



November 1, 2010

Supplement to  
AOR 2010-25

Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

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COMMISSION  
2010 NOV - 1 PM 5:31  
OFFICE OF GENERAL  
COUNSEL

Dear Commissioners:

Enclosed please find a letter from Ray Griggs, the producer and director of I WANT YOUR MONEY, responding to Commissioner Walther's Statement.

Mr. Griggs' letter makes several references to the Commission's regulatory treatment of Michael Moore's *Fahrenheit 9/11*. In MUR 5474/5593, Michael Moore and his production company Dog Eat Dog Films, Inc., had expended corporate resources to produce the political documentary *Fahrenheit 9/11*, initially under contract to Miramax. Later, Robert and Harvey Weinstein purchased the film and Moore remained a financial partner in the film with the Weinstains.<sup>1</sup>

The complaint alleged that Moore made several public statements regarding the electoral purpose of *Fahrenheit 9/11* when it was released in the Summer and Fall of 2004 to coincide with the presidential election. In response to the complaint, Moore invoked the commercial vendor exemption, representing to the Commission:

Mr. Moore is in the business of making documentaries regarding important issues and selling the documentaries for public consumption. The Websites act to promote the Film. The purpose of the Film and the Websites is not to influence elections.

See, MUR 5474, Response of Michael Moore, Aug. 3, 2004 (at 6).

According to the General Counsel's Report (at 5), "Following completion of the film, Moore made conflicting public statements, sometimes indicating that he hoped the film would influence the presidential election and at other times stating that he regarded the film simply as a

<sup>1</sup> See Gabriel Snyder, "Moore fires fresh salvo vs Mouse," *Daily Variety* (July 26, 2004) ("Moore acknowledged he is a profit participant [in *Fahrenheit 9/11*], but declined to say how big his cut will be, quipping at one point, 'I don't read the contracts.'"); Phyllis Furman, "Cashing in on *Fahrenheit*," *New York Daily News* (June 29, 2004) (Moore "owns an undisclosed stake in [*Fahrenheit 9/11*]"); Judy Bachrach, "The Provocateur: Moore's War," *Vanity Fair* (March 2005) ("The Weinstains' wallets defrayed a fair portion of [Moore's] \$700,000 [film promotion] tour.").

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contribution to his body of work." Some examples of Moore's statements regarding his intent in promoting the film follow:

**Daily Variety (July 26, 2004)**

MOORE: "Part of the problem Democrats have had in the past is energizing their base. I believe this film will bring hundreds of thousands of people to the polls who don't vote and wouldn't vote in this election."

Gabriel Snyder, "Moore fires fresh salvo vs Mouse," *Daily Variety* (July 26, 2004).

**Charlie Rose Show (July 1, 2004)**

CHARLIE ROSE: You would like nothing better than for it to be said in November, John Kerry beat George Bush in part with some contribution from "Fahrenheit 9/11". Nothing would make you happier.

MICHAEL MOORE: I would alter that just a bit. Nothing would make me happier than for George W. Bush to be out of the White House. If I can play some small role in helping to make that happen, great.

CHARLIE ROSE: Did you set out to do that?

MICHAEL MOORE: Yes.

CHARLIE ROSE: So you set out to make a film that you thought would cause George Bush to lose the election.

MICHAEL MOORE: I hope so. I mean, as a filmmaker, the first thing I set out to do was make a good movie. Because if I just -- if I was just about getting rid of Bush, if that's all I cared about, then I would be on the campaign trail, or I maybe would be running for office myself, or something like that. Horrible thought there. That's never going to happen.

CHARLIE ROSE: No, no, they love you in Flint, but not that much.

MICHAEL MOORE: Yeah, right. That's right. So I'm a filmmaker, and I want to make a good movie, and if I can have the added benefit of a number of people who see it, leaving the theater thinking, you know what, I have got to go do my civic duty here and vote.

CHARLIE ROSE: OK, so one thing is to get people to vote; another is to get them to vote a certain way. I mean, if you -- are you saying, I just hope this movie creates debate about America's role in the world and the conduct of foreign policy by the Bush administration. That's one thing. Another thing to say, I hope my movie gets people start thinking about important issues and how they decide to come down on it, it's their choice, up to them, I'm just going to get them talking. You have more than some civic ideal here. You believe Bush policies going to Iraq.

MICHAEL MOORE: Yes.

*The Charlie Rose Show*, July 1, 2004 (Transcript at p. 10, available on Lexis).

