

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

**MUR 5854**

DATE COMPLAINT FILED: 10/19/06

DATE OF NOTIFICATION: 10/26/06

DATE OF LAST RESPONSE: 12/19/06

DATE ACTIVATED: 1/24/07

STATUTE OF LIMITATIONS: 7/11/10

**COMPLAINANTS:**

Democracy 21

Campaign Legal Center

**RESPONDENTS:**

The Lantern Project and Brian Donlen, as treasurer<sup>1</sup>

**RELEVANT STATUTES:**

2 U.S.C. § 431(4)(A)

2 U.S.C. § 431(8)(A)

2 U.S.C. § 431(9)(A)

2 U.S.C. § 433

2 U.S.C. § 434

2 U.S.C. § 441a

2 U.S.C. § 441b(a)

11 C.F.R. § 100.22(a)-(b)

11 C.F.R. § 100.57

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

Internal Revenue Service

<sup>1</sup> A First General Counsel's Report addressing the complaint in this matter as well as a related complaint designatex [redacted] was circulated on August 27, 2007 and placed on the September 11, 2007 Executive Session agenda. However, the Report was withdrawn on September 7, 2007 because two Commissioners were recused from different fact patterns of the Report, which did not leave the minimum of four Commissioners to consider the substance of the matter. The allegations concerning [redacted] raised in the MUR 5854 complaint were severed from MUR 5854 and placed into [redacted] so that only allegations as to the Lantern Project would be addressed in one MUR that four Commissioners could consider.

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**I. INTRODUCTION**

The complaint in this matter alleges that the Lantern Project, an entity organized under Section 527 of the Internal Revenue Code, failed to register as a political committee with the Commission and disclose its contributions and expenditures as required by the Federal Election Campaign Act of 1971, as amended ("the Act"). The complaint also alleges that the Lantern Project accepted excessive contributions and corporate or labor organization contributions in violation of the Act. Based on the complaint and response, as well as our review of publicly available information, we recommend that the Commission find no reason to believe the Lantern Project, and Brian Donlon, as treasurer, violated the Act.

**II. FACTUAL SUMMARY**

The Lantern Project was established on January 10, 2005 and files disclosure reports with the Internal Revenue Service under Section 527 of the Internal Revenue Code. 26 U.S.C. § 527. It has not registered with the Commission as a political committee. In reports filed with the IRS, it reports raising \$1,700,900 and spending \$1,633,502 through February 2007, with most of its financial activity taking place in the months immediately prior to the 2006 general election.<sup>2</sup> The complaint alleges that the Lantern Project raised funds outside the limitations and prohibitions of the Act to influence the 2006 Senate election in Pennsylvania between Rick Santorum and Bob Casey, and therefore should have registered and properly disclosed its activities in reports filed with the Commission.

In response to the complaint, Lantern Project denies that it received contributions or made any expenditures for the purpose of influencing a federal election, and thus was not required to register and report as a political committee under the Act. In asserting that it did not

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<sup>2</sup> Almost half of the Lantern Project's receipts, \$865,500, came from labor organizations. In addition, \$697,000 of the donations received from individuals exceeded \$5,000.

1 make any expenditures, the Lantern Project states that it did not pay for any communications  
2 containing express advocacy. Further, the organization asserts that the complaint errs by  
3 equating 527 organization status with political committee status and by claiming that the  
4 organization's major purpose was the election of candidates.

5 The Lantern Project funded at least eight television advertisements, one Internet ad and  
6 one radio ad, all of which criticized Santorum's position on an issue. Attachment A.

7 Representative examples of the ads include:

- 8       ▪ "It's hard to make ends meet. Yet Rick Santorum voted against raising the  
9       minimum wage. But Santorum voted to allow his own pay to be raised by \$8000.  
10      What is he thinking?" Attachment A at 1("Minimum").  
11
- 12      ▪ "From privatizing Social Security to cutting student loans for the middle class,  
13      when Rick Santorum has to choose between siding with George Bush or middle  
14      class Pennsylvanians, Santorum supports Bush. What is he thinking?" *Id.*  
15      ("Sides").  
16
- 17      ▪ "Rick Santorum's committees accepted more money from lobbyists last year than  
18      any other member of Congress. No wonder Santorum voted to give billions in  
19      special tax breaks to oil companies. What was he thinking?" *Id.* at 2  
20      ("Lobbyists").  
21

