

FEDERAL ELECTION COMMISSION
SECRETARIAT
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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5774

DATE COMPLAINT FILED: July 25, 2006

DATE OF NOTIFICATION: July 31, 2006

LAST RESPONSE RECEIVED: October 16, 2006

DATE ACTIVATED: October 16, 2006

EXPIRATION OF SOL: July 7, 2011

COMPLAINANT:

Robert Gardner¹

RESPONDENTS:

Doug Lamborn for Congress and Kathleen Ann
Rockefeller, in her official capacity as treasurer
Club for Growth State Action
Christian Coalition of Colorado

RELEVANT STATUTES:

2 U.S.C. § 441b
11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

Internal Revenue Service

I. INTRODUCTION

This matter involves alleged coordination between Doug Lamborn for Congress
("Lamborn Committee"), Club for Growth State Action ("CFGSA"),² and Christian Coalition of

¹ Mr Gardner requested withdrawal of his complaint on October 30, 2006. In accordance with standard practice, this Office advised him that once a complaint is properly filed with the Commission pursuant to 2 U.S.C. § 437g, a request for withdrawal will not prevent the Commission from reviewing the complaint and taking such action as it deems appropriate.

² CFGSA is a Virginia corporation with its main office and mailing address in Chicago, Illinois, and it appears to be a 501(c)(4) organization that serves as the "umbrella group" for Club for Growth's state affiliates. See Chris Casteel, *Group Funding Lawmaker's Ad*, DAILY OKLAHOMAN, June 24, 2006 (quoting David Keating, Executive Director of Club for Growth)

Colorado ("Christian Coalition").³ The complaint alleges that the Lamborn Committee obtained the addresses of absentee voters and shared them with CFGSA and Christian Coalition, and that these organizations each used the addresses to send mailers criticizing two of Lamborn's opponents, Jeff Crank and Lionel Rivera, resulting in prohibited in-kind contributions under 2 U.S.C. § 441b. As more fully set forth below, we recommend that the Commission find no reason to believe that CFGSA and Christian Coalition made, or that the Lamborn Committee and Kathleen Ann Rockefeller, in her official capacity as treasurer, knowingly accepted, prohibited in-kind contributions in the form of coordinated communications.

II. FACTUAL SUMMARY

Doug Lamborn was a candidate in the open Republican Primary in Colorado's 5th Congressional District, held on August 8, 2006, and won the nomination with 27 percent of the vote. The complaint alleges that Lamborn's authorized committee obtained the names and addresses of absentee voters from the El Paso County Clerk and Recorder and provided them to CFGSA and Christian Coalition, and that these organizations used the addresses to send mailers attacking two of Lamborn's primary opponents, Jeff Crank and Lionel Rivera, on July 11, 13, 15 and 18, 2006. The complaint relies on a series of inferences to conclude that CFGSA and Christian Coalition received the addresses from the Lamborn Committee:

- Two recipients, Julie Jutton and Gary Bohall, received the mailers at their respective business addresses, but neither was registered to vote under those addresses. Instead, both Jutton and Bohall requested absentee ballots using their business addresses and, as a result, only the El Paso County Clerk and Recorder had access to those addresses.
- Only five entities, including the Lamborn Committee, requested absentee ballot information from the El Paso County Clerk and Recorder, and none of these entities other

³ Christian Coalition is a non-profit, 501(c)(4) organization incorporated and headquartered in Denver, Colorado.

1 than the Lamborn Committee shared or were likely to have shared the information with
2 CFGSA or Christian Coalition.

- 3 • The Lamborn Committee and Christian Coalition are closely connected because the
4 Executive Director of Christian Coalition, Mark Hotaling, and the campaign manager for
5 the Lamborn Committee, John Hotaling, are brothers.

6 *See* Compl. at 2-3.

