

Confidential Response to Complaint Docketed as MUR 6089

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COMMISSION
OFFICE OF GENERAL
COUNSEL

To:
Office of General Counsel
Federal Election Commission
999 E. Street NW
Washington, DC 20463

2008 DEC -9 P 2:33

Re: Response of People With Hart, Melissa Hart and Treasurer Michelle Pierson to Complaint in MUR 6089

People With Hart, candidate for the U.S. House of Representatives, Melissa A. Hart ("Hart" or "the candidate"), and People With Hart's Treasurer, Michelle Pierson, respond to the Complaint filed by Shawn T. Flaherty and docketed as MUR 6089 as follows:

The Complaint alleges that the candidate appeared on a radio program and in the course of the appearance by providing information to listeners in response to a question regarding how to contribute to her campaign thereby engaged in a coordinated communication that created an improper corporate contribution from a radio show to her campaign in violation of or the Federal Election Campaign Act of 1971 as Amended ("the Act").

As an initial matter and as shown below, there was no corporate entity involved, and thus, there never was any prohibited corporate contribution. This matter, in sum, appears to be a Complaint regarding a possible expense or in-kind contribution of less than \$15.00 and should be dismissed by the Commission.

Background Facts

On July 20, 2008, the candidate appeared for a portion of the last half of the Glen Meakem Program (the "Program"), which is an hour long radio program airing in Pittsburgh, Pennsylvania on FM News Talk 104.7 and hosted by Glen Meakem (the "Host"). The candidate was invited to appear on the show to discuss the important issues of the day. The candidate appeared on the show beginning at about 36 minutes into the hour long program and continued to appear for approximately seventeen minutes thereafter. She arrived to the radio show's studio just shortly before her appearance as the hour long show taping already was in progress. During the course of the interview on the Program, the candidate discussed various issues of the day as interviewed by the Host. At the close of her appearance on the Program, the Host expressed his personal support of the candidate's campaign and asked her how people could support her campaign. She responded to the question spontaneously with information regarding how people could support or contribute to the campaign by stating the campaign's website address and the campaign's address and phone number. Her response was spontaneous and not in anyway pre-planned or coordinated. The discussion of the host's support of her and her spontaneous provision of information regarding the campaign's contact information lasted approximately two minutes of her seventeen minute appearance time

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on the hour long show and came at the very end of her appearance. Indeed, the candidate had not discussed with the Host prior to her appearance any specifics regarding topics for the interview.

There was no coordinated communication

The FEC's regulations define a coordinated communication in 11 C.F.R. § 109.21. Under section 109.21, in order to be treated as a coordinated communication, the communication must meet one of the content standards found in section 109.21(c) and must meet one of the conduct standards in section 109.21(d). The Complaint alleges that the radio show exchange constituted a coordinated communication under section 109.21(a)(1)-(3), 109.21(c)(3), and 109.21(d)(2). The regulations cited in the Complaint specifically provide:

(a) **Definition.** A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication:

- (1) Is paid for, in whole or in part, by a person other than that candidate, authorized committee, or political party committee;
- (2) Satisfies at least one of the content standards in paragraph (c) of this section; and
- (3) Satisfies at least one of the conduct standards in paragraph (d) of this section.

(c) **Content standards.** Each of the types of content described in paragraphs (c)(1) through (c)(4) satisfies the content standard of this section.

- (3) A public communication, as defined in 11 CFR 100.26, that expressly advocates the election or defeat of a clearly identified candidate for Federal office.

(d) **Conduct standards.** Any one of the following types of conduct satisfies the conduct standard of this section whether or not there is agreement or formal collaboration, as defined in paragraph (e) of this section:

- (2) **Material involvement.** This paragraph, (d)(2), is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source. A candidate, authorized committee, or political party committee is materially involved in decisions regarding:

- (i) The content of the communication;
- (ii) The intended audience for the communication;
- (iii) The means or mode of the communication;
- (iv) The specific media outlet used for the communication;
- (v) The timing or frequency of the communication; or
- (vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

The radio air time on July 20, 2008, during which the candidate appears was not air time purchased for her appearance, but rather was weekly air time purchased by the Program. It would seem that to constitute a coordinated communication in light of the purposes of the Act, that the purpose of the purchase of the airtime would be for the coordinated communication and not for its regularly intended purpose of producing and presenting a weekly radio show under contract for broadcasting. Regarding the content standards, however, it does appear that the statements expressing the Host's advocacy of the candidate's election satisfies the content standard. The conduct standard, namely, the material involvement of the campaign, however, also does not appear to be met. There were no decisions made or to be made by the candidate or the campaign in the presentation of the radio show. The candidate simply and spontaneously replied to a question regarding her campaign during her appearance on the radio show and such ought not to constitute the type of "material involvement" as intended by the regulations or the Act. Accordingly, the Commission should dismiss the Complaint.

