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FIRST GENERAL COUNSEL'S REPORT

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MUR: 6722

DATE COMPLAINT FILED: February 13, 2013

DATE OF NOTIFICATION: March 4, 2013

DATE OF LAST RESPONSE: April 22, 2013

DATE ACTIVATED: May 9, 2013

EXPIRATION OF SOL:

Earliest: January 29, 2018

Latest: January 29, 2018

ELECTION CYCLE: 2014

COMPLAINANTS:

Thomas Del Beccaro, California Republican Party

RESPONDENTS:

House Majority PAC and Shannon Roche in her
official capacity as treasurer
Dr. Raul Ruiz for Congress and Greg Lucas
Rodriguez in his official capacity as treasurer
Representative Raul Ruiz

MUR: 6723

DATE COMPLAINT FILED: February 13, 2013

DATE OF NOTIFICATION: March 4, 2013

DATE OF LAST RESPONSE: April 18, 2013

DATE ACTIVATED: May 9, 2013

EXPIRATION OF SOL:

Earliest: January 29, 2018

Latest: January 29, 2018

ELECTION CYCLE: 2014

COMPLAINANTS:

Thomas Del Beccaro, California Republican Party

RESPONDENTS:

House Majority PAC and Shannon Roche in her
official capacity as treasurer
Bera for Congress and Rita Copeland in her official
capacity as treasurer
Representative Ami Bera

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(22)

2 U.S.C. § 441b(a)
11 C.F.R. § 109.21(a)-(c)
11 C.F.R. § 100.29(a)(2)
11 C.F.R. § 100.26
11 C.F.R. § 114.2

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaints allege that House Majority PAC, an independent expenditure-only political committee, made in-kind corporate contributions by creating and posting a video on its website and YouTube, featuring Rep. Raul Ruiz, Rep. Ami Bera, and others thanking House Majority PAC for supporting them in the 2012 elections.¹ As a result, the Complaints claim that House Majority PAC, Ruiz, Bera, and Ruiz's and Bera's committees and treasurers violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2.²

House Majority PAC contends that the video is not an in-kind contribution to the candidates because it does not satisfy the content prong of the Commission's test for coordinated communications — specifically, the video is neither an electioneering communication nor a public communication, as required by 11 C.F.R. § 109.21.³ House Majority PAC asserts that its video is not an electioneering communication because it is not a "broadcast, cable or satellite

¹ In 2012, House Majority PAC disclosed making \$29,396,484.81 in independent expenditures. *See* House Majority PAC 2012 Year-End Report at 4 (Jan. 31, 2013), <http://images.nictusa.com/pdf/186/13960658186/13960658186.pdf>.

² Compl. at 1-2 (Feb. 13, 2013), MUR 6722 (House Majority PAC; Ruiz); Compl. at 1-2 (Feb. 13, 2013), MUR 6723 (House Majority PAC; Bera). House Majority PAC posted the video to its website and YouTube on January 29, 2013. *House Majority PAC: We Make the Difference*, HOUSE MAJORITY PAC, <http://www.youtube.com/watch?v=F4JFEFqNheQ> (last visited Aug. 3, 2013); *House Majority PAC: We Make the Difference*, HOUSE MAJORITY PAC, <http://www.thehousemajoritypac.com/ads/page/2/> (last visited Aug. 3, 2013). Because we conclude that House Majority PAC's video did not constitute an in-kind contribution to Ruiz or Bera, we do not address whether such an in-kind contribution, had it been made, would have been a prohibited corporate contribution under 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2.

³ House Majority PAC Resp. at 2, MUR 6722/6723. House Majority PAC filed a single response addressing the allegations in the Complaints in both MUR 6722 and MUR 6723.

1 communication,” and it is not a public communication because it is an internet communication
2 that was not placed for a fee on another person’s website.⁴ Further, House Majority PAC asserts
3 that the video fails the other requirements of the content prong: it did not republish campaign
4 material, expressly advocate the election or defeat of a candidate, and it was not sufficiently
5 proximate to an election.⁵ Ruiz’s and Bera’s Responses concur with or make the same
6 arguments as House Majority PAC’s Response.⁶

7 We recommend that the Commission find that there is no reason to believe that
8 Respondents violated the Federal Election Campaign Act of 1971, as amended (the “Act”), as
9 alleged in the Complaints because the House Majority PAC video does not satisfy the content
10 prong of the Commission’s coordinated communications test.

11 II. ANALYSIS

12 A payment for a “coordinated communication” is an in-kind contribution from the payor
13 to the candidate with whom it is coordinated.⁷ A communication is coordinated with a candidate
14 when it is: (a) paid for by a person other than the candidate; (b) satisfies one of the content
15 standards of the Commission’s coordination test; and (c) satisfies one of the conduct standards of
16 the Commission’s coordination test.⁸

17 House Majority PAC’s payments to create the video satisfy the first prong of the
18 coordination test. Bera and Ruiz participated in the video, thus satisfying the third prong of the

⁴ *Id.*

⁵ *Id.* at 2-3, n.8.

⁶ See Ruiz Resp. at 2 (Apr. 22, 2013), MUR 6722 (House Majority PAC; Ruiz); Bera Resp. at 1-2 (Apr. 18, 2013), MUR 6723 (House Majority PAC; Bera). Ruiz is represented by attorneys from the same firm as those representing House Majority PAC.

