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FEDERAL ELECTION COMMISSION
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SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 5831

DATE COMPLAINT FILED: 10/2/06
DATE OF NOTIFICATION: 10/6/06
DATE OF LAST RESPONSE: 10/31/06
DATE ACTIVATED: 1/24/07

STATUTE OF LIMITATIONS: 9/18/11¹

COMPLAINANT:

Stanley E. Levine

RESPONDENTS:

Softer Voices

Lisa Schiffren, director of Softer Voices

**Santorum 2006, and Gregg R. Menlinson, in his
official capacity as treasurer**

Richard J. Santorum

Jack Templaton

RELEVANT STATUTES:

2 U.S.C. § 431(4)(A)
2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(9)(A)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441a
2 U.S.C. § 441b(a)
2 U.S.C. § 441e

¹ A First General Counsel's Report addressing the complaint in this matter as well as a related complaint designated MUR 5854 was circulated on August 27, 2007 and placed on the September 11, 2007 Executive Session agenda. However, the Report was withdrawn on September 7, 2007 because two Commissioners were recused from different fact patterns of the Report, which did not leave the minimum of four Commissioners to consider the substance of the matter. The allegations concerning Softer Voices were severed from MUR 5854 and placed into this matter so that all outstanding allegations as to Softer Voices would be addressed in one MUR that four Commissioners could consider.

11 C.F.R. § 100.22(a)-(b)
11 C.F.R. § 100.57
11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: Internal Revenue Service

L INTRODUCTION

The complaint in this matter alleges that Softer Voices, an entity organized under Section 527 of the Internal Revenue Code, spent well over a million dollars, raised outside the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended, (the "Act") to influence the 2006 Senate election in Pennsylvania between Rick Santorum and Bob Casey, and therefore, should have registered with the Commission as a political committee and properly disclosed its activities in reports filed with the Commission. The complaint also alleges that Softer Voices coordinated its activities with Santorum 2006, Senator Santorum's principal campaign committee, and that a Softer Voices' donor, Jack Templeton, was a foreign national.²

In response to the complaint, Softer Voices denies that it was required to register and report as a political committee under the Act because it claims it did not receive contributions or pay for any communications containing express advocacy. Further, the organization asserts that the complaint errs by equating 527 organization status with political committee status and by claiming that the organization's major purpose was the election of candidates. Softer Voices denies coordinating any expenditures with any outside organization or individual and asserts that it did not accept funds from a foreign national because Mr. Templeton is a U.S. citizen. All other respondents have likewise denied violating the Act.

² The allegation concerning Softer Voices' receipt of the Templeton contribution was made in MUR 5854, but was severed from that matter and merged with other allegations as to Softer Voices in this matter.

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1 Based on available information discussed below, we recommend that the Commission
2 find reason to believe that: 1) Softer Voices violated 2 U.S.C. §§ 433, 434, and 441a(f) by
3 failing to register as a political committee with the Commission, failing to report contributions
4 and expenditures, and knowingly accepting contributions in excess of \$5,000; (2) Softer Voices
5 violated 2 U.S.C. §§ 441a and 434 by making and failing to report excessive contributions, in the
6 form of coordinated expenditures, to Santorum 2006; and (3) Santorum 2006 and Gregg R.
7 Merzinsun, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434 by
8 accepting and failing to report excessive in-kind contributions. We also recommend the
9 Commission find no reason to believe Jack Templeton or Softer Voices violated 2 U.S.C.
10 § 441e(a) by making or receiving foreign national contributions. Finally, we recommend that the
11 Commission take no action at this time as to Rick Santorum and Lisa Schiffren, director of
12 Softer Voices.

13 **II. FACTUAL SUMMARY**

14 Softer Voices was established on July 15, 2004 and files disclosure reports with the
15 Internal Revenue Service under Section 527 of the Internal Revenue Code. 26 U.S.C. § 527. It
16 has not registered with the Commission as a political committee. In reports filed with the IRS,
17 Softer Voices reports raising \$1,403,308 and spending \$1,265,088 during the 2006 election
18 cycle, with the bulk of this activity occurring between September and November of the election
19 year. Although it did not report receiving any corporate or labor organization contributions,
20 \$1,355,000 of Softer Voices receipts were from individuals in amounts exceeding \$5,000. Since
21 the election, Softer Voices has not updated its website to reflect new activity, has made no public
22 statements reported in the press, and has not reported any new activity to the IRS.

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1 Softer Voices' activities and public statements in 2006 appear to have been directed
2 almost exclusively toward supporting Rick Santorum's 2006 Senate re-election campaign. The
3 group's website prominently features images of Santorum and shows media player clips of
4 Softer Voices' advertisements, all of which support Santorum's candidacy. Attachment A. The
5 website also features excerpts of a book written by Rick Santorum and speeches given by him in
6 the Senate. Prominently displayed on the webpage are links to newspaper articles describing
7 Softer Voices, including a link entitled "Political Group Shells Out \$1M To Boost Santorum's
8 Popularity With Women." The linked article reports that Softer Voices sought to "soften the
9 image of Senator Santorum of Pennsylvania in the hope of boosting his standing with female
10 voters and saving his Senate seat for the Republican Party." See MUR 5854 Complaint, Exhibit
11 F. In the same article, Lisa Schiffren, the co-founder of Softer Voices, is quoted as having stated
12 that the group's ads sought to influence voters (e.g., "It's really important for conservatives to
13 remember and *for voters to remember* that welfare reform was a conservative issue and that
14 people like Rick Santorum made it happen ...").³ *Id.* (emphasis added).

