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September 16, 2019

BY ELECTRONIC MAIL

Federal Election Commission
Office of Complaints Examination and
Legal Administration
Attn: Kathryn Ross, Paralegal
999 E. Street, NW
Washington, D.C. 20436
cela@fec.gov

Re: MUR 7632; *Campaign for Accountability, et al. v. Susan B. Anthony List Inc. Candidate Fund, et al.*

Dear Ms. Ross:

On behalf of Susan B. Anthony List Inc. Candidate Fund (the “Committee”); Robert J. Kania II, individually and as Former Treasurer of the Susan B. Anthony List Inc. Candidate Fund; and The Lukens Company (“TLC”), this letter responds to the complaint filed by Campaign for Accountability and Alice C.C. Huling (the “Complainants”).

The complaint alleges that the Committee knowingly received, and TLC knowingly made, an in-kind corporate contribution in the form of credit extended to the Committee by TLC, a longtime vendor of the Committee, for independent expenditures that it produced and distributed. The complaint also alleges that the Committee knowingly filed inaccurate reports related to these independent expenditures.

As elaborated below, both allegations are without merit and the complaint should be dismissed. TLC extended credit to the Committee—as it has throughout their 10-year relationship and as it regularly does for other political clients—for the production and distribution of the mailers. Likewise, although the Committee misidentified the payable owed to TLC as a loan instead of a debt on its reports, it did not knowingly file a false report, and immediately corrected the reports upon being notified by its analyst.

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1. The Committee Did Not Receive a Corporate Contribution from The Lukens Company.

The Committee made independent expenditures in support of candidates for the United States Senate in the three months leading up to the November 2018 election. The independent expenditures were in the form of print advertisements that were distributed on August 17, September 10, and October 15, respectively. The Committee engaged TLC for the production and distribution of these independent expenditures, as it has on similar expenditures over the past decade in which it has engaged TLC for various print communications. Consistent with its agreement with the Committee and its standard business practice, TLC invoiced the Committee for the mailers, but payment was not due until up to three months later. In November 2018, the Committee paid TLC in full for the production and distribution of the advertisements.

The Committee filed 24-hour notices reporting the independent expenditures (FEC-1257080, FEC-1257068, FEC-1257075, FEC-1260669, FEC-1260671, FEC-1260668, FEC-1260670) and also reported them on its regular monthly reports (FEC-1263372, FEC-1275062, FEC-1283364). It reported that TLC had produced and distributed the print advertisements. (However, it neglected to include on its monthly reports that it still owed TLC for the services provided. This issue is addressed in section 2, below.)

The complaint wrongly alleges that this extension of credit to the Committee by TLC was an in-kind contribution. In determining whether an extension of credit from a vendor to a committee constitutes an in-kind contribution, the Commission considers whether (i) the vendor followed established procedures and past business practices in making the extension of credit, (ii) the vendor received prompt payment in full, and (iii) the extension of credit conformed to the usual and normal practice in the industry. 11 C.F.R. § 116.3(c). Each of these factors is met here. As noted above, TLC followed past business practices in making the extension of credit, TLC received payment in full, and TLC's customary payment period on its invoices is within normal industry practice.

Because each of the factors in Section 116.3(C) has been established, the extension of credit from TLC to the Committee does not constitute an illegal in-kind corporate contribution.

2. The Committee Did Not Fail to File Reports and Promptly Clarified All Reports Following Instructions from the Commission.

The Committee filed timely 24-hour notices and monthly reports reflecting the above-described independent expenditures. These reports accurately reflected when the mailers were distributed, their cost, the amount of funds expended in support of each candidate, and that TLC had produced and distributed the mailers.

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Initially, however, the Committee did not correctly indicate that the independent expenditures had been distributed but had not been paid for yet. At the time of distribution, no disbursement had been made; rather, only an obligation to pay had been incurred. The original September and October 2018 monthly reports filed by the Committee (FEC-1263372, FEC-1275062) did not reflect the incurred obligations to TLC for the mailers. Realizing this, the Committee made a good faith effort to correct the reports by reporting (incorrectly, it later learned) a “loan” from TLC on its 2018 pre-general report, which was explained in the description field as “payables carried forward” in the form of amounts owed to TLC for the mailers. (FEC-1283364 at 204.) At the time, the Committee believed in good faith that this was an acceptable and proper way to reflect that the independent expenditures had been distributed but not yet paid for. The outstanding obligation for the costs of the mailers was paid during November 2018 consistent with standard practice between the Committee and TLC and with TLC’s standard business practice. This payment was reflected on the Committee’s year-end report filed on January 31, 2019 (FEC-1312421 at 8), and described as “Paid Bill” in the description field. Again, the Committee later learned that this was not the proper way to report the outstanding invoice and payment, but the description clearly indicates and discloses the full details of the expenditures.

