



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Congressman Steve Buyer
2230 Rayburn HOB
Washington, DC 20515

AUG 12 2010

RE: MUR 6261

Dear Congressman Buyer:

On March 16, 2010, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On August 5, 2010, the Commission found, on the basis of the information in the complaint, and information you provided, that there is no reason to believe you violated 2 U.S.C. § 441a(f). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Kimberly D. Hart, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Handwritten signature of Mark D. Shonkwiler, with the initials "KDN" circled in a hand-drawn circle.

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6261

RESPONDENTS:

Hoosiers Supporting Buyer for Congress
and Dan Raderstorf, in his official capacity
as treasurer

Congressman Stephen Buyer

I. INTRODUCTION

MUR 6261 involves allegations that two organizations associated with Congressman Stephen Buyer ("Buyer"), Frontier Foundation ("Foundation"), a section 501(c)(3) organization and Storm Chasers PAC ("Storm Chasers"), a non-connected federal political committee operating as a leadership PAC, made excessive and/or prohibited contributions to subsidize Buyer's principal campaign committee, Hoosiers Supporting Buyer for Congress and Douglas E. Raderstorf, in his official capacity as treasurer ("Committee") and/or Buyer's lifestyle.

According to the complaint, this was accomplished by the Committee, Storm Chasers and the Foundation commingling their affairs and activities. The complaint further alleges that the Foundation operates solely for Buyer's personal and political benefit, as it had failed to operate for its stated purpose of helping needy students once its endowment reached \$100,000. As support, the complaint alleges that the Foundation and Storm Chasers made disbursements for office space shared by the Committee based on information that the entities had the same office address and telephone numbers. It also

1 alleges the three entities shared an employee, Stephanie Mattix¹, and that the Foundation
2 and Storm Chasers subsidized her work for the Committee.

3 Buyer, the Committee and Mattix filed a joint response. The Foundation filed a
4 separate response. Storm Chasers did not provide a response. In the responses,
5 Respondents maintain that the three entities are operated separately and distinctly from
6 one another, and that no disbursements by the Foundation or Storm Chasers constituted
7 an in-kind contribution to the Committee.²

8 Based on the available information, it does not appear that the Foundation made
9 any prohibited contributions or that Storm Chasers made any excessive in-kind
10 contributions to Buyer or the Committee, or that Buyer or the Committee accepted any
11 prohibited or excessive in-kind contributions. Therefore, the Commission found no
12 reason to believe that the Respondents violated the Act in connection with this matter,
13 and closed the file.

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 **A. Factual Background**

16 Buyer has represented Indiana's 4th Congressional District since 2002. In 2003,
17 the Foundation was formed in the state of Indiana to provide scholarships to "needy
18 graduating high school students of Indiana's 4th Congressional district," and to "provide

¹ Although the caption of the complaint names Ms. Mattix, our reading of the text of the complaint suggests that the allegations are with regard to her capacity as treasurer of Storm Chasers PAC and as an employee of the Committee and the Foundation.

² Respondents note that the Complainant relies upon an ethics complaint filed by Citizens for Responsibility and Ethics (CREW) with the Office of Congressional Ethics (OCE) against Congressman Buyer. According to Respondents, on March 26, 2010, the Board of the OCE dismissed CREW's ethics complaint and closed the matter with no further action. Media reports indicate that OCE did, in fact, dismiss the complaint, but did not provide details as to the reasons for the dismissal.

1 emergency relief to individuals who suffer losses due to casualty, catastrophe, or acts of
2 God.”³ Foundation Response, Exhibit A. The Foundation has yet to distribute any
3 scholarships, but states it plans to do so once it raises an endowment of \$1 million.
4 Foundation Response at 2. While it appears that Congressman Buyer does not serve as
5 an officer or a board member of the Foundation, he has actively supported it in
6 fundraising efforts. *See* Foundation Response, Affidavit of Maria Vander Sande
7 (President of Board of Directors).

8 On July 29, 2002, Storm Chasers, registered with the Commission as an
9 unauthorized, non-party, non-qualified political committee, of which Buyer is the
10 Honorary Chairman. Joint Response at ¶ 3. At different times, all three organizations
11 shared common addresses at 200 North Main Street, Monticello, Indiana, and 103 West
12 Broadway, Monticello, Indiana, but have not done so since October 2009, when the
13 Foundation relocated to a different address. Joint Response at ¶ 4.

