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August 28, 2008

VIA COURIER

Jeff S. Jordan
Supervisory Attorney
Complaints Examination &
Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6033

Dear Mr. Jordan:

This response, including attached exhibits, is submitted on behalf of the Ohio Bankers League ("OBL") and Daniel K. Conklin ("Mr. Conklin") in response to a complaint filed by the Ohio Democratic Party ("ODP") with regard to a fund-raising event held on June 3, 2008 for Stivers for Congress. The essence of ODP's complaint is that both OBL and Mr. Conklin violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f)(1) by facilitating the making of contributions to the Stivers for Congress campaign. For the reasons set forth below, the Federal Election Commission ("FEC" or "Commission") should activate this case and find that there is no reason to believe that either OBL or Mr. Conklin committed any violation of 2 U.S.C. § 441b(a) or 11 C.F.R. § 114.2(f).

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Summary of the Facts and Legal Arguments

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The ODP's complaint is based entirely upon an incorrect interpretation of an in-artfully worded invitation to a fund-raising event for the Stivers for Congress campaign. The ODP complaint points to two phrases on the invitation as the sole basis for its allegation that both OBL and Mr. Conklin violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f). First, the invitation solicits recipients to "join the OBL for an evening with State Senator Steve Stivers Republican Candidate for Congress." Second, the invitation advises recipients that they may return the response form and contributions to "Dan Conklin, Ohio Bankers League, 4249 Easton Way, Suite 150, Columbus, Ohio 43219." ODP Complaint at ¶ 10 and Exhibit 3. Based solely upon those two phrases, the ODP alleges that "earmarked contributions were directed by Respondents to the corporate headquarters of Respondent OBL and to the attention of a corporate representative, Respondent Conklin, in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f). ODP Complaint at ¶ 11.

The ODP's complaint unwittingly refutes itself. The ODP notes that "Dan Conklin is listed on the Statement of Organization of the Ohio Bankers League Political Action Committee, a separate segregated fund of OBL, as custodian of records with the position title of 'PAC Specialist' at the same address." ODP Complaint at ¶ 10. And that, of course, is the explanation for what happened in this matter. The invitation the ODP finds so objectionable was, in fact, a solicitation sent by the Ohio Bankers League Political Action Committee ("OBL PAC") to members of its restricted class, which advised members that they could send their contribution

checks to an officer of the OBL PAC for delivery to the Stivers for Congress campaign.

Commission regulations specifically exclude from the prohibitions of 11 C.F.R. §114.2(f) the soliciting of "contributions earmarked for a candidate that are to be collected and forwarded by the [trade association's] separate segregated fund" 11 C.F.R. § 114.2(f)(4)(iii).

Statement of the Facts

The Ohio Bankers League is a Section 501(c)(6) trade association representing FDIC insured depository institutions and their affiliates in Ohio. Affidavit of Jeffrey D. Quayle at ¶ 2 (attached hereto as Exhibit 1). The OBL PAC is a separate segregated fund connected to the OBL. The OBL PAC is also an affiliated committee of the American Bankers Association PAC (BANKPAC). Quayle Affidavit at ¶ 3. Jeffrey D. Quayle serves simultaneously as the Senior Vice President and General Counsel of the OBL and as Treasurer of the OBL PAC. Quayle Affidavit at ¶¶ 2-3. As the ODP concedes in its complaint, Daniel K. Conklin is a PAC Specialist with the OBL and serves simultaneously as the Custodian of Records of the OBL PAC. Quayle Affidavit at ¶ 3.

Steve Stivers is currently an Ohio State Senator and a candidate seeking to represent the 15th Congressional District of Ohio in the U.S. House of Representatives. Quayle Affidavit at ¶ 4. Prior to running for public office, Mr. Stivers was a government relations professional for Bank One in Ohio for approximately fifteen years and was an active participant in OBL activities on behalf of Bank One during that period. *Id.* Not surprisingly therefore, when he began his campaign for the House of Representatives, Mr. Stivers approached Mr. Quayle and many other

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members of the Ohio banking community (a substantial portion of whom are members of the OBL PAC's restricted class) to raise funds for his campaign. Id. Subsequently, Sherran Blair, President of First Community Bank in Columbus, Ohio (and a former Chairwoman of OBL) and her husband, Roger, volunteered to host a small fund-raising event for the Stivers campaign in their home in New Albany, Ohio on the evening of June 3, 2008. Id. The OBL PAC agreed to print and mail invitations to the event to members of the OBL PAC's restricted class with the understanding that the printing and mailing costs would be paid by the Stivers for Congress campaign. Id. The event was scheduled to coincide with the OBL CEO Symposium on June 3-4, 2008, when many members of the OBL PAC's restricted class would be in Central Ohio. Id.