22 Although the complaint generally alleges that the Lantern Project accepted  
23 contributions, the complainants do not appear to have had access to any Lantern Project  
24 fundraising materials. Although Lantern Project did not submit any sample solicitations with its  
25 response, it stated that its "written solicitations ... tell donors expressly that their funds will not  
26 be used to support the election or defeat of clearly identified federal candidates." Lantern Project  
27 Response at 3 (emphasis added). Further, our review of the organization's website identified an  
28 instruction to readers that: "[c]ontributions to the Lantern Project will neither be used to support

1 or oppose the election of a clearly identified Federal candidate nor to influence Federal  
2 elections.”<sup>3</sup>

3 The mission statement on the Lantern Project's website asserts that “our mission here is  
4 simple: [t]o shine a light on the facts about Rick Santorum's extreme positions, failed policies  
5 and hypocritical statements – and let the facts speak for themselves.” See MUR 5854 Complaint,  
6 Exhibit B; see also www.santorumexposed.com. Although the Lantern Project claims on its  
7 website that its “goal is to expose right wing public officials as the extremists they are rather than  
8 the pillars of mainstream, middle-American values they claim to be,” the website focuses  
9 exclusively on Santorum, with articles, editorials, and videos critical of the Senator and his views  
10 on a wide range of issues. Attachment B. There is no indication that the organization did any  
11 work outside Pennsylvania in 2006. Lantern Project's response acknowledges that it “focused  
12 initially on the legislative record” of only Santorum, but claimed that it did so because  
13 Santorum's agenda was the “best example” of the “brand of politics” and “right-wing legislative  
14 style” they opposed and because the group was based in Pennsylvania, the state Santorum  
15 represented. Lantern Project Response at 2-3.

### 16 III. LEGAL ANALYSIS

17 The Act defines a “political committee” as any committee, club, association, or other  
18 group of persons that receives “contributions” or makes “expenditures” for the purpose of  
19 influencing a federal election that aggregate in excess of \$1,000 during a calendar year. 2 U.S.C.  
20 § 431(4)(A). To address overbreadth concerns, the Supreme Court has held that only  
21 organizations whose major purpose is campaign activity can potentially qualify as political  
22 committees under the Act. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v.*

<sup>3</sup> However, the website's fundraising page also urged donors to contribute in order to “help us expose Rick's radical agenda.”

1 *Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("MCFL"). The Commission has long  
2 applied the Court's major purpose test in determining whether an organization is a "political  
3 committee" under the Act, and it interprets that test as limited to organizations whose major  
4 purpose is federal campaign activity. *See* Political Committee Status: Supplemental Explanation  
5 and Justification, 72 Fed. Reg. 5595, 5597, 5601 (Feb. 7, 2007); *see also* FEC's Mem. in Support  
6 of Its Second Mot. for Summ. J., *Emily's List v. FEC*, Civ. No. 05-0049 at 21 (D.D.C. Oct. 9,  
7 2007).

8 During the 2004 election cycle, the Commission concluded there was reason to  
9 investigate whether section 527 organizations had triggered political committee status when the  
10 available information demonstrated that the objective of a group was to influence a federal  
11 election and the group raised and spent substantial sums of money in furtherance of that  
12 objective. In such instances, the Commission concluded it was appropriate to investigate  
13 whether, among those funds spent and received, the groups had made \$1,000 in "expenditures"  
14 or received \$1,000 in "contributions."<sup>4</sup> *See, e.g.*, MURs 5577 and 5620 (National Association of  
15 Realtors – 527 Fund), Factual and Legal Analysis.

16 For matters arising out of the 2006 election cycle, however, the Commission has  
17 indicated that due to developments in the law, including the distillation of the meaning of  
18 "expenditure" through the enforcement process and the promulgation of 11 C.F.R. § 100.57  
19 addressing contributions, it will now require that there be some information suggesting a specific  
20 expenditure was made or a contribution received prior to authorizing an investigation. □

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4 As the Commission observed in prior matters involving 527 organizations, the complainant and the Commission will not have access to all solicitations and communications at this preliminary stage of the enforcement process in the vast majority of cases. For this reason, the Commission has not required proof that the 527 organization triggered the statutory threshold of \$1,000 in contributions or expenditures before finding reason to believe, provided available information otherwise suggests that the organization has the sole or primary objective of influencing federal elections and has raised and spent substantial funds in furtherance of that objective.

