



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Bruce Hughes
Taxpayer Network
660 W. First Street
Tustin, CA 92780

JUN 30 2011

RE: MUR 6413

Dear Mr. Hughes:

On November 4, 2010, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on June 22, 2011, found that there is reason to believe Taxpayer Network violated 2 U.S.C. §§ 434(f) and 441d, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Peter Reynolds, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,


Cynthia L. Bauerly
Chair

Enclosures
Designation of Counsel Form
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 2046

**Statement of Designation of Counsel
(Respondent/Witness)**

MUR: _____

Name of Counsel: _____

Firm:

Telephone: () _____ **Fax:** () _____

The above named individual 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.

Date

Signature

Name (Print): _____

Address:

Telephone: Home () _____
Business () _____

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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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Taxpayer Network

MUR: 6413

I. INTRODUCTION

This matter was generated by a complaint filed by California Young Democrats and Alisso Ko, President. See 2 U.S.C. § 437(g)(a)(1). Taxpayer Network did not respond to the complaint. The available information indicates there is reason to believe that Taxpayer Network, a 501(c)(4) non-profit corporation, violated 2 U.S.C. §§ 434(f) and 441d by failing to properly report, and include complete disclaimers on, electioneering communications.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Taxpayer Network's website indicates that it is a section 501(c)(4) non-profit corporation. See <http://www.taxpayernetwork.com>. It is not registered with the Commission, nor has it filed any reports with the Commission.

The Taxpayer Network website states that "its goal is to educate the public about the policies and policy-makers involved in issues of taxation, spending and regulation of the economy." See *id.* On a monthly basis from January to September 2010, Taxpayer Network purports to have recognized a single member of Congress as a "Taxpayer's Champion" for his or her work to limit taxes and reduce waste in Washington. *Id.* The Taxpayer Network website further states that it "uses television, radio, direct mail and the Internet to communicate its messages." *Id.* The website currently contains a single television ad which criticizes the voting record of California Senator Barbara Boxer, a candidate for U.S. Senate in 2010. *Id.* The

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website does not appear to have been updated since November 2010. As noted above, Taxpayer Network did not respond to the complaint.

Complainant alleges that one week before the 2010 general election, Taxpayer Network aired two television advertisements "across California" that refer to and include photographs of Senator Boxer. Complaint at 1. See <http://www.youtube.com/watch?v=Pot25ZJAjo4> and <http://www.youtube.com/watch?v=Pde4ljxbTCg>. The two Taxpayer Network ads, which are very similar, sharply criticize Boxer's voting record, but do not make any clear reference to, or expressly advocate her defeat in, the upcoming election.

Complainant contends that if Taxpayer Network spent \$10,000 for the communications, the Boxer Ads qualify as electioneering communications and, therefore, should have been reported to the Commission pursuant to 2 U.S.C. § 437g(a)(1). Complaint at 1-2; see also 11 C.F.R. § 100.29(b)(3) and (b)(5). Further, Complainant contends that while the Boxer Ads contained a printed disclaimer indicating that Taxpayer Network paid for the communications, the disclaimer did not include a street address, telephone number, or website address. Further, the Boxer Ads do not contain an audio or spoken message as to the person responsible for the content of the advertisements. *Id.* at 2-3. Thus, the complaint alleges that the advertisements do not satisfy the disclaimer requirements at 2 U.S.C. § 441d.

B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that every person who makes aggregate disbursements of \$10,000 or more to produce and air "electioneering communications" file disclosure reports with the Commission. 2 U.S.C. § 434(f). The Act defines an "electioneering communication" as a broadcast, cable, or satellite communication that refers to a clearly identified federal candidate, is publicly distributed within

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sixty days before a general election or thirty days before a primary election, and is targeted to the relevant electorate. 2 U.S.C. § 434(f)(3)(A)(i); 11 C.F.R. § 100.29. In *Citizens United v. Federal Election Commission*, the Supreme Court struck down as unconstitutional the Act's prohibition on corporate financing of electioneering communications at 2 U.S.C. § 441b(b)(2), see 130 S.Ct. 876, 913 (2010), but upheld the Act's disclosure and disclaimer provisions applicable to electioneering communications at 2 U.S.C. §§ 434(f) and 441d, and 11 C.F.R. §§ 104.26 and 110.11. See *id.* at 915-916. Thus, persons making electioneering communications that cost, in the aggregate, more than \$10,000 must disclose such electioneering communications in reports filed with the Commission.

The available information indicates that the Boxer Ads, which included references to and photographs of Senator Boxer, were publicly distributed in the state of California, which was the relevant electorate for Senator Boxer, within a week of the general election. Complaint at 1-2. While the complaint lacks specific information regarding the cost of the Taxpayer Network communications, it alleges that the cost of running two different communications "for some time" on television stations across California would result in disbursements of the requisite \$10,000 threshold. See Complaint at 2-4. This allegation is un rebutted. Given the rapidly rising cost of television advertising in California prior to the 2010 election, there is a credible basis for the assertion that the Taxpayer Network may have spent more than the \$10,000 electioneering communication threshold for the Boxer Ads. See Meg James, *TV Still the Favared Medium for Political Ad Spending*, Los Angeles Times, October 29, 2010, <http://articles.latimes.com/2010/oct/29/business/la-fi-ct-political-ads-20101029>.

Accordingly, there is reason to believe that Taxpayer Network violated 2 U.S.C. § 434(f) by failing to report electioneering communications.

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The Act also requires that when any person who is not a candidate or authorized political committee makes a disbursement for an electioneering communication, such communication include a disclaimer stating who paid for the message, stating that it was not authorized by any candidate or candidate's committee, and listing the permanent street address, telephone number, or World Wide Web address of the person who paid for the communication. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(b)(3). Further, for television ads, the disclaimer must include an audio statement as to who or what group is responsible for the content of the advertisement. 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(c)(4)(i)-(ii).

While Taxpayer Network is identified in a written disclaimer that appears on the screen ("Paid for by Taxpayer Network"), that disclaimer does not reveal its street address, telephone number, or World Wide Web address. Further, the communications do not state that they were not authorized by any candidate or candidate's committee, do not list the required contact information of the person paying for the communications as required by 11 C.F.R. § 110.11(b)(3), and do not contain an audio statement regarding the person responsible for the content of the advertisements as required by 11 C.F.R. § 110.11(c)(4). *See, e.g.,* MUR 5889 (Republicans for Trauner) (Commission found reason to believe that § 441d was violated where a radio ad did not contain spoken message identifying responsible party). Thus, the advertisements do not fully comply with the disclaimer requirements for electioneering communications. Accordingly, there is reason to believe that Taxpayer Network violated 2 U.S.C. § 441d by failing to include sufficient disclaimers on its television advertisements.