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FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

CELA

FIRST GENERAL COUNSEL'S REPORT

MUR: 6152

DATE COMPLAINT FILED: December 22, 2008

DATE SUPPLEMENT FILED: February 3, 2009

DATE OF NOTIFICATION: December 31, 2008

DATE OF NOTIFICATION

OF SUPPLEMENT: February 4, 2009

LAST RESPONSE RECEIVED: March 5, 2009

DATE ACTIVATED: March 31, 2009

EXPIRATION OF SOL: October 29, 2013

COMPLAINANT:

Nadira (Daiza) Plater

RESPONDENTS:

Martin Manna

Chaldean Chamber Political Action Committee
and Martin Manna, in his official capacity as
treasurer

Chaldean-American Chamber of Commerce
Knollenberg for Congress Committee
and Debra Kling, in her official capacity as
treasurer

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431

2 U.S.C. § 433

2 U.S.C. § 434(b)

2 U.S.C. § 441a

2 U.S.C. § 441d(a)

11 C.F.R. § 100.26

11 C.F.R. § 100.27

11 C.F.R. § 100.52

11 C.F.R. § 100.111

11 C.F.R. § 109.20

11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves allegations made by Complainant in connection with a letter purportedly sent by a group called the "Chaldeans for Congressman Joe Knollenberg" that advocated the re-election of Representative Joe Knollenberg. Specifically, the Complaint and its supplement, allege that the letter lacked a proper disclaimer; that the entity sending the letter failed to register and report with the Commission as a political committee and disclose any disbursements made in connection with the mailer, as required by the Act; and may have made an unreported in-kind contribution or independent expenditure by using the mailing list developed and maintained by the "Chaldean News" to distribute the mailer. The complaint also alleged that the Chaldean Chamber Political Action Committee ("Chaldean Chamber PAC") may have been involved in the letter because the return address on the letter is the address of the PAC.

As discussed further below, the information provided in response to the Complaint shows that the letter was actually created, disseminated and paid for by Martin Manna, the treasurer of the Chaldean Chamber PAC, but that he acted in his individual capacity. It appears that the letter was a public communication that contained express advocacy of a federal candidate, but did not include a disclaimer as required by the Act. In addition, the available information suggests that the letter was coordinated with Representative Knollenberg and a committee staff person and thus may constitute an in-kind contribution from Manna to the Knollenberg for Congress Committee ("Knollenberg Committee"). Because Manna was the source of and paid the costs of the letter, we recommend that the Commission find no reason to believe that the Chaldean Chamber Political Action Committee and its connected organization, the Chaldean-American Chamber of Commerce violated any provision of the Act or the Commission's regulations in

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1 connection with the allegations in this matter. We further recommend that, due to the *de minimis*
2 nature of the amount in violation, the Commission exercise its prosecutorial discretion and
3 dismiss this matter as to Martin Manna and the Knollenberg Committee.

4 **II. FACTUAL BACKGROUND**

5 On or about October 28, 2008, a letter titled "Chaldeans for Congressman Joe
6 Knollenberg" was sent to 1,999 households in Michigan's 9th Congressional District. The letter
7 praises the accomplishments of Representative Knollenberg, the incumbent candidate in the 2008
8 general election, and concludes with the statement "[p]lease join us in casting your ballot for
9 Congressman Joe Knollenberg on Tuesday, November 4th." Complaint at Attachment 1. The
10 letter lists the names of eighteen individuals who apparently support the message, and an address
11 appears at the bottom of the letter. The return address on the envelope containing the letter
12 shows the name "Chaldeans for Knollenberg" and has the same address that appears at the
13 bottom of the letter.

