

ADDENDUM H

FEDERAL ELECTION COMMISSION
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FIRST GENERAL COUNSEL'S REPORT

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MUR: 6696
DATE COMPLAINT FILED: November 15, 2012
DATE OF NOTIFICATION: November 28, 2012
DATE OF LAST RESPONSE: January 18, 2013
DATE ACTIVATED: April 3, 2013

EXPIRATION OF STATUTE OF LIMITATIONS:
October 30, 2017
ELECTION CYCLE: 2012

COMPLAINANT: Citizens for Responsibility and Ethics in
Washington
Melanie Sloan
Nicholas Mezlak

RESPONDENTS: Crossroads Grassroots Policy Strategies
Steven Law
Karl Rove
Haley Barbour
Caleb Crosby

RELEVANT STATUTES: 2 U.S.C. § 434(c)
11 C.F.R. § 109.10

INTERNAL REPORTS CHECKED: Disclosure Reports; Commission Indices

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint contends that Crossroads Grassroots Policy Strategies ("Crossroads") failed to disclose donors in certain independent expenditure reports that Crossroads filed with the Commission, in violation of 2 U.S.C. § 434 and 11 C.F.R. §§ 109.10(b)-(e).² The Complaint

¹ An Amended Complaint was filed on April 24, 2013. The Amended Complaint replaced Jessica Markley with Nicholas Mezlak as a complainant and included references to additional public filings made by Crossroads but did not assert any new substantive allegations.

² Am. Compl. at 11-14 (Apr. 24, 2013).

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1 further alleges that Crossroads was aware of its legal obligation to identify those donors, and that
2 several individuals associated with Crossroads — Steven Law, Karl Rove, Haley Barbour, and
3 Caleb Crosby — conspired to prevent disclosure of the donors' identities.³ Respondents argue
4 that Crossroads was not required to disclose any contributions for the independent expenditures
5 at issue because no donor made a contribution “for the purpose of furthering the reported
6 independent expenditure.”⁴

7 As discussed, the record reflects that an unnamed individual contributed to Crossroads in
8 furtherance of Crossroads' effort to support a clearly identified federal candidate. Nonetheless,
9 because the relevant information does not reasonably suggest that the donor made a contribution
10 “for the purpose of furthering the reported independent expenditure,” it does not appear that
11 Crossroads was required to identify that contributor on its relevant independent expenditure
12 report or reports under the applicable Commission regulation.⁵ Likewise, with respect to the
13 other reported independent expenditures in question, the facts alleged here do not support the
14 conclusion that the applicable Commission regulation imposed an obligation on Crossroads to
15 identify contributors in connection with those reports.⁶ We therefore recommend that the
16 Commission find no reason to believe that Crossroads violated 2 U.S.C. § 434(c)(2) and
17 11 C.F.R. § 109.10(e)(1)(vi). Further, to the extent the question is presented on these facts, we

³ The Complaint and Responses make cross-allegations of criminal violations under Title 18, including conspiracy and false statements, each recommending that the Commission refer the other to the appropriate law enforcement authorities. *See* Compl.; Resp. at 2 (Jan. 18, 2013); Supp. Resp. at 1 (May 14, 2013). We make no recommendation concerning alleged violations of federal criminal law outside the scope of the Commission's jurisdiction, nor do we see any basis warranting a Commission referral of any individual to another law enforcement agency in connection with this matter. *See* 2 U.S.C. § 437d(a)(9). Accordingly we recommend that the Commission close the file as to Steven Law, Karl Rove, Haley Barbour and Caleb Crosby.

⁴ Resp. at 2, 11-14 (citing 11 C.F.R. § 109.10(e)(1)(vi)).

⁵ 11 C.F.R. § 109.10(e)(1)(vi) (emphasis added).

⁶ *Id.*

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1 recommend that the Commission dismiss in the exercise of prosecutorial discretion the allegation
 2 that Crossroads violated 2 U.S.C. § 434(c)(1).

