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November 30, 2006

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COURIER

Ms. Kim Collins, Paralegal
Complaints Examination & Legal Administration
Office of General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, DC 20463

Re: MUR 5867 (American College of Gastroenterology)

Dear Ms. Collins:

The American College of Gastroenterology ("ACG"), through counsel, hereby responds to the complaint filed against it by Michael L. Kochman, M.D., FACP. The complaint touches upon two issues: (1) the relationship between an ACG continuing medical education dinner program and a subsequent fundraising event held by an incumbent U.S. Senator's campaign committee; and (2) several thank-you billboards and other ads that expressed appreciation for the legislative efforts of various members of Congress on health care legislation supported by ACG. Both allegations are meritless.

"Incident #1". This involved an ACG-sponsored continuing medical education dinner program regarding colorectal cancer (removal of polyps) conveniently held in proximity of both time and place to the Pennsylvania GI Society annual meeting held on the same day and in the same hotel in Philadelphia. Fise Aff. ¶ 2. Senator Santorum was neither invited to, nor present at, this program, *id.* at ¶ 3, and it involved no fundraising for Senator Santorum's campaign committee or advocacy of his re-election. *Id.*

After this meeting and in a location discrete from the dinner program, *Santorum 2006* held a fundraising event. *Id.* at 4. Apart from logistical announcements made at the beginning of the dinner program pertaining to the itinerary for the program, including what time the program would end for those planning on attending the *Santorum* event, there was no public suggestion to any attendees to participate at the event or to vote for him. *Id.* at ¶ 5.

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Consequently, the dinner program was not a forum for any campaign fundraising or advocacy and the Complainant fails to cite any communications to ACG members that could reasonably be construed as coercion. See 11 C.F.R. § 114.2(f)(2)(iv) .

“**Incident #2**”. This simply involved a public expression of appreciation to seven members of Congress for their co-sponsorship of S. 1010. This was done to help remind these members of, and solidify their support for (by putting them on record for their past support for), this legislation, and to increase public support for colon cancer screening in general by providing the ACG website address for more information. *Id.* at ¶ 6.

The billboards (copies attached to Fise Declaration) thanked Senators Bingaman, Nelson and Santorum, and Representatives Cardin and English for their commitment to defeating colon cancer and were displayed in their respective states. The messages thanking Senators Snowe and Lieberman (copies attached to Fise Declaration) were newspaper ads because of billboard restrictions in Maine and the high cost of billboards in Connecticut. The message thanking Senator Graham, which mirrors the newspaper ads (copy attached to Fise Declaration), was an airport diorama. *Id.* at ¶ 7.

These ads were displayed or published at separate times during 2005 and 2006 (except for the Bingaman billboard, which was displayed only in 2005 because of a lack of available billboard space in New Mexico, and the Graham diorama, which had no 2005 counterpart because he had not joined in supporting the colorectal cancer screening efforts until 2006), but deliberately not in October of 2006 so as to avoid any questions that the ads may have been election related. *Id.* at ¶ 8.

The billboards, by the very nature of their placement along interstate highways, had less content regarding the specific legislation the member’s co-sponsored and other relevant issues than did the newspaper ads and airport diorama, which, because of the nature of their placement, afforded the reader more time to consume their subject matter. *Id.* at ¶ 9. The Complainant, therefore, makes much of the unremarkable and inevitable characteristics of billboards placed along interstate highways.

These ads were precisely what they appear to be on their face – expressions of appreciation for legislative efforts and a grassroots attempt to increase public support for colon cancer screening. They did not advocate that the reader of the ad do anything (apart from subtly suggesting that readers get more informed on the subject of colon cancer screening by providing ACG’s website), let alone expressly advocating the election of a candidate.¹

¹ Senator Graham wasn’t even on the ballot in 2006.

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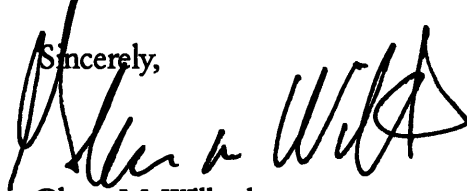
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Moreover, ACG's messages cannot be analyzed under 11 C.F.R. § 100.22(b) because it "do[es] not affect pure issue advocacy, such as attempts to create support for specific legislation, or purely educational messages,"² which is all that was involved in ACG's advertisements.