15 The complaint alleges that Softer Voices raised its funds through large donations from
16 Santorum supporters, who, according to a Philadelphia Inquirer article, donated "as much as they
17 legally could to Santorum's campaign -- and then gave thousands more to Softer Voices." See
18 MUR 5854 Complaint, Exhibit G. Schiffren, in commenting about 527 organizations in the
19 article, reportedly stated that "of course, it is a way around campaign finance law." *Id.*
20 Fundraising solicitations on the website were placed next to clips of advertisements described

³ Other materials on the website describe the organization as "a conservative issue advocacy organization ... particularly concerned with national security issues, as well as issues which affect our economy and free markets, the success and viability of our national families, and the culture necessary for a free and democratic society." Although it is not mentioned in any of its website materials, or in the complaint or response, Softer Voices sponsored advertising during the 2004 election in support of George W. Bush.

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below referencing Santorum and his 2006 candidacy, stating: "Support Softer Voices. Please help us keep this ad on the air." Information pertaining to Softer Voices' fundraising through other efforts, for instance, mass mailings, individual letters, or verbal communications, was not included in the complaint or response.

All five Softer Voices video ads shown on its website identify and support Rick Santorum, and two of them also name Bob Casey and cast him in a critical light. Attachment B. As discussed below, at least some of the ads appear to expressly advocate Rick Santorum's election. Two advertisements, found on the website, but not discussed in the complaint, address the global war on terrorism and broadly assert that Santorum is an experienced leader on national security issues and that Casey lacks experience needed to provide similar leadership in this area. The ad, "We the People," shows images of Osama Bin Laden and other terrorists, and claims that "we live in a world of danger" and that Bob Casey is still learning about these threats. The ads conclude with the slogan: "Can we really risk Bob Casey learning on the job? (audio and text)⁴ Rick Santorum. Real. Experienced. Leadership. (text only)" Attachment B at 1. The second ad, "Tough Enough," depicts images of the World Trade Center attacks, Americans being tortured in Iraq, and a mock nuclear attack on a metropolitan area. After describing these threats and Santorum's experience, the ad concludes by stating: "Senator Rick Santorum is leading the effort to prevent a nuclear Iran. Don't we need leaders tough enough to face such a threat?" Attachment B at 2.

Two other ads, which were referenced in the complaint, focus on Santorum's hiring of Billy Jo Morton, a former welfare recipient, to work in one of his state offices. The ads praise Santorum for giving Ms. Morton the opportunity to improve her life. One version of the ad only

⁴ The word "really" in this sentence is spoken on the ad's audio, but is omitted from the text shown on the screen.

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1 discusses Ms. Morton's story, while a second version relates her story to the broader issue of
2 welfare reform, asserting that Santorum favors welfare reform and that Casey opposes it.⁵
3 Attachment B at 3-4.

4 The "Billy Jo" ad is the basis for the complaint's allegation that Softer Voices
5 coordinated expenditures with Santorum's campaign. The complaint asserts that the ad was
6 derived from Rick Santorum's book "It Takes a Family," which described Santorum's efforts to
7 hire former welfare recipients like Ms. Morton to work in his Senate office. Disclosure reports
8 demonstrate that Softer Voices paid a fee to Santorum's publisher for the right to excerpt the
9 story from the book. The complaint alleges that it is "extremely likely that Santorum, or agents
10 of Santorum or his campaign, were aware of and consented to the sale of rights to Softer Voices,
11 which then used those rights to publicize the story of Ms. Morton to help Santorum's re-election
12 effort. The awareness and consent of Santorum or his agents constitutes assent to a suggestion
13 for purposes of the coordination standard; it also constitutes material involvement in the content
14 of the advertisements." MUR 5831 Complaint, at 6.

15 The Santorum Committee response, submitted jointly with Softer Voices, claims that
16 neither the candidate nor his authorized committee had "involvement with the publisher on the
17 sale or license" of the book excerpts, and notes that the complaint produced "no evidence
18 whatever to support [its] allegations and none exists."⁶ Santorum/Softer Voices Response at 2.
19 The response explains that Softer Voices made the payment for licensing rights to utilize
20 excerpts of the book and contends that the payment constituted "evidence that all disbursements

⁵ A fifth ad, which also was identified in the complaint, is apparently titled "Rick Santorum Gets It," and features Jon Sniestak, a "leading advocate for autistic kids." The ad features a testimonial from Mr. Sniestak in which he states that "what everyone with someone with autism needs to know is that Rick Santorum is the greatest champion in Congress our kids have ever had." Attachment B at 5.

⁶ The response also claims that no excerpts were actually used by Softer Voices. But, the Billy Jo Morton story was described in Santorum's book and seems to have inspired the advertisement even if no direct lines from the book were used in the end product.

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1 by Softer Voices were made independently of any candidate or committee." *Id.* It appears that
2 the story of Billy Jo Morton originated from Santorum's book and that some communications
3 about the usage of the material took place at least between Softer Voices and Santorum's
4 publisher. Although the Santorum Committee denies communicating with the publisher over the
5 sale, it does not deny having communications with Softer Voices related to the use of the book
6 excerpts in the ad.

7 Finally, the complaint in MUR 5854 alleges that one of Softer Voices' major donors,
8 Jack Templeton, is not a U.S. citizen and that his donations to Softer Voices may have resulted in
9 prohibited contributions under FECA. Templeton, who donated \$630,000 to Softer Voices, was
10 described in a newspaper article attached to the complaint as a citizen of the Bahamas. See MUR
11 5854 Complaint, Exhibit F. The response claims that the complainant is confusing donor
12 Templeton with Templeton's father (John Templeton of the Bahamas), and that the donor is in
13 fact a U.S. citizen.