14 The original complaint alleges that the letter is a public communication that "clearly
15 advocates for the election of a candidate for federal office," but it is missing the required
16 authorization statement indicating whether a candidate or candidate's committee authorized the
17 communication. Complaint at 1; see 2 U.S.C. § 441d(a); 11 C.F.R. §§ 100.26, 101.27, and
18 110.11. In addition, the complaint appears to raise doubts as to whether the letter was actually
19 paid for by "Chaldeans for Congressman Joe Knollenberg," noting that the address listed for the

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1 organization on the letter is the same address as the Chaldean Chamber PAC.¹ Martin Manna
2 serves as the treasurer of the Chaldean Chamber PAC. The complaint then infers, based on the
3 number of likely recipients, that the letter exceeded the \$1,000 reporting threshold, and asserts
4 that neither "Chaldeans for Congressman Joe Knollenberg" nor the Chaldean Chamber PAC is
5 registered and reporting with the Commission. 2 U.S.C. §§ 433 and 434(b). Further,
6 Complainant submitted a supplement to the complaint which alleges that the respondents may
7 have made an unreported in-kind contribution or independent expenditures in connection with the
8 letter by using a mailing list developed and maintained by the "Chaldean News" to distribute the
9 letter. 2 U.S.C. § 434(b); 11 C.F.R. §§ 100.52 and 100.111. In the supplement, Complainant
10 states that the letter was addressed to her using her maiden name (Nadira Daiza). However,
11 Complainant explains that she has not used that name in 35 years except to subscribe to a
12 publication called the Chaldean News and that the Chaldean News is the only mailing she has
13 received under her maiden name. Complainant further states that the Chaldean News shares the
14 same address as the Chaldean Chamber PAC and the return address listed on the Knollenberg
15 mailer. Thus, the complainant alleges that the respondents' use of the Chaldean News mailing
16 list results in a contribution or expenditure.

17 In a joint response to the Complaint, the Chaldean Chamber PAC and its connected
18 organization, the Chaldean-American Chamber of Commerce, explains that the "Chaldeans for
19 Congressman Joe Knollenberg" is not a real organization, but rather it is an "expression of

¹ The Chaldean Chamber Political Action is registered as a state political committee in Michigan, but is not registered and reporting with the Commission. See http://www.chaldeanchamber.com/joomla/index.php?option=com_content&task=view&id=22&Itemid=41 (last visited June 27, 2009). The complaint refers to the Chaldean Chamber Political Action Committee as the Chaldean Chamber of Commerce Political Action Committee, presumably as a result of a simple error. We will refer to the PAC as the "Chaldean Chamber PAC" throughout this report.

1 solidarity" by persons supporting the candidate. Chaldean Response at 2. The response averred
2 that the Chaldean Chamber PAC had nothing to do with the letter, and asserted that it was
3 actually Martin Manna, the Chaldean Chamber PAC's treasurer, who prepared and paid for the
4 letter, but that he did so in his individual capacity, and not on behalf of the Chaldean-American
5 Chamber of Commerce or its PAC. See Chaldean Response at 3.

6 Although Manna had received notification of the complaint in his official capacity as
7 treasurer of the PAC upon the Commission's receipt of the complaint, after reviewing the
8 information in the Chaldean Response, we notified Manna in his individual capacity of the
9 allegations and informed him that we obtained information that he was the sole source of the
10 mailer, and invited him to submit any factual or legal materials relevant to the allegations. In
11 response, Manna submitted more detailed information concerning the mailer, acknowledging that
12 he paid approximately \$740 of his own funds (\$630 in stamps, \$40 in paper and \$70 in
13 envelopes) to mail the letter, which was sent to approximately 1,500 households with Chaldean-
14 American members. Manna Response at 4. The response also indicated that Manna used a
15 variety of sources to obtain names for the mailing list for the letter, including publicly available
16 directories from various Chaldean organizations that are free of charge and two membership lists
17 from the Chaldean News and the Chaldean American Chamber of Commerce which are only
18 available to members but are free of charge. *Id.* at 2.