3 **II. FACTUAL BACKGROUND**

4 Crossroads is a non-profit organization established under section 501(c)(4) of the Internal
 5 Revenue Code.⁷ It was formed as a Virginia corporation on June 2, 2010.⁸ Steven Law is
 6 Crossroads' President, and Karl Rove is reportedly a co-founder, fundraiser, and an
 7 uncompensated advisor.⁹ Caleb Crosby serves as Treasurer for Crossroads.¹⁰ Mississippi
 8 Governor Haley Barbour joined American Crossroads — a political committee registered with
 9 the Commission — in 2011 to serve as a fundraiser.¹¹

10 The Complaint relies upon published accounts of a reporter who gained access to an
 11 August 30, 2012, fundraiser for Crossroads and American Crossroads.¹² According to those
 12 reports, Karl Rove, Haley Barbour, and Steven Law spoke before 70 donors and apparently
 13 solicited contributions in connection with the presidential race and various senate races during

⁷ See Commonwealth of Va., State Corp. Comm'n, <https://sccfile.scc.virginia.gov/Business/0723872> (last visited June 11, 2013).

⁸ *Id.*

⁹ See Am. Compl. at 3; Resp., Affidavit of Karl Rove ¶ 1 ("Rove Aff.").

¹⁰ Am. Compl., Ex. L (Letter from Caleb Crosby to Christopher Whyrick, RAD (Nov. 29, 2012)).

¹¹ Am. Compl., Ex. A; see Cameron Joseph, *Barbour to Join American Crossroads*, THE HILL (Sept. 9, 2011), <http://thehill.com/blogs/ballot-box/presidential-races/180511-barbour-to-join-american-crossroads>.

¹² See Sheelah Kolhatkar, *Exclusive: Inside Karl Rove's Billionaire Fundraiser*, BLOOMBERG BUSINESSWEEK, Aug. 31, 2012, [hereinafter Kolhatkar, *Rove Fundraiser*] (Exhibit B of Amended Complaint); Sheelah Kolhatkar, *Exclusive: How Karl Rove's SuperPAC Plays the Senate*, BLOOMBERG BUSINESSWEEK, Sept. 4, 2012, [hereinafter Kolhatkar, *Rove SuperPAC*] (Exhibit D of Amended Complaint); *Interview with Sheelah Kolhatkar*, DEMOCRACY NOW (Sept. 5, 2012) (Exhibit C of Amended Complaint).

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1 the 2012 election.¹³ Rove also reportedly identified numerous states that could be competitive
2 for Republicans.¹⁴ With respect to Ohio, the Complaint relies on the reporter's claim that

3 Rove stated that he'd had a call from an unnamed out-of-state donor who told
4 him, "I really like Josh Mandel," referring to the Ohio treasurer attempting to
5 unseat Democrat Sherrod Brown. The donor, Rove said, had asked him what his
6 budget was in the state; Rove told him \$6 million. "I'll give ya \$3 million,
7 matching challenge," Rove said the donor told him. "Bob Castellini, owner of
8 the Cincinnati Reds, is helping raise the other \$3 million for that one."¹⁵
9

10 The Complaint notes that Crossroads later reported making \$6,363,711 in independent
11 expenditures in Ohio, which the Complaint contends involved funds that Crossroads raised as a
12 result of the matching challenge Rove described during his speech.¹⁶ The Complaint further
13 alleges that Rove's conversation with the unnamed out-of-state donor concerning his support for
14 Mandel indicates that Crossroads should have disclosed in its independent expenditure reports
15 the identity both of that donor and the donors who made \$3 million in matching contributions.¹⁷
16 Because Crossroads did not identify any donors in ten reports disclosing independent
17 expenditures in Ohio, the Complaint alleges that Crossroads violated 2 U.S.C. § 434 and
18 11 C.F.R. §§ 109.10(b)-(e).¹⁸

19 In addition, the Complaint further asserts that at the August 30, 2012, fundraiser,
20 Crossroads showed attendees advertisements targeting Senate candidates in Ohio, Virginia,

¹³ See Kolhatkar, *Rove Fundraiser*, *supra*; Kolhatkar, *Rove SuperPAC*, *supra*.

¹⁴ *Id.*

¹⁵ Kolhatkar, *Rove SuperPAC*, *supra*, at 2-3.