14 **III. THERE IS REASON TO INVESTIGATE WHETHER SOFTER VOICES**
15 **TRIGGERED POLITICAL COMMITTEE STATUS IN 2006 AND FAILED TO**
16 **REGISTER AND FILE REPORTS WITH THE COMMISSION**
17

18 Softer Voices may be a "political committee" subject to the contribution limitations,
19 source prohibitions, and reporting requirements of the Act. See 2 U.S.C. §§ 431(4)(A), 433, 434,
20 441a, and 441b. The Act defines a "political committee" as any committee, club, association, or
21 other group of persons that receives "contributions" or makes "expenditures" for the purpose of
22 influencing a federal election which aggregate in excess of \$1,000 during a calendar year.
23 2 U.S.C. § 431(4)(A). To address overbreadth concerns, the Supreme Court has held that only
24 organizations whose major purpose is campaign activity can potentially qualify as political
25 committees under the Act. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v.*

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1 *Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("MCFL"). The Commission has long
2 applied the Court's major purpose test in determining whether an organization is a "political
3 committee" under the Act, and it interprets that test as limited to organizations whose major
4 purpose is federal campaign activity. See Political Committee Status: Supplemental Explanation
5 and Justification, 72 Fed. Reg. 5595, 5597, 5601 (Feb. 7, 2007); see also FEC's Mem. in Support
6 of Its Second Mot. for Summa. J., *Emily's List v. FEC*, Civ. No. 05-0049 at 21 (D.D.C. Oct. 9,
7 2007).

8 During the 2004 election cycle, the Commission concluded there was reason to
9 investigate whether section 527 organizations had triggered political committee status when the
10 available information demonstrated that the objective of a group was to influence a federal
11 election and the group raised and spent substantial sums of money in furtherance of that
12 objective. In such instances, the Commission concluded it was appropriate to investigate
13 whether, among those funds spent and received, the groups had made \$1,000 in "expenditures"
14 or received \$1,000 in "contributions."⁷ See, e.g., MURs 5577 and 5620 (National Association of
15 Realtors – 527 Fund), Factual and Legal Analysis.

16 For matters arising out of the 2006 election cycle, however, the Commission has
17 indicated that, due to developments in the law, including the distillation of the meaning of
18 "expenditure" through the enforcement process and the promulgation of 11 C.F.R. § 100.57
19 addressing contributions, it will now require that there be some information suggesting a specific
20 expenditure was made or a contribution received prior to authorizing an investigation. See

7 As the Commission observed in prior matters involving 527 organizations, the complainant and the Commission will not have access to all solicitations and communications at this preliminary stage of the enforcement process in the vast majority of cases. For this reason, the Commission has not required proof that the 527 organization triggered the statutory threshold of \$1,000 in contributions or expenditures before finding reason to believe, provided available information otherwise suggests that the organization has the sole or primary objective of influencing federal elections and has raised and spent substantial funds in furtherance of that objective.

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Executive Session discussion of September 11, 2007 concerning MUR 5842 (Economic Freedom Fund). We conclude that there is information available at this stage suggesting that Softer Voices made over \$1,000 in expenditures by financing communications expressly advocating the election of a federal candidate and that it received over \$1,000 in contributions.

A. Softer Voices Has Made Expenditures Exceeding \$1,000

In determining whether an organization makes an expenditure, the Commission "analyzes whether expenditures for any of an organization's communications made independently of a candidate constitute express advocacy either under 11 C.F.R. § 100.22(a), or the broader definition at 11 C.F.R. § 100.22(b)." Supplemental Explanation and Justification, Political Committee Status, 72 Fed. Reg. 5595, 5606 (Feb. 7, 2007). Under the Commission's regulations, a communication contains express advocacy when it uses phrases such as "vote for the President," "re-elect your Congressman," or "Smith for Congress," or uses campaign slogans or words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, or advertisements that say, "Nixon's the One," "Carter '76," "Reagan/Bush," or "Mondale!" See 11 C.F.R. § 100.22(a); see also *MCFL*, 479 U.S. at 249 ("[The publication] provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than "Vote for Smith" does not change its essential nature."). Courts have held that "express advocacy also includes verbs that exhort one to campaign for, or contribute to, a clearly identified candidate." *FEC v. Christian Coalition*, 52 F.Supp. 2d 45, 62 (D.D.C. 1999) (explaining why *Buckley*, 424 U.S. at 44, n.52, included the word "support," in addition to "vote for" or "elect," on its list of examples of express advocacy communication).

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1 The Commission's regulations further provide that express advocacy includes
2 communications containing an "electoral portion" that is "unmistakable, unambiguous, and
3 suggestive of only one meaning" and about which "reasonable minds could not differ as to
4 whether it encourages actions to elect or defeat" a candidate when taken as a whole and with
5 limited reference to external events, such as the proximity to the election. See 11 C.F.R.
6 § 100.22(b). In its discussion of then-newly promulgated section 100.22, the Commission stated
7 that "communications discussing or commenting on a candidate's character, qualifications or
8 accomplishments are considered express advocacy under new section 100.22(b) if, in context,
9 they have no other reasonable meaning than to encourage actions to elect or defeat the candidate
10 in question." See 60 Fed. Reg. 35292, 35295 (July 6, 1995).⁸

11 At least two Softer Voices' advertisements contain express advocacy under 11 C.F.R.
12 § 100.22(a) because they use individual words and slogans that in context can have no
13 reasonable meaning other than to urge the election of Santorum or defeat of Casey. See
14 Attachment B at 1-2. For instance, the ad "Tough Enough" praises Santorum in the context of
15 describing national security threats and prominently features images of him, casting him in a
16 positive light. The ad ends with the slogan: "Don't we need leaders tough enough to face such a
17 threat?" This slogan references the office of Senator when it refers to "leaders" and urges action
18 when it references a "need." The communication's reference to the "need" for a particular kind

⁸ In *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. ___, 127 S.Ct. 2652 (2007) (*WRTL*), the U.S. Supreme Court held that "an ad is the functional equivalent of express advocacy," and thus subject to the ban against corporate funding of electioneering communications, "only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *Id.*, 127 S.Ct. at 2667. Although 11 C.F.R. § 100.22 was not at issue in the matter, the Court's analysis included examining whether the electioneering communication had "indicia of express advocacy" such as the "mention [of] an election, candidacy, political party, or challenger" or whether it "take[s] a position on a candidate's character, qualifications, or fitness for office." *Id.* The Commission subsequently incorporated the principles set forth in the *WRTL* opinion into its regulations governing permissible uses of corporate and labor organization funds for electioneering communications at 11 C.F.R. § 114.15. See Final Rule on Electioneering Communications, 72 Fed. Reg. 72899, 72914 (Dec. 26, 2007).