**A. There is an Insufficient Basis to Conclude Lantern Project Has Made Expenditures Exceeding \$1,000**

In determining whether an organization makes an expenditure, the Commission "analyzes whether expenditures for any of an organization's communications made independently of a candidate constitute express advocacy either under 11 C.F.R. § 100.22(a), or the broader definition at 11 C.F.R. § 100.22(b)." Supplemental Explanation and Justification, Political Committee Status, 72 Fed. Reg. 5595, 5606 (Feb. 7, 2007). Under the Commission's regulations, a communication contains express advocacy when it uses phrases such as "vote for the President," "re-elect your Congressman," or "Smith for Congress," or uses campaign slogans or words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, or advertisements that say, "Nixon's the One," "Carter '76," "Reagan/Bush," or "Mondale!" See 11 C.F.R. § 100.22(a); see also *MCFL*, 479 U.S. at 249 ("[The publication] provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than "Vote for Smith" does not change its essential nature."). Courts have held that "express advocacy also includes verbs that exhort one to campaign for, or contribute to, a clearly identified candidate." *FEC v. Christian Coalition*, 52 F.Supp. 2d 45, 62 (D.D.C. 1999) (explaining why *Buckley*, 424 U.S. at 44, n.52, included the word "support," in addition to "vote for" or "elect," on its list of examples of express advocacy communication).

<sup>5</sup> Because we conclude in this Report that the Lantern Project does not appear to have made expenditures in excess of \$1,000 or accepted contributions in excess of \$1,000, it is unnecessary for the Commission to make a determination as to the major purpose of Lantern Project

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1 The Commission's regulations further provide that express advocacy includes  
2 communications containing an "electoral portion" that is "unmistakable, unambiguous, and  
3 suggestive of only one meaning" and about which "reasonable minds could not differ as to  
4 whether it encourages actions to elect or defeat" a candidate when taken as a whole and with  
5 limited reference to external events, such as the proximity to the election. *See* 11 C.F.R.  
6 § 100.22(b). In its discussion of then-newly promulgated section 100.22, the Commission stated  
7 that "communications discussing or commenting on a candidate's character, qualifications or  
8 accomplishments are considered express advocacy under new section 100.22(b) if, in context,  
9 they have no other reasonable meaning than to encourage actions to elect or defeat the candidate  
10 in question." *See* 60 Fed. Reg. 35292, 35295 (July 6, 1995).<sup>6</sup>

11 As explained earlier, Lantern Project distributed at least ten advertisements. A review of  
12 the ads reveals that each of them is critical of Santorum, but at the same time, they focus on  
13 issues, and never mention Santorum's candidacy or his political opponent. Finally, the ads  
14 contain no exhortations that a viewer would understand as urging action for Santorum's election.  
15 The ads in question do not contain phrases, slogans or words that explicitly or "in effect" urge  
16 the election of Rick Santorum or the defeat of Bob Casey. *See* 11 C.F.R. § 100.22(a). Rather,  
17 they end with the rhetorical question asking "What was he thinking?" While the  
18 communications clearly indicate that the Lantern Project disagrees with Santorum's policies on

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<sup>6</sup> In *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. \_\_\_, 127 S.Ct. 2652 (2007) (*WRTL*), the U.S. Supreme Court held that "an ad is the functional equivalent of express advocacy," and thus subject to the ban against corporate funding of electioneering communications, "only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *Id.*, 127 S.Ct. at 2667. Although 11 C.F.R. § 100.22 was not at issue in the matter, the Court's analysis included examining whether the electioneering communication had "indicia of express advocacy" such as the "mention [of] an election, candidacy, political party, or challenger" or whether it "take[s] a position on a candidate's character, qualifications, or fitness for office." *Id.* The Commission subsequently incorporated the principles set forth in the *WRTL* opinion into its regulations governing permissible uses of corporate and labor organization funds for electioneering communications at 11 C.F.R. § 114.15. *See* Final Rule on Electioneering Communications, 72 Fed. Reg. 72899, 72914 (Dec. 26, 2007).

