



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA ELECTRONIC AND CERTIFIED MAIL

Paul E. Sullivan, Esq.
Sullivan & Associates, PLLC
601 Pennsylvania Ave., NW
Suite 909
Washington, DC 20004

JUL 01 2013

RE: MUR 6413
Taxpayer Network

Dear Mr. Sullivan:

Based on a complaint filed with the Federal Election Commission ("Commission") on October 28, 2010, the Commission, on June 22, 2011, found that there was reason to believe that your client, Taxpayer Network, violated 2 U.S.C. §§ 434(f) and 441d and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of receiving this notice, you may file with the Secretary of the Commission a brief stating your position on the issues and replying to the brief of the General Counsel. (If possible, ten copies of the brief should be filed with the Commission Secretary and an additional three copies should be forwarded to the Office of the General Counsel.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days before the due date and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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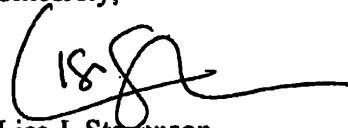
You may also request an oral hearing before the Commission. *See* Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. 64,919 (Nov. 19, 2007) and Amendment of Agency Procedures for Probable Cause Hearings, 74 Fed. Reg. 55,443 (Oct. 28, 2009). Hearings are voluntary, and no adverse inference will be drawn by the Commission if you do not request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted.

In addition, you may request the disclosure of relevant documents from the Office of the General Counsel's investigation, if any such documents are not already in your possession. *See* Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34,986 (June 15, 2011).

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90, days to settle this matter through a conciliation agreement.

Should you have any questions, please contact Margaret R. Howell, the attorney assigned to this matter, at (202) 694-1574.

Sincerely,

A handwritten signature in black ink, appearing to read "LJ Stevenson", with a long horizontal line extending to the right.

Lisa J. Stevenson
Deputy General Counsel for Law

Enclosure
Brief

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the matter of)
4) MUR 6413
5 Taxpayer Network)
6)
7

8 **GENERAL COUNSEL'S BRIEF**

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10 **I. STATEMENT OF THE CASE**

11 This matter arose from a Complaint alleging that Taxpayer Network ("Respondent")
12 violated the Federal Election Campaign Act of 1971, as amended (the "Act") by failing to
13 properly report and include complete disclaimers on two electioneering communications. In the
14 weeks leading up to the 2010 general election, Respondent aired two television advertisements
15 "across California" identifying California Senator and then-candidate Barbara Boxer ("Boxer
16 Ads"). Compl. at 1. These advertisements were substantially similar: both sharply criticized
17 Boxer's voting record on taxes and instructed viewers to "[c]all Barbara Boxer" and "[t]ell her to
18 vote for veterans' rights, not illegal aliens."¹ Both also included a written disclaimer stating
19 "Paid for by Taxpayer Network" at the end of each communication. Compl. at 2. Although the
20 Boxer Ads criticized Boxer's voting record, they did not make any clear reference to, or
21 advocate her defeat in, the upcoming election.

22 The Federal Election Commission ("Commission") found reason to believe that Taxpayer
23 Network violated 2 U.S.C. §§ 434(f) and 441d by failing to report and include complete
24 disclaimers on the Boxer Ads. See Factual & Legal Analysis ("F&LA"). The Commission also
25 authorized an investigation to determine the amount of money spent to air these communications.
26 In response to a discovery request, Taxpayer Network stated that it spent \$192,185 on the Boxer

¹ See "Work," <http://www.youtube.com/watch?v=Pot25ZJAjo4>;
"Record," <http://www.youtube.com/watch?v=Pdc4ljxbTCg>.

1 Ads. See Letter from Paul Sullivan, Counsel, Taxpayer Network, to Mark Shonkwiler, Ass't.
2 Gen. Counsel, FEC (Oct. 25, 2011) ("Sullivan Letter").

3 Based on the Complaint and the results of the investigation, the facts of which are
4 undisputed, the General Counsel is prepared to recommend that the Commission find probable
5 cause to believe that Taxpayer Network violated 2 U.S.C. §§ 434(f) and 441d.

6 II. LEGAL ANALYSIS

7 Every person who makes aggregate disbursements of \$10,000 or more to produce and air
8 electioneering communications must file disclosure reports with the Commission within 24 hours
9 of making the communication. 2 U.S.C. § 434(f). The Act defines "electioneering
10 communication" as a broadcast, cable, or satellite communication that refers to a clearly
11 identified federal candidate, is publicly distributed within 60 days before a general election or 30
12 days before a primary election, and is targeted to the relevant electorate. 2 U.S.C.
13 § 434(f)(3)(A); 11 C.F.R. § 100.29.

