



Wiley Rein & Fielding LLP

RECEIVED
FEC MAIL
OPERATIONS CENTER
2006 JUL -3 P 1:11
RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

July 3, 2006

2006 JUL -3 P 1:46

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202 719 7000
FAX 202 719 7049

Virginia Office
7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703 905 2800
FAX 703.905.2820

www.wrf.com

VIA HAND DELIVERY

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5750

Dear Mr. Norton:

This office represents the Club for Growth, Inc. PAC ("Club PAC") and its Treasurer, Patrick Toomey with respect to a June 14, 2006 letter from Mr. Jeff F. Jordan, transmitting a complaint ("Complaint") designated Matter Under Review ("MUR") 5750 by the Federal Election Commission ("FEC" or "Commission"). An executed Designation of Counsel Form is attached hereto at Tab A.

As we show below, the Complaint simply does not allege any facts that constitute a violation by Club PAC. But a series of threshold defects require that the June 14 letter be withdrawn or that the Complaint be dismissed before that ultimate question is reached.

To begin with, the Commission's statute and regulations specify that, if the Commission staff wishes to proceed on a complaint against a respondent, it "shall" send that respondent notice and a copy "within five (5) days" after receipt. *See* 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.5(a). The June 14 letter treats Club PAC as a respondent but withheld service for weeks "due to administrative oversight" of some unexplained nature.¹ This is, of course, the second time that the Commission has violated the right of the Club for Growth and Club PAC to prompt notice. *See* MUR 5365. As a law enforcement organization, the Commission should model respect for law and accept the consequences of its failure to comply with clear obligations. To avoid reducing the 5-day notice requirement to a hollow mockery, the June 14 letter should be withdrawn or the Complaint dismissed as to Club PAC.

The June 14 letter also violates other explicit and mandatory regulations. 11 C.F.R. § 111.4 & 111.5. Section 111.4(d)(1) requires an administrative complaint to

¹ The date stamp on the Complaint shows it was received by the Commission on May 19, 2006. Thus, it should have been sent to all respondents by May 26, 2006. But it was not sent to the Club PAC until June 14, a full 19 days late – a multiple of the mandatory 5-day period

27044173800

Lawrence H. Norton, Esq.

July 3, 2006

Page 2

“clearly identify as a respondent each person or entity who is alleged to have committed a violation,” and Section 111.4(d)(3) requires “a clear and concise recitation of the facts which describe a violation” by that person (emphasis added). Section 111.5(a) mandates immediate staff review to determine whether the purported complaint substantially complies with these requirements, and Section 111.5(b) specifies that “no action shall be taken” on the filing except for notice to the complaining party.

In this case, the purported Complaint does not identify Club PAC as a respondent. It makes a few references to the Club for Growth that, in light of the attachments, may be understood to mean Club PAC. However, far from naming Club PAC as a violator, the Complaint says “the Club for Growth has apparently complied with the Commission’s requirement.” This is no oversight. To the contrary, the Complaint opens by identifying the respondent: “Please accept this letter as a formal complaint against Laffey US Senate.” Nor, as we discuss below, does the Complaint even purport to describe a violation by Club PAC.

Serving a complaint and notice to respond imposes serious burden, disruption, and expense on an entity. The regulations requiring the Commission to be sure a complaint contains explicit identification of respondents and clear factual allegations of violation before serving notice protect core First Amendment values. Moreover, the Commission is bound to follow its own regulations. Because the Complaint here fails to meet the standards for service, the June 14 letter should be withdrawn and the Complaint dismissed as to Club PAC.

The June 14 letter and attached Complaint also violate Section 111.6 of the Commission’s regulations as they relate to the Club PAC. As subsection (a) makes clear, the notice and Complaint must give the respondent an “opportunity to demonstrate that no action should be taken on the basis of a complaint.” Clearly, this contemplates a fair opportunity to respond to the clearly described factual violation required by the rules just discussed. Where, as here, the notice and Complaint fail to provide such clear factual notice, they fail to provide the “opportunity” required by subsection (a).

Subsection (b) forbids the Commission from taking action against a respondent without considering its response to the fair opportunity mandated by subsection (a). Because the June 14 letter and Complaint fail to clearly describe a factual violation,

27044173801

Wiley Rein & Fielding LLP

Lawrence H. Norton, Esq.

July 3, 2006


Page 3

Club PAC has not been given a fair opportunity for response. Thus, the Commission is precluded from proceeding against the Club by subsection (b).