14 The Respondents acknowledge that the Committee, Foundation and Storm
15 Chasers employed Ms. Mattix at various times in various paid and unpaid capacities.
16 Joint Response at ¶ 9 and Foundation Response at 6. While it does not appear that Storm
17 Chasers compensated Ms. Mattix in connection with her treasurer duties, it paid her for
18 the provision of “fundraiser consultant” services on its behalf. *See* Commission
19 disclosure reports. The Foundation also compensated Ms. Mattix for her position as
20 secretary/treasurer, and the Committee paid her for the provision of “fundraiser
21 consultant” services. Joint Response at ¶ 9, Foundation Response at 6, Commission
22 disclosure reports and IRS filings.

³ On September 29, 2004, the Foundation applied to the IRS for Federal recognition of its tax exempt status as a private foundation and its application was approved in 2005. Foundation Response at 3.

1 The complaint alleges that the rental payments made by the Foundation for the
2 Committee's office space, and the Foundation's salary payments to Mattix for work
3 performed to benefit Buyer and the Committee constitute a prohibited in-kind
4 contribution made and accepted in violation of 2 U.S.C. § 441b. The complaint is less
5 clear as to the alleged violations by Storm Chasers, but it appears to suggest that alleged
6 shared rental payments and salary disbursements to Ms. Mattix by Storm Chasers were
7 excessive in-kind contributions made to and accepted by the Committee in violation of
8 2 U.S.C. § 441a(a) that the Committee and Storm Chasers failed to disclose in violation
9 of 2 U.S.C. § 434(b).

10 1. Office rental

11 As support for the allegation that the Committee, Foundation and Storm Chasers
12 commingled their activities and affairs in order to support Buyer's campaign and
13 lifestyle, the complaint states that the Committee, Foundation and Storm Chasers all
14 reside at the same physical address, and the Committee and Foundation are listed on
15 some IRS forms as having the same telephone number. In its response, the Committee
16 states generally that "[e]ach entity operated with its own lease, office space, bank
17 accounts, credit cards, business ledgers, accounting systems, internal controls, payroll
18 records, computer hardware and software, storage, phone, supplies, legal counsel, and
19 accounting service." Joint Response at ¶ 7. Respondents specifically deny that any of
20 the three entities paid any portion of the rent for the office space that any other entity
21 leased at the same addresses, and provided their separate telephone numbers. Joint
22 Response at ¶ 4 and Foundation Response at 6.

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1 According to the Responses, during the tenancy at the 200 North Main Street,
2 Monticello, Indiana location, the Foundation paid \$200 per month as did Storm Chasers,
3 and the Committee paid \$250 per month. Joint Response at ¶ 4 and Commission
4 disclosure reports. Upon their 2009 relocation to 103 West Broadway, Monticello,
5 Indiana, the Foundation paid \$300 per month, Storm Chasers paid \$300 per month, and
6 the Committee paid \$850 per month. *Id.* In October 2009, the Foundation relocated to a
7 different location while the Committee and Storm Chasers remained at the 103 West
8 Broadway address. *Id.* The Foundation also noted in its response that it was “not aware
9 of the specific terms of any agreement for the use of office space between either Ms.
10 Vogel [landlord] or Mr. Johnson [landlord], and Congressman Buyer’s campaign or the
11 Storm Chasers PAC” but that it did not pay rent on behalf of Buyer’s campaign or Storm
12 Chasers. Foundation Response at 5 and Affidavit of Maria Vander Sande.

13 The complaint based its allegation of shared telephone numbers on information
14 located in some of the IRS filings by the Foundation. Foundation Response Attachments
15 (Application for Recognition of Exemption and 2003 990-EZ filing). Respondents assert
16 that the listing of the Committee’s telephone number on some IRS forms as the
17 Foundation’s contact number was a clerical error. Joint Response at ¶ 7 and Foundation
18 Response at 6. They state that Mattix inadvertently provided the IRS with the
19 Committee’s telephone number rather than the correct contact number for the
20 Foundation. *Id.* Thereafter, the template for the cover page of each IRS 990 form was
21 used repeatedly in error by the accounting firm when filing annual reports for the
22 Foundation. *Id.* The Foundation points out that its tax return for 2004 reflects two
23 telephone numbers for the organization. See Joint Response at 6 and Attachment (Form

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1 990-PF filing for 2004.) The incorrect telephone number of (574) 583-9843 is noted on
2 the front page under B and the correct telephone number of (574) 870-4565 is reflected at
3 Part XV, Line 2a. *Id.*