19 Finally, the response stated that Manna discussed the letter and its contents with
20 Representative Knollenberg and Bryce Sandler, a campaign staff member. *Id.* at 3. Manna
21 asserts that he contacted the candidate on several occasions and "specifically advised" him of the
22 letter and its contents, and the candidate "orally approved the letter." *Id.* Manna contends that

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1 because he was sending such a letter for the first time, he wanted to do it properly and consulted
2 with Bryce Sandler, a person who was identified as the Committee's "point" and "liaison" person
3 and "a key campaign committee member of the candidate." *Id.* at 4. Manna reportedly called
4 Sandler on at least three occasions, advised him of the contents of the letter, and asked whether
5 the letter needed a disclaimer and what he had to do to avoid problems. *Id.* Sandler told Manna
6 "there would be no problem." *Id.* The response stresses that Manna had a very clear recollection
7 of the discussion with Sandler, that the letter was coordinated with both the candidate and the
8 candidate's committee, and that the letter would not have been sent without this coordination.
9 *Id.* Manna contends that "[t]here was no 'specific endorsement'" but the candidate clearly
10 supported the letter and its contents. *Id.* Finally, on October 28, 2008, Manna advised the
11 Committee through an email to Sandler that the letter was being mailed and provided an estimate
12 of the cost for the letter. *Id.* The response included a copy of the email which states, in relevant
13 part, "This hit just about every Chaldean household in the district. Just so you know, I love Joe
14 dearly and personally paid for the letter/postage (about \$2,000). Should hit homes tomorrow."²
15 *Id.* at Attachment 1.

16 Bryce Sandler filed a response to the complaint on behalf of the Knollenberg for
17 Congress Committee ("the Knollenberg Committee") indicating that the letter did not come from
18 Knollenberg or the Knollenberg Committee, was not paid for by Knollenberg or the Knollenberg
19 Committee and was not authorized by Knollenberg or the Knollenberg Committee.

² The \$2,000 was apparently Manna's initial estimate of the costs of the letter, costs which he subsequently itemized and aggregated at only \$740. The costs of the letter were not reported as in-kind contributions by the Knollenberg Committee. However, the Knollenberg Committee disclosure reports reflect that Manna made a \$1,175 in-kind contribution, dated October 25, 2008, for "advertising," apparently related to a Knollenberg advertisement published in a Chaldean newspaper and funded by Manna, and a \$500 direct contribution, dated October 29, 2008.

III. ANALYSIS

A. Alleged Failure to Register as a Political Committee

The complaint alleges that the entity responsible for the letter violated the Act by failing to register and report as a federal political committee, noting that neither "Chaldeans for Knollenberg" or the Chaldean Chamber PAC, are registered and reporting with the Commission. Complaint at 2. See 2 U.S.C. §§ 433 and 434(b). The Act defines a "political committee" as any committee, club, association, or other group of persons that receives "contributions" or makes "expenditures" for the purpose of influencing a federal election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). To address overbreadth concerns, the Supreme Court has held that only organizations whose major purpose is campaign activity can potentially qualify as political committees under the Act. See, e.g., Buckley v. Valeo, 424 U.S. 1, 79 (1976); FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 262 (1986).

As discussed above, the available information indicates that, although the letter lists eighteen individuals who apparently supported the message in the letter, it was the product of an individual, Martin Manna, who created, disseminated and paid for it, not the product of a group called "Chaldeans for Congressman Joe Knollenberg." In addition, at \$740, the costs of the letter fall below the \$1,000 threshold of 2 U.S.C. § 431(4)(A). Based on the above, we recommended that the Commission find no reason to believe that the Chaldean Chamber Political Action Committee and Martin Manna, in his official capacity as treasurer, or its connected organization, the Chaldean American Chamber of Commerce, violated the Federal Election Campaign Act of 1971, as amended, in connection with the allegations in this matter.

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B. Alleged Failure to Include a Disclaimer in a Communication

The complaint alleges that "the letter does not contain any disclaimer notice on either the letter or envelope," although it is a public communication which "must 'clearly state the name and permanent street address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.'" Complaint at 1. The complaint argues that the result is that, "it is impossible to conclude whether the letter was paid for and authorized by Congressman Jac Knollenburg, committees whom he is affiliated with, or by independent committees." *Id.*

The Act requires a disclaimer to appear on any public communication by any person that expressly advocates the election or defeat of a clearly identified candidate or solicits funds in connection with a Federal election. 2 U.S.C. § 441d. The disclaimer notice must state, *inter alia*, who paid for the communication and whether it was authorized by a candidate, an authorized political committee of a candidate, or its agents. *Id.* A public communication includes a mass mailing (more than 500 substantially similar mailings within 30 days). *See* 2 U.S.C. § 441d(a); 11 C.F.R. §§ 100.26, 100.27, and 110.11. Express advocacy is defined as including any communication that uses phrases such as "Vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," and "Smith for Congress." 11 C.F.R. § 100.22(a).

