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**BakerHostetler**

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November 5, 2014

**VIA E-MAIL AND FIRST CLASS MAIL**

Jeff Jordan  
Assistant General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463  
Attn: Frankie Hampton

*Re: MUR 6872*

Dear Mr. Jordan:

BakerHostetler has been retained to represent New Models regarding the complaint submitted to the Federal Election Commission ("Commission") by Citizens for Responsibility and Ethics in Washington (CREW) and Melanie Sloan, alleging that New Models, a Virginia non-profit corporation, violated the Federal Election Campaign Act ("Act") by failing to register and report as a "political committee" with the Commission.

The Commission should promptly dismiss this matter. The Act and Commission regulations require that a complaint clearly recite facts setting forth specific violations of statutes and regulations under the Commission's jurisdiction. If a complaint fails to allege facts showing specific violations of the Act, the matter should be dismissed without further action.

The MUR 6872 complaint fails this threshold requirement. The issue presented by the complaint is whether New Models is a political committee as defined by federal law. New Models is not a federal political committee, and the complaint fails to provide the Commission with factual allegations on which the Commission could determine that New Models is such.

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## **I. ALLEGED VIOLATIONS OF THE ACT**

The CREW complaint contains two alleged violations styled as two counts:

Count I - "New Models was a political committee between in 2012 (sic), but failed to register as one with the FEC."<sup>1</sup>

Count II - "As a political committee, New Models was required to file periodic reports with the FEC ..."<sup>2</sup>, and "New Models failed to file any of these reports with the FEC."<sup>3</sup>

## **II. A POLITICAL COMMITTEE MUST TRIGGER BOTH A REGISTRATION MONETARY THRESHOLD AND HAVE A "MAJOR PURPOSE" OF INFLUENCING FEDERAL ELECTIONS.**

Under the Act, a "political committee" is any "committee, club, association, or other group of persons" that receives more than \$1,000 in "contributions" or makes more than \$1,000 in "expenditures" in a calendar year. 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a). The Act defines "contribution" and expenditure" to include any payment of money to or by any person "for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

An entity, such as New Models, that is not controlled by a candidate must register as a political committee only if the entity: (1) crosses the \$1,000 threshold of contributions or expenditures; and (2) has as its "major purpose" the nomination or election of federal candidates. *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (per curiam); see also *FEC v. Mass. Cit. for Life, Inc.*, 479 U.S. 238, 262 (1986). New Models does not dispute that it made contributions, as defined by the Act, of more than \$1,000 in 2012. However, it did not then, and never has had, the "major purpose" of nominating or electing federal candidates, and the complaint does not allege sufficient facts to show that it does.

CREW fails to allege any other indicia from which the Commission could conclude that federal campaign activity is New Models major purpose other than the three donations listed in the complaint. This New Models' financial activity in only one year is far too modest in amount and duration to represent the organization's major purpose under any reasonable standard.

## **III. METHODS TO DETERMINE MAJOR PURPOSE**

The Commission has no regulation or policy containing a particular method for determining an organization's major purpose. In 2004, the Commission considered a regulatory definition of "political committee" that would have encompassed all political organizations holding tax-exempt status as political committees under Section 527 of the Internal Revenue

<sup>1</sup> Complaint Count I, #15, page 5.

<sup>2</sup> Complaint Count II #23, page 7

<sup>3</sup> Complaint Count II, #24 page 7

Code. *Proposed Rules: Political Committee Status*, 69 Fed. Reg. 11,736, 11,748-11; 749 (Mar. 11, 2004); see 26 U.S.C. §§ 527(a), (e)(I). However, no rules were adopted. In February 2007, the Commission published a Supplemental Explanation and Justification further explaining its decision not to promulgate such a regulation. *Rules and Regulations Political Committee Status*, 72 Fed.Reg. 5595 (Feb. 7, 2007) (“Supplemental E&J”).