¹⁶ Am. Compl. at 13.

¹⁷ *Id.* at 11-14.

¹⁸ *Id.*

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1 Montana, Florida, Massachusetts, and Nevada and then solicited attendees for contributions.¹⁹
2 The Complaint notes that after the fundraiser, Crossroads filed 32 reports disclosing independent
3 expenditures for broadcasting advertisements in Virginia, Montana, and Nevada.²⁰ From these
4 facts, the Complaint concludes that individuals present at the fundraiser made contributions for
5 the purpose of furthering the advertisements in Virginia, Montana, and Nevada and should have
6 been identified in Crossroads' independent expenditure reports.²¹ The Complaint alleges that
7 Crossroads violated 2 U.S.C. § 434 and 11 C.F.R. §§ 109.10(b)-(e) by not doing so.²²

8 The Response disputes the Complaint's recitation of facts and argues that Crossroads had
9 no obligation to identify any contributors in connection with the challenged independent
10 expenditure reports, as no donor made a contribution for the purpose of furthering a specific
11 independent expenditure.²³ The Response relies on a sworn affidavit of Karl Rove.²⁴ Rove
12 concedes in his affidavit that Kolhatkar's description of his conversation with the Ohio donor is
13 "substantially accurate."²⁵ Rove states that the conversation took place in Spring 2012 and that
14 the "donor indicated that he was a supporter of Josh Mandel, and offered to donate funds toward

¹⁹ *Id.* at 15. The Complaint states that organizers of the fundraiser reportedly screened 14 television advertisements, which included ads "targeting Democratic Senate candidates in Virginia, Ohio, Montana, Florida, Massachusetts, and Nevada." Kolhatkar, *Rove Fundraiser*, *supra*. Some were Crossroads ads, and others were for American Crossroads. Kolhatkar, *Rove SuperPAC*, *supra*. After the ads were shown, the Complaint alleges that Law and Barbour solicited funds on behalf of both American Crossroads and Crossroads, and that Law specifically noted increases in advertising rates in connection with his solicitation. Am. Compl. at 8, 15, Ex. G (Paul Blumenthal, *Karl Rove-Backed Groups Are Largest Single Outside Force in 2012*, HUFFINGTON POST, Nov. 4, 2012); Kolhatkar, *Rove Fundraiser*, *supra*, at 3.

²⁰ Am. Compl. at 16.

²¹ *Id.*

²² *Id.*

²³ Resp. at 13. The Response further contends that the fundraising appeals in question were made on behalf of American Crossroads, not Crossroads. *Id.* at 19.

²⁴ Resp. at 7-8.

²⁵ Rove Aff. ¶ 3.

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1 [Crossroads'] budget in the State of Ohio."²⁶ Rove asserts that the conversation did not "include
 2 any discussion of any particular television advertisements, or television advertisements in
 3 general," nor did it include any discussion of any "specific efforts" that Crossroads would take to
 4 support Mandel.²⁷ Nonetheless, Rove understood "that the donor intended the funds to be used
 5 in some manner that would aid the election of Josh Mandel."²⁸ Rove avers, however, that the
 6 unnamed donor never made a \$3 million contribution; rather, the donor contributed a larger
 7 amount to Crossroads "that was not in any way earmarked for any particular use."²⁹

8 With respect to the alleged matching challenge, Rove claims that the unnamed donor who
 9 extended the offer did not intend for the challenge to be a formal program; rather, Rove
 10 understood that the donor wanted "simply [to] encourage[] our general efforts to raise funds."³⁰
 11 Rove further avers that Crossroads raised \$1.3 million for "general use in Ohio" as a result of the
 12 matching challenge.³¹

13 Concerning the independent expenditure reports addressing Crossroads-funded
 14 broadcasts in Virginia, Montana, and Nevada, the Response contends no donor contributed
 15 money specifically to fund those advertisements.³² Further, none of the donors who attended the
 16 August 30, 2012, fundraiser made contributions to further any of the fourteen ads displayed

²⁶ *Id.* ¶ 5.

²⁷ *Id.* ¶¶ 6-7.

