



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX (202-508-6200) and CERTIFIED MAIL

Michael E. Toner, Esq.
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1155 F Street N.W.
Washington, D.C. 20004

APR 12 2011

RE: MUR 6317
Timothy S. Stewart;
SADDLE PAC and Timothy Stewart, in his
official capacity as Treasurer;
Utah Defenders of Constitutional Integrity

Dear Mr. Toner:

On June 29, 2010, the Federal Election Commission notified your clients, Timothy S. Stewart, SADDLE PAC and Timothy Stewart, in his official capacity as Treasurer, and Utah Defenders of Constitutional Integrity, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint and information provided by your clients, the Commission, on April 5, 2011, found that there is reason to believe Utah Defenders of Constitutional Integrity violated 2 U.S.C. §§ 433, 434, and 441d. Also on this date, the Commission found that there is no reason to believe that SADDLEPAC and Timothy Stewart, in his official capacity as Treasurer, violated 2 U.S.C. §§ 433, 434, and 441d. In addition, the Commission determined to take no action at this time with regard to Timothy Stewart in his personal capacity or as a possible officer of Utah Defenders of Constitutional Integrity. The Factual and Legal Analyses, which formed a basis for the Commission's findings, are attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Candice Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,


Cynthia L. Bauerly
Chair

Enclosures
Factual and Legal Analyses

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Utah Defenders of Constitutional Integrity

MUR: 6317

I. INTRODUCTION

The complaint in this matter alleges that Utah Defenders of Constitutional Integrity (“UDCI”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to register or report as a political committee after spending more than \$1,000 on a mailer that expressly advocated the defeat of Senator Robert “Bob” Bennett in his bid for the Republican U.S. Senate seat nomination at the 2010 Utah GOP Convention. Complaint at unnumbered 3-4; *see* 2 U.S.C. §§ 433 and 434. The complaint also alleges that the disclaimer on the UDCI mailer did not comply with the Act, and that the mailer was misleadingly designed to appear as though it came from Mike Lee, one of Senator Bennett’s opponents. *Id.*; *see* 2 U.S.C. § 441d; 11 C.F.R. §§ 100.26 and 100.27. Finally, the complaint alleges that Respondents accepted contributions from anonymous donors, in violation of 11 C.F.R. § 110.4.¹ *Id.* at 3.

Respondents admit that UDCI, acting through Timothy Stewart, spent approximately \$4,700 to produce and disseminate the mailer. Response at 2-3. Respondents assert that the mailer was actually a satirical commentary on the nominating process, and was not express advocacy. *Id.* at 3-7. Based on its claim that the mailer did not contain express advocacy, Respondents claim the communication was not required to have a disclaimer, nor did it trigger independent expenditure reporting obligations. *Id.* Respondents acknowledge that UDCI has not

¹ At one point, the complaint alleges that Respondents accepted contributions from anonymous donors, in violation of 11 C.F.R. § 110.4. The facts described in the complaint, however, seem to indicate that UDCI was aware of the source of its funds, and that the source of the contributions simply were not disclosed, in violation of 2 U.S.C. § 434.

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1 registered with the Commission or filed disclosure reports, but contend that UDCI is not a
2 political committee. *Id.* at 7-8.

3 As set forth below, the available information indicates that UDCI triggered political
4 committee status and is subject to the Act's registration and reporting requirements, and that the
5 disclaimer on the mailer was deficient. Accordingly, the Commission found reason to believe
6 that Utah Defenders of Constitutional Integrity violated 2 U.S.C. §§ 433, 434, and 441d.

7 **II. FACTUAL BACKGROUND**

8
9 Utah Defenders of Constitutional Integrity ("UDCI"), which describes itself as a
10 grassroots collection of individuals who planned to pool personal resources for the sole purpose
11 of financing the mailer at issue in this matter, was formed in the spring of 2010. UDCI claims
12 that it did not intend to create an ongoing formal organization, and did not open a bank account
13 or take any other action to establish an ongoing entity. Response at 2. UDCI has not registered
14 with the Commission or the Internal Revenue Service as either a political committee or a non-
15 profit organization.

