

RECEIVED
FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

2016 JUN 1 PM 12:07

In the Matter of)

)

MUR 6816

American Future Fund)

)

OFFICE OF GENERAL
COUNSEL

)

CONCILIATION AGREEMENT

This matter was generated by a complaint filed with the Federal Election Commission ("Commission"). The Commission found reason to believe that American Future Fund ("AFF") violated 52 U.S.C. § 30104(c)(2)(C) and 11 C.F.R. § 109.10(e)(1)(vi) by failing to disclose that the Center to Protect Patient Rights ("CPPR") provided funds for the purpose of furthering independent expenditures in connection with the 2010 federal elections.

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:

FACTUAL BACKGROUND

1. AFF is non-profit corporation organized under section 501(c)(4) of the Internal Revenue Code ("IRC").

2. CPPR is a non-profit corporation organized under section 501(c)(4) of the IRC. CPPR, which was formed in 2009, did not directly sponsor independent expenditures in 2010 but provided money to other organizations to do so. CPPR changed its name to American Encore in February 2014.

3. Sean Noble is the owner and sole member of Noble Associates. As part of a consulting agreement between Noble Associates and CPPR, Noble agreed to serve as CPPR's Executive Director in 2009 and 2010.

4. In 2010, CPPR, through Noble as its Executive Director and agent, provided a total of \$11,685,000 in grants to AFF. CPPR did not distribute this amount in one lump sum to AFF but made a series of smaller grants to AFF throughout the year.

5. In 2010, AFF's total receipts were \$23,304,826.

6. In 2010, AFF spent a total of \$8,313,866 for advertisements that qualified as independent expenditures or electioneering communications, \$7,396,831 of this total was for independent expenditures.

7. In 2010, AFF retained two media consulting firms to create, produce, and place broadcast advertising for AFF. According to information in the Commission's possession, Noble and Noble Associates served as a subcontractor to these media consulting firms.

8. Noble developed an Excel spreadsheet that identified Members of the House of Representatives and ranked them according to likelihood of defeat in the 2010 elections. AFF's 2010 advertising focused, in part, on candidates included in Noble's list.

9. The available information indicates that Noble, in his role as a subcontractor to AFF's retained media consultants, provided media services in connection with \$6,427,422.08 of AFF's independent expenditures described in paragraph 6, and was in a position to know how AFF would use CPPR funds to further specific advertisements. Noble was the Executive

Director of CPPR at the same time he served as a subcontractor to the media consulting firms retained by AFF.

10. For purposes of settling this matter, AFF will no longer contest the Commission's conclusion that a portion of the grant funding that CPPR provided to AFF was for the purpose of furthering specific independent expenditures.

11. AFF did not report that CPPR provided funds for the advertisements when it filed independent expenditure reports with the Commission in 2010.

12. AFF contends that the available information demonstrates that AFF requested grant funds from CPPR in writing, AFF's written requests did not seek funding for any specific projects, activities, or advertisements, and CPPR's grants to AFF were accompanied by transmittal letters indicating that the grants were made as general support grants.

13. AFF contends that neither its officers nor staff spoke to Noble about specific advertisements in 2010.

LAW

14. The Federal Election Campaign Act of 1971, as amended (the "Act") requires persons, other than political committees, to report independent expenditures that exceed \$250 during a calendar year. 52 U.S.C. § 30104(c)(1). Such a report must include, among other information, "the identification of each person who made a contribution in excess of \$200 to the person filing such statement which was made for the purpose of furthering an independent expenditure." *Id.* § 30104(c)(2)(C).

15. The Commission's implementing regulation provides that an independent expenditure report must include "[t]he identification of each person who made a contribution in excess of \$200 to the person filing such report which contribution was made for the purpose of furthering the reported independent expenditure." 11 C.F.R. § 109.10(e)(1)(vi).

V. Respondent committed the following violations:

1. Respondent failed to disclose CPPR as a donor in its independent expenditure reports in violation of 52 U.S.C. § 30104(c)(2)(C) and 11 C.F.R. § 109.10(e)(1)(vi).

VI. Respondent will take the following actions:

1. Respondent will pay a civil penalty to the Federal Election Commission in the amount of one-hundred forty thousand dollars (\$140,000) pursuant to 52 U.S.C.

§ 30109(a)(5)(A).

2. Respondent will cease and desist from violating 52 U.S.C. § 30104(c)(2)(C) and 11 C.F.R. § 109.10(e)(1)(vi).

3. In consultation with the Reports and Analysis Division, Respondent will amend its disclosure reports to reflect CPPR as a donor with respect to the relevant independent expenditures.

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Except as otherwise provided, Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made

MUR 6816 (American Future Fund)
Conciliation Agreement

by either party or by agents of either party, that is not contained in this written agreement shall
be enforceable.

FOR THE COMMISSION:

Kathleen Guith
Kathleen Guith
Acting Associate General Counsel
For Enforcement

6-21-16
Date

FOR THE RESPONDENT:

Michael Bryan
American Future Fund, Counsel

May 31, 2016
Date