

SANDLER REIFF

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September 17, 2019

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

**Re: MUR 7551 – 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 (“CSSA”), 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 complaint that four issue advocacy mailings by CSSA did not include disclaimers.

Two of the issue advocacy mailings included in MUR 7551 were the subject of Mr. Harper’s complaint in MUR 7536. CSSA filed a response in MUR 7536 demonstrating that the two mailings were not independent expenditures and, therefore, did not need FEC disclaimers. We request that you also incorporate CSSA’s response to the two mailings in MUR 7536 into this response. We will address the two new mailings that are the subject in MUR 7551 in this response.

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 the two new 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 subject to the registration, reporting, and disclaimer requirements under the Act.

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The two new mailings in MUR 7551 were issue advocacy communications, not independent expenditures. The first of the two new mailings opposing tax increases contained the following content:

Address Side

Paying more than ever for gas for your car?
And 45 other everyday things?
THANK TAX HIKE MIKE BRAUN

Other Side

Mike Braun's Tax Hike on our gas will take \$5 BILLION out of taxpayers' pockets.

Mike Braun raised the taxes we pay on gas by a whopping 55% - the largest tax hike in Indiana's history. But that's not all. He also raised or imposed taxes or fees on:

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

Thanks to Tax Hike Mike, the gas tax alone will cost us \$5 billion in the first seven years.

Call tax hike Mike at (317)732-8893 and tell him to stop raising our taxes.¹

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

Address Side

Mike Braun: The Tax Hike King of Indiana

The facts on Mike Braun's \$5 billion gas tax hike:

- Will take \$5 billion out of taxpayers' pockets
- Is the largest tax increase in Indiana history
- Indiana tied with California for the largest gas price increase in the country last year.

¹ See Compl., Exhibit

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Other Side

Taxpayers are out \$5 billion thanks to Tax Hike Mike

Mike Braun's gas tax hike – the largest tax increase in Indiana's history – will take \$5 billion from taxpayer pockets over the next seven years. And the gas tax isn't the only tax or fee he voted to raise or impose.

Thanks to Tax Hike Mike, Hoosiers are having to pay more for:

- Gas for your car
- Car registration fees
- Airplane fuel
- Immunizations
- And 41 other things.

Call Tax Hike Mike at (317)732-8893 and tell him to stop raising our taxes.

Lucy Brenton: Opposed to taking more money from taxpayer pockets.

Lucy Brenton is opposed to Mike Braun's gas tax hike, and the 45 other taxes he voted to support or impose. In fact, she opposes all taxes that take money from taxpayers to line the government's pockets.

Call Lucy Brenton at (317)721-3676 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

² See Compl., Exhibit

³ 52 U.S.C. § 30101(17)

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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 ‘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).

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

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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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 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

⁹ 11 C.F.R. § 110.11(a)(1)-(4)

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“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.

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

¹⁰ 11 C.F.R. § 100.29(a)(b)