

## **COMPLAINT**

*Complainant files this complaint with the Federal Election Commission ("FEC" or "Commission") under 2 U.S.C. § 437g(a)(1) against Terri Lynn Land, her campaign committee Terri Lynn Land for Senate, Kathy Vosbury, Treasurer, as well as against the purportedly "independent" outside groups that appear to be coordinating with Land and her campaign in violation of the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act").*

*Terri Lynn Land is a candidate for U.S. Senate in Michigan. At a meeting of Republican supporters in August 2013, Land inadvertently revealed that her campaign has apparently had numerous discussions with "Super PACs," to obtain a commitment from these outside groups to support her campaign. Formed in the wake of the Citizens United decision, so-called "Super PACs" are political committees that can take unlimited contributions and contributions from corporations to fund their election activities, but only because they operate completely independent of candidates and their campaigns. Other groups, like 501(c)(4)s, can also run campaign ads without even disclosing their donors, again, only if they do so independently. However, if a Super PAC or other "independent" group runs campaign ads at the request or suggestion of a candidate, or otherwise in coordination with a campaign, then the cost of the ads constitute illegal in-kind contributions to the campaign. Tellingly, in the months after Land's speech and her reported discussions, Super PACs and other outside organizations began spending huge sums of money on political advertisements attacking Land's opponent, current U.S. Congressman Gary Peters. To date, Land and her campaign have refused to admit whether any of the groups running ads were the very ones that she has coordinated with. The FEC should immediately launch an investigation to shed light on the full scope of Land's discussions with outside groups, determine which groups she has coordinated with, and find out whether any of the outside attack ads already aired in Michigan constitute illegal in-kind contributions to Land's campaign.*

## **FACTUAL BACKGROUND**

*Terri Lynn Land filed her Statement of Candidacy seeking to represent Michigan in the U.S. Senate on July 10, 2013. In a video recording of Land speaking at a campaign event in August 2013, Land revealed that her campaign apparently had discussions with multiple Super PACs. In her speech, Land tells the crowd that "it's going to take a lot of resources" to win the election and estimates she will need to raise \$20 million dollars in order to win.[1] Next, Land explains that "we've got new folks out there that are raising money – that's the Super PACs." Land admits that her "campaign has talked to a lot of those folks," referring to Super PACs or possibly other outside groups and that the Super PACs have "committed to Michigan." Stating that "the whole country is watching" – possibly a reference to groups that are active in elections across the country – Land says that outside groups "really want to support us here in Michigan." In other words, it appears that Land, or other representatives of her campaign, had meetings with groups that are required to maintain their independence, and secured their commitment to run campaign ads to help in the Michigan Senate race.*

*As may be expected, shortly after Land's admission, outside groups began spending huge amounts of money on political advertisements opposing Congressman Gary Peters. For example, according to reports filed with the Commission, a Super PAC named PURE PAC spent \$65,000 on advertisements opposing Congressman Peters in the Fall of 2013.[2] PURE PAC's advertisement clearly identifies Congressman Peters, references the upcoming election for U.S. Senate, takes a negative position of Peters's record in Washington, and expressly advocates against his election, telling its audience of Michigan voters that electing Peters to the U.S. Senate "makes sense, if you think Michigan needs more Washington." [3] PURE PAC ran a second, similar ad in October and November 2014 at a combined cost of over \$57,000.[4]*

*More recently, Americans for Prosperity reportedly launched a \$1,000,000 television and radio advertisement campaign attacking Congressman Peters.[5] AFP is a non-profit corporation organized under IRC section 501(c)(4) and incorporated in the District of Columbia. AFP's advertisement clearly refers to Congressman Peters, shows an image of Peters in front of campaign sign in a clear reference to elections and then tells its audience that Peters is a*

liar.[6] The ad is part of a larger AFP campaign to target other Democratic Senate candidates in competitive races.[7]

Other nationwide outside political groups have also increased their spending in Michigan. In November 2013, the Republican National Committee ("RNC") launched robocalls that referenced Congressman Peters and other Democratic U.S. Representatives and called them liars.[8] Last week, the RNC ran radio advertisements again referring to Congressman Peters, calling him a liar, and urging Michigan voters that "2014 is your chance to hold Representative Peters accountable." [9] Also in November 2013, the National Republican Senatorial Committee ("NRSC") reportedly distributed flyers across the state clearly referencing Congressman Peters and accusing Peters of lying to voters about healthcare legislation.[10]

When Land's campaign was asked about the apparent connection between her campaign's conversations with Super PACs and the increased spending by outside groups and party committees, the campaign dodged the question. The campaign has refused to admit which groups it has coordinated with.[11]

### **LEGAL DISCUSSION**

The Act strictly limits the amount of money that any person may contribute to Federal candidates and political committees. 2 U.S.C. § 441a(a). The Act also prohibits corporations from making contributions in connection with Federal elections. *Id.* § 441b(a). Pursuant to 2 U.S.C. § 441a(7)(B)(i), "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate." The Commission's regulations implementing this provision further explain that an expenditure for a communication will be considered an in-kind contribution to a campaign if it (1) is paid for by an entity other than the campaign; (2) meets certain content standards, including by being an electioneering communication, public communication that contains express advocacy, a public communication that contains the functional equivalent of express advocacy, or a public communication that clearly identifies a candidate for the Senate within 90 days of an election; and (3) meets certain conduct standards regarding the coordination between who paid for the ad and the campaign. See 11 C.F.R. §§ 109.20(b), .21. Regardless of whether there is "formal collaboration," the conduct prong is satisfied (there was coordinating activity) when the campaign has "material involvement" with the expenditure, if there was "substantial discussion" with the campaign about an expenditure, or if the expenditure was done at the "request or suggestion" of a campaign. See 11 C.F.R. §§ 109.21(d).