The Committee received a Request for Additional Information dated April 4, 2019, concerning the “loan” shown on its 2018 pre-general report. The pre-general report was the first time that the “loan” had been reported and, therefore, was the first time that an RFAI could have been generated related to the underlying payment arrangement for the independent expenditures. The Committee contacted its analyst who, upon learning that the amount reported as a “loan” was not a loan but was instead an obligation, explained the proper way to report post-paid independent expenditures—by reporting the expenditure on Schedule E as a memo entry and the underlying obligation on Schedule D as a debt. On June 10, 2019, the Committee amended all applicable reports (including the year-end report, which was the subject of a second RFAI dated May 17, 2019) to make the corrections according to the analyst’s instructions. (FEC-1333533, FEC-1333532, FEC-1333530, FEC-1333523, FEC-1333522.)

Accordingly, at the time the Complainants contacted the Committee in April 2019, the Committee had already been in contact with the FEC regarding the reporting of the independent expenditures and was already aware that clarifications needed to be made to its reports. Therefore, the statements in Paragraph 19 of the Complaint are false and the reports were not corrected as a result of information received from the Complainants. Furthermore, the allegations regarding purported actions by the Former Treasurer of the Committee in his individual capacity in unrelated matters and jurisdictions are irrelevant to the facts surrounding the mistaken reporting of the obligations for the independent expenditures at issue. Mr. Kania was removed as Treasurer because his term as an SBA Board Member was expired.

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Neither the Committee nor its Treasurer at the time, Robert Kania, knowingly filed inaccurate reports. The Committee accurately disclosed the independent expenditures at the time that they were distributed and attempted to accurately report that they were paid for later in the ordinary course of business. After receiving a request for clarification and in accordance with the instructions it received from its analyst, the Committee amended the reports to clarify the “payables” as debts instead of loans. Whatever reporting mistakes were involved here have already been long-clarified through the RFAI process.

Finally, there was no misrepresentation to the FEC and no harm to the public. At all times the independent expenditures were reported promptly, and the underlying obligations were reported in good faith.

Based on the foregoing, the complaint against Respondents should be dismissed.

Sincerely,

LANGDON LAW LLC

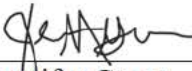


David R. Langdon

Counsel for Susan B. Anthony List Inc.
Candidate Fund, Robert Kania, and The
Lukens Company

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Under 28 U.S.C. § 1746, I declare under penalty of perjury that each of the factual statements in this letter concerning Susan B. Anthony List Inc. Candidate Fund is true and correct.

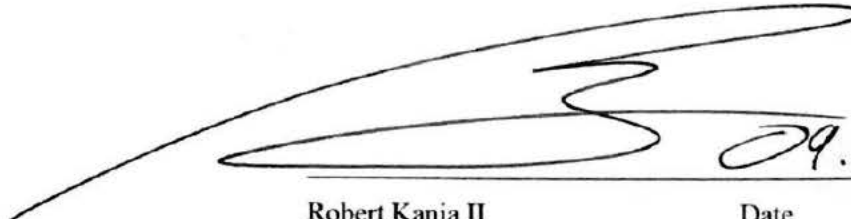


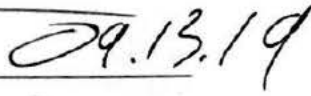
Jennifer Gross

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Under 28 U.S.C. § 1746, I declare under penalty of perjury that each of the factual statements in this letter concerning Robert Kania is true and correct.


Robert Kania II


Date

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Under 28 U.S.C. § 1746, I declare under penalty of perjury that each of the factual statements in this letter concerning The Lukens Company is true and correct.

A handwritten signature in black ink, appearing to read "Seth Colton", is written over a horizontal line.

Seth Colton

9/16/19

Date