4 2. Stephanie Mattix's Salary

5 The complaint alleges that the Committee, Foundation and Storm Chasers each
6 employed Stephanie Mattix, but that her employment by the Foundation was "ghost
7 employment to the extent that any services rendered by Mattix to" the Foundation "were
8 in furtherance of the political campaigns and ambitions of Buyer as Congressman of
9 Indiana's Fourth Congressional District." Complaint at ¶ 12. It further alleges that the
10 stated purposes of the Foundation and Storm Chasers were a "fraud and sham."
11 Complaint at ¶ 11. In support, the complaint asserts Mattix claimed on the IRS forms to
12 have worked 20 hrs/week (1,000 hrs per year) for the Foundation up until July 31, 2009,
13 during which time she also worked for the Committee. *Id.* at ¶ 9. When compensation
14 for Mattix's employment by the Foundation was discontinued on July 31, 2009, her
15 compensation for employment by the Committee went from \$873 per month to \$1,574
16 per month. *Id.*

17 Respondents maintain that Mattix was a salaried part-time employee for both the
18 Committee and the Frontier Foundation until July 31, 2009. Joint Response at ¶ 9 and
19 Foundation Response at 6. Upon Mattix's departure from her salaried position with the
20 Foundation, she increased her work duties and responsibilities with the Committee which
21 resulted in an increase in her part-time salary from \$873 per month to \$1,574 per month.
22 Joint Response at ¶ 9. In addition, the Joint Response states that its disclosure reports
23 clearly indicate a flux in Mattix's salary during peak campaign season which was due to

1 her additional duties and responsibilities during those times. *Id.* The Respondents assert
2 that Mattix was legitimately compensated for her work on behalf of the Foundation and
3 the Committee, and any contention that the Foundation was compensating her for work
4 benefiting the Committee is unsubstantiated. Joint Response at ¶ 9.

5 In its separate response, the Foundation states that during Mattix’s employment
6 between 2003 and July 31, 2009, she was not authorized by the Board of Directors to
7 work for any other entity during the hours she was to be working for the Foundation.
8 Foundation Response, Affidavit of Maria Vander Sande. Further, the Joint Response
9 provides that the position held by Mattix for seven years paid \$1,000 per month, which is
10 the same amount paid to the successor employee. Joint Response at ¶ 12.

11 **3. Foundation’s Operation**

12 The complaint asserts that the Foundation “failed to operate for its stated purpose
13 of helping needy students and does little more than pay for Congressman Buyer to play
14 golf with donors with interests before his Committee.” Complaint at ¶ 6. In addition, it
15 alleges that the stated purposes for the Foundation and Storm Chasers were a “fraud and
16 sham” and that the true purpose of the organizations is to promote the political campaigns
17 of Buyer and to support his lifestyle. Complaint at ¶ 11. Complainant asserts that Buyer
18 created the Foundation for the “stated purpose of handing out scholarships to needy
19 graduating high school students of Indiana’s Fourth Congressional District once the fund
20 reached \$100,000” and that the Foundation has raised more than \$880,000 -- primarily
21 from companies and trade organizations with an interest in the House Energy and
22 Commerce Committee, on which Buyer serves, yet the Foundation has not yet distributed
23 any scholarships. Complaint at ¶ 5. In response, the Foundation maintains that it has

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1 operated within the IRS guidelines for a section 501(c)(3) organization. Foundation
2 Response at 7. The Foundation asserts that the complaint incorrectly states that it was
3 formed to distribute scholarships once it reached a fundraising goal of \$100,000.
4 Foundation Response at 2. According to the Foundation, in its IRS application for
5 Federal recognition of its tax exempt status, it stated the following regarding the activities
6 of the organization:

7 Frontier Foundation, Inc. was formed on June 13, 2003 to
8 address the fact [that] young, educated individuals leaving the
9 state of Indiana upon graduation from college. The organization
10 will provide scholarships for students pledging to work in Indiana
11 for a period of time after graduation. **The organization will not**
12 **award scholarships until \$1,000,000 has been raised through**
13 **donations.** (Emphasis added)
14

15 Foundation Response at 3.

16 The Foundation states that it has raised approximately \$880,000 and that it
17 intends to distribute scholarships once it has raised \$1,000,000. Foundation Response at
18 3. The Joint Response adds that, upon reaching its “originating goal of \$100,000, the
19 Foundation Board realized this was an insufficient sum to be self-sustaining; therefore,
20 the endowment goal was raised to \$1,000,000.” Joint Response at ¶ 6. Further, it states
21 that “[b]uilding an endowment is an acceptable and appropriate business practice among
22 non-profit corporations, colleges, and universities for sustainability purposes.” *Id.* In
23 addition, the Respondents assert that Buyer has reimbursed the Foundation for all travel-
24 related expenses, including lodging and golf fees associated with its fundraising events.
25 Joint Response at ¶ 6 and Foundation Response at 4.

