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Brian G. Svoboda
PHONE: (202) 434-1634
FAX: (202) 434-1690
EMAIL: B@svoboda@perkinscoie.com

607 Fourteenth Street N.W.
Washington, D.C. 20005-7003
PHONE: 202.628.6600
FAX: 202.434.1690
www.perkinscoie.com

March 27, 2008

Thomaseia Duncan
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 5970

Dear Ms. Duncan:

This is the response of EMILY's List and Ranny Cooper as Treasurer (collectively, "EMILY's List"), to the complaint filed with your agency. The claim in the complaint against EMILY's List is without merit and should be dismissed.

The complaint alleges that EMILY's List coordinated with the Donna Edwards for Congress Committee, the principal campaign committee of a candidate for Congress in Maryland's Fourth Congressional District ("the Edwards Campaign"), and as a result, made excessive contributions to the Edwards Campaign. Compl. ¶ 15-18. To support this allegation, the complaint identifies only a single email message that was sent "to EMILY's List supporters" and that "was approved and expressly authorized by the Edwards Campaign." *Id.* ¶ 16. The complaint offers no other factual allegations or evidence to support its assertion of coordination.

The email message in question cannot constitute a coordinated communication because it was paid for by the Edwards Campaign—not by EMILY's List. *See* Ex. A.¹ Thus, the complaint fails to provide any specific facts which, if proven true, would constitute a violation of FECA. Moreover, EMILY's List uses a firewall that protects it from precisely this sort of speculative and unsupported attack.

¹ The email included in the complaint as Exhibit 7 is difficult to decipher and does not include the email's images. Respondent therefore attaches a clean and complete copy of the email in question. *See* Ex. A.

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The Complaint Fails to State Sufficient Facts, which if True, Would Constitute a Violation of FECA's Coordination Rules

A person who believes a violation of the Federal Election Campaign Act (FECA), 2 U.S.C. § 441a(a)(1)(A) has occurred, may file a complaint with the Commission. *Id.* § 537g(a)(1). Only where there is "reason to believe" that a violation has been, or is about to be, committed, does the Commission have power to investigate alleged FECA violations. *Id.* § 437g(a)(2). The Commission may not find "reason to believe" unless the complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of FECA. *See* 11 C.F.R. § 111.4(d)(2); *see also* Statement of Reasons, MUR 4960.

This complaint fails to satisfy these basic requirements. Of 34 paragraphs in the complaint, only four relate to EMILY's List. Compl. ¶ 15-18. They provide no specific facts which, if proven true would constitute a violation of FECA's coordination rules. To the contrary, the only communication identified as coordinated by the complaint, *see id.* ¶ 16, is a single email from EMILY's List that specifically states it was paid for by the Edwards Campaign. *See* Ex. A; *see also* Ex. B (invoice from EMILY's List and check from Edwards Campaign).

The Commission's regulations provide that coordination can occur only when a communication "[i]s paid for, in whole or part, by a person other than that candidate, authorized committee or political party committee." 11 C.F.R. § 109.21(a)(1) (emphasis added). Here, the email communication identified by the complaint was paid for by the candidate. The email, which is attached to this response as Exhibit A, makes this plain, and the complainant offers no evidence to the contrary. *See also* Ex. B. The email therefore cannot constitute a coordinated communication.

Even if the Complaint Could Be Construed as Stating a Claim of Coordination, EMILY's List Uses a Firewall that Protects it From Attack

Other than the email paid for by the Edwards Campaign, the complaint offers only conjecture that EMILY's List engaged in "coordination and collaboration [that] could violate federal campaign finance law." Compl. ¶ 17; *see also* Compl. ¶ 15, 18. However, EMILY's List operates using a firewall that protects it from precisely this sort of speculative attack.

The coordination conduct standards in 11 C.F.R. § 109.21(d) "are not met if . . . [a] political committee has established and implemented a firewall" meeting certain requirements. *Id.* § 109.21(h). The firewall must be designed and implemented to prohibit the flow of information between those providing services for the sponsor, and those who have provided services to the affected candidate. *See id.* § 109.21(h)(1). It must also be described in a written policy that is distributed to all relevant, affected employees and consultants. *See id.* § 109.21(h)(2).

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This safe harbor was patterned after EMILY's List's own firewall procedures, which the Commission considered in MUR 5506. The Commission adopted this "safe harbor ... as a way for organizations to respond to speculative complaints alleging coordination when organizations are faced with trying to 'prove a negative' by showing that coordination did not occur." Coordinated Communications, 71 Fed. Reg. 33,190, 33,206 (2006). When a firewall exists, only "specific information" showing the flow of material information about a candidate's plans, projects, activities or needs to the sponsor is sufficient to defeat the presumption that the conduct standard has not been met. *See id.* § 109.21(h).

