

**SENSITIVE** **FEDERAL ELECTION COMMISSION**  
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**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR 6590

DATE OF COMPLAINT: June 8, 2012

DATE OF NOTIFICATIONS: June 14, 2012

LAST RESPONSE RECEIVED: Aug. 8, 2012

DATE ACTIVATED: Sept. 4, 2012

**EXPIRATION OF SOL:**

(earliest) May 23, 2017

(latest) May 23, 2017

**COMPLAINANT:**

Mark R. Brown

**RESPONDENTS:**

Columbus Metropolitan Club  
Ohio Democratic Party  
Ohio Republican Party

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 441b  
11 C.F.R. § 100.52  
11 C.F.R. § 100.22  
11 C.F.R. § 110.13  
11 C.F.R. § 114.4(c)(7)(ii)

**INTERNAL REPORTS CHECKED:** None

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

The Columbus Metropolitan Club ("CMC") is a non-profit corporation that regularly organizes speaking engagements. On May 23, 2012, CMC sponsored a moderated discussion (the "Forum") between the chairs of the Ohio Republican Party ("ORP") and Ohio Democratic Party ("ODP") entitled "Presidential Politics in O-H-I-O." During the Forum, the chairs discussed their parties' presidential candidates and positions in response to questions posed by the moderator and the audience. The principal issue in this matter is whether the CMC made,

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1 and the ORP and the ODP accepted, prohibited corporate contributions in violation of 2 U.S.C.  
2 § 441b(a) when the CMC paid the Forum's expenses, provided a video recording of the event to  
3 an Ohio press entity, and posted the video on YouTube. For the reasons set forth below, we  
4 recommend that the Commission exercise its prosecutorial discretion and dismiss the allegations  
5 as to all parties. In our view, further expenditure of Commission resources is not warranted due  
6 to the limited value of any potential contributions.<sup>1</sup>

## 7 II. FACTS

8 CMC is a 501(c)(3) non-profit corporation<sup>2</sup> that organizes 60 to 70 public issue  
9 discussion forums in Columbus, Ohio each year.<sup>3</sup> Its stated mission "is to promote the open  
10 exchange of information and ideas among the residents of Central Ohio by providing a forum for  
11 the discussion of topics of civic and public interest."<sup>4</sup> CMC's Articles provide that "the  
12 corporation shall not participate in, [*sic*] or intervene in (including the publication or distribution  
13 of statements) any political campaign on behalf of any candidate for public office."<sup>5</sup>

14 ORP and ODP are registered with the Commission as state party committees. On  
15 May 23, 2012, the CMC hosted the Forum, featuring Robert T. Bennett and Chris Redfern, the  
16 chairs of the ORP and ODP, respectively.<sup>6</sup> In publicizing the Forum, CMC stated that Bennett

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<sup>1</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985); Statement of Reasons, Cmm'rs Hunter, Weintraub, McGahn, Bauerly, Petersen, and Walther at 3-5, MUR 6459 (Iowa Faith and Freedom Coalition) (dismissal of matter in which no exemption applied due to low potential amount in violation).

<sup>2</sup> See *Certificate of Amendment to Articles of Columbus Metropolitan Club, Inc.*, Art. 6 (Dec. 10, 1976), available at [http://www2.sos.state.oh.us/reports/rwservlet?imgc&Din=E222\\_1147](http://www2.sos.state.oh.us/reports/rwservlet?imgc&Din=E222_1147) ("Certificate of Amendment").

<sup>3</sup> See *Mission*, COLUMBUS METRO. CLUB, <http://www.columbusmetroclub.org/Default.aspx?pageId=49310> (last visited Dec. 4, 2012).

<sup>4</sup> *Id.*

<sup>5</sup> CMC Certificate of Amendment, Art. 6. The Commission has analyzed CMC and its events in two past matters. See MUR 5642 (Soros, *et al.*) (book tour); MUR 6111 (Columbus Metro. Club) (candidate debate).

<sup>6</sup> See Compl. at 1.

