

**AKIN GUMP
STRAUSS HAUER & FELD LLP**

Attorneys at Law

STEVE ROSS
202.867.4343/fax: 202.867.4288
sross@akingump.com

March 24, 2005

**RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2005 MAR 29 P 12:59**

**Jeff S. Jordan
Supervisory Attorney
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463**

Re: MUR 5642

Dear Mr. Jordan:

This letter is in response to the Complaint filed by the National Legal and Policy Center ("NLPC") alleging that an individual, George Soros ("Soros"), violated the Federal Election Campaign Act ("FECA" or "Act"). The NLPC's Complaint rests entirely on the mistaken notion that FECA applies the same disclosure requirements to individuals who are exercising their right to independently speak out on candidates and parties, as it does to candidates, political parties and political committees. NLPC seeks to invent, out of whole cloth, a new FECA concept—the "independent expenditure campaign." Complaint, 1-22 *passim*. No such concept exists under the Act, and the Commission should reject this attempt to make up new provisions of federal law.

The Complaint alleges that Soros failed to report certain independent expenditures and failed to timely file independent expenditure reports. The Complaint also alleges that two 501(c)(3) organizations, the World Affairs Council of Philadelphia and the Columbus Metropolitan Club,¹ made prohibited corporate in-kind contributions to "federal candidates"—a claim that would require the Commission to ignore the distinction between people who are

¹ World Affairs Council of Philadelphia and Columbus Metropolitan Club are non-profit organizations that regularly host events featuring speeches by public figures. Soros appeared as a guest speaker at both organizations.

Jeff S. Jordan
March 24, 2005
Page 2

29044223656

candidates and those who are not. The Complaint also names Fenton Communications as a Respondent.² The Complaint fails to allege the violation of any applicable provision of the FECA by any of the Respondents. The Complaint should be promptly dismissed.

I. The Complaint Confuses The Disclosure Rules Governing Candidates And Political Committees With Those That Apply To Individuals

The Complaint does not allege that Soros was either a candidate for federal office or that he was affiliated with, or acting as, an agent of a federal candidate or committee. The Complaint, by repeated invocation of the word "campaign," incorrectly extends to Soros a set of disclosure rules that apply only to candidates and political committees. As the Complaint itself recognizes, Soros is an individual who made a series of public pronouncements expressing his own personal views. In some—but not all—instances, the manner of his public pronouncements fell within the Act's definition of independent expenditure. A separate set of disclosure rules distinct in purpose and manner from those applicable to a candidate or a political committee governs the disclosure of independent expenditures by individuals. As explained below, Soros filed all required disclosure reports in a complete, accurate, and timely manner.

II. Complainant Misconstrues FEC Form 5 Filing Requirements

The FEC regulations contain specific reporting requirements for independent expenditures made by individuals. The FEC Form 5 reports must disclose, among other things, the "amount, date, and purpose" of an expenditure for a communication that expressly advocates the election or defeat of a clearly identified federal candidate. 11 C.F.R. § 109.10. Soros complied with this reporting requirement.

The Complaint wrongly alleges that Soros should have reported as expenditures costs associated with his personal travel and items such as his personal legal fees. Unlike political committees and principal campaign committees that are required to report all receipts and disbursements, individuals are only required to report payments made for "communications" that expressly advocate the election or defeat of a federal candidate or committee. 11 C.F.R. §§ 100.16(a), 109.10. The Commission regulations define "public communication" as "broadcast, cable, or satellite communications, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political

²Remarkably, the Complaint names Fenton Communications as a respondent, but does not allege any violation by Fenton. Fenton is a communications firm that was paid by Soros to perform certain services and appears in the independent disclosure reports filed by Soros. This letter will serve as a response on behalf of Fenton Communications, as well as Soros.

3

3

**AKIN GUMP
STRAUSS HAUER & FELD LLP**

Attorneys at Law

Jeff S. Jordan
March 24, 2005
Page 3

advertising." 11 C.F.R. § 100.26. Internet communications are expressly excluded from the definition of "public communications." *Id.*

The Complaint wrongly alleges that Soros should have disclosed additional expenses on his FEC Form 5 independent expenditure reports. These expenses include: payments to Fenton Communications; costs associated with employment of his public spokesman; legal fees; costs for the printing of his book; travel and administrative costs associated with Soros's speaking tour; and mailing list costs. These expenses do not fall within the definition of "public communication" at 11 C.F.R. § 100.26, and the Act does not require individuals to include such expenses on FEC Form 5.³

Soros did report, as required, all payments for newspaper advertisements, direct mailing, and other communications that fit within the definition of "public communication."

III. Soros Filed All FEC Form 5 Reports In A Timely Manner

The Complaint inaccurately states that Soros did not timely file the FEC Form 5 Reports. The FEC Form 5 Report filed on November 4, 2004 was, in fact, timely filed. The report covered an expenditure made on November 2, 2004, the date of the general election, for costs associated with maintaining a website www.soros.com (an expense that did not have to be reported).

Pursuant to FEC rules, an individual must report within 24 hours all expenditures made during the final 20 days before the election, up to 24 hours before the election. Specifically, to trigger the 24 hour report, the expenditure must be made "more than 24 hours before 12:01 a.m. of the day of the election." 11 C.F.R. § 109.10(d). Soros did not make the final payment until November 2, 2004, after 12:01 a.m. and as such did not trigger the 24 hour reporting requirement.

Moreover, independent expenditure reports do not have to be filed until the communication has been "publicly distributed." 11 C.F.R. § 109.10(c). The first communication for which an expenditure was made by Soros was not publicly distributed until September 28, 2004; thus, the FEC Form 5 filed on September 29, 2004 was well within the 48 hour period.

IV. The World Affairs Council And The Columbus Metropolitan Club Did Not Make Political Contributions By Hosting Soros As A Guest Speaker

³ See e.g., FEC AO 1979-80 (classifying mailing list rental costs as an operating expense and not a communication expense).

29044223657

**AKIN GUMP
STRAUSS HAUER & FELD LLP**

Attorneys at Law

**Jeff S. Jordan
March 24, 2005
Page 4**

29044223658

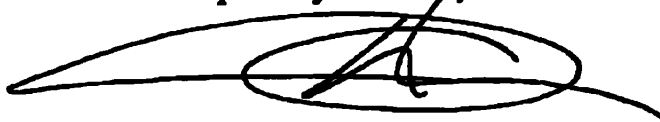
The Complaint alleges that the 501(c)(3) corporations made illegal corporate in-kind contributions to unnamed "federal candidates" by spending corporate resources to promote the defeat of President Bush. The Complaint is simply wrong. The 501(c)(3) corporations hosted Soros, an individual who is neither a federal candidate nor an agent of a federal candidate, as a guest speaker to deliver speeches on "America's Role in the World and the Election." The cost of such an event does not become an in-kind contribution solely by virtue of the fact that Soros included in his remarks his personal opinions about the upcoming election.

Entities that host an individual who is not a federal candidate or an agent of a candidate, are not making a political contribution, in-kind or otherwise, simply because the individual expresses his opinion to defeat a federal candidate. No matter how well known Soros may be, he was not a candidate or an agent of a candidate at the time the speeches were made.

V. Conclusion

The Complaint fails to allege the violation of any provision of the Federal Election Campaign Act which is applicable to any of the Respondents. The Complaint should be promptly dismissed.

Respectfully submitted,



**Steven R. Ross
Counsel to George Soros**