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FIRST GENERAL COUNSEL'S REPORT

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MUR 6002
DATE COMPLAINT FILED: 04/28/08
LAST RESPONSE RECEIVED: 06/13/08
DATE OF NOTIFICATION: 05/05/08
DATE ACTIVATED: 06/04/08
EXPIRATION OF SOL: 04/2013

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COMPLAINANT: Democratic Congressional Campaign Committee
RESPONDENTS: Freedom's Watch, Inc.
RELEVANT STATUTES: 2 U.S.C. § 434(f)(2)(E)-(F)
2 U.S.C. § 441b(b)(2)
11 C.F.R. § 104.20(c)(9)
11 C.F.R. § 114.15
INTERNAL REPORTS CHECKED: FEC Database
FEDERAL AGENCIES CHECKED: None

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I. INTRODUCTION

The complaint in this matter alleges that Freedom's Watch, Inc. ("FW") made a prohibited disbursement for an electioneering communication in violation of Section 441b(b)(2) of the Federal Election Campaign Act of 1971, as amended ("the Act"), and failed to make required disclosures in violation of 11 C.F.R. § 104.20(c)(9). As discussed in more detail below, based on the Supreme Court's intervening decision in *Citizens United v. FEC*, 558 U.S. _____ (2010), holding, *inter alia*, that corporations may finance electioneering communications using general treasury funds, we recommend that the Commission find no reason to believe FW violated 2 U.S.C. § 441b(b)(2). Because it

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1 appears that FW failed to make required disclosures, however, we recommend that the
2 Commission find reason to believe that FW violated 11 C.F.R. § 104.20(c)(9), and
3 conduct a limited investigation to ascertain the amount in violation.

4 **II. FACTUAL AND LEGAL ANALYSIS**

5 **A. Factual Summary**

6 On April 13, 2008, FW began to air an advertisement on television stations in
7 Louisiana. The advertisement, entitled "Family Taxes," criticized the voting record of
8 Louisiana State Representative Don Cazayoux, who was the Democratic candidate for the
9 6th Congressional District in Louisiana in the special general election held on May 3,
10 2008. The complaint alleges that FW's Family Taxes advertisement, which aired less
11 than 30 days before the special general election, expressly advocated the defeat of Mr.
12 Cazayoux, and, therefore, constitutes a prohibited disbursement made by FW in violation
13 of 2 U.S.C. § 441b(b)(2). The complaint further alleges that FW filed a 24-Hour Notice
14 of Disbursements/Obligations for Electioneering Communications for disbursements
15 made in connection with the "Family Taxes" advertisement that "fails to identify any
16 person who made a donation aggregating \$1,000 or more for the purpose of furthering
17 electioneering communications," in violation of 11 C.F.R. § 104.20(c)(9).

18 In response to the complaint, FW argues that the advertisement at issue
19 constitutes a permissible electioneering communication under *FEC. v. Wisconsin Right to*
20 *Life, Inc.*, 551 U.S. ___, 127 S.Ct. 2652 (2007) (*WRTL*) and Commission regulations.
21 FW further argues that it reported all information required of non-profit entities
22 sponsoring a permissible electioneering communication.

1 **B. Legal Analysis**

2 In *Citizens United*, the Supreme Court struck down as unconstitutional the Act's
3 prohibition on corporate financing of electioneering communications at 2 U.S.C.
4 § 441b(b)(2). See 558 U.S. ___, slip. op. at 50 (2010). Thus, it is permissible for
5 corporations to use general treasury funds for this purpose. Accordingly, we recommend
6 that the Commission find no reason to believe FW violated 2 U.S.C. § 441b(b)(2) by
7 using its treasury funds for the electioneering communication at issue.¹

8 Although the *Citizens United* decision invalidated the prohibition on corporate
9 financing of electioneering communications, it upheld the disclosure provisions
10 applicable to electioneering communications. See *id.* at 55-56. Section 104.20(c)(9)
11 of the Commission's regulations requires corporations that make permissible
12 disbursements for electioneering communications to disclose the name and address of
13 each person who made a donation aggregating \$1,000 or more to the corporation,
14 aggregating since the first day of the preceding calendar year, which was made for the
15 purpose of furthering electioneering communications. 11 C.F.R. § 104.20(c)(9); see
16 2 U.S.C. § 434(f)(2)(E)-(F).