²⁸ *Id.* ¶ 10.

²⁹ *Id.* ¶ 14.

³⁰ *Id.*

³¹ *Id.* ¶ 13.

³² Resp. at 5-6.

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1 during the event.³³ Indeed, 13 of the 14 advertisements at issue were fully “paid for and aired”
 2 before the August 30, 2012, fundraiser, and the 14th advertisement was shown to a focus group
 3 and not publicly aired at all.³⁴ The Response also asserts that Law and Barbour did not solicit
 4 funds on behalf of both Crossroads and American Crossroads at the fundraiser; rather, their
 5 solicitations related specifically and solely to American Crossroads.³⁵

6 The Response further asserts that, contrary to the representations in the Complaint,
 7 Crossroads spent over \$10 million in Ohio on TV ads mentioning one of the two U.S. Senate
 8 candidates.³⁶ The Response represents that these ads included either independent expenditures
 9 or electioneering communications and “[o]ther issue and policy advocacy ads [that] did not fall
 10 into either category and were not required to be reported. . . .”³⁷ Production costs for those ads
 11 not required to be reported totaled approximately \$150,000.³⁸ The Respondents explain that the
 12 Complaint’s \$6.4 million figure includes only funds that Crossroads spent on independent
 13 expenditures that opposed Senator Brown.³⁹

14 The Complaint also contends that the Respondents’ violations were knowing and willful.
 15 It cites responses to Requests for Additional Information (“RFAs”) sent to Crossroads that were

³³ *Id.*

³⁴ *Id.* at 6.

³⁵ *Id.* at 10.

³⁶ Resp. at 8.

³⁷ *Id.* Commission disclosure reports confirm that Crossroads spent approximately \$6.4 million on independent expenditures in Ohio. Although the Response here suggests that Crossroads may have spent some amount of money in connection with electioneering communications, Crossroads has not filed any electioneering communication reports in connection with its Ohio activities. As such, it remains unclear how Crossroads spent that additional \$3.6 million in Ohio beyond those funds it claims were committed to independent expenditures in the state.

³⁸ *Id.*

³⁹ *Id.*

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1 issued in connection with other Crossroads independent expenditure reports.⁴⁰ Those notices
2 informed Crossroads that it had failed to itemize any contributions in its independent expenditure
3 reports.⁴¹ The June 2011 and October 2012 RFAs stated that Crossroads was required to
4 disclose identification information for each individual who made a donation in excess of \$200
5 "used to fund the independent expenditure[s]."⁴² In its response, Crossroads asserted that the
6 RFAs misstated the law and that Crossroads neither solicited nor received contributions "for the
7 purpose of furthering the reported independent expenditure."⁴³ Moreover, Crossroads declared
8 that it understood the applicable reporting regulations and that any omission of contributor
9 information in future reports "should not be assumed to be an oversight."⁴⁴ The legal position
10 Crossroads described in its responses to the RFAs is therefore consistent with the position the
11 Respondents take concerning the allegations raised here.

12 III. LEGAL ANALYSIS

13 An independent expenditure is an expenditure that expressly advocates the election or
14 defeat of a clearly identified federal candidate and "that is not made in concert or cooperation
15 with or at the request or suggestion of such candidate, the candidate's authorized political
16 committee, or their agents, or a political party committee or its agents."⁴⁵ The Federal Election

⁴⁰ See Am. Compl. at 15-16.

⁴¹ See Letter from Christopher Whyrick, FEC to Crossroads (June 14, 2011) ("June 2011 RFA") (Exhibit I of Amended Complaint); Letter from Christopher Whyrick, FEC to Crossroads (Oct. 25, 2012) ("Oct. 2012 RFA") (Exhibit K of Amended Complaint); Letter from Christopher Whyrick, FEC to Crossroads (Apr. 9, 2013) ("Apr. 2013 RFA") (Exhibit M of Amended Complaint).

⁴² June 2011 RFA at 1; October 2012 RFA at 2.

⁴³ See Letter from Thomas Josefiak to Christopher Whyrick, FEC at 1 (June 19, 2011) ("June 2011 Resp.") (Exhibit J of Amended Complaint); Letter from Caleb Crosby to Christopher Whyrick, FEC (Apr. 10, 2013) (Exhibit N of Amended Complaint).

