

SANDLER, REIFF & YOUNG, P.C.
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2008 NOV 17 A 11: 53

November 17, 2008

Via Hand-Delivery

Kim Collins, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6083

Dear Ms. Collins:

This response is submitted on behalf of our client, MoveOn.org Political Action ("MoveOn") to the complaint filed in the above-referenced MUR. A Statement of Designation of Counsel has previously been filed.

The Complaint alleges that in September, 2008, the complainant, Mr. Swier, received a phone call from a MoveOn volunteer named "Erin" who stated that she was a "member of the Boston office of MoveOn.org." "Erin" allegedly asked Mr. Swier to volunteer at the Sarasota County, Florida office of Obama for America, the authorized committee of Senator Barack Obama for the general election for President of the U.S. "Erin" also provided to Mr. Swier the phone number for the Sarasota County office for the Obama campaign.

Mr. Swier states that, "As I understand FEC rules and laws a 527 organization such as MoveOn.org is prohibited from directly soliciting for or directly supporting any political campaign."

Mr. Swier attached to his Complaint an e-mail from Adam Ruben, political director of MoveOn, soliciting volunteers for the Obama campaign. The Complaint does not reference or discuss this e-mail.

I. Factual Background

The Complaint is inaccurate in a number of key respects. The relevant facts relating to the events described in the Complaint are as follows.

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MoveOn is not a section 527 organization but a federal political committee, registered with the Commission.

There was no Boston office of MoveOn during the 2007-08 election cycle. *See* Declaration of Adam Ruben, Political Director of MoveOn, attached hereto, ¶ 2. Rather, the call referenced in the Complaint was made at one of a series of "MoveOn for Obama" house parties, organized by MoveOn, that took place on September 21, 2008. All of those house parties were organized by volunteers in their own homes or apartments. *Id.* ¶4.

At each of these house parties, the host downloaded, from his or her personal computer, lists of MoveOn supporters in battleground states; guests at the house party then called those MoveOn supporters using the guest's cell phone or the home telephone of the person hosting the party. *Id.* ¶5.

Mr. Swier had participated in MoveOn's online campaigns and therefore appeared on a list of MoveOn supporters. *Id.* ¶3. That list was downloaded by Lee Palmer, host of a party in Somerville, Massachusetts, a town next to Boston. MoveOn's records show that this house party was attended by an Erin Sweeney. *Id.* ¶6. It appears, therefore, that it was Erin Sweeney who was the "Erin" who called Mr. Swier. Based on the way the house parties were organized, to the best of MoveOn's knowledge and information, Ms. Sweeney must have used a personal cell phone or Ms. Palmer's home phone to make the call to Mr. Swier. *Id.* ¶7. Ms. Sweeney was a volunteer; she has never been a paid employee of or consultant to MoveOn. *Id.* ¶8.

The script used by guests at the house parties invited the MoveOn supporter being called, in a battleground state, to go to the Obama campaign office near that supporter, to volunteer for the campaign, and provided contact information for that office. *Id.* ¶9. If the person being called signed up, the caller recorded that information and contacted a MoveOn hotline to record who had signed up. *Id.* ¶10. It was the practice of MoveOn then to send a confirming e-mail to each MoveOn supporter who had signed up to volunteer at an Obama campaign office. Those e-mails were in the form of the e-mail attached to Mr. Swier's Complaint. It appears, therefore, that the e-mail attached to Mr. Swier's Complaint was the confirming e-mail sent to him following Ms. Sweeney's call to him. *Id.*

II. Discussion

Even if the facts alleged in the Complaint were true, there is no expenditure by MoveOn alleged to have been made in connection with the solicitation of a MoveOn volunteer of another person to volunteer for the Obama campaign. Whatever *de minimus* use of the individual volunteer's personal resources were involved would not constitute a

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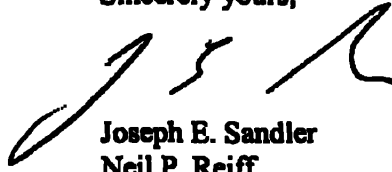
contribution, by the individual, either to MoveOn or to the Obama campaign. 11 C.F.R. §100.75.

Further, with respect to the e-mail from Mr. Ruben to Mr. Swier, because e-mail is not a "public communication" within the meaning of the Commission's regulations, 11 C.F.R. §100.26, the sending of e-mail by a federal political committee soliciting volunteer activity for a federal campaign does not constitute a contribution to or an expenditure on behalf of the campaign. 11 C.F.R. §109.21(a).

For these reasons, the Commission should find no reason to believe that MoveOn has committed any violation of the Federal Election Campaign Act of 1971 as amended or the Commission's regulations, and should dismiss the Complaint and close the file.

If the Commission has any further questions or needs additional information, please contact the undersigned.

Sincerely yours,

A handwritten signature in black ink, appearing to be "JSR", is written over the typed names of the attorneys.

Joseph E. Sandler
Neil P. Reiff

Attorneys for Respondent, MoveOn.org Political
Action

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

MUR # 6083

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The above-named individual and/or firm 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.

10/7/2008
Date


Respondent/Client Signature

Treasurer
Title

RESPONDENT/CLIENT MoveOn.org Political Action Wes Boyd, Treasurer

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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.

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