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1 and Redfern "would address '[t]he economy, taxes, health care, education, social rights, and  
2 individual freedoms'" as well as questions relating to the importance of Ohio to the national  
3 election scene, how the state party organizations work with national election committees, where  
4 political operatives would focus their efforts, and how the influx of money from Super PACs  
5 might affect the 2012 election.<sup>7</sup> CMC further stated: "It all comes down to choosing an R or a D  
6 and who better to discuss the process than State Political Party Chairmen Chris Redfern and Bob  
7 Bornett."<sup>8</sup> The general public was invited purchase a ticket to attend the Forum.<sup>9</sup> According to  
8 the CMC, in its unsworn response, 139 people attended the Forum, generating revenue from  
9 ticket sales of \$2,740, which funded the costs of the event — including CMC's payment of  
10 \$2,080 for the venue and for the costs to video record the event.<sup>10</sup>

11 The Complaint alleges that the statements that Bennett and Redfern made at the event,  
12 either praising their own party's candidate or criticizing the opposing party's candidate,  
13 constituted express advocacy and were "campaign-related speech" that was sponsored,  
14 authorized, organized, or otherwise allowed by CMC.<sup>11</sup> The Complaint focused on four  
15 statements that Bennett reportedly made at the event:

- 16 • "I think President Obama is bringing the (Ohio Republican) party together."  
17  
18 • The "Obama-directed bailout of General Motors and Chrysler was 'a bad thing.'"

<sup>7</sup> See *id.* at 3-4 (quoting the CMC website announcement of the event, a copy of which was included with the Complaint as Attachment B) and 6-7 (quoting CMC's YouTube description of the event, a copy of which was included as Attachment F). The video that CMC posted of the Forum shows that the moderator did not ask, and the speakers did not address, these latter questions. See *Presidential Politics in O-H-I-O*, COLUMBUS METRO. CLUB (May 23, 2012) (videotape of the event), available at <http://www.youtube.com/watch?v=IqYbnd3wWIM>

<sup>8</sup> See Compl. at 4 (quoting Attachment B).

<sup>9</sup> See *id.* at 1.

<sup>10</sup> CMC Resp. at 10-11.

<sup>11</sup> Compl. at 10-11.

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- He "would 'be very surprised if we have a gender gap,' with more women voting for Obama than Romney."
- When asked whether he was pleased with Romney as the Republican nominee, he responded, "Absolutely" and further stated: "I think . . . he will appeal to not only the social conservatives and the fiscal conservatives and the Tea Party people within the party, but he'll be able to reach out and attract a number of independents."<sup>12</sup>

And the Complaint highlighted two statements reportedly made by Redfern:

- He was "happy with Barack Obama as a president and a candidate."
- "The president's leadership and the leadership of those who joined him in the Congress have meant that more Ohioans are working today than there were in January 2009 when his hand came off the Bible. There are more Ohioans today covered by health care when [*sic*] there were when the president's hand came off the Bible. And I think we should all celebrate that."<sup>13</sup>

The Complaint contends that the Forum and video, which CMC subsequently provided to a television news station and posted on YouTube, constituted things of value that CMC contributed to the ORP and ODP, as well as their presumptive presidential candidates, which the ORP and ODP knowingly accepted.<sup>14</sup>

According to the CMC, the Federal Election Campaign Act of 1971, as amended, (the "Act") and Commission regulations "allow both non-profit and for-profit corporations to engage in certain types of political speech in cooperation with party officials[.]"<sup>15</sup> CMC contends that its activities in connection with staging the Forum do not constitute a "contribution" or an

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<sup>12</sup> *Id.* at 4-5.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 2. The Complaint asserts, without support, that Bennett and Redfern were, respectively, agents of Romney and Obama, *id.* at 1, 9, but does not allege that Romney and Obama violated the Act. We are not aware of any basis, other than in the Complaint's speculative claim, to conclude that Bennett and Redfern were acting as agents of Romney and Obama at the Forum. Accordingly, those candidates and their committees were not named as respondents, and we make no recommendations concerning them.

<sup>15</sup> CMC Resp. at 7.

1 “expenditure” because CMC invited Bennett and Redfern to provide context and analysis of the  
2 2012 presidential electoral landscape; its promotional materials for the event did not name or  
3 contain the images of either presidential candidate or expressly advocate their election or defeat;  
4 it advertised the forum as “a glimpse [of] what to expect in Ohio this upcoming presidential  
5 election season”; it did not endorse a candidate or provide a platform for party officials to  
6 expressly advocate the election of their parties’ candidates; it did not endorse the speakers’  
7 views; it funded the event through ticket sales; and neither ORP nor ODP officials engaged in  
8 express advocacy as defined by 11 C.F.R. § 100.22.<sup>16</sup> Finally, CMC claims that it did not violate  
9 the Act or Commission regulations by providing video of the event to the Ohio News Network  
10 (“ONN”) because ONN’s broadcasts are covered by the press exemption.<sup>17</sup>

11 ODP and ORP both deny that they received in-kind contributions by virtue of their  
12 chairs’ participation in the Forum, and deny legal responsibility for any possible violation by  
13 CMC. ORP contends that the CMC event satisfied the exemption to the definition of  
14 contribution at 11 C.F.R. § 114.4(c)(7)(ii) for events sponsored by non-profit educational  
15 institutions.<sup>18</sup> ORP also asserts that “[p]roviding a forum for any person to make a statement  
16 about a federal candidate does not constitute a ‘contribution’ to the speaker.”<sup>19</sup> The ODP  
17 acknowledges that the Forum was not an exempt candidate debate, but contends that the CMC  
18 event satisfied the exemption in the definition of expenditure at 2 U.S.C. § 431(9)(B)(ii) for  
19 educational activity designed to encourage individuals to vote or register to vote.<sup>20</sup> ODP also

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<sup>16</sup> *Id.* at 9-12.