⁴⁴ June 2011 Resp. at 2.

⁴⁵ 2 U.S.C. § 431(17).

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1 Campaign Act of 1971, as amended (the "Act") requires persons, other than political committees,
 2 to report independent expenditures that exceed \$250 during a calendar year.⁴⁶ Such a report
 3 must include, among other information, "the identification of each person who made a
 4 contribution in excess of \$200 to the person filing such statement which was made for the
 5 purpose of furthering *an* independent expenditure."⁴⁷ The Commission's implementing
 6 regulation provides that an independent expenditure report must include "[t]he identification of
 7 each person who made a contribution in excess of \$200 to the person filing such report which
 8 contribution was made for the purpose of furthering *the reported* independent expenditure."⁴⁸

9 Relying on the language of the Commission's regulation, the Response argues that
 10 Crossroads must only disclose the identity of those donors who make a contribution intending
 11 that those funds be used to further a specific advertisement:

12 At a minimum, a donor who is subject to disclosure under Section
 13 109.10(e)(1)(vi) must know what advertisement he or she is funding. A
 14 donation made for the far more general purpose of funding unspecified
 15 advertisements in a handful of states at some later date does not satisfy the
 16 contribution be made "for the purpose of furthering *the reported*
 17 *independent expenditure*."⁴⁹

18 This Office previously addressed the scope of disclosure required under Section 434(c) of
 19 the Act and Section 109.10(e)(1)(vi) of the Commission's implementing regulations in [REDACTED]

⁴⁶ *Id.* § 434(c)(1); 11 C.F.R. § 109.10(b).

⁴⁷ 2 U.S.C. § 434(c)(2)(C) (emphasis added).

⁴⁸ 11 C.F.R. § 109.10(e)(1)(vi) (emphasis added). In 2011, Rep. Chris Van Hollen petitioned the Commission to revise section 109.10(e)(1)(vi), arguing that it "requires disclosure only of those contributors who state a specific intent to fund a specific ('the reported') independent expenditure." Rep. Chris Van Hollen, Petition for Rulemaking at 3 (Apr. 21, 2011) ("Van Hollen Petition"). In response, this Office submitted to the Commission a draft notice of proposed rulemaking proposing to amend section 109.10(e)(1)(vi). The proposal would have required disclosure of all contributors who make a contribution for the purpose of furthering "an" independent expenditure. *See* Draft Notice of Proposed Rulemaking for Independent Expenditure Reporting at 7 (Dec. 15, 2011) ("Draft Notice"). The Commission did not approve the proposal for publication in the *Federal Register*.

⁴⁹ Resp. at 20 (emphasis in original).

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1 [REDACTED] In that matter, the Commission approved our
 2 recommendation not to open a matter where there was no information that a 501(c)(4)
 3 organization received "donations tied to a specific independent expenditure."⁵⁰ We concluded
 4 that Section 434(c) may reasonably be construed to require disclosure of the identity of certain
 5 contributors regardless of whether the contributor made a contribution to further a specific
 6 independent expenditure. Nonetheless, we explained that the regulatory language of section
 7 109.10(e)(1)(vi) "appears to require an express link between the receipt and the independent
 8 expenditure."⁵¹ Nothing in the record before the Commission indicated that a donor had made a
 9 contribution for the purpose of funding the reported independent expenditure or otherwise
 10 triggering disclosure under Section 434(c).⁵² Acknowledging the difficulty of resolving the
 11 question through an enforcement action and given the lack of information suggesting [REDACTED] had
 12 received a contribution that would require disclosure under any construction of Section 434(c),
 13 this Office recommended that the Commission not open a matter, and the Commission approved
 14 that recommendation.⁵³

50 [REDACTED]

51 *Id.* As we further explained, paragraph (c)(1) of the same provision of the Act may impose additional reporting obligations — namely, that every person (other than a political committee) who makes independent expenditures in excess of \$250 must file a report identifying each person who, for the purpose of influencing a federal election, made a contribution to that person in excess of \$200 in a calendar year, regardless of whether the contribution was made for the purpose of furthering an independent expenditure. *See id.* at 7-8 (citing *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986)).