Media Exempt Activity

The candidate's appearance on the Program should be treated as media exempt activity. The candidate's understanding was that she was appearing on a weekly aired radio program that discussed important issues of the day and she appeared for that very purpose. Under the FEC's media exemption rules, news stories, commentaries, and endorsements are exempt from regulation unless the media facility is owned or controlled by a candidate, political party, or FEC registered political committee. Neither the facility nor the program appears to be owned or controlled by a candidate, political party or FEC registered political committee. The Complaint argues that payment for the radio air time by the Program somehow renders the media exemption incapable of application. However, in the FEC's recent rulings regarding blogs, the commission did not consider payment for advertising nor the costs of running the blogs to render the media exemption inapplicable. Indeed, the free speech concerns do not mean that there are no monetary costs to the form of media. It is more the nature of the weekly radio show-the Glen Meakem Program-talking about issues of importance to people in the Pittsburgh area that should make the media exemption applicable. For this reason alone, the Complaint should be dismissed.

There can be no corporate Contribution without a corporation
On information and belief, the Glen Meakem Radio Show is a weekly radio
program paid for by Meakem Communications Company, LLC. Meakem

Communications Company, LLC is registered with the Commonwealth of Pennsylvania as a Limited Liability Company and not a corporation. FEC regulations specifically govern treatment of a Limited Liability Company. Specifically, 11 CFR Section 110.1(g)(2) states:

(g) Contributions by limited liability companies ("LLC") – (1) Definition. A limited liability company is a business entity that is recognized as a limited liability company under the laws of the State in which it is established.

(2) A contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service pursuant to 26 CFR 301.7701-3, or does not elect treatment as either a partnership or a corporation pursuant to that section, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e). . . .

Meakem Communications Company, LLC, has as its sole member SnowLine Partners Limited Partnership, which is registered with the Commonwealth of Pennsylvania as a Limited Partnership, and not a corporation. SnowLine Partners appears to in turn be owned by the individual trusts of Glen Meakem and his wife. Ultimately, then, there was no corporation involved at all in the matter. On information and belief, the Meakem Communications Company, LLC is a disregarded entity for federal income tax purposes and qualifies as a partnership under FEC regulations. The sole member of the Limited Liability Company is a partnership which in turn is owned by the personal trust of Mr. Glen Meakem and Mrs. Meakem. Thus, to the extent a contribution resulted from the statements made on the Program, the campaign could either remit payment to Meakem Communications Company, LLC for the value of the communication and report the same on a regularly scheduled report or termination report, whichever is filed first, or the value could be treated as an in-kind contribution from Mr. Meakem on July 20, 2008, for the October Quarterly Report, which would be accomplished by amendment.

Valuation of any resulting contribution

To the extent a contribution occurred, which the campaign maintains it did not, valuation of the contribution must be considered. On information and belief, Meakem Communications Company, LLC has a contract to air his show and pays \$375.00 for the fifty seven minutes of airtime as the weekly Glen Meakem Program. Thus the cost of the Program is approximately \$6.58 per minute. The candidate only appeared for 17 minutes of one Program, which would make the cost for the entire amount of time paid for the time during which the candidate appeared on that weekly show equal to approximately \$111.84. Furthermore, the information regarding the Host's support of the candidate and the information provided by the candidate regarding supporting her campaign occurred for approximately two minutes of the show. Thus, the amount of money paid for the approximate two minutes of the radio show discussing support of her campaign would be approximately \$13.16.

The filing of the Complaint was an abuse of the Commission's process

Finally, although the allegations are treated herein seriously by People With Hart, its treasurer and the candidate, as well as the FEC in the course of its administration of

the Federal Election Code and regulations, the context of the filing of the Complaint should not be ignored. As shown regarding the allegations of corporate contribution, there was no evidence whatsoever that a corporate contribution occurred. Nevertheless, People With Hart, the candidate and the treasurer became aware that a Complaint had been filed with the FEC by virtue of a press release issued by the Complainant on October 15, 2008, a copy of which is attached hereto as Exhibit A, making scurrilous allegations of an illegal corporate contribution. Thus, it appears that the complainant's purpose was to misuse the FEC Complaint process to the complainant's personal ends.