16 UDCI asked Timothy Stewart, the founder and treasurer of SADDLEPAC and a former
17 legislative aide to Senator Bob Bennett, to design, produce, and distribute a mailer directed at
18 delegates to the 2010 Utah GOP Convention. Response at 2. Respondents deny that
19 SADDLEPAC was involved with the mailer. *Id.* Neither the media accounts relied on by the
20 Complainant nor the Response to the complaint identify UDCI's principals or officers. As
21 discussed below, Mr. Stewart, who describes himself as a political consultant, is the only
22 individual identified as acting on behalf of UDCI. Mr. Stewart made public statements on the
23 organization's behalf, and was responsible for approving the content and making payments for

1 the mailer. Response at 2-3; *see also* Robert Gehrke and Thomas Burr, *Ex-Bennett Staffer*
2 *Linked to Temple Mailer*, The Salt Lake City Tribune, June 15, 2010.

3 UDCI claims that its intent was to use a satirical mail piece to criticize "an ongoing
4 whisper campaign propagated by various U.S. Senate candidates in Utah and their supporters
5 regarding which candidate was the staunchest defender of the U.S. Constitution and which
6 candidate possessed the greatest 'Utah values.'" ² Response at 2. Respondents assert that they
7 wanted to express their frustration that this "whisper campaign" was having an impact on the
8 March 22, 2010 Republican caucus meetings (at which delegates to the upcoming GOP state
9 convention had been selected). *Id.*

10 After being contacted by UDCI, Stewart arranged for Capital Campaigns, Inc. to create,
11 produce, and disseminate the Utah Values mailer. Response at 2-3. Stewart used his personal
12 funds to pay Capital Campaigns a deposit of \$3,500 for the mailer with the understanding that he
13 would be reimbursed by UDCI for the cost of the mailer, which totaled approximately \$4,700.
14 *Id.* As of the date of the Response, Stewart had only been reimbursed for \$820 of the mailer
15 expenses. ³ On or about May 4, 2010, a few days before the May 7-9, 2010 Republican
16 nominating convention, UDCI sent the "Utah Values" mailer via the U.S. Postal Service to
17 approximately 2,000 of the 3,500 convention delegates. *See* Response at 3.

18 The front of the Utah Values mailer poses the question, "Which candidate really has Utah
19 values?" Response, Attachment 1. Over the question, on the left half of the mailer, is a picture
20 of the Mormon Temple in Salt Lake City with an insert of Mike Lee's picture; opposite these

² Senator Bob Bennett, Mike Lee, and Tim Bridgewater were all candidates for the 2010 Utah GOP Senate nomination. According to media reports, pre-convention polling indicated that Mike Lee had a lead over the other candidates, including Senator Bennett. During the first round of voting at the convention, Utah businessman Tim Bridgewater received the most votes, followed by Mike Lee; Senator Bennett came in third. Lee eventually won the GOP nomination over Bridgewater in the second round of voting, and won the general election.

³ It is unclear if Stewart and/or UDCI ever paid the vendor the difference between the initial deposit of \$3,500 and the total of approximately \$4,700.

1 pictures, on the right half of the mailer, is a picture of the United States Capitol with an insert of
2 Senator Bennett's picture. *Id.* The back of the mailer reads, "Utahans Value the Constitution
3 Above All Else. But we know it hangs by a thread. Does Senator Bennett care? Or does he care
4 about staying in power? . . . You know the answer and you have the power to change things." *Id.*
5 Below this section is a highlighted box with the statement, "State Delegates, on May 8th, Release
6 Bennett with a vote of thanks and extend the call to someone new." *Id.* (emphasis added). The
7 mailer includes the disclaimer, "Paid for by Utah Defenders of Constitutional Integrity. Not
8 authorized by any candidate or candidate's committee." *Id.* The disclaimer does not include any
9 address, telephone number, or World Wide Web address.