52 *Id.* at 3-5, 11. In its disclosure reports filed with the Commission, the respondent in [REDACTED] had identified two contributors who had made contributions — of \$3,500 and \$500, respectively — to further the independent expenditures that were the subjects of its reports. *See id.* at 3, 6. With respect to the remaining independent expenditures in question, [REDACTED] argued in the enforcement proceeding that it used general treasury funds to pay for its independent expenditures and asserted that it would be impossible to identify other individuals who donated funds tied to any specific independent expenditure. *Id.* at 3.

53 [REDACTED]

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1 Here, although Rove contends that the donor subsequently contributed a different amount
2 not tied to any stated purpose,⁵⁴ the initial discussion concerning the proposed contribution — “I
3 really like Josh Mandel I’ll give ya 3 million” — was at least specific enough that
4 Rove understood that the donor proposed to make a contribution to Crossroads for it to use to
5 support the election of Josh Mandel.⁵⁵ Nonetheless, a donor’s general purpose to support an
6 organization in its efforts to further the election of a particular federal candidate does not itself
7 indicate that the donor’s purpose was to further “the reported independent expenditure” — the
8 requisite regulatory test.

9 The record also fails to support a reasonable inference that any persons made
10 contributions in response to the matching challenge for the purpose of furthering the ten reported
11 independent expenditures in Ohio. The Complaint alleges that Crossroads spent \$6.4 million in
12 independent expenditures opposing Senator Brown in the Ohio Senate race. Even if true,
13 however, that fact would not advance the claim that, as a result of the matching challenge,
14 Crossroads received funds from a donor for the purpose of furthering Crossroads’ reported
15 independent expenditures in Ohio.

16 The Complaint also alleges that Crossroads failed to disclose the identities of persons
17 who attended the August 30, 2012, fundraiser and made contributions relating to the 14
18 television advertisements shown at the fundraiser in connection with the 32 independent

⁵⁴ See Rove Aff. ¶ 14.

⁵⁵ See Rove Aff. ¶ 10. Consistent with the position of this Office in litigation concerning similar regulatory language, when considering the donor’s purpose under 11 C.F.R. § 109.10(e)(1)(vi), we construe the available record using objective standards and in light of all the circumstances. Cf. FEC Mem. of P.&A. in Supp. of Mot. for Summ. J. at 33, *Van Hollen v. FEC*, Civ. No. 00766 (Aug. 1, 2011) (contending that similar regulatory language concerning disclosure of identity of donors for electioneering communications “does not rely solely on statements (public or private) by donors, but applies objective standards to determine which donations meet the regulatory standard.”); FEC Resp. to Pl.’s Supplemental Mem. at 2, *Van Hollen v. FEC*, Civ. No. 00766 (Apr. 29, 2013) (same). Because the test is an objective one, the stated purpose of the donor may be a relevant fact, but it is not necessarily dispositive.

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1 expenditures Crossroads reported for Virginia, Montana, and Nevada. Crossroads represents that
 2 none of the contributions received at the event were for the purpose of furthering those
 3 communications.⁵⁶ Moreover, Crossroads explains that 13 of the advertisements were broadcast
 4 and fully paid for before August 30, 2012, and that the 14th never aired, which further tends to
 5 support Crossroads' assertion that it did not receive contributions for the purpose of furthering
 6 those communications. Consequently, there is no basis to conclude on these facts that
 7 Crossroads received contributions from individuals at the fundraiser for the purpose of furthering
 8 Crossroads' reported independent expenditures in Virginia, Montana, and Nevada as alleged.

9 We therefore recommend that the Commission find no reason to believe that Crossroads
 10 violated 2 U.S.C. § 434(c)(2) or 11 C.F.R. § 109.10(e)(1)(vi) when it filed independent
 11 expenditure reports without identifying any donors who contributed to Crossroads with the
 12 purpose of furthering the reported independent expenditures.⁵⁷

13 Finally, as we have explained, Section 434(c)(1) of the Act may impose additional
 14 reporting obligations for certain contributions made for the purpose of influencing a federal
 15 election generally.⁵⁸ The Commission's regulation at 11 C.F.R. § 109.10(e) is silent concerning

⁵⁶ Resp. at 5, 6, 19.