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1 of candidate (*i.e.*, one who is "tough enough"), preceded by the identification of Rick Santorum
2 as that type of candidate, is express advocacy of Santorum's candidacy. See 11 C.F.R.
3 § 100.22(a) (express advocacy includes phrases such as "'vote Pro-choice' accompanied by a
4 listing of clearly identified candidates described as ... Pro-Choice"); see also *MCFL*, 479 U.S. at
5 249 (express advocacy existed where publication exhorted readers "to vote for 'pro-life'
6 candidates [and] also identifie[d] . . . specific candidates fitting that description").⁹

7 This ad "We the People" also contains express advocacy under 11 C.F.R. § 100.22(a). It
8 depicts photographs of Santorum and his electoral opponent Casey, attacks Casey's
9 qualifications and praises Santorum's, and concludes with a slogan "Can we really risk Bob
10 Casey learning on the job?" This slogan amounts to express advocacy because it identifies a
11 candidate and references the office of Senator when it refers to a "job." The only way that a
12 viewer could "risk Bob Casey learning on the job" would be by voting for him for the "job" of
13 Senator. Thus, the ad exhorts viewers to defeat Casey and not take the "risk." Moreover, the use
14 of "risk" as a verb in the sentence is equivalent to the use of verbs such as "vote for" or "elect."
15 The ad also contains a slogan stating: "Rick Santorum. Real. Experienced. Leadership." This
16 slogan too is centered on the candidate and references personal characteristics unrelated to any
17 issue. Further, the use of the word "leadership" is a reference to his election to the office of
18 Senator, where he would be a leader. The ad does not direct the reader to take action to express a
19 view on a public policy issue or urge the reader to take some action other than to vote for
20 Santorum.

⁹ This advertisement is also similar to the "Education mailer" that The Media Fund distributed in which it identified John Kerry as supporting the "American dream" of a college education, and then exhorted that "we need a President who encourages pursuit of the American dream" The Commission found probable cause to believe that the mailer constituted express advocacy under 11 C.F.R. § 100.22(a). See Certification, MUR 5440, *In re The Media Fund*, July 12, 2007.

1 It also appears that these communications contain express advocacy within the meaning
2 of 11 C.F.R. § 100.22(b) because the ads tout Santorum's accomplishments, character, and
3 qualifications and, in proximity to the upcoming election, these ads only make sense if they are
4 read as advocating the election of the clearly identified candidate. See 11 C.F.R. § 100.22(b).
5 For instance, the ad "We the People" attacks Casey's qualifications and praises Santorum's
6 leadership and qualifications. The ad "Tough Enough" praises Santorum and highlights his
7 character and qualifications by stressing his "tough" leadership. Further, the ads only make
8 sense if they are understood to advocate Santorum's election. Thus, "We the People" viewers
9 are urged not to "risk Bob Casey learning on the job" by voting for him for Senator. Similarly,
10 viewers of "Tough Enough" are urged to fill the "need" for "leaders tough enough" by voting for
11 Santorum for Senator.¹⁰

12 Because Softer Voices paid for advertisements that appear to contain express advocacy,
13 disbursements for them may qualify as "expenditures" under 2 U.S.C. § 431(9)(A). By spending
14 over \$1,000 on these communications, Softer Voices may have surpassed the \$1,000 threshold in
15 expenditures, which provides a basis for believing that Softer Voices triggered political
16 committee status.¹¹ See 2 U.S.C. § 431(4)(A).

¹⁰ Although the Commission's express advocacy regulation was not at issue in *WRITL*, the Court's consideration of what could be regulated as an electioneering communication set forth a test that included elements similar to those used in 11 C.F.R. § 100.22(b). While the *WRITL* test is not applicable here, the ads at issue would meet the Court's test, if the other qualifying factors were met, for regulable electioneering communications. The ads contain, to varying degrees, the "indicia of express advocacy" discussed in *WRITL*, such as the discussion of "a candidate's character, qualifications, or fitness for office." *WRITL*, 127 S.Ct. at 2667. Further, the ads do not direct the reader to take action to express a view on a public policy issue or urge the reader to contact public officials with respect to the issue. In sum, the ads are susceptible of no reasonable interpretation other than as an appeal to vote for or against a particular candidate.

¹¹ This Office cannot confirm whether all of the advertisements shown on the organization's website were actually broadcast on television. Certainly the advertisement "Tough Enough" appears to be customized with two versions, with one intended for the Philadelphia television market and the other for the Pittsburgh market.

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B. Softer Voices Has Received Contributions Exceeding \$1,000

The term "contribution" is defined to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). A gift, subscription, loan, advance, or deposit of money or anything of value made by any person in response to any communication is a contribution to the person making the communication if the communication indicates that any portion of the funds received will be used to support or oppose the election of a clearly identified Federal candidate. 11 C.F.R. § 100.57(a).

There is information available suggesting that Softer Voices received over \$1,000 in funds in response to communications indicating that the funds received would be used to support Rick Santorum's Senate reelection campaign. Softer Voices solicited donations through its website by posting fundraising appeals next to video player clips of advertisements such as "We the People," which asked, "Can we really risk Bob Casey learning on the job?" The fundraising appeal asked website readers to "Support Softer Voices. Please help us keep this ad on the air."¹² The fundraising message clearly indicates that any donated funds will be used to fund Santorum advertising (in fact, over 90% of Softer Voices' spending was for Santorum advertising).¹³ By soliciting funds with a message to donors indicating that the funds received will be used to support Santorum's election, Softer Voices may have surpassed the \$1,000

¹² In fact, the advertisements were causal to the website fundraising program. If you select the "contribute" button on the website's main screen, it takes you to a page containing the clips and the fundraising appeal. Clips also appear on the main page of the website, also next to fundraising appeals stating "help us keep this ad on the air."