Although New Models is a 501(c)(4) social welfare organization, and not a 527 political committee, the proposed rules and Supplemental E&J nevertheless are useful in explaining the Commission’s practice of determining an organization’s major purpose through case-by-case adjudication and the factors used. See *Supplemental E&J* at 5596-97. These include an analysis of an organization’s public and private statements and its spending activity to evaluate whether the organization’s major purpose is the nomination or election of federal candidates. *Id.* at 5601. Under these factors, New Models clearly does not have the “major purpose” of nominating or electing federal candidates.

A. PUBLIC STATEMENTS

The Commission and courts have used an analysis of public statements in determining an organization purpose. See, e.g., *FEC v. Malenick*, 310 F. Supp. 2d 230, 234-36 (D.D.C. 2004) (finding that an organization evidenced its major purpose through its own materials which stated that the organization’s main goal was supporting Republican candidates for federal office and through its efforts to get prospective donors to consider supporting federal candidates); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996) (“organization’s [major] purpose may be evidenced by its public statements of its purpose or by other means”).

The Complaint does not allege that New Models has ever made or sponsored a statement, either publically or in its own materials, to evidence a major purpose of nominating or electing federal candidates. New Models has never made or sponsored such a statement.<sup>4</sup>

B. WEBSITE

In Advisory Opinion 2006-20, the Commission explained that an organization (“Unity 08”) evidenced its major purpose through organizational statements of purpose on its Website. Again, the Complaint does not allege this, and New Models has never stated that its purpose was the election or defeat of any federal candidate or otherwise advocated for the election or defeat of a federal candidate on its website.<sup>5</sup>

<sup>4</sup> Crawford Affidavit Item #4.

<sup>5</sup> Crawford Affidavit Items #7 and #8.

C. SOLICITATIONS

No New Models' materials state that the organization's goal is supporting the election of any party's candidates for federal office. Its materials contain no efforts to get prospective donors to consider supporting federal candidates. New Models has not created materials for distribution to prospective donors, showing that the organization's intent is to elect federal candidates.<sup>6</sup>

The Complainants provide no allegations to the contrary or examples of such materials.

D. INDEPENDENT SPENDING

The Commission has also said that an organization may satisfy the major purpose test by independent spending that is "so extensive that the group's major purpose may be regarded as campaign activity." *MCFL*, 479 U.S. 238 at 262. While neither the Court nor the Commission has defined "so extensive," the Commission should look at the organization's spending on federal campaign activity in proportion to its spending on overall activity. Fed. Reg. 5595 at 5601. See *Koerber*, 583 F.Supp.2d at 748; AO 1996-03 (comparing an organization spending on campaign activity to their overall spending). See MUR 5365 (Club for Growth), Factual and Legal Analysis at 21; *GOPAC*, 917 F.Supp. at 854.55 (confirming the "major purpose" test to federal campaign activity).

New Models has never made an independent expenditure or electioneering communication, supporting or opposing a federal candidate.<sup>7</sup>

The Complainants provide no allegations to the contrary or examples of such activities.

E. CONTRIBUTIONS/FINANCIAL ACTIVITY

With the exception of 2012 checks, New Models has never made a disbursement, contribution or donation to or for any federal political committee. New Models has made no federal political contributions in any year other than in 2012.

The CREW Complaint has provided the Commission with no allegation of contributions by New Models to federal political committees other than in 2012. The Commission records show no political committee filing listing contributions from New Models, except in 2012.

By focusing on only one year of a two-year election cycle, CREW comes up with a highly distorted figure in claiming that New Models' contributions constitute 68.5% of its total spending activity. When including all New Models' activities, the total sum of all the

<sup>6</sup> Crawford Affidavit Items #9 and #10.

<sup>7</sup> Crawford Affidavit Items #4, #5, and #6.

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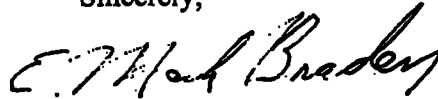
contributions which CREW identifies amount to less than 20% of New Models' total expenditures. It defies reason to argue that New Models has the "major purpose" of federal election-related activity when this is the sum of its federal election-related activity in over a decade of existence.

