

BEFORE THE FEDERAL ELECTION COMMISSION

1
2
3 In the Matter of)
4) MUR 6038
5 Doug Lamborn, et al.)
6)
7)
8
9

STATEMENT OF REASONS

I. INTRODUCTION

10
11
12
13 This matter arises out of a complaint alleging that Lamborn for Congress and
14 Kathleen Ann Rockefeller, in her official capacity as Treasurer (“Lamborn Committee”),
15 coordinated its communications with Christian Coalition of Colorado (“Christian
16 Coalition”) through flyers attacking Doug Lamborn’s primary opponents during his 2006
17 primary campaign for Colorado’s 5th Congressional District. The complaint requested
18 that, based on new information, we reopen MUR 5774, which concerned similar
19 allegations against the same respondents. On April 27, 2010, we declined to reopen the
20 previous enforcement matter and instead voted to dismiss as a matter of prosecutorial
21 discretion allegations that Christian Coalition violated 2 U.S.C. § 441b by making
22 prohibited in-kind contributions to the Lamborn Committee in the form of coordinated
23 expenditures, and the Lamborn Committee violated 2 U.S.C. §§ 441b and 434(b) by
24 knowingly accepting and failing to disclose such prohibited contributions.¹

¹ We also found no reason to believe that Club for Growth State Action made, or the Lamborn Committee knowingly accepted and failed to disclose, prohibited in-kind contributions in the form of coordinated expenditures, and no reason to believe that Tactical Data Solutions, Inc., Blue Point, LLC, Liberty Service Corp., Tom Bjorkland, Christopher Baker, Jonathan Hotaling, Mark Hotaling, Chuck Gosnell, and Doug Lamborn violated the Act. These findings are covered separately by the Factual and Legal Analyses approved in this matter.

10044280876

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 **1. 2006 Complaint**

4 Doug Lamborn was a candidate in the open Republican Primary in Colorado's 5th
5 Congressional District, held on August 8, 2006, and won the nomination with 27 percent
6 of the vote. In a complaint filed in 2006, Robert Gardner alleged that Lamborn's
7 authorized committee obtained the names and addresses of absentee voters from the El
8 Paso County Clerk and Recorder and provided them to CFGSA and Christian Coalition,
9 and that these organizations used the addresses to send mailers to voters attacking two of
10 Lamborn's primary opponents, Jeff Crank and Lionel Rivera, in July 2006. The 2006
11 complaint relied on a series of inferences – that two recipients received the flyers at their
12 work addresses, which they had used to request absentee ballots; that only the Lamborn
13 Committee and four other entities had requested absentee voter data from the county
14 clerk's office; and that the Lamborn Committee and Christian Coalition were closely
15 connected because Jonathan Hotaling, Lamborn's campaign manager, and Mark
16 Hotaling, the Executive Director of Christian Coalition, are brothers – to conclude that
17 CFGSA and Christian Coalition received the addresses from the Lamborn Committee.
18 Because the allegations were speculative, and the respondents provided information
19 sufficient to rebut them, the Commission found no reason to believe that the respondents
20 violated the Act.²

² See MUR 5774 (Lamborn for Congress), First General Counsel's Report dated Nov. 17, 2006, at 4, available at <http://eqs.nictusa.com/eqsdocs/00005A19.pdf>, and Certification dated Nov. 27, 2006, available at <http://eqs.nictusa.com/eqsdocs/00005A1A.pdf>.