7 In its response, the Lamborn Committee asserted that it had in no way coordinated
8 communications with CFGSA or Christian Coalition, and stated that the business addresses of
9 Jutton and Bohall were available from a wide variety of public sources, including publicly
10 available Republican activist lists, the Colorado Secretary of State's public voter file, and other
11 publicly available business contact lists.⁴ Similarly, CFGSA submitted a comprehensive
12 response denying that it had coordinated its mailers with the Lamborn Committee, including an
13 affidavit in which the consultant responsible for the mailers, Christopher Baker of Blue Point
14 LLC, states that he purchased the list of absentee voters from a list vendor, Tactical Data
15 Solutions. *See* Aff. of Christopher Baker, at ¶¶ 7-10. Christian Coalition, however, submitted
16 only a cursory, two-sentence response denying coordination.

17 **III. LEGAL ANALYSIS**

18 To determine whether a communication is coordinated, 11 C.F.R. § 109.21 sets forth a
19 three-pronged test: (1) the communication must be paid for by a person other than a Federal
20 candidate, a candidate's authorized committee, or political party committee, or any agent of any
21 of the foregoing; (2) one or more of the four content standards set forth in 11 C.F.R. § 109.21(c)

⁴ For example, Bohall's business address is available on the Colorado Secretary of State's list of registered agents of political committees. *See* Colorado Secretary of State Elections Center, Political Committees, at <http://www.elections.colorado.gov/DDefault.aspx?tid=458> (last visited Oct 24, 2006) (registered agent for Farmers Employees & Agent Political Action Committee). Jutton's home and business addresses, however, were not available on the Colorado Secretary of State's website, through Google or Westlaw searches, or in Commission contributor records.

1 must be satisfied; and (3) one or more of the six conduct standards set forth in 11 C.F.R.
2 § 109.21(d) must be satisfied. *See* 11 C.F.R. § 109.21(a). Here, there is no question that CFGSA
3 and Christian Coalition funded the mailers at issue, and these mailers appear to meet the content
4 standard for coordination under 11 C.F.R. § 109.21(c)(4) (public communications disseminated
5 within 90 days of an election). The complaint, however, does not provide facts sufficient to
6 suggest that the mailers met any of the conduct standards under 11 C.F.R. § 109.21(d)(1)-(6).

7 The complainant alleges that the Lamborn Committee shared its absentee voter list with
8 CFGSA and Christian Coalition based on the assumption that Jutton's and Bohall's respective
9 business addresses were available only from the El Paso County Clerk and Recorder and those
10 five entities that requested the absentee voter list directly from the county. Thus, the sole basis
11 for this allegation appears to be the complainant's inference that CFGSA and Christian Coalition
12 could not have obtained the names and addresses from any source other than the Lamborn
13 Committee.

14 The factual basis for the allegations here appears to be sufficiently rebutted in that
15 Respondents provide information establishing that the business addresses of Jutton and Bohall
16 were available from other sources. In particular, CFGSA avers that its media consultant obtained
17 the names and addresses used to send the mailers from a third-party list vendor, Tactical Data
18 Solutions, while the Lamborn Committee stated in its response that the addresses were publicly
19 available from various sources, including the Secretary of State's public voter file. Although
20 Christian Coalition submitted only a cursory denial, there does not appear to be a basis to
21 investigate alleged coordination given the information submitted by the other Respondents
22 refuting the purported factual basis of the allegations.

Accordingly, we recommend that the Commission find no reason to believe that CFGSA and Christian Coalition made, or that the Lamborn Committee and Kathleen Ann Rockefeller, in her official capacity as treasurer, knowingly accepted, prohibited in-kind contributions in the form of coordinated communications.

IV. RECOMMENDATIONS

1. Find no reason to believe that Club for Growth State Action and Christian Coalition of Colorado violated 2 U.S.C. § 441b by making prohibited in-kind contributions in the form of coordinated communications.
2. Find no reason to believe that Doug Lamborn for Congress and Kathleen Ann Rockefeller, in her official capacity as treasurer, violated 2 U.S.C. § 441b by knowingly accepting prohibited in-kind contributions in the form of coordinated communications.
3. Approve the appropriate letters.
4. Close the file.

Lawrence H. Norton
General Counsel

Lawrence L. Calvert, Jr.
Deputy Associate General Counsel for
Enforcement

11/17/06
Date

BY: 
Ann Marie Terzaken
Assistant General Counsel


Julie Kara McConnell
Attorney

Attachment:
Affidavit of Christopher Baker, Blue Point, LLC