¹³ Even though the specific words in the appeal do not identify Santorum, the appeal's physical placement next to the Santorum ads and direct reference to the ads results in a clear identification of the candidate. See 11 C.F.R. § 100.57(a); see also MUR 5487 GCR #2, p. 14 (Progress for America Voter Fund) (describing similar fundraising slogans placed next to photos of President Bush on Progress for America's website). The complaint does not include information on any other written or verbal solicitations, and the Softer Voices response does not provide any further information as to the content of its other solicitations.

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1 threshold in contributions, which provides a basis for believing that Softer Voices triggered
2 political committee status. See 2 U.S.C. §§ 431(4)(A) and 431(8)(A)(i); 11 C.F.R. § 100.57(a).

3 **C. Softer Voices Had the Major Purpose of Federal Election Activity**

4 Finally, as detailed in the prior section, Softer Voices' public statements, television
5 advertisements, and website materials establish that the organization's major purpose was to
6 influence Senator Santorum's election. The group intended to reach "voters," "boost Santorum's
7 popularity with women," and find "a way around campaign finance law." Its website was
8 entirely devoted to material concerning Santorum and its founders were unequivocal in their
9 public support of Santorum's election. Its fundraising message, as set forth on its website, was
10 entirely centered on supporting Santorum. Further, over 90% of the funds raised were spent on
11 advertising supporting Santorum, broadcast shortly before the 2006 general election. The ads
12 featured images of Santorum and his opponent Bob Casey, and as detailed below, appear to have
13 expressly advocated the election of Santorum.

14 **D. Recommendations on Political Committee Status**

15 If Softer Voices was operating as a political committee, it must comply with the Act's
16 contribution limitations. See 2 U.S.C. § 441a(f). Softer Voices, however, accepted \$1,355,000
17 in contributions from individuals in excess of \$5,000. Therefore, we recommend that the
18 Commission find reason to believe that Softer Voices violated 2 U.S.C. §§ 433, 434, and 441a(f)
19 by failing to register as a political committee with the Commission; by failing to disclose its
20 contributions and expenditures in reports filed with the Commission; and by knowingly
21 accepting contributions from individuals in excess of \$5,000.

1 Softer Voices co-founder and director Lisa Schiffren was also named a respondent in this
2 matter. We recommend that the Commission take no action at this time with respect to her so
3 that we may focus our investigation on the organization.

4 **IV. THERE IS REASON TO INVESTIGATE WHETHER SOFTER VOICES**
5 **COORDINATED COMMUNICATIONS WITH SANTORUM 2006**
6

7 As explained earlier in this Report, the complaint in MUR 5831 alleges that Softer
8 Voices made excessive in-kind contributions by coordinating expenditures for the advertisement
9 "Billy Jo" with Santorum 2006. A payment for a coordinated communication constitutes an in-
10 kind contribution to the candidate or committee with whom or which it is coordinated, and must
11 be reported as an expenditure made by that candidate or committee. See 11 C.F.R.
12 § 109.21(b)(1). A communication is coordinated with a candidate, an authorized committee, a
13 political party committee, or agent thereof if it meets a three-part test: (1) payment by a third
14 party; (2) satisfaction of one of four "content" standards; and (3) satisfaction of one of six
15 "conduct" standards. See 11 C.F.R. § 109.21.

16 In this matter, the first prong of the coordinated communication test is satisfied because
17 Softer Voices is a "person other than [the] candidate, authorized committee, political party
18 committee, or agent of any of the foregoing" that paid for the two television advertisements
19 featuring Ma. Morton. 11 C.F.R. § 109.21(a)(1). The second prong of this test, the content
20 standard, is satisfied because Softer Voices' television advertisements both identify Santorum
21 and qualify as "public communications" under 11 C.F.R. § 109.21(c)(4)(i) because they were
22 broadcast within 90 days of the general election.¹⁴

23 The third prong, the conduct standard, is met if, *inter alia*, the communication is made at
24 the "request or suggestion" of the candidate or authorized committee or if the candidate or

¹⁴ IRS reports indicate that Softer Voices paid its media vendors in September, October, and November 2006.

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1 committee "assents to the suggestion" of a person who is paying for the communication.
2 11 C.F.R. § 109.21(d)(1). The standard can also be met with the "material involvement" of the
3 candidate or authorized committee; or after "substantial discussion" with the relevant candidate
4 or committee. 11 C.F.R. § 109.21(d)(2)-(3). The "material involvement" conduct standard is
5 satisfied if a candidate or his authorized committee is materially involved in decisions regarding
6 the communication, such as its content, intended audience, means or mode, specific media outlet
7 used, timing or frequency, or size or prominence. *See* 11 C.F.R. § 109.21(d)(2). Similarly, a
8 "substantial discussion" has occurred if material information about the candidate's campaign
9 plans, projects, activities or needs is conveyed to a person paying for the communication. 11
10 C.F.R. § 109.21(d)(3).