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1 **B. Analysis**

2 The primary issue presented by this matter is whether the Foundation and Storm
3 Chasers made excessive and/or prohibited in-kind contributions in the form of
4 disbursements for shared office space and a shared employee (Mattix) that were intended
5 to benefit the Committee.

6 Under the Act, political action committees (PACs) are allowed to contribute
7 \$5,000 annually to a candidate or his campaign committee. 2 U.S.C. § 441a(1)(C). It is
8 unlawful for any corporation, including section 501(c)(3) corporations, to make
9 contributions or coordinated expenditures in connection with a federal election. 2 U.S.C.
10 § 441b(a). Likewise, candidates and their authorized committees cannot knowingly
11 accept excessive or prohibited contributions. 2 U.S.C. § 441a(f). Treasurers of political
12 committees must disclose the total amount of all receipts including contributions and the
13 total amount of all disbursements including expenditures. 2 U.S.C. § 434(b)(2), (3) and
14 (4).

15 1. Office rental

16
17 All the available information, including the Committee's and Storm Chasers' FEC
18 and the Foundation's IRS filings, confirms that the entities made separate payments for
19 rental space. There is no available information indicating that the Foundation or Storm
20 Chasers paid any portion of the Committee's office space. That the three entities had
21 rental spaces in the same building is not sufficient information to demonstrate that the
22 Foundation or Storm Chasers is paying for any portion of the rental space occupied by
23 the Committee. Respondents have provided an adequate explanation for the Committee's

1 telephone number appearing on the cover page of the Foundation's IRS filings and
2 provided the separate telephone numbers used by the three entities.

3 2. Mattix's Salary

4 The available information indicates that Mattix was employed at various times in
5 various capacities by the Foundation, the Committee and Storm Chasers. *See*
6 Commission disclosure reports and IRS filings. The entities' disclosure reports show
7 regular monthly payments to Mattix from all three entities at certain times. *Id.* The
8 Committee's explanation for the increase in Mattix's compensation for consultant
9 services provided to the Committee as being due to her increased work responsibilities
10 and duties in connection with Buyer's re-election campaign appears reasonable. In
11 addition, the Foundation's filings confirm that the individual who replaced Mattix is
12 currently being compensated at \$1,000 per month, the same as Mattix's compensation.
13 *See* IRS filings. Thus, Complainant has provided no persuasive information
14 demonstrating that the Foundation or Storm Chasers compensated Mattix for work
15 performed to benefit the Committee. That Mattix was employed and compensated by the
16 three entities for various duties and responsibilities does not, in and of itself, support the
17 allegation.

18 3. Foundation's Operations

19 The complaint alleges that the Foundation has not operated for its stated purpose
20 within the IRS guidelines for a section 501(c)(3) organization. The Respondents deny
21 this allegation and counter that the Foundation has engaged in legitimate fundraising
22 efforts and fully intends to distribute scholarships once it reaches the stated fundraising
23 goal of \$1,000,000.

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1 While the responses appear to present a plausible rebuttal to the complaint
2 allegation, we need not reach this issue since the Commission lacks jurisdiction to
3 consider this allegation. Therefore, the Commission made no finding regarding the
4 merits of this allegation.

5 **III. CONCLUSION**

6 Based on an assortment of asserted facts, Complainant has drawn unsubstantiated
7 legal conclusions that have been sufficiently rebutted by the responses and public record.
8 The Commission has stated that “[u]nwarranted legal conclusions from asserted facts ...
9 or mere speculation ... will not be accepted as true,” and that “a complaint may be
10 dismissed if it consists of factual allegations that are refuted by sufficiently compelling
11 evidence produced in responses to the complaint.” Statement of Reasons, MUR 5141
12 (Moran for Congress), issued March 11, 2002.

13 Based on the foregoing, the Commission: 1) found no reason to believe that
14 Congressman Stephen Buyer or Hoosiers Supporting Buyer for Congress and Douglas E.
15 Raderstorf, in his official capacity as treasurer, received excessive or prohibited in-kind
16 contributions in violation of 2 U.S.C. § 441a(f); and 2) found no reason to believe that
17 Hoosiers Supporting Buyer for Congress and Douglas E. Raderstorf, in his official
18 capacity as treasurer, failed to report such contributions as required by 2 U.S.C. § 434(b).
19 Accordingly, the Commission closed the file.

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