



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 6320
John Gomez for Congress and Denise Passero in her official capacity as Treasurer)	
)	
John Gomez)	
)	
Clear Channel Communications, Inc.)	
)	
Premiere Radio Networks, Inc.)	
)	
Sean Hannity)	

1104428499

STATEMENT OF REASONS
Chair Cynthia L. Bauerly and Commissioner Ellen L. Weintraub

This matter concerns an email sent on May 8, 2010 ("May 8 email") from *The Sean Hannity Show* to subscribers who signed up to receive "Hannity's Headlines" email updates from the show. The May 8 email forwards a solicitation signed by Mark Levin, a radio talk show host. During the course of the message, Mr. Levin expressly advocates the election of John Gomez to Congress, stating "I strongly encourage you to help me get [Mr. Gomez] elected to the House of Representatives in November."¹ Mr. Levin, who states that Mr. Gomez "needs your financial support," also requests that the reader "please consider supporting his candidacy."² The bottom of the email features a "Donate Now" button, which contains a hyperlink to the Gomez campaign website.³

The complaint in this matter made several allegations based on the Act's prohibition against corporate contributions. On December 14, 2010, a motion to find no reason to believe as to each Respondent failed by a vote of 3-2.⁴ In our view, there was reason to believe that the email constituted corporate facilitation of contributions in violation of Section 441b(a) of the

¹ MUR 6320 (John Gomez for Congress *et al.*), Complaint at Attachment F.

² *Id.*

³ *Id.*

⁴ MUR 6320 (Gomez), Certification dated December 16, 2010. Then-Chairman Petersen and Commissioners Hunter and McGulm supported the motion. Commissioners Walther and Weintraub opposed the motion. Then-Vice Chair Bauerly was unavoidably absent and did not vote, but had she been present, she would have joined Commissioners Walther and Weintraub in opposing the motion.

Federal Election Campaign Act of 1971, as amended.⁵ We write separately to explain why we do not believe that the email qualifies for the press exemption.

Plainly, Premier Radio Networks, Inc. ("Premier") and Clear Channel Communications, Inc. ("Clear Channel") are media entities, and there is nothing to suggest that they are owned or controlled by a political party, political committee, or candidate.⁶ But the press exemption involves a two-part analysis.⁷ It is not enough that Respondents Premier and Clear Channel qualify as press entities; they must also have been acting in their "legitimate press function" when they sent the email to Hannity's subscriber list.⁸ In determining whether the email in question was an exercise of Respondents' press function, the Commission must consider, among other things, whether the email is "comparable in form to those ordinarily issued by the entity."⁹

In making this determination, the Commission must be guided by the Supreme Court's decision in *Massachusetts Citizens for Life, Inc. v. FEC* ("MCFL"). In that case, the Court applied the press exemption to the "Special Edition" of a newsletter published by a nonprofit corporation. All of the newsletters published by the corporation other than the Special Edition bore a masthead reading "Massachusetts Citizens for Life Newsletter."¹⁰ Each newsletter also contained a distinct volume and issue number.¹¹ The Special Edition, by contrast, lacked both the MCFL masthead and a volume and issue number.¹² The Special Edition also differed from the corporation's other newsletters in terms of content. The standard newsletters contained information about the corporation's activities, appeals for volunteers and contributions, and news of relevance to the pro-life movement.¹³ The Special Edition, on the other hand, consisted of a voting guide in the form of a list of candidates for each federal and state office in Massachusetts.¹⁴ Each candidate was identified "as either supporting or opposing what MCFL regarded as the correct position on three issues" of relevance to the corporation.¹⁵ The Special Edition also differed from the standard newsletters in terms of the quantity of issues circulated and the identity of the personnel responsible for its production.

In the end, the Court concluded that "the 'Special Edition' cannot be considered comparable to any single issue of the newsletter."¹⁶ Applying the same analysis, we find the email solicitation in this matter to be dissimilar from the "Hannity's Headlines" feature that was usually sent to subscribers. First, the May 8 email differed in form from the standard emails.