11 The complaint asserts that Softer Voices coordinated its use of the Billy Jo Morton story
12 with Santorum or his campaign by obtaining Santorum's "assent" to the expenditure through his
13 agreement to sell the rights to the story. Essentially, through his alleged control over the sale of
14 the book rights, Santorum was in a position to decide whether or not a Softer Voices ad focused
15 on the Morton story would be produced and broadcast. Presumably, he could have even
16 suggested that instead of the Morton story, he could sell rights to a different chapter of his book,
17 focusing on a different issue. Thus, the nature of the book rights process allowed Santorum to
18 control or influence Softer Voices' communications and this amounted to a coordinated
19 communication under 11 C.F.R. § 109.21(d)(1). Although the Santorum Committee denied
20 contact with the publisher over the sale or use of the story, it did not make a similar denial with
21 respect to any contact with Softer Voices. In light of the unusual circumstances presented here,
22 where clearly some communication between three related parties had to occur for the transaction

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1 to be processed, coupled with the incomplete and cursory denials from the Respondents, there is
2 reason to investigate this limited factual scenario.

3 Therefore, we recommend that the Commission find reason to believe that Softer Voices
4 violated 2 U.S.C. §§ 441a and 434 by making and failing to report excessive contributions, in the
5 form of coordinated expenditures, to Santorum 2006. We further recommend that the
6 Commission find reason to believe that Santorum 2006 and Gregg R. Menlimon, in his official
7 capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434 by accepting and failing to report
8 excessive in-kind contributions. Because there is no information at this time indicating that Rick
9 Santorum was personally involved in these transactions, we recommend the Commission take no
10 action with respect to him at this time.

11 **V. THERE IS NO BASIS ON WHICH TO INVESTIGATE THE ALLEGATIONS**
12 **CONCERNING FOREIGN NATIONAL CONTRIBUTIONS**
13

14 Finally, the complaint alleges that Softer Voices accepted contributions from Jack
15 Templeton, who allegedly is a foreign national. The Act prohibits foreign nationals from making
16 contributions in connection with an election to any political office and it is unlawful for any
17 person to accept such a contribution. 2 U.S.C. § 441e(a). The term "foreign national" refers to
18 an individual who is not a citizen of the United States and who is not lawfully admitted for
19 permanent residence as defined by 8 U.S.C. § 1101(a)(20). 2 U.S.C. § 441e(b)(2).

20 In response to the complaint, Respondents explain that Jack Templeton is a U.S. citizen
21 and speculates that the complainant is confusing him with his father, John Templeton, who is a
22 citizen of the Bahamas. A search of public records indicates that Jack Templeton, who
23 contributed to Softer Voices, resides in Bryn Mawr, Pennsylvania, where he works as a

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1 physician and serves as president of the John Templeton Foundation, a charitable organization.¹⁵
2 The Templeton Foundation website states that it was founded by Jack Templeton's father, John
3 Templeton, who did not contribute to Softer Voices, and who according to the foundation's
4 website is a citizen of the Bahamas. Thus, based on the denials from the complaint responses,
5 and available information on the public record which corroborates the respondents' explanation,
6 we recommend the Commission find no reason to believe Jack Templeton or Softer Voices
7 violated 2 U.S.C. § 441e(a).

8 **VI. PROPOSED DISCOVERY**

9 We plan to request documents relating to Softer Voices' fundraising solicitations and
10 communications to the public to determine whether they received more than \$1,000 in
11 contributions or made more than \$1,000 in expenditures. In addition, this Office intends to make
12 a limited inquiry to determine Santorum 2006's involvement, if any, in Softer Voices' use of
13 Rick Santorum's book in producing the Billy Jo Morton advertisements.

14 This Office seeks authorization to issue subpoenas for answers to written questions,
15 production of documents, and depositions directed to representatives of Softer Voices, Santorum
16 2006, and witnesses in this matter. Accordingly, this Office requests that the Commission
17 authorize the use of compulsory process to all respondents and witnesses in this matter, including
18 the issuance of appropriate subpoenas and the issuance of appropriate additional interrogatories,
19 document subpoenas, and deposition subpoenas, as necessary.

20

¹⁵ Softer Voices' IRS reports disclose the donor as Jack Templeton of Bryn Mawr, PA, and list his employer as the John Templeton Foundation.

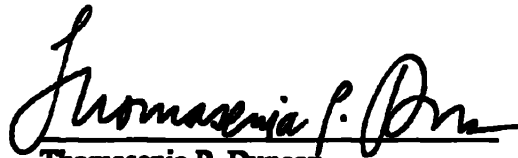
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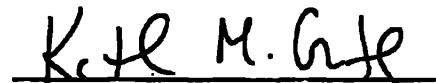
VII. RECOMMENDATIONS

1. Find reason to believe that Softer Voices violated 2 U.S.C. §§ 433, 434, and 441a(f), by failing to register as a political committee with the Commission; by failing to report its contributions and expenditures; and by knowingly accepting contributions in excess of \$5,000;
2. Find reason to believe that Softer Voices violated 2 U.S.C. §§ 441a and 434 by making and failing to report excessive contributions, in the form of coordinated expenditures, to Santorum 2006;
3. Find reason to believe that Santorum 2006 and Gregg R. Menlinson, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434 by accepting and failing to report excessive in-kind contributions from Softer Voices;
4. Find no reason to believe that Softer Voices or Jack Templeton violated 2 U.S.C. § 441e;
5. Take no action at this time with respect to Richard J. Santorum and Lisa Schiffren;
6. Approve the attached Factual and Legal Analyses;
7. Authorize the use of compulsory process against all respondents and witnesses in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary;
8. Approve the appropriate letters.

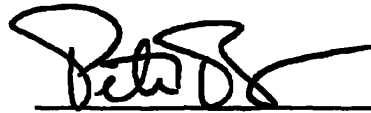
Date

2/6/2008


Thomasenia P. Duncan
General Counsel


Kathleen M. Guith
Acting Associate General Counsel


Mark D. Shonkwiler
Acting Deputy Associate General Counsel



Peter G. Blumberg
Acting Assistant General Counsel

Attachments

- A. Softer Voices Webpage
- B. Transcript of Softer Voices Advertisements
- C.
- D.
- E.