<sup>17</sup> *Id.* at 12-16.

<sup>18</sup> ORP Resp. at 3-4.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> ODP Resp. at 1.

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1 asserts that its chair, Redfern, simply "provided his personal views in response to questions" and  
2 did not solicit or accept contributions.<sup>21</sup>

3 **III. ANALYSIS**

4 The Act prohibits a corporation, including a non-profit corporation, from making a  
5 contribution to a political party.<sup>22</sup> A contribution includes "anything of value made by any  
6 person for the purpose of influencing any election for Federal office."<sup>23</sup> "[T]he term anything of  
7 value includes all in-kind contributions. Unless specifically exempted . . . the provision of any  
8 goods or services without charge or at a charge that is less than the usual and normal charge for  
9 such goods and services is a contribution."<sup>24</sup> This includes the provision of facilities and  
10 advertising services.<sup>25</sup>

11 The Complaint alleges that CMC's payments to promote the Forum, lease the facility at  
12 which it was held, and produce and distribute a film of the event are in-kind contributions to  
13 ORP and ODP. To the extent that CMC's payments for the Forum may constitute contributions  
14 to ODP and ORP, the Respondents assert that the Forum is exempted from the ban on corporate  
15 contributions by Commission regulations covering certain corporate payments for debates and  
16 party representative appearances.<sup>26</sup> Although similar in certain respects to such exempt events,  
17 the Forum does not appear to qualify for either exemption.

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<sup>21</sup> *Id.* at 1-3.

<sup>22</sup> 2 U.S.C. § 441b(a), (b)(2).

<sup>23</sup> 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>24</sup> 11 C.F.R. § 100.52(d)(1).

<sup>25</sup> *Id.*

<sup>26</sup> Compl. at 1, 9-10; CMC Resp. at 4-5; ORP Resp. at 3-4; ODP Resp. at 2. *See also* 11 C.F.R. § 110.13 (candidate debates) and 11 C.F.R. § 114.4(c)(7)(ii) (party representative appearances).

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1 First, the Commission's regulations exempt from the definitions of contributions and  
2 expenditures those funds received and expended by certain non-profit organizations to defray  
3 costs incurred in staging nonpartisan candidate debates.<sup>27</sup> In this case, the debate participants  
4 were not candidates. More fundamentally, the debate regulations prohibit the exclusion of other  
5 potential participants — such as representatives of other political party committees — unless  
6 premised on pre-established, objective criteria. There is no evidence that such criteria were  
7 applied in this matter.<sup>28</sup>

8 Second, the Commission's regulations exempt payments by non-profit educational  
9 institutions to sponsor appearances by "representatives of political parties at which such  
10 individuals address or meet . . . the general public"<sup>29</sup> at no charge or less than the usual and  
11 normal charge to the speakers if, among other requirements, the event is held on the institution's  
12 premises and the institution does not favor any one candidate or political party over any other in  
13 allowing the appearances.<sup>30</sup> Even assuming that CMC is a "non-profit educational institution,"  
14 the Forum satisfied neither of those requirements. The Forum did not take place on CMC's  
15 premises — rather, CMC paid \$2,080 to lease space for the event from the Athletic Club of

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<sup>27</sup> See 11 C.F.R. § 110.13.

<sup>28</sup> CMC qualified for the debate exemption in a prior matter. See MUR 6111 (Columbus Metro. Club).

<sup>29</sup> See 11 C.F.R. § 114.4(c)(7).

<sup>30</sup> See *id.*; see also 11 C.F.R. § 114.4(b)(1)(iii) (exemption from "contribution" or "expenditure" for corporation-sponsored appearances by party representatives to the corporation's employees beyond the restricted class requires the corporation to allow other party representatives an opportunity to appear).