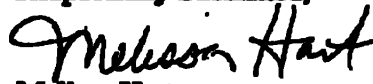
Indeed, at the time the FEC Complaint dated October 2, 2008, was filed with the FEC the October Quarterly Report, which would report July 20, 2008 activity, the deadline for the October Quarterly Report had not even passed. As shown above, the campaign contends that under the circumstances no coordinated communication occurred, and has proceeded with the FEC's process so that the campaign, candidate and treasurer can act appropriately in accordance with resolution of the present matter.

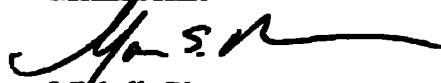
Conclusion

The Campaign, its Treasurer and the Candidate contend that the media exemption applies, and further that the candidate's appearance on the Program did not constitute a coordinated communication, thus, no contribution resulted, and the Complaint should be dismissed. Nevertheless, if the FEC determines that a reportable coordinated communication occurred, such would be *de minimus* and the FEC should dismiss the Complaint. Finally, the campaign would also offer to resolve the matter by proposing that the campaign remit payment to Meakem Communications Company, LLC in the amount of \$13.16 and report that expenditure on the next following regularly scheduled report or the campaign's termination report, whichever occurs first. Alternatively, the campaign could amend its October Quarterly Report and itemize the \$13.16 as an in-kind contribution from Mr. Meakem, whichever approach the Commission deems most appropriate.

WHEREFORE, it is respectfully requested that MUR 6089 be dismissed and the matter be closed.

Respectfully Submitted,


Melissa Hart


Michelle Pierson
Treasurer, People With Hart

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EXHIBIT A

For Immediate Release

Contact: Shawn T. Flaherty
work: (412) 882-8366
cell:
email:

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2008 DEC -9 P 2: 34

Melissa Hart accused of Breaking Campaign Financing Laws

FEC Complaint Cites Illegal Corporate Contribution

(Pittsburgh) A formal complaint has been lodged with the Federal Election Commission (FEC) by Shawn T. Flaherty, a local attorney and former PA State Representative.

The complaint alleges that Melissa Hart, Republican nominee for Congress in Pennsylvania's Fourth Congressional District, violated the laws governing federal elections by accepting an illegal campaign contribution.

On July 20, 2008, Melissa Hart joined Glen Meakem on his program aired weekly on FM News Talk 104.7 in Pittsburgh. Rather than being an actual radio program, Meakem pays for the time as a "vanity show" on the station so that he can broadcast his views. Mr. Meakem is well within his rights to purchase the time and to broadcast his views.

However, according to the complaint now being reviewed by the FEC, Meakem promoted Hart repeatedly while Melissa Hart was appearing on the show. Meakem then went on to ask the listeners to go Melissa Hart's campaign website and to make contributions. At this point, the show on July 20, 2008 became a combination of a Melissa Hart fund-raiser and a Melissa Hart promotional advertisement.

According to the "Glen Meakem Program" website, the program is a production of Meakem Communications Company LLC. Hart, by appearing on the show and participating with Meakem in the solicitation/advertisement of her campaign, has accepted a direct contribution from a corporation for her campaign for federal office.

"The federal regulations on campaign contributions are clear," said Flaherty, a resident of Fox Chapel and Pennsylvania's Fourth Congressional District. "Mr. Meakem basically paid for and produced a half-hour campaign commercial and fund-raiser for Melissa Hart—an endeavor that she herself participated in. That is a coordinated campaign contribution, and it has to be treated as such." Flaherty added, "This is not a matter of political ideology. Nobody should be permitted to skirt, or for that matter flagrantly violate, campaign financing laws."

Flaherty went on to state, "Even Melissa Hart knows this is wrong and I am disappointed that she would have participated in this endeavor."

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VERIFICATION

I, MELISSA HART, verify that the facts set forth in the Response to the Complaint docketed as MUR 6089 are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Dated: 12/1/08

BY: Melissa Hart

**Certificate of Service of Confidential Response to Complaint Docketed as MUR
6009 by People With Hart, Melissa Hart, and Michelle Pierson**

**The undersigned hereby certifies that on this 2nd day of December she did serve via
overnight mail postage prepaid the foregoing response on the following:**

**Office of General Counsel
Federal Election Commission
999 E. Street NW
Washington, DC 20463**



**Michelle S. Pierson
People With Hart
P.O. Box 435
Wexford, PA 15090**

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