Mr. Quayle, as Treasurer of the OBL PAC, prepared the first draft of the invitation that is the basis for the complaint in MUR 6033. Quayle Affidavit at ¶ 5. In retrospect, Mr. Quayle now concedes that the invitation should have been more clearly written to state that it was from the OBL PAC rather than giving the impression that it was from the OBL. Id. In addition, he concedes that the invitation should have made it clear that contributions from the members of the OBL PAC's restricted class to the Stivers for Congress campaign were to be sent to Mr. Conklin in his capacity as an officer of the OBL PAC rather than as an employee of OBL. Id. Since Mr. Quayle's previous experience in drafting solicitation letters was limited to soliciting contributions to the OBL PAC rather than to a federal candidate, he submitted the draft invitation to the Stivers for Congress campaign for their review and approval. Id. The campaign approved the invitation as submitted without raising any concerns that the text did not clearly indicate that

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it was from the OBL PAC rather than from the OBL itself. Id.

The invitation was mailed to members of the OBL PAC's restricted class on April 30 and May 1, 2008. Quayle Affidavit at ¶ 6. As a service to members of the restricted class, the OBL PAC offered to serve as a conduit for contributions from those who chose to make a contribution to the Stivers for Congress campaign, but who either could not attend, or did not want to attend, the Blair event in person. Id. Accordingly, the invitation advised members of the OBL PAC's restricted class that they could send their contribution checks to Mr. Conklin for delivery to the Stivers for Congress campaign. Id.

The ODP obtained a copy of the invitation and, on the day of the Blair event, released it to the public falsely claiming that it demonstrated that the OBL had made an illegal corporate contribution to the Stivers for Congress campaign. Quayle Affidavit at ¶ 7. The OBL PAC publicly disputed the ODP's claim, but, in an abundance of caution, the OBL PAC opted to forego its right to act as a conduit for contributions to the Stivers for Congress campaign and instead returned the contribution checks that had been received to the original contributors and informed them that they should deliver the checks to the Stivers for Congress campaign themselves. Id. "No campaign contribution checks from members of the OBL PAC's restricted class were delivered to the Stivers campaign by any officer or employee of the OBL PAC or OBL itself." Id. (Emphasis added). Mr. Conklin's role in the Blair event was limited to accepting contribution checks in his role as an officer of the OBL PAC and then returning those same checks to the original contributors when the OBL PAC opted not to serve as a conduit for

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those contributions. Id.

The Blair event was, as intended, a small event. Quayle Affidavit at ¶ 8. Sherran and Roger Blair bought and prepared the food for the event themselves. Id. There was no entertainment or valet parking service provided to those who attended. Id. Their total cost, including alcohol, was approximately \$475. Id. The Blairs reported that amount to the Stivers for Congress campaign as an in-kind contribution. The total cost for the printing and mailing of the invitations to the Blair event was \$811. Id. The OBL PAC received a check in that amount from the Stivers for Congress campaign on July 14 or 15, 2008. Id. See also Exhibit 2.

Legal Arguments

There is simply no basis in law or fact for the Commission to find reason to believe that either OBL or Mr. Conklin violated 2 U.S.C. § 441b(a) or 11 C.F.R. § 114.2(l). The sole allegation of the complaint is that "carmarked contributions were directed by Respondents to the corporate headquarters of Respondent OBL and to the attention of a corporate representative, Mr. Conklin, in violation of" 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f). This allegation is directly refuted by the sworn affidavit of Mr. Quayle, who testified that the invitation was sent by the OBL PAC to members of its restricted class and that the OBL PAC, as a service to the members of its restricted class, offered to serve as a conduit for contributions from members of its restricted class who chose to make contributions to the Stivers for Congress campaign. Mr. Conklin accepted these checks in his role as an officer of the OBL PAC. Quayle Affidavit at ¶¶ 6-7. Moreover, Mr. Quayle also testified that the OBL PAC ultimately decided not to

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exercisc its right to serve as a conduit for the members of the restricted class and instead returned any checks that had been sent to the OBL PAC to the original contributors and informed them that they should deliver the checks to the Stivers for Congress campaign themselves. No campaign contribution checks from members of the OBL PAC's restricted class were delivered to the Stivers for Congress campaign by any officer or employee of the OBL PAC or the OBL itself. Quayle Affidavit at ¶ 7.

More importantly, the actions of the OBL PAC are specifically exempted from the prohibition on facilitating the making of contributions in 11 C.F.R. § 114.2(f). Section 114.2(f)(3)(i)&(ii) states specifically that the term "facilitating the making of contributions" does not include the following activities if conducted by a separate segregated fund: (1) soliciting contributions to a candidate or political committee, and (2) collecting and forwarding contributions earmarked to a candidate. In addition, Section 114.2(f)(4)(ii)&(iii) states specifically that the term "facilitating the making of contributions" does not include the following activities if conducted by a corporation: (1) soliciting contributions to be sent directly to candidates if the solicitation is directed to the restricted class, and (2) soliciting contributions earmarked for a candidate that are to be forwarded by the corporation's separate segregated fund. Accordingly, there is no possible way that the actions of OBL, OBL PAC or Mr. Conklin in this matter can be interpreted as a violation of 11 C.F.R. § 114.2(f).

For all of the reasons discussed above, the Commission should determine that there is no reason to believe that either the Ohio Bankers League or Daniel K. Conklin committed any

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violation of 2 U.S.C. § 441b(a) or 11 C.F.R. § 114.2(f) and should dismiss this matter promptly.

Respectfully submitted,



Brett G. Kappel
Counsel for the Ohio Bankers League
and Daniel K. Conklin

Enclosures

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