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2006 DEC 26 P 4: 17

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December 26, 2006

The Honorable Robert D. Lenhard
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, DC 20005

Re: MUR 5870
Alan Mollohan for Congress Committee

Dear Chairman Lenhard:

I write on behalf of my clients, the Alan Mollohan for Congress Committee and Richard S. Pizatella, as treasurer ("Respondents"), to respond to the Complaint in the above-referenced matter. The Complaint presents no conduct by Respondents that would violate the Federal Election Campaign Act, as amended, 2 U.S.C. § 431 *et seq.* (2006). Its coordination allegations are baseless and purely speculative, and warrant no further action.

As its name indicates, the Alan Mollohan for Congress Committee is the principal campaign committee of Congressman Alan Mollohan, who represents West Virginia's First Congressional District. The complaint alleges that an organization called West Virginia Values sponsored television advertisements that attacked Congressman Mollohan's opponent in the 2006 general election. The complaint alleges further that an individual named Jeffrey Burum, who gave to Congressman Mollohan's previous campaigns and who was associated with various groups linked to the Congressman in the press, was the group's principal donor. From these facts, the Complaint speculates that the group, through Mr. Burum, must have coordinated its advertisements with the Mollohan campaign.

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The Complaint fails to present a credible allegation of coordination. A valid complaint must present facts which, if true, would "describe a violation of a statute or regulation over which the Commission has jurisdiction ..." *See* 11 C.F.R. 111.4(d)(3) (2006). "Unwarranted legal conclusions from asserted facts ... or mere speculation ... will not be accepted as true." Statement of Reasons, MUR 4960.

Here, the Complaint must allege facts that would satisfy the "conduct" prong of the Commission's coordination rules. *See* 11 C.F.R. § 109.21(d). It must allege facts showing that:

- (1) the campaign requested or suggested the ads, or assented to a request by the sponsor;
- (2) the campaign was materially involved in decisions regarding the ads;
- (3) substantial discussions about the ads occurred between the campaign and the sponsor;
- (4) the sponsor and the campaign employed a common vendor, who used or conveyed campaign information; or
- (5) the sponsor employed a former campaign employee or contractor, who used or conveyed campaign information.

See id. § 109.21(d)(1)-(5).

Respondents categorically deny any involvement in the West Virginia Values advertisements. The Complaint alleges no such facts to suggest that there was any involvement. It claims that the conduct prong must have been met, simply because Mr. Burum gave previously to Congressman Mollohan's campaigns,¹ was involved in projects that he supported legislatively, and communicated at some point with him about matters unrelated to West Virginia Values or its ads.

Yet none of this signifies coordination. The Commission has rejected the notion that past associations between a group's major donor and a federal candidate provide any reason to believe that the group coordinated advertisements with the candidate's campaign. In

¹ Commission data indicate that Mr. Burum has made only two contributions to Congressman Mollohan's campaigns over the past three election cycles: a \$1,000 contribution on March 22, 2004; and a \$1,000 contribution on March 22, 2002.

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MUR 5525, for example, the Commission considered allegations that Swift Boat Veterans for Truth coordinated with the Bush-Cheney campaign because Bob Perry, who provided "two-thirds of this group's total funding," had been a "dependable supporter" and "staunch backer" of President Bush's family. Complaint, MUR 5525, at 8. Both Perry and the Bush-Cheney campaign categorically denied the allegations. As the Bush-Cheney campaign wrote: "The mere fact that these entities are supported by a few of the same donors and that some donors have personal and/or old commercial relationships with Bush Campaign advisors does not even approach the definition of coordination in Commission regulations or imply any other wrong doing." Letter from Thomas Josefiak, General Counsel, Bush-Cheney '04, to Federal Election Commission, MUR 5525, at 4 (Oct. 27, 2004).

The Commission was persuaded by the Bush-Cheney campaign's argument, as well as by the unsworn denial of coordination made by Perry's counsel. *See* Letter from Andy Taylor to the Honorable Bradley A. Smith, MUR 5525 (Oct. 15, 2006).² The Commission took no further action with regard to the allegations against Perry. *See* Letter from Peter Blumberg to Andy Taylor, MUR 5525 (Dec. 13, 2006). It took no action against Bush-Cheney '04, after reviewing the limited question of whether Kenneth Cordier, an apparent agent of both the campaign and the Swift Vets, had conveyed campaign information to the group or been materially involved in its communications, and concluding that he had not. *See* Factual and Legal Analysis, Bush-Cheney '04, Inc., MUR 5525, at 2, 4 (Mar. 2, 2005); Factual and Legal Analysis Regarding Alleged Coordination of Expenditures by Swift Boat Veterans and POWs for Truth With Bush-Cheney '04 (Dec. 13, 2006).

The same logic should apply here. If Perry's past associations with President Bush provided no reason to believe that coordination occurred in the Swift Vets MUR, then any past association with Burum may have had with Congressman Mollohan should not be taken to suggest that coordination occurred here, either. Because the Complaint fails to present any credible allegation of a violation by Respondents, the Commission should dismiss them immediately from this matter.

² Perry's response can be taken as a tacit admission that he discussed other, unrelated matters with agents of Bush-Cheney '04: "Mr. Perry at no time whatsoever even communicated, much less coordinated, with any individual or entity who was, to his knowledge or belief, an employee or agent of the Bush-Cheney campaign, *concerning anything to do with Swift Boat Veterans for Truth or the public communications which were aired by that group.*" Letter from Andy Taylor, at 1 (emphasis added).

The Honorable Robert D. Lenhard
December 26, 2006
Page 4

Very truly yours,



Brian G. Svoboda
Counsel to Respondents

cc: Vice Chairman David M. Mason
Commissioner Michael E. Toner
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