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1 Columbus<sup>31</sup> and CMC invited representatives of only the ORP and ODP, thereby favoring them  
2 over other parties with candidates on the ballot in Ohio.<sup>32</sup>

3       Regardless of whether staging the Forum may have resulted in violations of the Act, we  
4 recommend that the Commission exercise its prosecutorial discretion to dismiss the allegations.  
5 The amount at issue is *de minimis*: CMC apparently paid only \$2,740 to fund the costs of the  
6 Forum, which included the amount CMC spent to produce the video of the event.<sup>33</sup> The amount  
7 of any contribution would have to be apportioned between ODP and ORP.<sup>34</sup> Accordingly, we  
8 conclude that the potential violation here does not warrant further expenditure of Commission  
9 resources and recommend that the Commission exercise its prosecutorial discretion and dismiss

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<sup>31</sup> CMC Resp. at 10-11.

<sup>32</sup> See, e.g.,  
<http://www.sos.state.oh.us/SOS/elections/Research/electResultsMain/2012Results/20121106uspresident.aspx>  
(identifying six parties — Republican, Democratic, Libertarian, Green, Constitution, and Socialist — with  
candidates competing for the 2012 presidential election who qualified to appear on the ballot in Ohio, as well as an  
independent candidate); see also Compl. at 1 (quoting CMC's promotion of the Forum stating that "[i]t all comes  
down to choosing an R or a D and who better to discuss the process than State Political Party Chairmen Chris  
Redfern and Bob Bennett.").

<sup>33</sup> CMC Resp. at 10-11.

<sup>34</sup> In MUR 6459 (Iowa Faith & Freedom Coal.), the Commission dismissed an allegation that a non-profit  
corporation made prohibited corporate contributions to five potential candidates who were "testing the waters" by  
sponsoring a public event at which those potential candidates made speeches. The Commission reasoned that "[t]o  
determine the amount of any contribution . . . to each of the five speakers, [the host's] costs for staging the . . . event  
would have to be apportioned among each of these speakers" and thus, that "[t]he prorated amount for each speaker  
was likely small." Statement of Reasons, Comm'rs Hunter, Weintraub, McGahn, Bauerly, Petersen, and Walther  
at 3, MUR 6459 (Iowa Faith & Freedom Coal.).

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- 1 the allegation that CMC made, and the ORP and ODP received, prohibited corporate  
2 contributions.<sup>35</sup> *See Heckler v. Chaney*.<sup>36</sup>

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<sup>35</sup> The Complaint also asserted that CMC's alleged violation of 2 U.S.C. § 441b(a) was based, in part, on CMC planning for its video recording of the Forum to be made available on the internet and broadcast by ONN, a television news station. *See* Compl. at 1. CMC asserts that it did not use its corporate funds to make the video recording because it generated revenues from ticket sales to the event that exceeded the costs of the event, including the costs of making the video recording. CMC Resp. at 2, 10-11. CMC cited no authority establishing that the sale of tickets for a corporate event inoculates a corporation from making prohibited contributions in violation of 2 U.S.C. § 441b(a) by paying for the event's costs — or that the corporation's revenues from ticket sales do not become corporate funds once received. But, as in MUR 5642 (Soros), the fact that CMC's ticket sale revenues for the event in question exceeded the event's costs is one factor, among others, supporting OGC's recommendation to dismiss allegations against CMC. *See* First Gen. Counsel's Rpt. at 21-22, MUR 5642 (Soros).

CMC also asserts, without supporting authority, that because the press exemption protects ONN from liability for its broadcast of the Forum, CMC is protected by the press exemption, CMC Resp. at 14, 16, even though CMC does not claim that it is itself a press entity. In fact, CMC may have made a prohibited corporate contribution when it paid the production costs for the video, provided it to ONN, and published it on the internet. *See* Factual and Legal Analysis at 8-9, MUR 6552 (Ohio State Med. Ass'n); *see also* Advisory Op. 1996-11 at 6 (Nat'l Right to Life Convention) (prohibited corporate contribution if corporation distributed recordings of candidate speeches to the public); Advisory Op. 1980-90 at 2-3 (Atlantic Richfield) (corporate production and free distribution of candidate interviews constitute prohibited corporate contributions). Nonetheless, the value of any such contribution comprised part of the \$2,740 *de minimis* total cost of hosting the event.

<sup>36</sup> 470 U.S. 821 (1985).

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V. RECOMMENDATIONS


1. Dismiss the allegation that the Columbus Metropolitan Club violated 2 U.S.C. § 441b.
2. Dismiss the allegation that the Ohio Republican Party violated 2 U.S.C. § 441b.
3. Dismiss the allegation that the Ohio Democratic Party violated 2 U.S.C. § 441b.
4. Approve the attached Factual and Legal Analyses.
5. Approve the appropriate letters.
6. Close the file.

Anthony Herman  
General Counsel

BY:

  
Daniel A. Petalas  
Associate General Counsel

  
Mark D. Shonkwiler  
Assistant General Counsel

  
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Attorney

Date

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