⁵ The Commission's regulations provide a list of examples of corporate facilitation. See 11 CFR § 114.2(f)(2). Among these is "[u]sing a corporate or labor organization list of customers, clients, vendors or others who are not in the restricted class to solicit contributions." 11 CFR § 114.2(f)(2)(i)(C); see also *Explanation and Justification: Corporate and Labor Organization Activity*, 60 Fed. Reg. 64260, 64264 (Dec. 14, 1995).

⁶ See 11 CFR §§ 100.73 and 100.32.

⁷ See Advisory Opinions 2005-16 (Fired Up!) and 2000-13 (iNEXTV), as well as MUR 5928 (Kos Media, LLC).

⁸ *Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981).

⁹ Advisory Opinion 2005-16 (Fired Up!); see also *Massachusetts Citizens for Life ("MCFL") v. FEC*, 479 U.S. 238, 250-51 (1986).

¹⁰ *MCFL*, 479 U.S. at 243.

¹¹ *Id.*

¹² *Id.* at 250-51.

¹³ *Id.* at 243.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 250.

11044284500

Just as the MCFL "Special Edition" lacked the typical masthead and issue number, the usual "Hannity's Headlines" banner was absent from the May 8 email. Second, the May 8 email differed in content from other emails sent by Respondents. In particular, the May 8 email lacked the recap of Mr. Hannity's radio show and compilation of news and features that subscribers typically received. Rather, the email at issue consisted almost exclusively of a message from Mr. Levin, with only the briefest statement from Mr. Hannity himself.¹⁷ As the Supreme Court has emphasized, these are not merely "superficial considerations of form."¹⁸ Rather, such indicia are "essential" to determine whether a communication qualifies for the exemption.¹⁹ Because the May 8, 2010 email "cannot be considered comparable to any single issue of" Hannity's Headlines, the email does not appear to fall within the Respondents' legitimate press function. As a result, the press exemption is inapplicable to the email solicitation at issue.

1/21/2011
Date

Cynthia L. Bauerly
Cynthia L. Bauerly
Chair

1/21/2011
Date

Ellen L. Weintraub / scb
Ellen L. Weintraub
Commissioner

¹⁷ See MUR 6320 (Gomez), Response of Mr. Hannity at 2-3 and Exhibit 1.

¹⁸ MCFL, 479 U.S. at 251.

¹⁹ *Id.*

11044284501

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
John Gomez for Congress and Denise)
Passero, in her official capacity as)
treasurer; John Gomez; Clear Channel) MUR 6320
Communications, Inc.; Premiere Radio)
Networks, Inc.; Sean Hannity)

CERTIFICATION

I, Shawn Woodhead Werth, recording secretary of the Federal Election Commission executive session, do hereby certify that on December 14, 2010, the Commission took the following actions in the above-captioned matter:

1. Failed by a vote of 3-2 to:

- a. Find no reason to believe that John Gomez for Congress and Denise Passero, in her official capacity as treasurer, violated 2 U.S.C. §§ 441b(a) and 434(b).
- b. Find no reason to believe that John Gomez violated 2 U.S.C. §§ 441b(a).
- c. Find no reason to believe that Clear Channel Communications, Inc. violated 2 U.S.C. § 441b(a).
- d. Find no reason to believe that Premiere Radio Networks, Inc. violated 2 U.S.C. § 441b(a).
- e. Find no reason to believe that Sean Hannity violated 2 U.S.C. § 441b(a).
- f. Approve the Factual and Legal Analyses, as recommended in the First General Counsel's Report dated November 23, 2010, subject to the changes previously circulated.

11044283788

g. Approve the appropriate letters.

h. Close the file.

Commissioners Hunter, McGahn II and Petersen voted affirmatively for the motion.

Commissioners Walther and Weintraub dissented. Commissioner Bauerly did not vote.

2. Decided by a vote of 5-0 to:

a. Close the file.


b. Send the appropriate letters.

c. Make a technical amendment on Page 12, Line 9 of the First General Counsel's Report (change "Weintruab" to "Weintraub").