10 The mailer, and its use of the picture of the Mormon Temple and the wording purportedly
11 associated with the Mormon Church, received substantial media coverage. This media coverage,
12 however, did not indicate that any of the recipient GOP convention delegates who viewed the
13 mailer recognized it as satirical. Instead, media reports cited by the complaint indicate that a
14 post-convention poll found a third of the people who had seen the mailer found it offensive
15 because of the use of religious imagery and, notwithstanding the disclaimer that it was not
16 authorized by any candidate, many believed it originated from Mike Lee's campaign. Robert
17 Gehrke and Thomas Burr, *Ex-Bennett Staffer Linked to Temple Mailer*, The Salt Lake City
18 Tribune, June 15, 2010.

19 In statements made after Tim Bridgewater finished ahead of pre-convention favorite
20 Mike Lee at the GOP Convention, Timothy Stewart is first quoted in media reports as describing
21 the mailer and its impact on the election as, "the most brilliant and possibly the biggest single
22 game changing political play in Utah politics in the last 20 years." Robert Gehrke and Thomas
23 Burr, *Ex-Bennett Staffer Linked to Temple Mailer*, The Salt Lake City Tribune, June 15, 2010.

1 He states, "I sincerely wish that I could take credit for [it]...But I can't. I am not that diabolical
2 nor creative... Instead, I am just a two-bit, wannabe political consultant, contacted by some Utah
3 folks wanting to exercise their First Amendment rights. They came up with a great idea and we
4 found a vendor and that's about the extent of it." *Id.* In these initial statements, Mr. Stewart
5 made no mention of any purported satiric intent.

6 After Mike Lee complained about the mailer and made a public statement of his intention
7 to file a complaint with the Commission, Stewart apologized for what he characterizes as his
8 "glb" initial statement, and, for apparently the first time, described the mailer as "satirical."
9 Robert Gehrke, *Lobbyist Says No Campaigns Behind Temple Mailer*, The Salt Lake City
10 Tribune, June 17, 2010. Stewart also asserts he was "motivated to act after seeing Bennett, [his]
11 former boss, being shredded by outside interest groups." *Id.* Although Stewart and
12 SADDLEPAC contributed \$1,500 to Tim Bridgewater's campaign, the Bridgewater campaign
13 disavowed that support and promised to return the contributions once it became aware that
14 Stewart was involved in creating the mailer. *Id.*

15 **III. ANALYSIS**

16
17 **A. Political Committee Status**

18 The complaint alleges that UDCI failed to register with the Commission as a political
19 committee, and failed to report its contributions and expenditures. Complaint at 3.
20 Under the Act, groups that trigger political committee status are required to register with the
21 Commission and publicly report all of their receipts and disbursements. 2 U.S.C. §§ 433 and
22 434. The Act defines a "political committee" as any committee, association, or other group of
23 persons that receives "contributions" or makes "expenditures" for the purpose of influencing a
24 Federal election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C.

1 § 431(4)(A). The term "contribution" is defined to include "any gift, subscription, loan, advance,
2 or deposit of money or anything of value made by any person for the purpose of influencing any
3 election for Federal office." 2 U.S.C. § 431(8)(A)(i). The term "expenditure" is defined to
4 include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or
5 anything of value, made by any person for the purpose of influencing any election for Federal
6 Office." 2 U.S.C. § 431(9)(A)(i). An organization will not be considered a "political
7 committee" unless its "major purpose is Federal campaign activity (*i.e.*, the nomination or
8 election of a Federal candidate)." Political Committee Status: Supplemental Explanation and
9 Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007). See *Buckley v. Valeo*, 424 U.S. 1, 79
10 (1976); *FEC v. Massachusetts Citizens for Life, Inc. (MCFL)*, 479 U.S. 238, 262 (1986).

11 As discussed below, the available information indicates that UDCI made more than
12 \$1,000 in expenditures for a communication expressly advocating the election or defeat of a
13 clearly identified Federal candidate, and UDCI's major purpose was the nomination or federal
14 election of a Federal candidate. Accordingly, the Commission found reason to believe that Utah
15 Defenders of Constitutional Activity violated 2 U.S.C. §§ 433 and 434 by failing to register as a
16 political committee and report its receipts and disbursements.