10044280877

1 **2. 2008 Complaint**

2 In 2008, a different complainant, Matthew Werner, submitted the instant
3 complaint, requesting that we reopen MUR 5774. Werner's complaint incorporates the
4 information included in the 2006 complaint. However, it also includes an affidavit by
5 Alan Farina, a former employee of Tactical Data Solutions ("TDS"), asserting that Farina
6 witnessed unlawful conduct while working at TDS in the summer and fall of 2006.
7 Specifically, Farina alleges that in 2006, TDS collected and sold absentee voter data for
8 Colorado's 5th CD primary election to Liberty Service Corp. (a/k/a Liberty Media), a
9 sub-vendor owned and operated by Jonathan Hotaling, Lamborn's campaign manager,
10 which in turn sold the data to Lamborn for Congress. Farina further alleges that TDS, at
11 the direction of Jonathan Hotaling, then sold the same absentee voter data to Christian
12 Coalition, run by Mark Hotaling, his brother. Farina Aff. at ¶¶ 1-3. Farina alleges that
13 Christian Coalition used this voter data to mail flyers criticizing Doug Lamborn's
14 opponents, resulting in coordination between Christian Coalition and Lamborn for
15 Congress. *See* Farina Aff. at ¶¶ 4-23.

16 **B. Legal Analysis**

17 We voted to dismiss as a matter of prosecutorial discretion the allegations that
18 the Lamborn Committee and Christian Coalition engaged in coordination by sharing a list
19 of absentee voters. While the 2008 complaint was filed by a different complainant and
20 included new facts, we did not find these new facts sufficiently probative to justify
21 reopening the previous matter in light of concerns about the accuracy of Farina's
22 recollection of comments allegedly made by TDS and Christian Coalition regarding the
23 sale of the voter list approximately two years after the transaction occurred.

10044280378

1 Further, TDS asserts that it sold “public data” to Christian Coalition and the
2 Lamborn Committee. This raises the question whether the absentee voter data was
3 obtained from a “publicly available source,” and is thus excluded from the “material
4 involvement,” “substantial discussion,” “common vendor,” and “former employee”
5 conduct standards. *See* 11 C.F.R. §§ 109.21 (d)(2)-(5); *see also Revised Explanation and*
6 *Justification, Coordinated Communications*, 71 Fed. Reg. 33,190, 33,205 (Jun. 8, 2006).
7 Under this safe harbor, a communication that uses public information (*e.g.*, information
8 from newspaper or magazine articles, candidate speeches or interviews, materials on a
9 candidate's website or other publicly available website, transcripts from television shows,
10 and press releases) is not a coordinated communication unless it meets the “request or
11 suggestion” conduct standard. *See Revised E&J*, 71 Fed. Reg at 33,205. While TDS
12 acknowledges that the data sold to Christian Coalition and the Lamborn Committee was
13 “enhanced,” the original source of the information was public, and neither the
14 complaint nor the responses provided sufficient information to allow us to ascertain how
15 the voter list was enhanced, or whether these alleged enhancements to publicly available
16 information were such that the exemption does not apply.

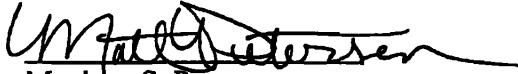
10044280879

1 Based on the foregoing considerations, we declined to reopen the previous matter
2 and voted to dismiss the allegations as to the Lamborn Committee and Christian
3 Coalition pursuant to *Heckler v. Chaney*, 470 U.S. 821. 831 (1985).

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

9/14/2010

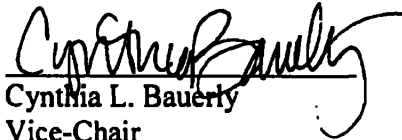
Date



Matthew S. Petersen
Chairman

9/14/2010

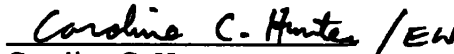
Date



Cynthia L. Bauerly
Vice-Chair

9/14/2010

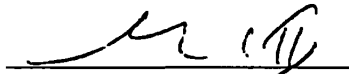
Date



Caroline C. Hunter /EW
Commissioner

9/16/2010

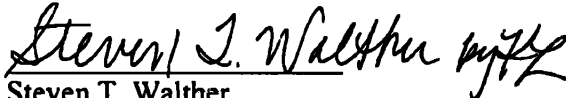
Date



Donald F. McGahn II
Commissioner

9/16/2010

Date



Steven T. Walther
Commissioner

9/14/10

Date



Ellen L. Weintraub
Commissioner

10044280880