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October 16, 2006

VIA HAND DELIVERY

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5774 (Club for Growth State Action)

Dear Mr. Norton:

This office represents Club for Growth State Action ("CFGSA"), which has received a complaint ("Complaint") designated Matter Under Review ("MUR") 5774 by the Federal Election Commission ("FEC" or "Commission").

Based on the attached sworn affidavit of Christopher K. Baker ("Baker Aff.") (attached hereto at Tab 1), it is clear that the Complaint is mistaken in its assertion that the CFGSA coordinated issue advocacy postcards with the Congressional campaign of Doug Lamborn ("Lamborn campaign"). CFGSA bought its mailing list from a list broker and made and disseminated its issue advocacy pieces independent of the Lamborn campaign. Thus, the Commission should dismiss the Complaint against CFGSA.

THE COMPLAINT

This Complaint in this matter is very narrow and relates to three mailings made by CFGSA which Complainant, Robert S. Gardner, claims must have been coordinated with the Lamborn campaign because the mailings were addressed to two individual's business address rather than their personal address. Specifically, Complainant admits that any entity could have purchased the list on which he believes the names and addresses in question were found from the County Clerk in El Paso County, Colorado. However, Complainant asserts that "an investigation shows that only five entities have requested information from the Clerk and Recorder," Complaint at 2, one of which was the Lamborn Campaign.

Complainant then makes assumptions about the five entities, saying that he personally confirmed that the Jeff Crank for Congress campaign did not provide the list, that he doubted the Rivera campaign provided the list, and that "after investigating" neither the Campaign Compliance Center or the Trailhead Group

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provided the list, leading the Complainant to deduce that the CFGSA must have received the mailing list from the Lamborn Campaign.

As will be shown below, the Complainants deductions were wrong.

THE LAW

According to the FEC's regulations, a "coordinated communication" is a communication by a third party that meets both the content and conduct standards contained in the regulations. 11 C.F.R. § 109.21(a). Assuming that the mail pieces at issue meet the requirements of 11 C.F.R. § 109.21(c)(4), the Complaint focuses on the Conduct standard of the FEC regulations. More narrowly, the conduct factor directly implicated by the Complaint relates to "*Material involvement*." The *Material involvement* standard is met if

a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing is materially involved in decisions regarding:

- (i) The content of the communication;
- (ii) The intended audience for the communication;
- (iii) The means or mode of the communication;
- (iv) The specific media outlet used for the communication;
- (v) The timing or frequency of the communication; or
- (vi) The size or prominence of a printed communication, or the duration of a communication by means of a broadcast, cable, or satellite.

11 C.F.R. § 109.21(d)(2).

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DISCUSSION

Contrary to Complainant's deductions and consistent with his admissions, the list containing the names of the two individuals in question could be purchased from the County Clerk in El Paso County. Once someone has purchased the list, it can be put on the open market through a list broker. The list in question here was purchased from a list broker, not from the Lamborn campaign either directly, or indirectly through the Lamborn campaign's list broker, to the extent the campaign has a list broker.

Specifically, according to the sworn affidavit of Christopher K. Baker, the principal of Blue Point, Blue Point was responsible for creating and distributing CFGSA issue advocacy postcards in Colorado. Baker Aff. ¶¶ 5-6. Blue Point, in undertaking this job, did not purchase or otherwise receive a mailing list of absentee voters from the Lamborn campaign. *Id.* ¶ 10. Instead, Blue Point purchased the list from a Grand Junction list broker, Tactical Data Solutions. *Id.* ¶ 7. This purchase was memorialized in an invoice from Tactical Data Solutions to Blue Point. *Id.* at Tab A. Prior to purchasing the list, Mr. Baker inquired and Tactical Data Solutions represented to Mr. Baker that it was not working for the Lamborn campaign. *Id.* ¶ 8.

While not alleged in the complaint, Mr. Baker also avers that neither Blue Point nor Mr. Baker were current or former employees, vendors, or independent contractors of the Lamborn campaign. *Id.* ¶ 4. Moreover, Blue Point did not coordinate the mailers in any other fashion with the Lamborn campaign, a political party committee, or agents of either. *Id.* ¶¶ 11-15.¹

Since Blue Point, acting on behalf of CFGSA, purchased the mailing list from a list broker and did not receive a list from the Lamborn campaign, the one factual assertion vis-à-vis the CFGSA in the Complaint is patently incorrect. Accordingly, there was no material involvement of the Lamborn campaign or its agents in the issue advocacy mailings made by the CFGSA. The complainant does not allege, and could not in any event demonstrate, that any of the other conduct standards in

¹ It is the complainant's duty to present "a clear and concise recitation of the facts which describe a violation" 11 C.F.R. § 111.4(d)(3). A respondent then is to demonstrate "that no action should be taken on the basis of a complaint." 11 C.F.R. § 111.6(a). CFGSA has not attempted to anticipate or answer unpleaded facts.

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the Commission's coordination regulations are present here. As a result, CFGSA did not make any coordinated communications.

CONCLUSION

There are no facts that suggest that the CFGSA coordinated communications with the Lamborn campaign. Related to the direct assertions in the Complaint, the CFGSA did not purchase or otherwise receive the mailing list from the Lamborn campaign. Thus, the CFGSA made no "coordinated communication" and made no in-kind contribution to the Lamborn campaign. Any suggestion to the contrary by the complainant is based upon a lack of facts and faulty suppositions. Thus, the Commission should find that there is no reason to believe a violation occurred and should dismiss this matter.

Sincerely,



Carol A. Laham
D. Mark Renaud

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