17 i. UDCI made more than \$1,000 in expenditures
18

19 UDCI made more than \$1,000 in expenditures when it spent \$4,700 on a mail piece that
20 expressly advocated the defeat of a Federal candidate. The Act's definition of expenditure, when
21 applied to communications made independently of a candidate or a candidate's committee,
22 reaches only funds used for communications "expressly advocating the election or defeat of a
23 clearly identified candidate." 2 U.S.C. § 431(17).

The Commission has defined express advocacy in the regulations set forth at 11 C.F.R.

§ 100.22. Under Section 100.22(a),

Expressly advocating means any communication that – (a) uses phrases such as “vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for U.S. Senate in Georgia,” “Smith for Congress,” “Bill McKay in ’94,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat” accompanied by a picture of one of more candidate(s), “reject the incumbent,” or communications of campaign slogan(s), or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say “Nixon’s the One,” “Carter ’76,” “Reagan/Bush” or “Mondale!”

11 C.F.R. § 100.22(a).

The Utah Values mailer constitutes express advocacy under 11 C.F.R. § 100.22(a) because it expressly advocates Bennett’s defeat. The mail piece states in pertinent part: “State Delegates, on May 8th, Release Bennett with a vote of thanks and extend the call to someone new.” Response, Attachment 1 (emphasis added). This statement, addressed specifically to state delegates who would be voting in the May 8 convention, urges them to remove Bennett from office. The message is suggestive of only one plausible meaning (advocating against the election of Senator Bennett), and there is an accompanying clear plea for a specific action to that end (to vote for someone other than Senator Bennett at the state nominating convention). Thus the mail piece contains express advocacy under Section 100.22(a).⁴

Respondents state that the Utah Values mailer cost \$4,700. Response at 3. Although Timothy Stewart states that he paid the vendor deposit of \$3,500 out of his personal funds, he also asserts that he was acting on UDCI’s behalf and with the understanding that UDCI would

⁴ Because the Utah Values mailer qualifies as express advocacy under Section 100.22(a), it is not necessary to consider the definition of express advocacy set forth in Section 100.22(b).

1 repay him.⁵ *Id.* at 2. Thus, UDCI made more than \$1,000 in expenditures in connection with the
2 Utah Values mailer.

3 **ii. UDCI's major purpose was the nomination or election of a candidate**

4 UDCI's only activity was the creation and dissemination of the Utah Values mailer.

5 Therefore, its major purpose was "Federal campaign activity (*i.e.*, the nomination or election of a
6 Federal candidate)." Political Committee Status: Supplemental Explanation and Justification, 72
7 Fed. Reg. at 5597.

8 UDCI was a grassroots collection of individuals who pooled together limited personal
9 resources to produce and disseminate a mail piece. Response at 2. Respondents assert that the
10 individuals involved had no intention of creating an ongoing, formal organization or working
11 together any longer than necessary to produce and disseminate the mail piece. *Id.* The mail
12 piece was sent to approximately 2,000 of the 3,500 Utah GOP Convention delegates a few days
13 before the nominating Convention. *Id.* at 2-3. The mail piece was not sent to anyone else, and
14 there is no evidence that UDCI engaged in any other activities, or raised or spent any other
15 funds.

16 Thus, the available information indicates that UDCI was formed by a group of
17 individuals for the sole purpose of producing and disseminating a communication which
18 expressly advocated the election or defeat of candidates for the Utah Republican Senate
19 nomination. Accordingly, as the mail piece is its only activity, there is sufficient information to
20 conclude that UDCI's major purpose was the nomination or election of a Federal candidate.

⁵ This claim is supported by the fact that, as of the date of the response, Stewart had already received \$820 in repayment from UDCI. Response at 2.