The available information indicates that the letter at issue here required a disclaimer stating who paid for the communication and whether it was authorized by a candidate or a candidate's committee or their agents. First, Manna stated that the letter was sent to 1500 individuals, and therefore, it was a mass mailing. 2 U.S.C. § 441d(a); 11 C.F.R. §§ 100.26,

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1 100.27, and 110.11. Second, the letter expressly advocates the re-election of Joe Knollenberg.
2 The letter praises the accomplishments of Representative Knollenberg, a Federal candidate, and
3 closes with the statement "[p]lease join us in casting your ballot for Congressman Joe
4 Knollenberg on Tuesday, November 4th." This language clearly falls within the definition of
5 express advocacy. 11 C.F.R. § 100.22(a)

6 Although the Act required the letter to contain a disclaimer, it failed to do so. The name
7 "Chaldeans for Congressman Joe Knollenberg" appears at the top of the letter, but it does not
8 state whether the group paid for letter, and available information establishes not only that the
9 group did not pay for the letter, but that the group does not even exist. Nor was the letter paid for
10 by the eighteen individuals whose names appear at the bottom of the letter. Instead, it appears
11 that the letter was created, disseminated and paid for by only one of the eighteen individuals,
12 Martin Manna. Nor does the letter contain a statement indicating whether it was authorized by a
13 candidate, a candidate's committee, or an agent of a candidate. As a result, Manna violated
14 2 U.S.C. § 441d by not including a proper disclaimer on the letter. However, due to the
15 *de minimis* nature of the activity at issue we do not think it is a prudent use of the Commission's
16 limited resources to pursue this violation. Accordingly, we recommended that the exercise its
17 prosecutorial discretion to dismiss the disclaimer allegation and issue a cautionary letter
18 recommending that Mr. Manna take steps to ensure that appropriate disclaimers are included in
19 future communications expressly advocating the election or defeat of a clearly identified
20 candidate, pursuant to 2 U.S.C. § 441d and 11 C.F.R. § 110.11. See *Heckler v. Chaney*, 270 U.S.
21 821 (1985).

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C. Alleged Reporting Violation

The supplement to the complaint alleges that the respondents may have made, but failed to report, an in-kind contribution or independent expenditure in connection with the letter by using a mailing list developed and maintained by the "Chaldean News" to distribute the letter, explaining that Martin Manna and another individual who signed the Chaldeans for Congressman Joe Knollenberg letter are managers of the publication. 2 U.S.C. § 434(b); 11 C.F.R. §§ 100.52 and 100.111.

The Act defines the term "contribution" 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); 11 C.F.R. § 100.52(a). The term "anything of value" includes membership lists and mailing lists. 11 C.F.R. § 100.52(d)(1). An expenditure made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees or their agents" constitutes an in-kind contribution to the candidate. 2 U.S.C. § 441a(a)(7)(B)(i). A communication is coordinated with a candidate, a candidate's authorized committee, or agent of either when the communication satisfies the three-pronged test set forth in 11 C.F.R. § 109.21(a): (1) the communication is paid for by a person other than a candidate, the candidate committee, or an agent of either; (2) the communication satisfies at least one of the content standards set forth in 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of the conduct standards set forth in 11 C.F.R. § 109.21(d).