Consequently, because ACG's ads are what just what they appear to be -- an attempt to solidify the support of seven members of Congress for specific legislation, and an attempt to increase public support for colon cancer screening in general -- the disgruntled ACG member's allegation is meritless.

Complainant did not get his facts straight. But, even if he had, he did not set "forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA". MUR 4960 (Clinton) Statement of Reasons. The Commission should, therefore, find no reason to believe that ACG violated the Act.

Sincerely,



Glenn M. Willard

² *Express Advocacy, Independent Expenditures, Corporate and Labor Organization Expenditures*, 60 Fed. Reg. 35292, 35295 (July 6, 1995).

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The American College of Gastroenterology

MUR 5867

Declaration of Tom Fise

Pursuant to 28 U.S.C. § 1746, I, Tom Fise, declare as follows:

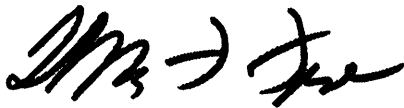
1. I was the Executive Director of the American College of Gastroenterology ("ACG") from January, 1987 until October 31, 2005 and, since November 1, 2005, have been ACG's Director of Policy and Strategic Initiatives. I am, therefore, familiar with the events referenced in the complaint in the above-referenced matter, and the following statements are made to the best of my knowledge and recollection.
2. The "dinner program" on colorectal cancer mentioned in the complaint, in which I assisted directly in the planning and execution, was an Educational Dinner sponsored by ACG and held, for purposes of convenience, on the same day and in the same hotel in Philadelphia as the Pennsylvania GI Society annual meeting. The program was purely educational, providing continuing medical education regarding the removal of polyps.
3. Senator Santorum was neither invited to, nor present at, this dinner program. This program also involved no fundraising for Senator Santorum's campaign committee, *Santorum 2006*, or advocacy of his re-election.
4. After this educational dinner and in a location discrete from the dinner program, *Santorum 2006* held a fundraising event.
5. Apart from logistical announcements I made at the beginning of the dinner program pertaining to the itinerary for the program, including what time the program would end for those planning on attending the Santorum event, there was no public suggestion to any attendees to participate at the fundraising event or to vote for him.
6. The advertisements mentioned in the complaint were public expressions of appreciation to seven members of Congress for their co-sponsorship of S. 1010/HR. 1632, the *Colon Cancer Screen for Life Act*. They were displayed or published to help remind these members of, and solidify their support (by putting them on record for their past support) for, this legislation, and to increase public support for, and knowledge of, colon cancer screening in general by providing the ACG website address for more information.
7. The billboards (copies attached) thanked Senators Bingaman, Nelson and Santorum, and Representatives Cardin and English for their commitment to defeating colon cancer and

were displayed in their respective states. The messages thanking Senators Snowe and Lieberman (copies attached) were newspaper ads because of billboard restrictions in Maine and the high cost of billboards in Connecticut. The message thanking Senator Graham, which mirrors the newspaper ads (copy attached), was an airport diorama.

8. The ads mentioned above were displayed or published at separate times during 2005 and 2006 (except for the Bingaman billboard, which was displayed only in 2005 because of a lack of available billboard space in New Mexico, and the Graham diorama, which had no 2005 counterpart because he had not joined in supporting the colorectal cancer screening efforts until 2006), but deliberately not in October of 2006 so as to avoid any questions that the ads may have been election related.
9. The billboards, by the very nature of their placement along highways, had less content regarding the specific legislation the members' co-sponsored and other relevant issues than did the newspaper ads and airport diorama, which, because of the nature of their placement, afforded the reader more time to consume their subject matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 29, 2006.



Tom Fise



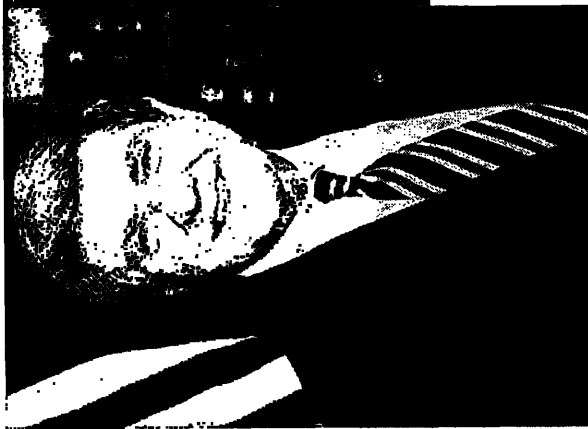
Thank you, Senator Bingaman

For your strong commitment to
HELPING AMERICA DEFEAT COLON CANCER

To learn more about Colon Cancer Screening, visit ACG's website at: www.acg.gi.org