17 The complaint alleges that a 24-Hour Notice of Disbursements for Electioneering
18 Communications filed by FW in connection with the "Family Taxes" advertisement "fails
19 to identify any person who made a donation aggregating \$1,000 or more for the purpose
20 of furthering electioneering communications," in violation of 11 C.F.R. § 104.20(c)(9).
21 The complaint provides information suggesting that FW may have, in fact, received
22 donations that were made for the purpose of furthering electioneering communications.

¹ Because *Citizens United* makes it permissible for corporations to use their treasury funds for electioneering communications, the question of whether the advertisement at issue constitutes a permissible electioneering communication under *WRFL* is moot.

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1 Specifically, the complaint cites an article that reports that FW's "roughly \$30 million" in
2 spending came almost entirely from casino mogul Sheldon Adelson, who "has insisted on
3 parceling out his money project by project" and "has rejected almost all of the staff's
4 proposals that have been brought to him." See Michael Luo, *Great Expectations for a*
5 *Conservative Group Seem All But Dashed*, The New York Times, April 12, 2008.
6 Quoting a Republican operative, the article continues, "What has happened here is pretty
7 much you had a single donor who essentially dictates the way things occur or do not
8 occur." *Id.*

9 In response to the complaint, FW argues that it was not required to list donors to
10 the organization pursuant to 11 C.F.R. § 104.20(c)(9) because it "did not solicit" any
11 donations for the purpose of airing an electioneering communication. This assertion,
12 however, does not foreclose the possibility that donations were nevertheless *made* for the
13 purpose of airing an electioneering communication. FW also argues that it was not
14 required to list donors pursuant to section 104.20(c)(9) because all funds contributed to
15 FW "during 2008" were for general purposes. However, section 104.20(c)(9) required
16 FW to disclose all donations made for the purpose of airing electioneering
17 communications during the reporting period. This period begins on the first day of the
18 preceding calendar year, here January 1, 2007, and runs through the disclosure date.
19 Thus, the FW's response that all funds contributed during 2008 were for general purposes
20 leaves open the question of whether funds donated since January 1, 2007, but prior to
21 January 2008, were made for the purpose of airing electioneering communications, and
22 were subject to disclosure requirements. In addition, FW's response does not address the
23 specific assertion in the New York Times article cited in the complaint that FW had a

1 single donor who essentially dictated what FW did. Based on information in the
2 complaint and the New York Times article, which suggests that FW may have received
3 funds specifically for the purpose of airing the electioneering communication at issue,
4 and FW's failure to squarely deny the complaint's allegation, there is reason to
5 investigate whether FW failed to make required disclosures pursuant to section
6 104.20(c)(9). Therefore, we recommend that the Commission find reason to believe that
7 Freedom's Watch violated 11 C.F.R. § 104.20(c)(9).

8 **III. PROPOSED INVESTIGATION**

9 We envision a streamlined investigation that would quickly lead to pre-probable
10 cause conciliation. Although we will attempt to conduct the investigation informally,
11 formal discovery may be necessary to ascertain the scope and amount of FW's failure to
12 make required disclosures pursuant to 11 C.F.R. § 104.20(c)(9). We therefore
13 recommend authorizing the use of compulsory process, including interrogatories and
14 subpoenas *duces tecum*, as necessary.

1 **IV. RECOMMENDATIONS**

- 2 1. Find no reason to believe that Freedom's Watch, Inc. violated 2 U.S.C.
3 § 441b(b)(2).
4 2. Find reason to believe that Freedom's Watch, Inc. violated 11 C.F.R.
5 § 104.20(c)(9).
6 3. Approve the attached Factual and Legal Analysis.
7 4. Authorize the use of compulsory process.
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9 5. Approve the appropriate letters.


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14 3/12/2010
15 Date

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Thomasenia P. Duncan
General Counsel


Ann Marie Terzaken
Associate General Counsel
for Enforcement


Julie K. McConnell
Assistant General Counsel


Tracey L. Ligon
Attorney

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