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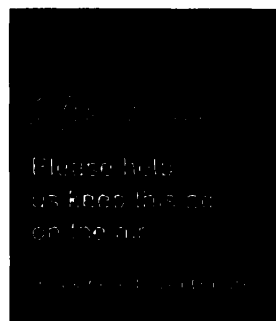
Softer Voices

■ [why we care](#) ■ [about us](#) ■ [contact us](#) ■ [links](#) ■ [contribute](#)

New ad by Softer Voices



VIEW AD IN WINDOWS MEDIA
(Download Windows Media Player)



who we are

Softer Voices is a conservative issue advocacy organization representing citizens concerned with national security, the economy, policies affecting families and society, and maintaining a free and democratic society.

[Click here to contact Softer Voices.](#)

in the news

JOSH GIBSTEIN, Oct 2, 2006
Political Group Shells Out \$1M To Boost Santorum's Popularity With Women
Softer Voices is running television ads emphasizing Mr. Santorum's role as an early advocate for and author of welfare-to-work legislation....
[Read More](#)

KATHLEEN PARKER, Sept 29, 2006
The Ecstasies of Rick Santorum

Attachment 1
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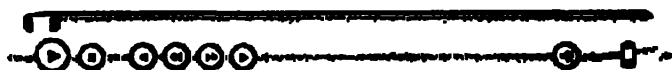
Rick Santorum can't seem to win for losing, no matter what he does...
[Read More](#)

ROBERT B. BLURY, Sept 20, 2004
PA-Sen TV Ad Praises Rick Santorum's Leadership on Welfare Reform
 A group calling itself Softer Voices launched a new TV ad campaign in Pennsylvania today on behalf of Sen. Rick Santorum...
[Read More](#)

KATHRYN JEAN LIPER, Sept 20, 2004
Momma's Boy
 What Santorum did - and Casey wouldn't have - for one young Pennsylvania mother...
[Read More](#)

SUZANNE FIELER, Sept 20, 2004
Talking Softly, With a Big Schtick
 Two savvy conservative women have established an organization to run television commercials to tap into this natural conservative feminine spirit...
[Read More](#)

LITZA SAVAGE, Oct 23, 2004
'Softer Voices' Aims Commercials At Women Voters
 Two New York women are behind a unique political ad aimed at convincing mothers that only President Bush can keep their children safe...
[Read More](#)



[VIEW AD IN REALPLAYER](#) | [VIEW AD IN WINDOWS MEDIA](#) | [AD TRANSCRIPT](#)
 (Download RealPlayer, Windows Media Player)

30-SECOND AD: "WHO I AM TODAY"
[VIEW IN REALPLAYER](#) | [VIEW IN WINDOWS MEDIA](#) | [AD TRANSCRIPT](#)

Santorum on welfare

Senator Santorum: "Work and Human Dignity" - Chapter 15: Work and Human Dignity from the book "It Takes a Family"

Finally, there is Billy Jo Morton. When I was sworn into the Senate in 1995, I decided that since I was going to take an active role in reforming welfare I had better see how it works firsthand.

So I immediately hired five people on welfare, about 10 percent of my staff, to work in my Pennsylvania offices. Billy Jo worked for me in her first job off welfare in my Harrisburg office. She told me that until she was forced to move off the rolls she thought she was stuck with two kids at home and no chance for a better life. Billy Jo was a great employee. After a while, we provided her a flexible enough schedule that she could go to community college to pick up some college credits part-time. There were some bumps along the way, but after a few years she moved on to something better. She was offered a scholarship to finish her degree, which she did, in education. She is now working as a teacher. [Read More](#)

Santorum floor remarks - 104th Congress 2nd Session 7/23/01
 Mr. President, I just want to say that this is welfare reform. This is the dramatic change in the system that the American public has been asking for for years and years and years. [Read More](#)

Casey on welfare

Bob Casey: A Campaign Profile - Pittsburgh Post-Gazette 3/24/02

Casey disagreed with the Clinton administration's embrace of welfare reform and trade liberalization measures such as the North American Free Trade Agreement. "I couldn't have voted for that," Casey said of the 1996 welfare overhaul, passed in the

Attachment A
 Page 2 of 3

year he first ran for office. "You were saying, 'Let's make people more self-sufficient,' but you weren't giving them the tools to do that. ... A lot of Democrats nationally and in the state say, 'You're crazy. We should be able to move in that other direction,' but I just don't agree with them." [Read More](#)

other voices on the success of self-help

Welfare Reform Succeeded Because It Trusted the Poor - Detroit News 8/29/06

Last week marked the 18th anniversary of welfare reform, which made radical changes to receiving unearned government cash. [Read More](#)

Apocalypse Not - Wall Street Journal 8/26/06

Welfare reform turned 10 this week, and more remarkable than its near-total success is the near-total amnesia that seems to have gripped its one-time opponents. [Read More](#)

How We Ended Welfare, Together - New York Times 8/22/06

Ten years ago today I signed the Personal Responsibility and Work Opportunity Reconciliation Act. [Read More](#)

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Attachment A
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"We the People"

Child's voice: We the people of the United States ...	<i>Image of the Declaration of Independence</i>
Narrator: Who live in a world of danger ...	<i>Still photographs, presented in succession, of Osama bin Laden and other terrorists</i>
Narrator: ... danger from fanatics sworn to kill Americans ... danger from tyrants seeking nuclear weapons	<i>Still photographs, presented in succession, of Iranian president Mahmoud Ahmadinejad, North Korean leader Kim Jong-il, missiles being launched and acts of terror.</i>
Narrator: Bob Casey recently showed he is still trying to learn the names of these tyrants.	<i>Photograph of Casey, offset with image of missile being launched, followed by text from news article published in the Allentown Morning Call, reading: "asking [Casey] to name the former Iranian president ... Casey couldn't answer."</i>
Narrator: Senator Santorum understands these threats.	<i>Photograph of Santorum</i>
Senator Santorum: When leaders say they are prepared to kill millions of people ... we must take them at their word.	<i>Footage of Santorum delivering speech</i>
Narrator: Can we really risk Bob Casey learning on the job?	<i>Footage of protesters/terrorists burning an American flag. Text states: "Can we risk Bob Casey learning on the job?"</i>
Narrator: Softer Voices is responsible for the content of this advertising.	<i>Photograph of Santorum, next to text stating: "Rick Santorum Real. Experienced. Leadership." Softer Voices disclaimer at bottom of screen in small print.</i>

