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December 17, 2012

Jeff S. Jordan  
Federal Election Commission  
999 E Street, NW, 6th Floor  
Washington DC 20463

**Re: Response to Complaint, MUR 6667**

Dear Mr. Jordan:

On behalf of Friends of Cheri Bustos and Jeanette Hunter, in her official capacity as treasurer, this letter responds to the complaint received on October 31, 2012. The Commission should dismiss the complaint with respect to Friends of Cheri Bustos and Ms. Hunter, and close the file. The Commission should further acknowledge that it erred by naming Friends of Cheri Bustos and Ms. Hunter as respondents in this matter.

The complaint names House Majority PAC as a respondent; it does *not* name Friends of Cheri Bustos as a respondent. The first paragraph of the complaint asks the Commission to "accept this letter as a Complaint against House Majority PAC ('HMPAC') for operating in violation of the Federal Election Campaign Act of 1971, as amended (the 'Act') and Federal Election Commission ... regulations ...." Complaint at 1. The complaint concludes: "Upon information and belief, and based upon the facts relayed herein, the House Majority PAC have violated the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission Regulations." *Id.* at 3. Again, the complaint does not identify Friends of Cheri Bustos as a respondent, nor does it ask the Commission to do so.

Moreover, the complaint does not allege that Friends of Cheri Bustos violated the Act. It argues that House Majority PAC violated the Act by "republishing" footage that Friends of Cheri Bustos had posted on YouTube. According to Respondents, House Majority PAC's use of this footage constituted "republishing" under section 109.23, which in turn resulted in an impermissible in-kind contribution. Section 109.23(a) reads:

The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials

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prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure. The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 C.F.R. 109.21 or a party coordinated communication under 11 C.F.R. 109.37.

11 C.F.R. § 109.23(a) (emphasis added).

In other words, even if the outside group is deemed to have *made* an in-kind contribution under section 109.23, the candidate is not deemed to have *received* an in-kind contribution unless the campaign and outside group "coordinated" the communication, as that term is defined in 11 C.F.R. § 109.21(d). Notably, the complaint does not allege that Friends of Cheri Bustos and House Majority PAC "coordinated" the communication at issue. And, in fact, they did not. Accordingly, even if the Commission were to determine that House Majority PAC "republished" campaign materials under section 109.23, there would be no legal basis to find a violation by Friends of Cheri Bustos.<sup>1</sup>

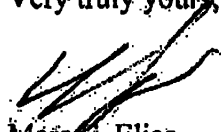
Because the complaint does not allege that Friends of Cheri Bustos violated the Act, the Commission should dismiss the complaint with respect to Friends of Cheri Bustos and Ms. Hunter, and close the file. The Commission should further acknowledge that it erred by naming Friends of Cheri Bustos and Ms. Hunter as respondents in this matter. The Act authorizes the Commission to serve a complaint on – and request a response from – "any person *alleged in the complaint to have committed such a violation.*" 2 U.S.C. § 437g(a)(1) (emphasis added). The Commission may *not* name as a respondent a person who has *not* been alleged to have violated the Act. *See also* 11 C.F.R. §§ 111.4(d)(1) (requiring complaint to "clearly identify as a respondent each person or entity who is alleged to have committed a violation"); 111.5(a) (authorizing General Counsel to "notify each respondent" only if the requirements of section 111.4 have been satisfied).

The complaint does not allege that Friends of Cheri Bustos violated the Act. Therefore, the complaint should be dismissed with respect to both Friends of Cheri Bustos and Ms.

<sup>1</sup> Though irrelevant to their own case, Friends of Cheri Bustos and Ms. Hunter do not believe that House Majority PAC "republished" campaign materials under section 109.23. In recent enforcement actions, the Commission has made clear that the "partial use of [publicly available campaign] materials in connection with one's own protected speech is not legally problematic." Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen, MUR 5879 (DCCC), at 5. *See also* Statement of Reasons of Commissioners Hans von Spakovsky and Ellen Weintraub, MUR 5743 (EMILY's List); Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn, MUR 5996 (Education Finance Reform Group); Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen, MUR 6357 (American Crossroads).

Hunter, and the Commission should acknowledge that it erred by naming them as respondents in this matter.

Very truly yours,



Marc E. Elias  
Jonathan S. Berkon  
Counsel to Friends of Cheri Bustos