**IX. CONCLUSION**

New Models cannot possibly constitute a "political committee" under Federal law, when its political contributions represent only a modest percentage of its total expenditures and occurred in only a single year. The CREW Complaint is transparently a "cherry picking" data analysis, using only a single year of New Models' activity when the organization has existed for more than a decade. One year with a handful of political contributions that constitute only a fraction of the organization's total expenditures does not make New Models a "political committee" under Federal law.

I urge the Commission to dismiss this matter without further action. If you should have any questions in regard to this matter, please do not hesitate to contact me.

Sincerely,



E. Mark Braden

Attachments

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Washington, DC 20463

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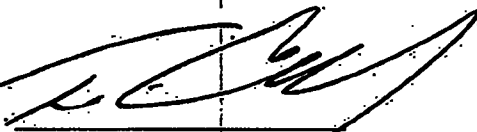
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COUNSEL

MUR 6872

**AFFIDAVIT OF TIM CRAWFORD**

1. I am the President and Chief Operating Officer of New Models.
2. New Models is a not-for-profit Virginia Corporation. Incorporated and operating continuously since 2001, New Models is presently based in McLean, Virginia. Its tax status is a social welfare organization, filing returns pursuant to IRC § 501(c)(4).
3. If CREW is correct in paragraph 18 of its complaint, that "only organizations whose 'major purpose' is the nomination or election of federal candidates can be "political committees,"" then New Models is not a political committee. The major purpose of New Models is not now nor has it ever been federal campaign activity.
4. New Models has never made a public statement, advertisement or other communication advocating the election or defeat of a candidate for federal office.
5. New Models has never made an independent expenditure supporting or opposing any federal candidate.
6. New Models has made no electioneering communications. It has made no communications to the public referring to a clearly identified federal candidate by broadcast, cable or satellite communication means.
7. No New Models website has ever contained statements advocating the election or defeat of any federal candidate.
8. No New Models website has ever stated that New Models' purpose was the election or defeat of any federal candidate.
9. No New Models' materials state that the organization's goal is supporting the election of any party's candidates for federal office. New Models materials contain no efforts to get prospective donors to consider supporting or opposing federal candidates.
10. New Models has not created materials for distribution to prospective donors, evidencing a New Models' intent to elect federal candidates.
11. With the exception of 2012, New Models has not made any contributions to or for any federal political committee, Super PAC or candidate. The Commission's records show no federal political committees receiving contributions from New Models, other than in 2012 because New Models has made no federal political contributions in any year other than in 2012.

12. New Models did not and does not intend to make any contributions nor expenditures for or to any federal candidate or political committee in the 2013/2014 election cycle.
13. New Models has no plans and does not intend to make any contributions or expenditures for or to any federal candidate or political committee in the 2015/2016 election cycle.
14. Since its inception, New Models has raised approximately \$15,787,616. (Attachment 1 listing annualized New Models fund information). This information is from New Models federal tax returns with the exception of years 2003 and 2014. The 2014 number is based on year-to-date bank records.
15. In 2012, New Models donated \$2,171,000 to the Now Or Never PAC, \$627,000 to the Government Integrity Fund Action Network and \$292,000 to Citizens For A Working America.

By:   
Tim Crawford, President

Date: 11/5/14

SUBSCRIBED AND SWORN TO BEFORE ME

This \_\_\_\_ day of November \_\_, 2014

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**NEW MODELS FUNDRAISING ACTIVITY**

<u>Year</u>	<u>Amount Raised:</u>
2002	\$89,700.00
2003	\$332,500.00 (expenditures from bank records)
2004	\$768,886.91
2005	\$581,136.39
2006	\$830,000.00
2007	\$656,516.54
2008	\$647,045.73
2009	\$2,049,110.10
2010	\$2,511,000.00
2011	\$1,348,415.00
2012	\$4,407,305.80
2013	\$922,500.00
2014	\$643,500.00 (YTD bank records)
<b>TOTAL</b>	<b>\$15,787,616.47</b>