1 the various issues, it does not tell readers to vote for Santorum, and does not identify him as a  
2 candidate for the office of Senate.

3 Moreover, the communication's electoral portion is not "unmistakable, unambiguous, and  
4 suggestive of only one meaning"; and reasonable minds could differ as to whether it encourages  
5 electoral, or some other action. See 11 C.F.R. § 100.22(h). While the ads appear to have been  
6 broadcast in the months preceding the general election, the overwhelming focus of the  
7 communication is on issues and Santorum's policies or positions on those issues. Even ads that  
8 arguably attack Santorum's "character, fitness and qualifications," such as "Lobbyists," where  
9 Santorum's legislative votes are linked to lobbyist's political contributions, do not appear to  
10 qualify as express advocacy. See 60 Fed. Reg. at 35295. "Lobbyists" is principally about the  
11 legislative issue of oil industry tax policy, not Santorum's character. Given the lack of any  
12 electoral directives in the various Lantern Project ads, and taking the communication as a whole,  
13 one can reasonably view each communication as criticizing Santorum's legislative or issues  
14 agenda, and not as encouraging voting for or against Santorum.

15 Therefore, there is an insufficient basis on which to conclude that the Lantern Project has  
16 made expenditures exceeding \$1,000 and triggered political committee status through  
17 expenditures.

18 **B. There is an Insufficient Basis to Conclude Lantern Project Has Received**  
19 **Contributions Exceeding \$1,000**  
20

21 The term "contribution" is defined to include "any gift, subscription, loan, advance, or  
22 deposit of money or anything of value made by any person for the purpose of influencing any  
23 election for Federal office." 2 U.S.C. § 431(8)(A)(i). A gift, subscription, loan, advance, or  
24 deposit of money or anything of value made by any person in response to any communication is  
25 a contribution to the person making the communication if the communication indicates that any



1 portion of the funds received will be used to support or oppose the election of a clearly identified  
2 Federal candidate. 11 C.F.R. § 100.57(a).

3 The complaint has not specifically alleged that the Lantern Project has received  
4 contributions under 11 C.F.R. § 100.57. Instead, it provides details on the donors to the Lantern  
5 Project whose contributions would be impermissible under the Act if the Lantern Project was a  
6 political committee. The complaint did not submit any Lantern Project solicitation letters or  
7 direct mail fundraising appeals. The Lantern Project response directly addresses the complaint's  
8 allegations by explaining that Lantern Project donors were "expressly" told "that their funds will  
9 not be used to support the election or defeat of clearly identified federal candidates." Lantern  
10 Project Response at 3. This Office has confirmed that a similar admonition was set forth on the  
11 organization's website. Although such a disclaimer would not immunize a fundraiser from the  
12 reach of 11 C.F.R. § 100.57 if in fact the Lantern Project communications to donors "indicate[d]  
13 that any portion of the funds received will be used to support or oppose the election of a clearly  
14 identified Federal candidate," there is no evidence that Lantern Project engaged in fundraising  
15 under these provisions. 11 C.F.R. § 100.57(a).<sup>7</sup> Therefore, there is an insufficient basis on  
16 which to conclude that the Lantern Project has received contributions exceeding \$1,000 and  
17 triggered political committee status through contributions.

18 **C. Conclusion**

19 Therefore, we recommend that the Commission find no reason to believe that the Lantern  
20 Project, and Brian Donlen, as treasurer, violated 2 U.S.C. §§ 433, 434, 441a(1), and 441b(a) by

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<sup>7</sup> Lantern Project's website set forth a message urging readers to contribute to the Lantern Project to help "expose Rick's radical agenda," but this message does not appear to request contributions to elect a clearly identified candidate for federal office because there are no references to elections or elective office in the solicitation. See Political Committee Status & Definition of Contribution: Explanation and Justification, 69 Fed. Reg. 68056, 68057 (Nov. 23, 2004).

1 failing to register as a political committee with the Commission; by failing to disclose its  
2 contributions and expenditures in reports filed with the Commission; by knowingly accepting  
3 contributions in excess of \$5,000; and by knowingly accepting union contributions.