**Charlie Rose Show (July 6, 2004)**

CHARLIE ROSE: Here you want people to leave the film and get involved in a debate about the future for America, and then vote.

MICHAEL MOORE: Yes.

*The Charlie Rose Show*, July 6, 2004 (Transcript at p. 13, available on Lexis).

**The Daily Iowan (June 30, 2004)**

"During the conference call with MoveOn members, Moore said that the movie [*Fahrenheit 9/11*] was No. 1 in 'every single red state' (those Bush won in the 2000 election) a 'stake in the heart' of the Bush administration and pundits who predicted that only liberals would go to screenings. Moore said he has felt a 'shift in the country' during the past few months and reported that 'even Republicans are saying how much the movie affected them.' 'I knew this would happen sooner or later. In my heart, I knew this would happen,' he said. 'I can't tell you how hopeful I am for what's ahead in the next few months.'"

Kathryn Anderson, "Fahrenheit opens big, moves thousands," *The Daily Iowan* (June 30, 2004).

**Associated Press (July 28, 2004)**

"Moore said that he didn't want the screening [*of Fahrenheit 9/11*] in Texas to detract from the Democratic National Convention."

Scott Lindlaw, "Moore drops plan to attend screening of Fahrenheit 9/11 in Bush home town," *Associated Press* (July 28, 2004).

**NBC Today Show (June 17, 2004)**

MATT LAUER: Who's the audience here? Who--who are you preaching to? Are you preaching to the converted here? I mean, if someone hates George Bush...

MICHAEL MOORE: Mm-hmm

LAUER: ...they're going to love your movie. How is someone going to feel who does not hate George Bush? How would you like that person to react?

MOORE: That's a good question. You know, I--hmm. I--if you support Bush, I hope that you would consider taking a look at this movie and some of the things that I'm saying. I have to tell you I met a lot of recovering Republicans lately. Otherwise good people who are Republicans, but are embarrassed and ashamed of the man who sits in the White House. And, you know, I think Bush--one of his problems come November 2nd, is going to be just getting his own base out because his base is demoralized. His base is--is now the way the Democratic base has been for so many years, where people kind of just give up and don't vote.

*NBC Today Show*, June 17, 2004 (Transcript at p. 2, available on Lexis).

**ABC's This Week (June 20, 2004)**

GEORGE STEPHANOPOULOS: ... Then in a Sunday morning exclusive, Michael Moore is ready to rumble with critics of his controversial new movie "Fahrenheit 9/11."

STEPHANOPOULOS: And your goal is to defeat President Bush?

MICHAEL MOORE: I would like to see Mr. Bush removed from the White House.

*ABC's This Week With George Stephanopoulos*, June 20, 2004 (Transcript at p. 1, available on Lexis).

**MichaelMoore.com Website**

Moore also operated a website that promoted *Fahrenheit 9/11*, expressed his political views, and linked directly to anti-Bush websites that also promoted *Fahrenheit 9/11*.<sup>2</sup>

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<sup>2</sup> See "FAQ About The Facts of Fahrenheit 9/11," [www.MichaelMoore.com](http://www.MichaelMoore.com) (posted June 27, 2004) (available at: <http://www.michaelmoore.com/words/fahrenheit-911-facts/faq-about-the-facts-of-fahrenheit-911>).

### October 2004 DVD & Book Release

Moore released *Fahrenheit 9/11* in DVD format and a book *The Official Fahrenheit 9/11 Reader* (featuring a picture of President Bush on the cover) on October 5, 2004, one month before the 2004 presidential election:

*"Fahrenheit 9/11* was released to DVD and VHS on October 5, 2004, an unusually short turnaround time after theatrical release. In the first days of the release, the film broke records for the highest-selling documentary ever. About two million copies were sold on the first day. A companion book, *The Official Fahrenheit 9/11 Reader*, was released at the same time. It contains the complete screenplay, documentation of Moore's sources, audience e-mails about the film, film reviews, articles and political cartoons pertaining to the film. The DVD also contained some additional footage."

See, Wikipedia, "Fahrenheit 9/11" (available at: [http://en.wikipedia.org/wiki/Fahrenheit\\_9/11](http://en.wikipedia.org/wiki/Fahrenheit_9/11)) (citing, "Fahrenheit' Burns Home-Video Sales Records," *Reuters* (October 6, 2004)).