14 When any person who is not a candidate or authorized political committee makes a
15 disbursement for an electioneering communication, such communication must include a
16 disclaimer stating the name and permanent street address, telephone number or World Wide Web
17 address of the person who paid for the communication, and state that the communication was not
18 authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a); 11 C.F.R.
19 § 110.11(b)(3). Further, disclaimers on television ads must include an audio statement as to who
20 or what group is responsible for the content of the advertisement. 2 U.S.C. § 441d(d)(2);
21 11 C.F.R. § 110.11(c)(4)(i)-(ii).

22 The Supreme Court has expressly affirmed the validity of disclosure and disclaimer
23 requirements for all electioneering communications, including those that are not the functional

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1 equivalent of express advocacy. *Citizens United v. FEC*, 558 U.S. 310, 366-71 (2010). The
2 Court upheld the disclosure requirements as applied not only to *Hillary: The Movie*, which
3 contained the functional equivalent of express advocacy, but also to three advertisements for the
4 movie that did not. *Id.* at 366-69. The Court found that, although the advertisements were
5 commercial, they fell within the definition of "electioneering communication," and therefore
6 required disclaimers under 2 U.S.C. § 441d. *Id.* at 368. The Court then directly addressed and
7 explicitly rejected the argument that the disclosure requirements at 2 U.S.C. § 434(f) apply only
8 to the functional equivalent of express advocacy:

9 As a final point, *Citizens United* claims that, in any event, the disclosure
10 requirements in § 201 must be confined to speech that is the functional
11 equivalent of express advocacy. The principal opinion in *WRTL* limited
12 2 U.S.C. § 441b's restrictions on independent expenditures to express
13 advocacy and its functional equivalent. *Citizens United* seeks to import a
14 similar distinction into BCRA's disclosure requirements. We reject this
15 contention.

16 *Id.* at 368-69 (internal citation omitted). Accordingly, the Commission may enforce the
17 provisions of 2 U.S.C. §§ 434(f) and 441d as to electioneering communications regardless of
18 whether such communications contain the functional equivalent of express advocacy.

19 The Boxer Ads, which sharply criticized the Senator's voting record, included references
20 to and photographs of Senator Boxer, who was a candidate for re-election in 2010, and were
21 publicly distributed in California, the relevant electorate, within weeks of the general election.
22 Compl. at 1-2. The Boxer Ads thus constitute electioneering communications. Taxpayer
23 Network represents that it spent \$192,185 to produce and air these ads. *See Sullivan Letter*.
24 Accordingly, as the Boxer Ads exceeded the \$10,000 reporting threshold, Taxpayer Network
25 violated 2 U.S.C. § 434(f) by failing to report the ads to the Commission.

1 Although the Boxer Ads contain the written statement, "Paid for by Taxpayer Network,"
2 they do not include Taxpayer Network's permanent street address, its telephone number or
3 World Wide Web address, a statement that the communication was not authorized by a candidate
4 or candidate's committee, or an audio statement as to who or what group is responsible for the
5 content of the advertisement. Compl. at 2. Accordingly, Taxpayer Network violated 2 U.S.C.
6 § 441d by failing to fully comply with the disclaimer requirements for electioneering
7 communications.

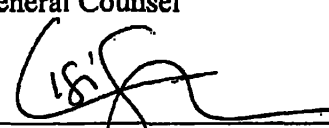
8 **III. CONCLUSION**

9 Based on the foregoing, the Office of the General Counsel is prepared to recommend that
10 the Commission find probable cause to believe that Taxpayer Network violated 2 U.S.C.
11 §§ 434(f) and 441d by failing to report and include complete disclaimers on two electioneering
12 communications.

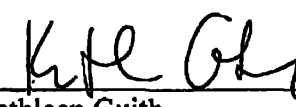
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18 Date

Anthony Herman
General Counsel

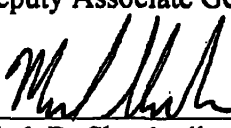
BY:




Lisa J. Stevenson
Deputy General Counsel for Law



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Assistant General Counsel



Margaret R. Howell
Attorney