AMERICAN COLLEGE of GASTROENTEROLOGY
Digestive Disease Specialists Committed to Quality in Patient Care



Thank you, Senator Nelson

For your strong commitment to
HELPING AMERICA DEFEAT COLON CANCER

To learn more about Colon Cancer Screening, visit ACG's website at: www.acg.gi.org



AMERICAN COLLEGE of GASTROENTEROLOGY
Digestive Disease Specialists Committed to Quality in Patient Care



Thank you, Senator Santorum

For your strong commitment to
HELPING AMERICA DEFEAT COLON CANCER

To learn more about Colon Cancer Screening, visit ACG's website at: www.acg.gi.org



AMERICAN COLLEGE of GASTROENTEROLOGY
Digestive Disease Specialists Committed to Quality in Patient Care



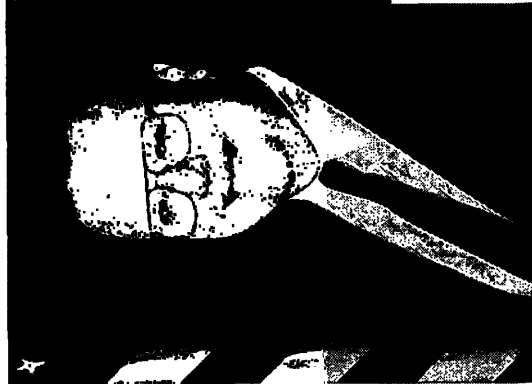
Thank you, Congressman Cardin

For your strong commitment to
HELPING AMERICA DEFEAT COLON CANCER

To learn more about Colon Cancer Screening, visit ACG's website at: www.acg.gi.org



AMERICAN COLLEGE of GASTROENTEROLOGY
Dedicated to the Advancement of Gastroenterology and Endoscopy



Thank you, Congressman English

For your strong commitment to
HELPING AMERICA DEFEAT COLON CANCER

To learn more about Colon Cancer Screening, visit ACG's website at: www.acg.gi.org



AMERICAN COLLEGE of GASTROENTEROLOGY
Digestive Diseases Specialists Committed to Quality in Patient Care

Thank you, Senator Snowe

For your strong commitment to
**HELPING AMERICA DEFEAT
COLON CANCER**

Your legislation, the Colon Cancer Screen for Life Act S.1010, would give Medicare beneficiaries greater access to the most effective screening test to detect colon cancer.



We know that with regular screening we can prevent up to 93% of colon cancer, America's # 2 cancer killer.

As the physicians who diagnose many of the 145,000 Americans with colon cancer annually, we congratulate you for being a champion with the foresight to focus on prevention — saving precious lives *and* scarce health care dollars.

For your strong commitment to preventing colon cancer deaths, we thank you. And our patients thank you.



AMERICAN COLLEGE of GASTROENTEROLOGY
Digestive Disease Specialists Committed to Quality in Patient Care

To learn more about Colon Cancer Screening, visit ACG's website www.acg.gi.org

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Thank you, Senator Lieberman

For your strong commitment to
**HELPING AMERICA DEFEAT
COLON CANCER**



Your legislation, the Colon Cancer
Screen for Life Act S.1010, would
give Medicare beneficiaries greater
access to the most effective
screening test to detect colon cancer.

We know that with regular screening we can prevent
up to 93% of colon cancer, America's # 2 cancer killer.

As the physicians who diagnose many of the 145,000
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AMERICAN COLLEGE of GASTROENTEROLOGY
Digestive Disease Specialists Committed to Quality in Patient Care

To learn more about Colon Cancer Screening, visit ACG's website www.acg.gi.org

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Thank you, Senator Graham

For your strong commitment to
**HELPING AMERICA DEFEAT
COLON CANCER**



Your legislation, the Colon Cancer Screen for Life Act S.1010, would give Medicare beneficiaries greater access to the most effective screening test to detect colon cancer.

We know that with regular screening we can prevent up to 93% of colon cancer, America's #2 killer.

As the physicians who diagnose many of the 145,000 Americans with colon cancer annually, we congratulate you for being a champion with the foresight to focus on prevention – saving precious lives and scarce health care dollars.

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