

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

The Honorable Tom Reed
Tom Reed for Congress
And Marc Valerio, as Treasurer

)
)
) **MUR 6888**
)
)
)
)

**RESPONSE OF THE HONORABLE TOM REED AND
TOM REED FOR CONGRESS, AND MARC VALERIO, AS TREASURER, TO THE
COMPLAINT AND SUPPLEMENTAL COMPLAINT**

This responds on behalf of our clients, The Honorable Tom Reed,¹ Tom Reed for Congress, and Marc Valerio, as Treasurer (collectively "Campaign or "Respondents"), to the notification from the Federal Election Commission ("Commission" or "FEC") that a complaint and supplemental complaint (collectively "Complaint") were filed against them in the above-captioned matter. The Complaint, filed by a political operative who controls a soft-money organization established for the sole purpose of filing harassment complaints against Republicans and conservative organizations, does not contain any factual allegations showing that any wrongdoing occurred, misstates the law, and fails to provide any evidence to support its baseless allegations against the Campaign.² For the reasons set forth below, the Commission must dismiss the Complaint, close the file, and take no further action against the Campaign.

¹ As explained more fully in this response, there are simply no allegations made in the Complaint against Congressman Tom Reed in his individual capacity that constitute a violation of the Federal Election Campaign Act of 1971, as amended (the "Act") or Commission regulations. Accordingly, the Commission must find no reason to believe that Congressman Reed violated the Act or Commission regulations, dismiss the matter as applied to him, and take no further action. See MUR 6038 (Lamborn), First General Counsel's Report ("[T]here is no information suggesting that Doug Lamborn was personally involved in any of the alleged violations, and therefore we recommend that the Commission find no reason to believe that Doug Lamborn violated the Act.").

² The original complaint contains two allegations that do not even reference the Campaign: namely, that the Republican National Committee ("RNC") received excessive contributions in the form of in-kind services from the Data Trust, and that the RNC appears to have illegally established, financed, maintained and/or controlled the Data Trust. The Complaint contains no factual assertions or legal arguments that the Campaign was involved in these

1. THE COMPLAINT IS LEGALLY DEFICIENT AND MUST BE DISMISSED BECAUSE IT FAILS TO CLEARLY AND CONCISELY RECITE ANY FACTS THAT CONSTITUTE A VIOLATION OF THE ACT OR COMMISSION REGULATIONS BY THE CAMPAIGN.

Under the Act and Commission regulations, a complaint must satisfy specific requirements in order to be deemed legally sufficient. Specifically, a complaint must contain a "clear and concise recitation of the facts which describe a violation of statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(3). Absent such a "clear and concise recitation of the facts," a complaint is legally deficient and must be dismissed. *See* MUR 6554 (Friends of Weiner), Factual and Legal Analysis at 5 ("The Complaint and other available information in the record do not provide information sufficient to establish [a violation]."). Consistent with this requirement, the Commission has already made clear that simple speculation by a complainant is insufficient and does not establish that there is reason to believe a violation occurred. MUR 5467 (Michael Moore), First General Counsel's Report at 5 ("Purely speculative charges, especially when accompanied by a direct refutation, do not form the adequate basis to find reason to believe that a violation of [the Act] has occurred." (quoting MUR 4960 Statement of Reasons at 3)). Due process and fundamental fairness dictate that the burden must not shift to a respondent merely because a complaint is filed with the Commission. *See* MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (rejecting the Office of General Counsel's recommendation to find reason to believe because the respondent did not specifically deny conclusory allegations,

allegations. *See* Compl. at 15-19. Accordingly, the Campaign will not be separately addressing the allegations in this response because there are no factual allegations or legal arguments to respond to, and we respectfully request that the Commission dismiss these allegations against the Campaign and take no further action. *See* MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (rejecting the Office of General Counsel's recommendation to find reason to believe because the respondent did not specifically deny conclusory allegations, and holding that "[a] mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents.")