⁷ 11 C.F.R. § 109.21(b).

⁸ *Id.* § 109.21(a).

1 coordination test as a result of their material involvement in decisions regarding its content.⁹ But
2 House Majority PAC's payments for the video do not constitute in-kind contributions to Bera
3 and Ruiz or their campaign committees because the video does not satisfy the content prong of
4 the coordination test.

5 The content prong can be satisfied in one of five ways.¹⁰ The first is if the
6 communication qualifies as an electioneering communication.¹¹ The House Majority PAC video
7 does not meet the definition of an electioneering communication because it was not publicly
8 distributed by a television station, radio station, cable television station, or satellite system,¹² and
9 it was not published within 60 days before a general election, or within 30 days of a primary
10 election, for offices sought by the candidates.¹³

11 The remaining four ways to satisfy the content prong require that the communication be a
12 "public communication."¹⁴ The Act defines a public communication as "a communication by
13 means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor
14 advertising facility, mass mailing, or telephone bank to the general public, or any other form of
15 public political advertising."¹⁵ The Commission's regulations further clarify that the phrase
16 "general public political advertising" — the only listed means of communication that might
17 encompass House Majority PAC's internet video — does not include "communications over the
18 Internet, except for communications placed for a fee on another person's Web site."¹⁶ Content

⁹ See *id.* § 109.21(d)(2)(i).

¹⁰ See *id.* § 109.21(c)(1)-(5).

¹¹ *Id.* § 109.21(c)(1).

¹² See *id.* § 100.29(a), (b)(1).

¹³ See *id.* § 100.29(a)(2).

¹⁴ See *id.* § 109.21(c)(2)-(5).

¹⁵ 2 U.S.C. § 431(22).

¹⁶ 11 C.F.R. § 100.26.

1 such as a video that a person places on their own website or on YouTube without paying a fee
2 cannot be a coordinated communication. *See* Internet Communications, 71 Fed. Reg. 18,589,
3 18,590, 18,600 (May 12, 2006) (explanation and justification); *see also* Factual & Legal
4 Analysis at 8, MUR 6477 (Turn Right USA) (advertisement uploaded to YouTube for free was
5 not a public communication because it was not placed for a fee); *see also* Advisory Op. 2011-14
6 (Utah Bankers Association Action PAC) (concluding that a committee's website and emails
7 soliciting contributions to and expressly advocating the election of certain candidates were not
8 coordinated communications because they were neither electioneering communications nor
9 public communications). Therefore, the video that House Majority PAC placed on its own
10 website and YouTube is not a public communication. Because the video is neither an
11 electioneering communication nor a public communication, it fails the content prong of the
12 Commission's coordinated communications test and it cannot constitute an in-kind
13 contribution.¹⁷

14 Accordingly, we recommend in MUR 6722 that the Commission find that there is no
15 reason to believe that House Majority PAC and Shannon Roche in her official capacity as
16 treasurer made, and Dr. Raul Ruiz for Congress and Greg Lucas Rodriguez in his official
17 capacity as treasurer and Rep. Raul Ruiz received, a prohibited corporate in-kind contribution in
18 violation of 2 U.S.C. § 441b(a). And in MUR 6723, we recommend that the Commission find
19 that there is no reason to believe that House Majority PAC and Shannon Roche in her official
20 capacity as treasurer made, and Bera for Congress and Rita Copeland in her official capacity as
21 treasurer and Rep. Ami Bera received, a prohibited corporate in-kind contribution in violation of
22 2 U.S.C. § 441b(a).

¹⁷ Because the House Majority PAC video does not satisfy the content prong of the coordination test, the Commission need not address the Respondents' alternative arguments regarding its content.

III. RECOMMENDATIONS

MUR 6722:

1. Find no reason to believe that House Majority PAC and Shannon Roche in her official capacity violated 2 U.S.C. § 441b.
2. Find no reason to believe that Dr. Raul Ruiz for Congress and Greg Lucas Rodriguez in his official capacity as treasurer and Rep. Raul Ruiz violated 2 U.S.C. § 441b.

MUR 6723:

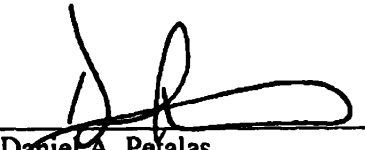
3. Find no reason to believe that House Majority PAC and Shannon Roche in her official capacity violated 2 U.S.C. § 441b.
4. Find no reason to believe that Bera for Congress and Rita Copeland in her official capacity as treasurer and Rep. Ami Bera violated 2 U.S.C. § 441b.

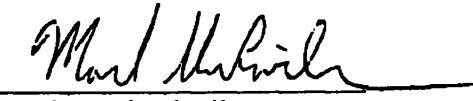
MUR 6722 and MUR 6723:


5. Approve the attached Factual and Legal Analysis.
6. Approve the appropriate letters.
7. Close the files.

8/6/13
Date

BY:


Daniel A. Petalas
Associate General Counsel for Enforcement


Mark D. Shonkwiler
Assistant General Counsel for Enforcement


Michael A. Columbo
Attorney