Manna acknowledges paying for the letter. Manna Response at 4. Therefore, the payment prong of 11 C.F.R. § 109.21(a)(1) is satisfied. The content prong is also satisfied

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1 because the letter is a public communication that contains express advocacy. See 11 C.F.R.
2 § 109.21(c)(3) and discussion *supra* at 8. The conduct prong of the coordinated communications
3 regulations is satisfied if, among other things, the communication is created, produced, or
4 distributed at the suggestion of a person paying for the communication and the candidate,
5 authorized committee, or agent thereof, assents to the suggestion; if the candidate, authorized
6 committee, or agent is "materially involved in decisions" regarding the content of the
7 communication, intended audience, means or mode of the communication, specific media outlet
8 used, timing or frequency of the communication, or size or prominence of a printed
9 communication or duration of a communications by means of a broadcast, cable or satellite; or if
10 a communication is created, produced or distributed after one or more substantial discussions
11 between the person paying for the communication and the candidate, candidate's committee, or
12 agent thereof. 11 C.F.R. § 109.21(d). Based on the available information regarding the
13 purported conversations between Manna and the Knollenberg Committee, it appears that the
14 letter may have been created, produced, or distributed at the suggestion of Manna and that
15 Knollenberg assented to the letter. It is also possible that Knollenberg and/or Sandler may have
16 been materially involved in decisions regarding the letter or that the letter was created, produced,
17 or distributed after one or more substantial discussions between Manna and Knollenberg and
18 Manna and Sandler. See discussion *supra* at 5-6. However, in the Committee's response to the
19 complaint, Sandler stated that the letter did not come from the Committee and/or candidate and
20 that neither the candidate nor the Committee paid for or authorized the letter. See Sandler
21 Response. The letter makes no mention of any discussions with Manna regarding the letter or
22 any other involvement.

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1 An in-kind contribution is treated as both a "contribution" to and an "expenditure" by the
2 political committee receiving the in-kind contribution. 11 C.F.R §§ 100.111(e); 104.13(a)(2).

3 An authorized committee of a candidate must report and itemize all contributions received from
4 individuals that aggregate in excess of \$200 per election cycle. 2 U.S.C. § 434(b); 11 C.F.R.
5 § 104.3(a)(4). An in-kind contribution must also be reported as an expenditure on the same report.
6 11 C.F.R. §§ 104.3(b) and 104.13(a)(2).

7 It appears that the disbursements made in connection with the letter, including any value
8 associated with the use of a pre-existing mailing list, should have been reported either as an
9 independent expenditure, or, if coordinated with Knollenberg, as both a contribution to and an
10 expenditure by the Knollenberg Committee. The available information provided some evidence
11 that the communication was coordinated with Knollenberg. Nevertheless, even if the
12 expenditure was coordinated, the value of any mailing lists used to distribute the letter is
13 unknown, is likely to be minimal, and would be difficult to ascertain because the lists are not
14 commercially available. For these reasons, we do not think it is a prudent use of the
15 Commission's limited resources to engage in an investigation to determine the value of the lists
16 and whether the letter was in fact coordinated with the Knollenberg Committee. Given the lack
17 of information and the minimal nature of the violation, we recommend that the exercise its
18 prosecutorial discretion to dismiss the allegation of the failure to report the disbursements made
19 in connection with the letter, and close the file. See *Heckler v. Chaney*, 270 U.S. 821 (1985).

20 **IV. RECOMMENDATIONS**

- 21 1. Find no reason to believe that Chaldean-American Chamber of Commerce
22 violated the Federal Election Campaign Act of 1971, as amended, in connection
23 with the allegations in this matter.
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2. Find no reason to believe that Chaldean Chamber Political Action Committee and Martin Manna, in his official capacity as treasurer, violated the Federal Election Campaign Act of 1971, as amended, in connection with the allegations in this matter.
3. Dismiss as a matter of prosecutorial discretion the allegations that Martin Manna, in his individual capacity, violated the Act and send a cautionary letter.
4. Dismiss as a matter of prosecutorial discretion the allegations that Knollenberg for Congress Committee and Debra Kling, in her official capacity as treasurer, violated the Act.
5. Approve the attached Factual and Legal Analyses.
6. Approve the appropriate letters.
7. Close the file.

Thomasenia P. Duncan
General Counsel

7-22-09
Date

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