

March 21, 2014

Kentucky Opportunity Coalition
PO Box 6067
Louisville, KY 40206

McConnell Senate Committee '14
PO Box 1496
Louisville, KY 40201

Dear Sir or Madam:

We are writing with regard to the republication of campaign footage prepared by the McConnell campaign committee, McConnell Senate Committee 14, in a TV ad campaign being run by the Kentucky Opportunity Coalition (KOC).

KOC, an incorporated entity, claims tax-exempt status as a social welfare organization under section 501(c)(4) of the tax code.

According to a report published in [The Washington Post \(March 18, 2014\)](#), KOC began a \$1.8 million ad campaign on March 19, 2014, just eight days after the McConnell campaign posted video footage produced by the campaign on the campaign's YouTube account. The McConnell campaign footage consisted of two-and-a-half minutes of video of Senator McConnell in several different settings. The video was silent except for a generic music track. This type of footage is commonly known as "B-roll."

KOC took four portions of the campaign "B-roll" that had been prepared and posted by the McConnell campaign and incorporated that video into a supposedly "independent expenditure" TV ad sponsored by KOC. Approximately 30 percent of the 30 second KOC ad consists of the footage prepared and posted on YouTube by the McConnell campaign.

Federal campaign finance law provides that republication of a candidate's campaign materials constitutes an in-kind contribution to the candidate. The law also prohibits any corporation from making an in-kind contribution to a candidate. 2 U.S.C. § 441b(a). Accordingly, by republishing McConnell campaign material as part of its ad, KOC, a corporation, made an impermissible in-kind contribution to the McConnell campaign in violation of the campaign finance law.

A Federal Election Commission regulation, 11 C.F.R. § 109.23(a), implements the restriction on republication, stating:

The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of the contribution limitations and reporting responsibilities of the person making the expenditure.

There is no question that the "B-roll" prepared and posted by the McConnell campaign constitutes "campaign materials prepared by the candidate" within the meaning of the law, and that the use of such "B-roll" footage by an outside spender is a "dissemination, distribution or republication" of the campaign material.

The FEC regulations list five exceptions to the rule restricting republication of campaign materials, none of which applies to the KOC campaign ad. The so-called "brief quote" exception, which is sometimes invoked in instances like this, is not applicable here for two reasons. The exception provides:

The campaign material used consists of a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views.
Id. at § 109.23(b)(4).

The footage posted by the McConnell campaign consists only of video footage of Sen. McConnell, who is not heard speaking, and does nothing to "demonstrate a candidate's position" on any issues. Thus it does not meet the standard necessary to qualify for the "brief quote" exception.

In any event, the use of republished campaign materials for 30 percent of a campaign ad does not constitute a "brief quote" of materials, under any credible meaning of the word "brief."

Thus, it appears quite clear that by republishing "B-roll" footage posted by the McConnell campaign in its ad, KOC violated the campaign finance law by making an impermissible corporate contribution to the McConnell campaign. We call on KOC to stop running this ad and to refrain from running any other ad that republishes the McConnell campaign's materials.

Furthermore, if the KOC ad containing republished McConnell campaign material was run at the "request or suggestion" of the McConnell campaign, it would constitute a coordinated expenditure that would be a violation of law not just by KOC for making an illegal in-kind contribution, but also by the McConnell campaign for "requesting or suggesting," and receiving, the illegal in-kind contribution. 2 U.S.C. § 441a(a)(7)(B)(iii); 11 C.F.R. §§ 109.23(a); 109.21(d)(1).

The fact that the McConnell campaign posted the “B-roll” footage on the McConnell campaign YouTube account and that the footage was republished the next week by KOC in a campaign ad supporting Senator McConnell raises a serious question as to whether the posting of the footage by the McConnell campaign was itself a suggestion that the “B-roll” footage should be used for a campaign ad by KOC or by another outside spender.

An article in [*The New York Times* \(March 16, 2014\)](#) noted that the McConnell campaign posted the footage “hoping to provide a friendly ‘super PAC’ with high quality images of Mr. McConnell to use in ads.” Indeed, the most credible explanation for why the McConnell campaign posted on the Internet a video compilation of wordless footage of Senator McConnell is that the campaign was seeking to encourage and facilitate the republication of the video footage in a campaign ad by an outside spender, such as KOC.

Thus, a serious question exists under the campaign finance law as to whether the actions the McConnell campaign took to prepare and post the footage, and in so doing to encourage and facilitate republication of the footage, rose to the level of making a “request or suggestion” that the campaign’s footage be republished by KOC for use in its ad.

If it did, then the republication of the McConnell campaign footage by KOC is both an illegal in-kind contribution made by KOC and an illegal in-kind contribution accepted by the McConnell campaign.

The campaign ad being run by KOC violates the campaign finance law and KOC should stop running the ad immediately.

Sincerely,

/s/ J. Gerald Hebert

J. Gerald Hebert
Executive Director
Campaign Legal Center

/s/ Fred Wertheimer

Fred Wertheimer
President
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