Applying the Commission's coordination test here, it is clear that the first prong is satisfied because entities other than the campaign have paid for communications. Additionally, it is plain that a number of these communications, like the Pure PACs advertisements, also satisfy the content prong because they contain express advocacy. The Commission should further evaluate other advertisements that likely constitute the "functional equivalent" of express advocacy and therefore also satisfy the content prong. For example, the ads run by AFP and the RNC contain numerous "indicia of express advocacy" previously identified by the Commission, including: (i) taking a position on Congressman Peters' character (calling him a liar); and mentioning an election (referring to 2014 and showing a Peters campaign sign). See 11 C.F.R. § 114.15(c). It is clear that the real purpose of these ads is to urge individuals to vote against Congressman Peters.[12]

Finally, Land's August 2013 campaign speech appears to be a clear admission that the third prong of the coordination test was also satisfied. Her speech indicated that her campaign committee has had substantial discussions with Super PACs and requested and obtained their commitment to make expenditures on her behalf. If the substance of these discussions amounted to a "request or suggestion" that the groups run the ads or a "material discussion" regarding the ads, then the ads would be "coordinated communications" – and therefore excessive or prohibited contributions.

## **CONCLUSION**

*Further investigation is needed into Land's campaign discussions with Super PACs and other outside groups, particularly in light of her campaign's refusal to answer basic questions from the press about these meetings. The FEC should depose Land to determine if the Super PAC's "commitment to Michigan" amounted to a pledge to run advertisements on behalf of her candidacy, and to determine the precise nature and content of all discussions between the campaign and any outside groups that have aired advertisements opposing Peters or air ads between now and Peters' election. If any ads satisfying the content prong were coordinated with the campaign, then those ads amount to excessive or prohibited coordinated contributions, and are a violation of federal law.*

[1] The video of the campaign event can be viewed online at [http://www.huffingtonpost.com/2013/09/25/terri-lynn-land-super-pac\\_n\\_3982274.html](http://www.huffingtonpost.com/2013/09/25/terri-lynn-land-super-pac_n_3982274.html).

[2] PURE Political Action Committee, 24/48 Hour Notice of Independent Expenditure (Sep. 9, 2013), *available at* <http://docquery.fec.gov/pdf/568/13941597568/13941597568.pdf#navpanes=0>. PURE PAC is registered with the Commission as an Independent Expenditure-Only Committee.

[3] The PURE PAC advertisement can be viewed online at <http://www.youtube.com/watch?v=GBRvoX2KnUI>.

[4] PURE Political Action Committee, 24/48 Hour Notice of Independent Expenditures (Oct. 15, 2013), *available at* <http://docquery.fec.gov/pdf/987/13964799987/13964799987.pdf#navpanes=0>; PURE Political Action Committee, 24/48 Hour Notice of Independent Expenditures (Nov. 19, 2013), *available at* <http://docquery.fec.gov/pdf/869/13942551869/13942551869.pdf#navpanes=0>. The second PURE PAC advertisement and transcript can be viewed online at <http://www.purepac.org/home/gary-peters-friends-tv-ad-released-statewide>.

[5] *See* David Eggert, Land Raises \$1.7M in 3 Months, Anti- Peters Ad Airs, [NewsObserver.com](http://www.newsobserver.com) (Jan. 14, 2014), *available at* <http://www.newsobserver.com/2014/01/14/3531350/land-raises-nearly-17m-in-last.html>.

[6] The AFP ad can be viewed online at <https://www.youtube.com/watch?v=IsLdhwwSwrQ>.

[7] *See* Thomas Beaumont, "Pro-GOP Group Airs Attack Ads in Senate Races," ABC News (January 15, 2014) *available at* <http://abcnews.go.com/Politics/wireStory/pro-gop-group-air-attack-ads-senate-races-21534553>.

[8] *See* <http://www.gop.com/trending/rnc-launches-robocalls-facebook-posts-on-obamacare-lie>.

[9] *See* <http://www.gop.com/general/rnc-launches-new-years-resolutions-radio-ads-against-targeted-democrats>.

[10] Alexandra Jaffe, NRSC Targets Female Voters with Black Friday Hit, [TheHill.com](http://thehill.com) (Nov. 26, 2013), *available at* <http://thehill.com/blogs/ballot-box/senate-races/191452-nrsc-targets-female-voters-with-black-friday-hit-on-landrieu>

[11] Chad Livengood, Conservative Group Launches Health Care Ad Against Rep. Peters, [DetroitNews.com](http://www.detroitnews.com) (Jan. 14, 2014), *available at* <http://www.detroitnews.com/article/20140114/POLITICS03/301140112>.

[12] *See, e.g.,* Thomas Beaumont, "Pro-GOP Group Airs Attack Ads in Senate Races," ABC News (January 15, 2014) *available at* <http://abcnews.go.com/Politics/wireStory/pro-gop-group-air-attack-ads-senate-races-21534553>.