Finally, no part of the Complaint or the materials attached to it alleges a violation on the part of Club PAC with respect to the Federal Election Campaign Act, as amended ("Act"). Two bullet points in the complaint relate to the Laffey campaign's handling of funds properly transmitted to the Laffey campaign by the Club PAC pursuant to 11 C.F.R. § 110.6. But there is no allegation that these facts constitute a violation, nor do they. To the contrary, the Complaint states that they were lawful.²

For each of these reasons, the Commission should withdraw the June 14 letter and dismiss or otherwise take no further action on the Complaint with respect to Club PAC. If the Commission decides to reach the merits of this Complaint, it should find no reason to believe a violation occurred on the part of Club PAC.

Sincerely,



Carol A. Laham

² Attached hereto at Tab B is a sample provided to us by Club PAC of what it regularly and timely sends the Laffey campaign with respect to earmarked member contributions (credit card numbers are redacted). As can be seen, this process fulfills the PAC's requirements under section 110.6 of the Commission's regulations.

27044173802



FEDERAL ELECTION COMMISSION
Office of General Counsel
999 E Street, NW
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Witness
FAX (202) 219-3923

MUR: 5750

COUNSEL: Carol A. Laham

FIRM: Wiley Rein & Fielding LLP

ADDRESS: 1776 K Street, NW, Washington, DC 20006

TELEPHONE - OFFICE: (202) 719-7301

FAX: (202) 719-7049

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

6/22/06
Date

[Signature]
Signature

PRESIDENT/TREASURER
Title

RESPONDENT/WITNESS NAME (PRINT): Club for Growth, Inc. PAC

MAILING ADDRESS: 2001 L Street, NW, Suite 600

Washington, DC 20036

TELEPHONE - HOME: ()

OFFICE: (202) 955-5500

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

Earmarked Receipts for Laffey , Steve for US Senate

Mr John L. Baker 800 North Benton Street Angier, NC 27501-8967	Emp: N/A Occ: Retired Laffey 2006 election (603) (Primary 200	Check: \$25.00	4/21/2006 12:
Mr. Robert D. Hofer 537 Miner Farm Road Apt. 537 Chazy, NY 12921-2206	Emp: Occ: Retired Laffey 2006 election (603) (Primary 200	Check: \$20.00	4/21/2006 12:
Mr. Robert A. File's 10418 E. Celestial Drive Scottsdale, AZ 85262-5120	Emp: n.a Occ: Retired Laffey 2006 election (603) (Primary 200	Check: \$150.00	4/24/2006 12:
Mr. James Carey 272 Pond Lane Sequim, WA 98382-8923	Emp: n.a Occ: Retired Laffey 2006 election (603) (Primary 200	Check: \$5.00	4/24/2006 12:
Mr. Rob Roy Mc Donald P.O. Box 769 La Canada, CA 91012	Emp: Caltech Occ: Retired Laffey 2006 election (603) (Primary 200	Check: \$100.00	4/24/2006 12:
Mr. Randolph Houchins 5575 Preserve Cir Alpharetta, GA 30005-8908	Emp: Cellnet Technology, Inc. Occ: Attorney Laffey 2006 election (603) (Primary 200	Check: \$100.00	4/26/2006 12:
Mr. Robert Stambaugh 9005 Lindante Dr. Whittier, CA 90603	Emp: n.a Occ: Retired Laffey 2006 election (603) (Primary 200	Check: \$100.00	4/26/2006 12:
Dr. Charles E. Law, Jr. 3400 Ben Lomond Pl, #304 Los Angeles, CA 90027	Emp: Self Occ: M.D. Laffey 2006 election (603) (Primary 200	Check: \$150.00	4/26/2006 12:
Mr. Lee E. Orr 2061 Cook Rd Ruston, LA 71270-3222	Emp: Wausau-Mosinee Paper Corp. Occ: Chairman Laffey 2006 election (603) (Primary 200	Check: \$40.00	4/27/2006 12:
Mr. and Mrs. Thomas V. Reifenheiser 9 Watchtower Road Darien, CT 06820	Emp: n.a Occ: Retired Laffey 2006 election (603) (Primary 200	Credit Card: \$500.00 MasterCard: XXXXXXXXXX Exp Date: 1/2008	4/27/2006 12:

Total for Laffey , Steve for US Senate:

\$1,190.00 # 10

27044173804