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*Gary S. Marbut*

P.O. Box 16106, Missoula, Montana 59808  
406-549-1252 - gary@marbut.com

Date: April 18, 2011

Christopher Morse  
Senior Campaign Finance Analyst  
Federal Election Commission  
999 E Street N.W.  
Washington, DC 20463

IDENTIFICATION NUMBER: C00322958

RE: Designation of Counsel

Dear Mr. Morse:

By this letter, please be informed that I designate Benjamin Barr and Stephen Hoersting as my counsel concerning all matters contained in the letter from the Federal Elections Commission to the Montana Shooting Sports Association Political Committee (C00322958) dated March 15, 2011. I authorize the Federal Election Commission to send any communications concerning this matter to:

Benjamin T. Barr  
10737 Hunting Lane  
Rockville, MD 20850  
Tel: 240.863.8280

Stephen M. Hoersting  
700 E Schantz Avenue  
Dayton, OH 45419  
Tel: 937.623.6102

In addition, I request that the Federal Elections Commission send me copies of any related correspondence to the address on this letterhead, or if that is not possible, to the address the FEC has on file for the MSSA PC, P.O. Box 4924, Missoula, Montana 59806.

Sincerely,



Gary Marbut

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# Benjamin T. Barr • Stephen M. Hoersting



10737 Hunting Lane • Rockville, Maryland 20850 • Phone 240.863.8280 • Fax 202.540.9064 • Benjamin.Barr@gmail.com

700 E Schantz Ave • Dayton, Ohio 45419 • Phone 937.623.6102 • Fax 937.723.6069 • Hoersting@gmail.com

Date: April 18, 2011

Christopher Morse  
Senior Campaign Finance Analyst  
Federal Election Commission  
999 E Street N.W.  
Washington, DC 20463

IDENTIFICATION NUMBER: C00322958

RE: Request for Immediate RTB Determination

Dear Mr. Morse:

With some pronounced trepidation, our clients, the Montana Shooting Sports Association Political Committee (MSSA PAC) and its treasurer, Gary Marbut, received your letter dated March 15, 2011. In that letter, the Federal Election Commission (FEC) demands that the MSSA PAC spend money it *does not have* to comply with regulations the Commission *cannot enforce*. This response is to inform you that, contrary to your request, MSSA PAC, a fully reporting political committee that makes no contributions to candidates, will not be refunding any part of the \$8000 it lawfully spent on independent expenditures. The FEC demands that MSSA PAC refund amounts received for independent expenditures in excess of \$5000 from individuals or any amount received from corporations. The FEC, however, lacks any constitutional basis to pursue this matter.

Therefore, MSSA PAC and Mr. Marbut request that the FEC refer, within the next sixty days, this matter to its Commissioners for a vote of (No) Reason To Believe under 2 U.S.C. §437g. Should the FEC pursue this matter further, we will aggressively pursue any and all legal remedies available to defend our clients' constitutional rights.

In its most recent litigation, the FEC has lost several challenges that severely curtail its regulatory reach. *See, e.g., Citizens United v. FEC*, 130 S.Ct. 876 (2010); *EMILY's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010). Utmost attention and deference must be given to these holdings as they are binding and controlling as applied to the Commission's actions. *See Marbury v. Madison*, 5 U.S. 137 (1803). This response serves as official notice to the FEC of its duty to terminate this investigative matter due to the holdings of *Citizens United*, *EMILY's List*, and *SpeechNow*.

Relevant to this inquiry, MSSA PAC made no contributions to candidates, and will not make contributions to candidates. The fact that some nonconnected committees make candidate contributions does not mean MSSA PAC made contributions to any candidates. Indeed, the FEC knows this because of MSSA PAC's obligation to report its every receipt and disbursement. 2 U.S.C § 434a. Any request that MSSA PAC refund amounts used for independent expenditures because those expenditures were made from a nonconnected committee – a vehicle through which some groups (other than MSSA PAC) use for candidate contributions – would elevate administrative form over constitutional substance. Therefore, this

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**Verification of Gary Marbut**

I, Gary Marbut, declare as follows:

1. I am the treasurer of the Montana Shooting Sports Association Political Committee.
2. Based on my personal knowledge, the Committee has never made contributions to state or federal candidates and I agree to the veracity of statements included in the filed response in this matter.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this response concerning the actions of the Montana Shooting Sports Association Political Committee are true. Executed on April 18, 2011.

  
Gary Marbut

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matter demands a simple adherence to *SpeechNow.org v. FEC* (individuals may pool resources for independent expenditures). It does not matter that Mr. Marbut selected a non-connected committee for this purpose. His actions are well within the holding of *SpeechNow*. Any corporate funds MSSA PAC used for its actions are protected under *Citizens United* and *EMILY's List*. The Commission has no jurisdiction to act in this matter.

The United States Court of Appeals for the District of Columbia has noted that agencies may not ignore relevant precedent when conducting their operations. *Jicarilla Apache Nation v. U.S. Dept. of Interior*, 613 F.3d 1112, 1120 (D.C. Cir. 2010) (citing *LeMoyné-Owen College v. NLRB*, 357 F.3d 55, 60 (D.C. Cir. 2004) (“[W]here . . . a party makes a significant showing that analogous cases have been decided differently, the agency must do more than simply ignore that argument”).

When a commission fails to conform its actions to binding precedent, this constitutes an “inexcusable departure.” *Id.* As such, the D.C. Circuit has invalidated actions of the Federal Communications Commission because an agency “cannot silently depart from previous policies or ignore precedent.” *Committee for Community Access v. F.C.C.*, 737 F.2d 74, 77 (D.C. Cir. 1984). The wisdom of these holdings is simple: “An agency is bound to follow precedent established by an unappealed decision of a circuit court on any matter within that court’s jurisdiction.” *Spraic v. U.S. R.R. Retirement Bd.*, 735 F.2d 1208, 1211 (9th Cir. 1984). Our request: That the FEC follow binding judicial precedent, refer this matter to its Commissioners for an RTB vote, and halt this investigation immediately.

In this matter, Mr. Marbut and MSSA PAC exercised their protected First Amendment rights to associate and speak out about issues and candidates relevant to the mission of MSSA PAC. As recognized in *SpeechNow*, the contribution limits at hand “violate the First Amendment by preventing plaintiffs from donating to [the organization] in excess of the limits and by prohibiting [the organization] from accepting donations in excess of the limits.” 599 F.3d 686, 696 (D.C. Cir. 2010). Unfortunately, the FEC ignored this precedent by launching its investigation of Mr. Marbut and the MSSA PAC outside of its jurisdictional limits as recognized by the D.C. Circuit Court of Appeals. This cannot stand.

The FEC’s second inquiry concerning Schedule H4 states a valid reporting consideration. Mr. Marbut will be amending the reports to clarify the ultimate purposes of the funds in question. The Commission’s third inquiry asks for the MSSA PAC to revise its disclosures in future filings, which it will do.

We look forward to your future closing of this matter and related correspondence with us.

Sincerely,

Benjamin T. Barr

Stephen M. Hoerstring

/s/

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Federal Election Commission  
**ENVELOPE REPLACEMENT PAGE FOR INCOMING DOCUMENTS**  
 The FEC added this page to the end of this filing to indicate how it was received.

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*Jmw*

PREPARER

(3/2005)

4/26/11

DATE PREPARED