSA’s mailings did not fall within any category of public communications under FEC regulations that required it to include a disclaimer on them.

⁹ 11 C.F.R. § 110.11(a)(1)-(4)

¹⁰ 11 C.F.R. § 100.29(a)(b)

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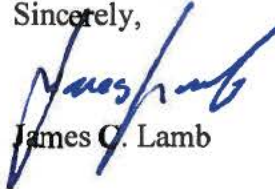
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III. Conclusion

CSSA's mailings were not independent expenditures and it was not required under FEC regulations to include any disclaimers on them. There is no reason to believe CSSA violated the Act with its issue advocacy mailings. Therefore, we respectfully request that the Commission dismiss this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "James C. Lamb", is written over the printed name.

James C. Lamb