B. 24-Hour Independent Expenditure Reporting

Under the Act, a person (including a political committee) that makes independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election, must file a report describing the expenditures within 24 hours. 2 U.S.C. § 434(g)(1). UDCI was required to disclose its spending on the Utah Values mailer to the Commission as an independent expenditure, notwithstanding its political committee status, because the group spent more than \$1,000 on the mailer. Respondents admit that the mailer was sent on May 4, 2010, three days before the Utah GOP Convention held on May 7-9, 2010, at which the GOP Senate candidate was to be selected by convention delegates. See 2 U.S.C. § 431(1)(B) (defining "election" to include "convention or caucus of a political party which has authority to nominate a candidate"). Because UDCI spent over \$1,000 in connection with the Utah Values mailer that was mailed three days before the nominating convention, the Commission found reason to believe that Utah Defenders of Constitutional Integrity violated 2 U.S.C. § 434(g) by failing to report the costs associated with the mailer as an independent expenditure.

C. Disclaimers

The Act requires that all general public advertising, public communications, or mass mailings containing express advocacy made by a political committee include disclaimers. 2 U.S.C. § 441d; 11 C.F.R. §§ 110.11(a)(2), 100.26, and 100.27. Moreover, communications that are not authorized by a candidate are required to clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communications, and to state that the communications were not authorized by any candidate or the candidate's committee. 2 U.S.C. § 441d(a)(3).

1 Complainant claims that the Utah Values mailer does not comply with the Act's
2 disclaimer requirements. Complaint at 1-2. The Utah Values mailer includes a disclaimer that
3 contains the statements, "Paid for by Utah Defenders of Constitutional Integrity. Not authorized
4 by any candidate or candidate's committee." Response, Attachment 1. While the disclaimer
5 includes the Committee's name and statement that that mailer was not authorized by any
6 candidate, the disclaimer is incomplete because it does not include UDCI's permanent street
7 address, telephone number, or World Wide Web address. Respondents claim that UDCI
8 intended to include a telephone number in the disclaimer, but that it was omitted due to a
9 miscommunication. Response at 3. Thus, Respondents acknowledge that, due to the omitted
10 telephone number, the disclaimer was deficient. Accordingly, the Commission found reason to
11 believe Utah Defenders of Constitutional Integrity violated 2 U.S.C. § 441d by failing to include
12 the required information in its disclaimer on a public communication.

13 Complainant also claims that because the Utah Values mailer used Mike Lee's image and
14 contained an inadequate disclaimer, UDCI violated the Act by deliberately giving the impression
15 that the mailer came from Mike Lee. Complaint at 1-2. In support, Complainant points to post-
16 Convention polling and media reports that indicate that a third of the people who received the
17 mailer thought it was from Mike Lee. *Id.* Although the disclaimer was defective, it does clearly
18 state that UDCI paid for the mailer and that it was not authorized by any candidate or candidate's
19 committee. Response, Attachment 1. Thus, there is no information that the mistaken belief by
20 some recipients that the mailer came from Mike Lee constitutes a violation of the Act.

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: SADDLEPAC and Timothy Stewart,
in his official capacity as Treasurer

MUR: 6317

I. INTRODUCTION

The complaint in this matter alleges that Utah Defenders of Constitutional Integrity (“UDCI”), as well as SADDLEPAC and Timothy Stewart, in his official capacity as treasurer, violated various provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”), in connection with a mailer that expressly advocated the defeat of Senator Robert Bennett in his bid for the Republican U.S. Senate seat nomination at the 2010 Utah GOP Convention. Complaint at unnumbered 3-4; *see* 2 U.S.C. §§ 433, 434, and 441d; 11 C.F.R. §§ 100.26, 100.27, and 110.4. *Id.* at 3.

II. DISCUSSION

Respondents admit that UDCI, acting through Timothy Stewart, as a political consultant, spent approximately \$4,700 to produce and disseminate the mailer. Response at 2-3. Respondents deny that SADDLEPAC, a non-connected political action committee founded by Mr. Stewart in 2005, was involved in the creation or distribution of the mailer. *Id.* at 3.

There is no information to contradict Respondents’ assertion that SADDLEPAC was not involved with the production or distribution of the UDCI mailer. Accordingly, the Commission found no reason to believe that SADDLEPAC and Timothy Stewart, in his official capacity as Treasurer, violated 2 U.S.C. §§ 433, 434, and 441d. This finding as to Mr. Stewart is limited solely to his actions in his capacity as treasurer of SADDLEPAC, and does not represent a disposition of this matter as to him in any other capacity.

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