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"Tough Enough"

Narrator: Our enemies crash planes into buildings ...	<i>Image of people chanting</i> <i>(subtitled translation of chant states: "Death to America")</i> <i>Image of airplane crashing into World Trade Center.</i>
Narrator: ... they cut off heads ...	<i>Image of terrorists preparing to behead hostage Eugene Armstrong</i> <i>(text identifies footage as described above)</i>
Narrator: And if they get nuclear weapons, they will use them on us.	<i>Image of person building a bomb</i>
Narrator: Right here	<i>Image of city (Pittsburgh/Philadelphia) undergoing nuclear attack</i> <i>Image of terrorists chanting</i> <i>(subtitled translation of chant states: "Bomb. Bomb. USA.")</i>
Senator Santorum: When leaders say they are prepared to kill millions of people ... we must take them at their word.	<i>Footage of Santorum delivering speech, over image of terrorists from previous frame.</i>
Narrator: Senator Santorum is leading the effort to prevent a nuclear Iran.	<i>"Iran TV" cartoon image of Statue of Liberty with a hollowed-out skull.</i> <i>Text reads: "America is the enemy of God's unity and an affront to God."</i>
Narrator: Don't we need leaders tough enough to face such threats?	<i>Same as previous image</i>
Narrator: Softer Voices is responsible for this message.	<i>Photograph of Santorum.</i> <i>Text states: "Senator Rick Santorum"</i> <i>Softer Voices disclaimer at bottom of screen in small print.</i>

Who I am Today

Billy Jo Morton: Senator Santorum was looking to hire someone who was on welfare and give them an opportunity to do something better with their life. And that was me.	<i>Video unavailable</i>
Billy Jo Morton: They got me started getting into college.	<i>Video unavailable</i>
Billy Jo Morton: I have 3 degrees, I just got my Master's Degree last year. I have been working as a teacher for the last 6 years.	<i>Video unavailable</i>
Billy Jo Morton: I could not tell him thank you enough for what he did for me. Because he gave the chance I needed to become who I am today.	<i>Video unavailable</i>
Narrator: Softer Voices is responsible for the content of this advertisement.	<i>Video unavailable</i>

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"Billy Jo"

Narrator: Welfare reform has moved millions of people from welfare to work	<i>Text reads: "Welfare reform reduced welfare cases by nearly 60%"</i>
Narrator: However, Bob Casey opposed these important and successful reforms	<i>Photograph of Bob Casey. Text reads: "Bob Casey opposes welfare reform"</i>
Narrator: Senator Rick Santorum not only helped author and pass the historic welfare-to-work legislation, he even went a step further ...	<i>Photograph of Rick Santorum. Text reads: "Helped Pass Welfare Reform"</i>
Billy Jo Morton: I was really hopeless basically ...	<i>Morton speaking into the camera</i>
Billy Jo Morton: ... when I found out about the opportunity that Senator Santorum was offering. I went for it.	<i>Text on screen states: "Senator Santorum started a welfare-to-work program")</i>
Billy Jo Morton: You know, who would have thought a Senator was looking to hire someone who was in my situation. I loved working in the office ...	<i>Morton speaking into the camera</i>
Billy Jo Morton: ... and actually, they got me started getting into college.	<i>Text on screen states: "Welfare-to-work provides new opportunities"</i>
Billy Jo Morton: I have three degrees. I just got my masters degree last year and I have been working as a teacher that last six years.	<i>Morton speaking into the camera</i>
Billy Jo Morton: Senator Santorum and his staff cared about me.	<i>Video footage of Morton with a child</i>
Billy Jo Morton: He helped provide for my family.	<i>Still photograph of Morton with her family</i>
Billy Jo Morton: And he got me to where I am and that is a successful, educated teacher.	<i>Text on screen states: "Rick Santorum caring for all our families"</i>
Narrator: Softer Voices is responsible for the content of this advertisement.	<i>Photograph of Santorum with child. Softer Voices disclaimer at bottom of screen in small print.</i>

"Rick Santorum Gets It"

Jon Shestak: I'm a liberal Democrat from Philadelphia and I'm also the father of an autistic son	<i>Shestak speaking into the camera</i>
Jon Shestak: I disagree with Rick Santorum about a lot of things.	<i>Camera pans back to reveal more of Shestak's body</i> <i>(text on screen identifies him as "Jon Shestak. Leading advocate for autistic children.")</i>
Jon Shestak: But what everyone who loves someone with autism needs to know ...	<i>Rolling photos of Shestak with his child and others.</i>
Jon Shestak: ... is that Rick Santorum is the greatest champion in Congress our kids have ever had. Ever.	<i>Shestak speaking into the camera</i>
Jon Shestak: Autism is an emergency. It's like another one of our kids has been kidnapped every 20 minutes.	<i>More photos of children, who apparently suffer from autism.</i> <i>(text on screen states: "1 in 166 kids suffer" and then "New diagnosis every 20 minutes.")</i>
Jon Shestak: Rick Santorum gets it and he's doing everything he can to help our kids.	<i>Return to image of Shestak speaking into the camera and then conclude with photo of Rick Santorum with a child.</i> <i>(text on screen states: "Rick Santorum gets it.")</i>
Narrator: Softer Voices is responsible for the content of this advertisement.	<i>Photograph of Santorum with child.</i> <i>Softer Voices disclaimer at bottom of screen in small print.</i>

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