and holding that "[a] mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents."). This is especially the case where the complaint does not contain sufficient information to establish an alleged violation or provide the respondent with sufficient information to meaningfully respond to the allegations. *See* MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 2 ("Unwarranted legal conclusions from asserted facts . . . will not be accepted as true."). The Complaint in the instant matter fails these rudimentary regulatory requirements and is a dishonest attempt to shift the burden to the Respondents through the use of innuendo and conjecture. It makes spurious claims that are not supported by the factual allegations contained in the Complaint and its legal theories do not satisfy the Commission's regulatory requirements to support a reason to believe finding. *Machinists Non-partisan Political Action Comm. v. FEC*, 655 F.2d 380, 388 (D.C. Cir. 1981) ("[M]ere 'official curiosity' will not suffice as the basis for FEC investigations").

2. THE COORDINATION ALLEGATIONS IN THE COMPLAINT ARE MISPLACED BECAUSE THEY FAIL TO SATISFY BOTH THE CONTENT AND CONDUCT STANDARDS.

The pertinent allegation in the Complaint against the Campaign is that it received an in-kind contribution in the form of a coordinated public communication. Commission regulations establish a three-pronged test to determine whether a public communication can be considered coordinated with a campaign and, therefore, constitute an in-kind contribution to the campaign. The first test is whether the public communication is paid for by a person other than the candidate's campaign or the candidate referenced in the public communication. The second test is whether the communication at issue satisfies one of the enumerated content standards. The

third and final test is whether a conduct standard is met regarding the interactions between the entity paying for the public communication and the candidate or political party committee. All three tests must be satisfied and if the allegation fails to satisfy one test, the complaint must be dismissed. See 68 Fed. Reg. 421, 426 (Jan. 3, 2003).

Under this regulatory regime, the Complaint in the instant matter is legally deficient for several reasons. First, the Complaint does not identify any public communication that references Congressman Reed or that could otherwise satisfy the content standards under 11 C.F.R. § 109.21.³ For this reason alone, the Complaint is legally deficient as applied against the Campaign, does not satisfy the threshold burden for the Commission to find reason to believe that a violation occurred, and must be dismissed. 68 Fed. Reg. at 430 (“In this light, the content standard may be viewed as a ‘filter’ or a ‘threshold’ that screens out certain communications from even being subjected to analysis under the conduct standards.”).

Second, even if the Complaint did identify specific public communications that satisfy the content standards under the Commission’s coordinated communications rule—which it does not—the Complaint is still legally deficient because it misstates the “common vendor” rule under the conduct standards and fails to set forth any facts that would constitute a violation under the rule.

Finally, the Complaint does not allege or even imply that the Campaign made a request or suggestion to, was materially involved in, or had substantial discussions with another person regarding a public communication that satisfies the content standard. Therefore, even if the Commission finds that the common vendor test is satisfied—and there is no factual or legal basis

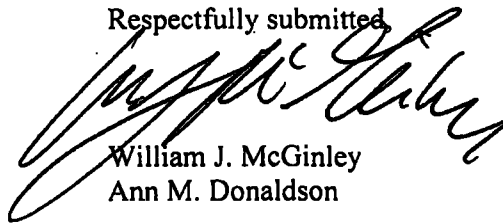
³ In fact, not only is no public communication identified, but none of the entities mentioned in the Complaint appear on the FEC’s list of independent expenditures made in Congressman Reed’s race. See FEC 2014 House Independent Expenditures for New York, District 23.

for making such a finding—Commission regulations provide that as a matter of law the Campaign did not receive or accept an in-kind contribution and was not required to report the expenditure. 11 C.F.R. § 109.21(b)(2). This regulatory provision alone, presumptively known to the Complainant when the Complaint was filed, demonstrates the dishonest and partisan purposes behind the filing of the complaint.

3. CONCLUSION

For all of the reasons stated above, there is no factual or legal basis for finding reason to believe a violation was committed by the Campaign. Accordingly, we respectfully request that the Commission dismiss the Complaint against the Campaign, close the file, and take no further action.

Respectfully submitted,



William J. McGinley
Ann M. Donaldson

JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
P: (202) 879-3939
F: (202) 626-1700

January 6, 2015