#### IV. RECOMMENDATIONS

1. Find no reason to believe that the Lantern Project, and Brian Donlen, as treasurer, violated 2 U.S.C. §§ 433, 434, 441a(f), and 441b(a) by failing to register as a political committee with the Commission; by failing to report its contributions and expenditures; by knowingly accepting contributions in excess of \$5,000, and by knowingly accepting prohibited contributions from labor organizations;
2. Approve the attached Factual and Legal Analysis;
3. Approve the appropriate letter; and
4. Close the file.

Date \_\_\_\_\_

2/6/2008

Thomasina P. Orr

**Thomasenia P. Duncan**  
**General Counsel**

Kell M. Gell

**Kathleen M. Guith**  
**Acting Associate General Counsel**

Max Schubert

**Mark D. Shonkwiler**  
**Acting Deputy Associate General Counsel**

Butler

**Peter G. Blumberg**  
**Acting Assistant General Counsel**

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Attachments

A. Transcript of Lantern Project Advertisements

B. Lantern Project Webpage

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## Lantern Project television advertisement scripts

### Drug

**Narrator:**

Rick Santorum sided with the big drug companies by voting to increase their profits  
And keep seniors from buying low-cost prescription drugs from Canada

No wonder the drug lobby gave Santorum committees half a million dollars

What is he thinking?

### Lobbyists

**Narrator:** Rick Santorum's committees accepted more money from lobbyists last year than any other member of Congress.

No wonder Santorum voted to give billions in special tax breaks to oil companies.

What is he thinking?

### Loans

**Narrator:** Rick Santorum recently voted to cut billions in loans that help middle-class students afford college.

But he voted to give oil companies an additional \$2 billion in new tax breaks.

What is he thinking?

### Minimum

**Narrator:** It's hard to make ends meet. Yet Rick Santorum voted against raising the minimum wage. But Santorum voted to allow his own pay to be raised by \$8000. What is he thinking?

## Oil

**Narrator:** Oil companies are making record profits. We're paying more

Rick Santorum recently voted to give oil companies an additional \$2 billion in new tax breaks

What is he thinking?

## Overtime

**Narrator:**

It's hard to make ends meet.

But Rick Santorum wants to let businesses eliminate overtime pay for millions of Americans...

...even if they work more than 40 hours a week.

What is he thinking?

## Security

**Narrator:** Rick Santorum is working with George Bush to privatize social security.

Eliminating the guaranteed benefit for seniors and putting your retirement security at risk.

What is he thinking?

## Sides

**Narrator:**

From privatizing social security to cutting student loans for the middle class.

When Rick Santorum has to choose between siding with George Bush or middle class Pennsylvanians, Santorum supports Bush.

What is he thinking?



Santorum on...

## Blog Events...

January 5, 2006  
[Senators Won't Get Any More Kisses from Rick](#)

December 22, 2006  
[Santorum Says Media Helps Terrorists](#)

December 14, 2006  
[Santorum Out of Touch?](#)

December 11, 2006  
[Santorum the Cable Guy?](#)

December 11, 2006  
[Santorum Supports Iranian Bus Drivers](#)

November 21, 2006  
[Your Taxes at Work for Rick](#)

November 13, 2006  
[Santorum the Shooting Star](#)

November 4, 2006  
[Santorum Helps Release Iraqi Nuclear Secrets](#)



Click here for que

## Welcome to Santorum Exposed

We believe that Rick Santorum has failed to use his position as a U.S. Senator to improve the lives of most Americans, and **our mission here is simple: To shine a light on the facts about Rick Santorum's extreme positions, failed policies and hypocritical statements - and let the facts speak for themselves.**

So come on in. Have a look around. Join us by [signing up for email updates](#). Then help us to expose Santorum. [Send us information](#). [Post on the Blog](#). Tell your friends, family members and colleagues about [santorumexposed.com](#) and ask them to get involved.

We'll keep you informed, but we need you to help us expose Rick Santomm in every corner of the Internet. That's the only way we'll succeed.

Send this page to a friend!

Your email:

Your Friend's email:

Comments:

Send

Contribute today and help us expose Rick's radical agenda

Contribute

Paid for and Authorized by the Lantern Project. Contributions to the Lantern Project will neither be used to oppose the election of a clearly identified Federal candidate nor to influence Federal elections.

Attachment B  
 Page 1 of 1

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