



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jan Witold Baran, Esq.
Caleb P. Burns, Esq.
Wiley Rein, LLP
1776 K Street NW
Washington, DC 20006

APR 12 2017

RE: MUR 7105
American Action Network
Caleb Crosby

Dear Messrs. Baran and Burns:

On July 20, 2016, the Federal Election Commission notified American Action Network and Caleb Crosby as treasurer (the "Committee") of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. Based upon information contained in the complaint, as well as information provided by the Committee, the Commission decided to exercise its prosecutorial discretion to dismiss the complaint and close the file in this matter. Accordingly, the Commission closed its file in this matter on April 5, 2017. The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Wanda D. Brown, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

A handwritten signature in black ink, appearing to be "Lisa J. Stevenson", is written over the typed name and title.

BY: Jeff S. Jordan
Assistant General Counsel

Enclosure
Factual and Legal Analysis

170444112672

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Caleb Crosby MUR 7105
American Action Network, Inc.

I. INTRODUCTION

This matter was generated by a Complaint alleging that Caleb Crosby and American Action Network, Inc. ("AAN") (collectively "Respondents"), violated the Act by providing false information on an Independent Expenditure Report.¹

II. FACTUAL AND LEGAL ANALYSIS

The Complaint states that on June 4, 2016, Respondents disclosed a \$25,000 expenditure for "telephone calls" in opposition of Helene Schneider, a 2016 candidate for the U.S. House of Representatives from California's 24th Congressional District.² However, the Complaint alleges that the calls did not oppose Schneider, and cites to a news article that quotes a named Democratic voter as saying that she received a call from a phone bank paid for by AAN that asked her to support Schneider.³ The article suggests that the calls asked for support for Schneider to split the Democratic primary vote.⁴

Respondents deny the allegation and assert that the calls were placed in opposition to Schneider and, therefore, AAN correctly disclosed in its report to the Commission that its calls

¹ Compl. At 1 (June 13, 2016).

² FEC Form 5, Report of Independent Expenditures Made and Contributions Received (filed June 4, 2016).

³ *Dem Voter Registration Jumps*, Santa Barbara Independent, <http://www.independent.com/news/2016/jun/06/primary-election-eve/> (June 6, 2016). The article names the source and quotes her, and the article also says that "other registered Democrats received the same calls."

⁴ *Id.* California uses a "Top Two Open Primary" system for state offices, including Congressional elections. All candidates from all parties are listed on a single Primary ballot. Voters choose from this list and the top two candidates advance to the General election. *League of Women Voters of California Education Fund*, <https://cavotes.org/vote/how-vote/voting-primary-election>.

1 opposed Schneider's candidacy.⁵ Respondents maintain that the Complaint relies on an
2 uncorroborated report in a single newspaper article, and they attach the script that they say was
3 used for the phone calls in question.⁶ The script, printed on the vendor's letterhead, asks the
4 caller if "we can count on you to vote against Helen Schneider."⁷

5 A person that makes or contracts to make independent expenditures aggregating \$1,000
6 after the 20th day, but more than 24 hours, before the date of an election shall file a report
7 describing the expenditures within 24 hours.⁸ The report must be filed within 24 hours
8 "following the date on which a communication that constitutes an independent expenditure is
9 publicly distributed or otherwise publicly disseminated."⁹ Each 24-hour report shall indicate
10 whether the independent expenditure is made in support of, or in opposition to, the candidate
11 involved.¹⁰

12 The Complaint and Respondents differ as to whether the independent expenditure at issue
13 was in support of, or opposition to, a federal candidate. The Complaint cites to a news article
14 that names a specific voter who stated for the record that she received a call paid for by AAN
15 supporting Schneider. The article refers to other unnamed sources who also claimed to receive
16 such calls. On the other hand, the Respondents directly rebut the allegation and provide the
17 script that was purportedly used for the calls, which clearly opposes Schneider's candidacy.¹¹

⁵ Resp. at 1-2.

⁶ Resp., Attach. 1.

⁷ *Id.* The Script lists as its target audience Democrats and Independents.

⁸ 52 U.S.C. § 30104(g)(1)(A).

⁹ 11 C.F.R. § 104.4(c).

¹⁰ 52 U.S.C. § 30104(c)(2); 11 C.F.R. § 104.3(b)(3)(vii).

¹¹ Resp., Attach. 1.

1 There is no further information that suggests that any other AAN expenditures advocated for
2 Schneider's election.¹² Thus, an investigation would be necessary to resolve this factual conflict.

3 Given the amount at issue, and the steps needed to establish the facts, the Commission
4 determined that an investigation would not be a prudent use of its resources. Accordingly, in
5 furtherance of its priorities, the Commission exercised its prosecutorial discretion and dismissed
6 the allegation that Respondents filed an inaccurate or misleading 24 Hour Report of an
7 Independent Expenditure.¹³

¹² FEC Form 5, Report of Independent Expenditures Made and Contributions Received (filed June 4, 2016).
AAN spent just over \$157,000 during the 2016 election cycle opposing Schneider's candidacy.

¹³ *Heckler v. Chaney*, 470 U.S. 821 (1985).