⁵⁷ Although we conclude that the record before the Commission does not indicate that Crossroads violated the regulatory standard for disclosure of donors in connection with its independent expenditure reporting, we note that 2 U.S.C. § 434(c)(2) specifically mandates disclosure of the identity of those who contribute for the purpose of furthering "an independent expenditure," an arguably more expansive approach. See First Gen. Counsel's Rpt. at 2, [REDACTED]. The Commission promulgated 11 C.F.R. § 109.10(e)(1)(vi) specifically to address Section 434(c), however, and thus it constitutes the Commission's controlling interpretation of the statutory provision it implements. See Reporting of Independent Expenditures by Persons Other Than a Political Committee, 45 Fed. Reg. 15,087 (Mar. 7, 1980) (stating that 11 C.F.R. § 109.2 [subsequently renumbered 109.10] "has been amended to incorporate the changes set forth at 2 U.S.C. § 434(c)(1) and (2)"). Accordingly, our recommendation that the Commission find no reason to believe Crossroads violated the independent expenditure reporting regulation at 11 C.F.R. § 109.10(e)(1)(vi) applies with equal force to the alleged violation of the independent expenditure reporting provision it implements at 2 U.S.C. § 434(c)(2).

⁵⁸ [REDACTED]

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1 any such additional reporting requirement. Because the record here does not suggest a basis to
2 find a violation of the regulatory standard at 11 C.F.R. § 109.10(e)(1)(vi) under its plain terms, a
3 Respondent could raise equitable concerns about whether a filer has fair notice of the requisite
4 level of disclosure required by law if the Commission attempted to impose liability under
5 Section 434(c)(1).⁵⁹ Accordingly, to the extent that the facts here may also give rise to a claim
6 that Crossroads allegedly violated 2 U.S.C. § 434(c)(1),⁶⁰ we recommend that the Commission
7 dismiss that allegation as a prudential matter in the exercise of its prosecutorial discretion.⁶¹

8 * * *

9 For the foregoing reasons, we recommend that the Commission find no reason to believe
10 that Crossroads violated 2 U.S.C. § 434(c)(2) and 11 C.F.R. § 109.10(e)(1)(vi), dismiss the
11 allegation that Crossroads violated 2 U.S.C. § 434(c)(1), and close the file in this matter.

12 **IV. RECOMMENDATIONS**

- 13 1. Find no reason to believe that Crossroads Grassroots Policy Strategies violated
14 2 U.S.C. § 434(c)(2) and 11 C.F.R. § 109.10(e)(1)(vi);
- 15 2. Dismiss in the exercise of prosecutorial discretion the allegation that Crossroads
16 Grassroots Policy Strategies violated 2 U.S.C. § 434(c)(1);
- 17 3. Close the file as to Steven Law, Karl Rove, Haley Barbour and Caleb Crosby.
- 18 4. Approve the attached Factual and Legal Analysis;
- 19 5. Approve the appropriate letters; and

⁵⁹ *Id.* at 10 (“In short, although certain disclosures appear to be required by the Act and *MCFL*, the Commission regulations concerning the disclosure requirements of the Act for QNCs can reasonably be interpreted as too narrow to provide sufficient notice to ONCs regarding what they must disclose.”); [REDACTED]

⁶⁰ See Compl. at 4-5 & n.1 (reciting language of disclosure obligations under Sections 434(c)(1) and (c)(2) and asserting that Commission's regulatory interpretation “fails to give full effect to these provisions”).


⁶¹ See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

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1 6. Close the file.

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Date: 3/7/14



Daniel A. Petalas
Associate General Counsel



Mark Shonkwiler
Assistant General Counsel



Jim Lee
Attorney

Attachment

- A. Factual and Analysis for Crossroads Grassroots Policy Strategies, Steven Law, Karl Rove, Haley Barbour, and Caleb Crosby