Commissioners Hunter, McGahn II, Petersen, Walther and Weintraub voted affirmatively for the decision. Commissioner Bauerly did not vote.

Attest:

December 16, 2010
Date


Shawn Woodhead Werth
Secretary and Clerk of the Commission

11044283789



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 17, 2010

Via Regular Mail and Electronic Mail
gomezny2@gmail.com

Lawrence Kelly, Esq.
PO Box 787
Bayport, NY 11705

RE: MUR 6320
John Gomez

Dear Mr. Kelly:

On June 29, 2010, the Federal Election Commission notified your client, John Gomez, of a complaint alleging that he had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

On December 14, 2010, the Commission considered the complaint but there was an insufficient number of votes to find reason to believe John Gomez violated 2 U.S.C. § 441b(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). One or more Statements of Reasons will follow.

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Susan L. Lebeaux".

Susan L. Lebeaux
Acting Deputy Associate General Counsel

11044283795



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 17, 2010

Via Regular Mail and Facsimile

Fax No.: 202-778-5503

Robert K. Kelner, Esq.
Covington & Burling LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004

RE: MUR 6320
Sean Hannity

Dear Mr. Kelner:

On June 29, 2010, the Federal Election Commission notified your client, Sean Hannity, of a complaint alleging that he had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

On December 14, 2010, the Commission considered the complaint but there was an insufficient number of votes to find reason to believe Sean Hannity violated 2 U.S.C. § 441b(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). One or more Statements of Reasons will follow.

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Susan L. Lebeaux".

Susan L. Lebeaux
Acting Deputy Associate General Counsel

11044283799



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 17, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jay S. Jacobs

Laurel Hollow, NY 11791

RE: MUR 6320
John Gomez for Congress, *et al.*

Dear Mr. Jacobs:

The Federal Election Commission has considered the allegations contained in your complaint dated June 22, 2010, but there was an insufficient number of votes to find reason to believe John Gomez, John Gomez for Congress and Denise Passero, in her official capacity as treasurer, Clear Channel Communications, Inc., Premiere Radio Networks, Inc., and Sean Hannity violated the Federal Election Campaign Act of 1971, as amended. Accordingly, on December 14, 2010, the Commission closed the file in this matter. One or more Statements of Reasons will follow.

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. 70426 (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 Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8). If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Susan L. Lebeaux".

Susan L. Lebeaux
Deputy Associate General Counsel

11044283791



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 17, 2010

Via Regular Mail and Facsimile

Fax No.: 202-719-7049

Jan Witold Baran, Esq.
Caleb P. Burns, Esq.
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

RE: MUR 6320
Clear Channel Communications, Inc.
Premiere Radio Networks, Inc.

Dear Messrs. Baran and Burns:

On June 29, 2010, the Federal Election Commission notified your clients, Clear Channel Communications, Inc. and Premiere Radio Networks, Inc., of a complaint alleging that they had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

On December 14, 2010, the Commission considered the complaint but there was an insufficient number of votes to find reason to believe Clear Channel Communications, Inc. and Premiere Radio Networks, Inc. violated 2 U.S.C. § 441b(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). One or more Statements of Reasons will follow.

If you have any questions, please contact Christino C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Susan L. Lebeaux
Acting Deputy Associate General Counsel

11044283797



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 17, 2010

Via Regular Mail and Electronic Mail
gomezny2@gmail.com

Denise Passero, Treasurer
John Gomez for Congress
PO Box 787
Bayport, NY 11705

RE: MUR 6320
John Gomez for Congress

Dear Ms. Passero:

On September 14, 2010, the Federal Election Commission notified John Gomez for Congress and its treasurer ("the Committee"), of a complaint alleging that the Committee had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

On December 14, 2010, the Commission considered the complaint but there was an insufficient number of votes to find reason to believe John Gomez for Congress and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 441b(a) and 434(b). 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). One or more Statements of Reasons will follow.

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Susan L. Lebeaux".

Susan L. Lebeaux
Acting Deputy Associate General Counsel

cc: John Gomez, c/o Lawrence Kelly, Esq.

11044283793