



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Mr. Bruce Donnelly

Lake Barrington, IL 60010

DEC 10 2010

RE: MUR 6292

Dear Mr. Donnelly:

On May 20, 2010, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On December 1, 2010, the Commission found, on the basis of the information in the complaint, information provided by you, and information provided by others, there is no reason to believe you violated 2 U.S.C. § 441a(a)(1)(A). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy Q. Luckett".

Roy Q. Luckett
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT: Bruce Donnelly****MUR: 6292****I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Richard M. Cape, alleging that Bruce Donnelly violated the Federal Election Campaign Act of 1971, as amended ("the Act").

II. FACTUAL AND LEGAL ANALYSIS**A. Background**

The complaint alleges that Joe Walsh for Congress Committee ("JWCC") gave phone data to Bryan Javor to assist him in conducting numerous automated phone calls paid for by Bruce Donnelly to increase Joe Walsh's name recognition and help get out the vote for him, and JWCC failed to report the expenditures for these calls as an in-kind contribution from Donnelly. If the allegation is true and the phone calls cost in excess of the \$2,400 per-election contribution limit, Mr. Donnelly may have made an excessive in-kind contribution. The complaint does not provide a time frame for these auto-calls, and none of the documents provided shed further light on this allegation. According to Bruce Donnelly, these phone calls took place after the primary election. Bruce Donnelly Response at 1.

Donnelly acknowledges that he used Bryan Javor's marketing services in March, April, and May 2010 to make a limited number of local auto-calls, and that complainant, while employed by JWCC, provided Javor with some of the phone data for the calls. Donnelly Response at 1-2. Donnelly states that the auto-calls were made to promote attendance at free, open meetings of a new local group of independent voters that encourages voters to become

1 better informed about issues. *Id.* Some of the calls mentioned that Walsh was among the invited
2 speakers at the meetings, but Donnelly maintains that the auto-calls did not solicit funds for
3 Walsh or the group, and the meetings were not fundraisers for Walsh. *Id.* Donnelly concludes
4 that none of his personal spending with respect to the auto-calls should be attributed to JWCC as
5 an in-kind contribution as he independently selected who to call based on his own criteria for
6 marketing the group, and JWCC exercised no control over the content of the calls, the group's
7 meeting agenda, or his use of Javor, whose services he used because it was one of the cheapest
8 options to promote the group. *Id.* Even if his spending were deemed to be an in-kind
9 contribution, Donnelly maintains the value would have been within his contribution limit for the
10 general election. *Id.* JWCC's reports confirm that Donnelly had made only one \$1,500 primary
11 election contribution as of the date he filed his response on June 7, 2010.

12 JWCC relies on statements in Mr. Donnelly's response. JWCC suggests that
13 Mr. Donnelly's activities did not constitute coordinated communications, and thus an in-kind
14 contribution, as Donnelly has stated that he did not coordinate the timing or content of auto-calls
15 with the JWCC or its agent and the purpose of the calls was not to advocate for Joe Walsh's
16 election."¹ Nonetheless, JWCC determined that the value of the phone data it supplied to Javor
17 was \$70 and stated that it would disclose it as an-kind contribution to Donnelly's organization in
18 its 2010 July Quarterly Report.

19 JWCC has since reported an-kind contribution of \$70 to Bruce Donnelly in its amended
20 2010 April Quarterly Report rather than its 2010 July Quarterly Report, presumably signifying

¹ Commission regulations provide that a communication is considered coordinated with a candidate, and thus, an in-kind contribution to the candidate's political committee, if it is paid for by a person other than a candidate and meets certain content and conduct standards. See 11 C.F.R. § 109.21(a). A communication satisfies the content standards if, for example, it is a public communication that expressly advocates the election or defeat of a clearly identified candidate. See 11 C.F.R. § 109.21(c)(3). A communication satisfies the conduct standard if, for example, a candidate or a political committee is materially involved in decisions regarding the content, intended audience, or frequency or timing of the communication. See 11 C.F.R. § 109.21(d)(2).

1 that the phone data was provided to Javor before March 31, 2010. In addition, in its 2010 July
2 Quarterly Report, JWCC reported six in-kind general election contributions, totaling \$1,702,
3 from Bruce Donnelly in May and June for in-kind automated calls, in-kind meeting room rentals
4 and in-kind printed materials.²

5 **2. Analysis**
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7 The Act provides that a person may not make contributions that aggregate in excess of the
8 statutory limitation with respect to any election for Federal office. 2 U.S.C. § 441a(a)(1)(A). In
9 the 2010 election cycle, the individual contribution limit is \$2,400. Expenditures made by any
10 person in cooperation, consultation or concert with, or at the request or suggestion of a candidate
11 or a candidate's political committee shall be considered a contribution. 2 U.S.C.
12 § 441a(a)(7)(B)(i).

13 Although there appears to be tension between Donnelly's response and JWCC's
14 post-response actions, the Commission finds that there is no reason to believe that any violation
15 occurred with respect to Donnelly's phone calls. Donnelly states that he acted independently of
16 JWCC in engaging Javor to conduct auto-calls referencing meetings featuring Joe Walsh in
17 March through May 2010, while JWCC's subsequently reported in-kind contributions from
18 Donnelly in its 2010 July Quarterly Report. Apparently, after filing its response, JWCC
19 determined either that some of Mr. Donnelly's expenditures for activities promoting meetings
20 with Mr. Walsh and for meeting space in May and June 2010 may have constituted in-kind
21 contributions and reported his activities as such, or Mr. Donnelly paid for printed materials, in-
22 kind auto-calls and meeting room rentals on JWCC's behalf. Even so, because Mr. Donnelly
23 indicates that he engaged Mr. Javor to conduct auto-calls to promote meetings featuring Walsh

² Donnelly's in-kind contributions include: \$265.80 and \$304.40 in in-kind automated calls on May 2, 2010, and June 9, 2010, respectively; \$330 in in-kind meeting room rentals on each of May 4 and June 15, 2010; and \$400 and \$72 in in-kind printed material on June 23 and 30, 2010, respectively.

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- 1 after the primary election, and Donnelly's newly reported in-kind contributions—totaling
- 2 \$1,702—were less than the \$2,400 contribution limit for the general election, it does not appear
- 3 that Mr. Donnelly made excessive contributions in connection with the general election.
- 4 Therefore, the Commission has determined to find no reason to believe that Bruce Donnelly
- 5 violated 2 U.S.C. § 441a(a)(1)(A).

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