The Complaint provides no "specific information" to show the flow of material information about the Edwards campaign's plans, projects, activities or needs to the EMILY'S List independent expenditure program. *See* 11 C.F.R. § 109.21(h). Rather, it relies on just the sort of "speculation" from which the safe harbor was designed to protect political committees. 71 Fed. Reg. at 33,206. *Cf.* Compl. ¶¶ 15-18. Were this sort of speculative assertion sufficient to defeat the operation of the safe harbor, then the safe harbor would be functionally meaningless—an outcome the Commission did not intend.

Conclusion

The complaint does not provide any evidence of coordinated in-kind contributions: the only EMILY's List communication identified by the complaint was plainly paid for by the Edwards Campaign and therefore cannot constitute a coordinated contribution. Moreover, EMILY's List operates using a firewall to ensure against coordination. Under these circumstances, the Commission should immediately dismiss the complaint.

Very truly yours,



Brian G. Svoboda
Kate Andrias

From: Ellen R. Malcolm
Sent: Tuesday, January 22, 2008 10:26 AM
To:
Subject: Three weeks to go for Donna Edwards!



EMILY's List

Dear ,

There are three things you need to know about the race in Maryland's fourth congressional district.

First, the more voters in this district learn about incumbent Albert Wynn -- that he's taken \$420,000 from big oil, gas, and electric companies ... voted with Dick Cheney to give them huge tax breaks ... supported the White House-backed energy bill ... taken over \$32,000 worth of privately funded travel to places like Jamaica, San Juan, and Florida ... voted for the resolution authorizing the Iraq war -- the more they move to Donna Edwards, his dynamic, energetic challenger in the Feb. 12 primary.

Second, Donna Edwards is poised to beat Wynn. She nearly did it in 2006, and she is running even stronger in 2008.

The third thing? Donna Edwards needs your immediate help. She can't oust this entrenched incumbent without it. With just three weeks to go, every dollar will enable her to compete with Wynn's war chest and mobilize her voters on election day.

Make an online contribution to Donna Edwards today!

Donna Edwards is the only truly progressive Democrat in this race. She is running a strong grassroots campaign, winning important endorsements from SEIU, National Organization for Women, League of Conservation Voters, Democracy for America, Clean V Action, Sierra Club, and more. And she's done it all on a shoestring budget!

But to win on Feb. 12, she needs to raise \$57,000 a week for the final three weeks to get her message out to voters on TV in the expensive D.C.-area media market -- and get them to the polls on election day.

You can make an immediate impact for Donna Edwards by contributing online to her campaign today.

Thanks for your swift response.

Warmest regards,



Ellen R. Malcolm
President

P.S. If you and other EMILY's List members send Donna Edwards the most generous contribution you can afford today, we can overcome Wynn's corporate special interest backers and send this promising lawyer, community activist, and progressive voice change to Washington. **Please support Donna Edwards today so she can win on Feb. 12!**

Make sure you receive email updates from EMILY's List. Add information@emilyslist.org to your approved senders list.

[Click here](#) to unsubscribe from email sent by EMILY's List.

Paid for by Donna Edwards for Congress.

Contributions or gifts to EMILY's List are not tax deductible.

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EMILY's List

1120 Connecticut Avenue, NW, Suite 1100, Washington, DC 20036

202.381.1400

202.381.1405

www.emilyslist.org

November 5, 2007

To: Donna Edwards for Congress

From: Callie Fines
EMILY's List

INVOICE

This invoice represents internet costs that will be incurred on behalf of Donna Edwards for Congress. The total includes web fees, e-mail costs, and various other items associated with placement on our website.

Total	\$778.54
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This invoice must be paid in full by Thursday November 8, 2007. Please make your check payable to EMILY's List. Please send via UPS or Federal Express. If you have any questions regarding this invoice, please contact me at (202) 419-3174.

Thank you,

Callie Fines
Director of Finance and Compliance

(B)

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DONNA EDWARDS FOR CONGRESS 04/08
2001 CLINT LANE
FORT WASHINGTON, MD 20744-4821

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Date November 8, 2007

Order of EMILY'S List

\$ 778.54

Seven hundred and seventy-eight dollars ⁵⁴/₁₀₀

HB&T

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For Cover Costs Incurred by Emily's List

Donna F. Edwards

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