### Looking Back on *Fahrenheit 9/11*'s Release

In 2005, *Vanity Fair* did a retrospective on the Weinstein-Moore efforts of 2004 and quoted Moore looking back on his release of *Fahrenheit 9/11*:

"What I did, what MoveOn did, what Bruce Springsteen did—we prevented a Bush landslide." ... Indeed, last year, quoting a "pollster friend," Moore wrote: "If Kerry wins, *Fahrenheit 9/11* will be one of the top three reasons for his election."

And why shouldn't Moore try to grab some credit? Last October, he campaigned so relentlessly that he drove himself into a bout of pneumonia. He flew to 63 cities in a little more than a month, exhorting young listeners on college campuses to register. The Weinstains' wallets defrayed a fair portion of the \$700,000 tour. (Speaker's fees, a source of considerable controversy at some public colleges, amounted to a mere \$200,000.) And everywhere Moore went, his zeal and humor essentially crowded Kerry out of the electoral mind, inflaming the media and turning Moore into what producer Jerry Kupfer, who has worked by his side, calls "in some ways one of the leading opposition figures in our country, even though he's not a politician."

Judy Bachrach, "THE PROVOCATEUR; Moore's War," Vanity Fair (March 2005)(emphasis added).

\* \* \*

The Weinsteins also invoked the commercial vendor exemption, although they did not represent that profit motive was their "sole" purpose in distributing the film. They represented that they had a "clear and unmistakable commercial purpose" and that the film's "underlying purpose is commercial." See MUR 5539, Response of Bob & Harvey Weinstein, Nov. 9, 2004 (at p. 6)(emphasis added). They argued that their marketing and distribution expenditures were exempt from regulation because "respondents are in the business of making movies" and distinguished themselves from "dissimilar activities where non-profit or political groups that have no legitimate media function, are not in the business of making movies or documentaries." *Id.*

The General Counsel concluded that the commercial vendor exemption applied to all of the joint Moore-Weinstein activities – and rightly so. The Commission voted 6 – 0 to find no reason to believe that Michael Moore, Dog Eat Dog Films, Inc., Bob and Harvey Weinstein, or any of their affiliated corporate entities, violated the Act, and the Commission dismissed the complaints.

It is significant to note that the Commission did not inquire about or devote any attention to the Weinsteins' political motives, even though they had funded Moore's express advocacy statements in promoting the film, and the Commission dismissed Moore's electoral statements as insignificant. That was an enforcement action, where the Commission had subpoena power, which it chose not to exercise. Here, by comparison, my clients have simply requested an advisory opinion, which by statute would advise only upon the facts they have presented. See 2 U.S.C. § 437f(c). Yet, unlike Moore and the Weinsteins, Mr. Griggs finds himself the subject of a *sua sponte* trial-like adjudication of a few selected quotes promoting his film in an effort to drive license fees and ticket sales on a level far below that witnessed in the case of *Fahrenheit 9/11*. This odd procedural turn comes many weeks after an advisory opinion was statutorily due and despite the fact that Mr. Griggs fully apprised the Commission of the verbatim political content and message of I WANT YOUR MONEY, even going so far as providing a pre-release copy of his film for Commission review, and the Requestors informed the Commission in detail that they intended to sell licenses to show the film to political organizations.

It is obvious that the legal issues presented in this request for an advisory opinion have evoked deep disagreement over legal interpretation within the Commission. Disagreement is understandable given the complexities of the law and the philosophical positions represented on the Commission. But it would not be fair or appropriate for the Commission to blame a Requestor for that philosophical disagreement. The Requestors continue to market a political

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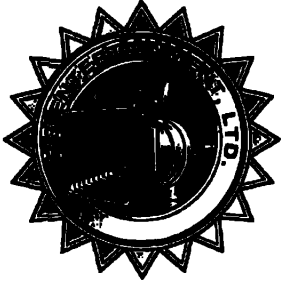
film, the details of which have been fully described to the Commission, and request that the Commission issue an advisory opinion forthwith so that they can conform their continuing marketing and distribution activities to the legal guidance they are entitled to receive from the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee E. Goodman". The signature is written in a cursive style with a long horizontal stroke at the end.

Lee E. Goodman

Enclosure



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October 29, 2010

Federal Election Commission  
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Washington, DC 20463

Dear Commissioners:

My name is Ray Griggs. I am an independent film maker in Hollywood, California. My production company is called RG Entertainment Ltd. In 2010, I produced and directed the political documentary film I WANT YOUR MONEY.

I launched an effort to market and distribute I WANT YOUR MONEY in the late Summer in preparation for a theatrical release in the Fall of 2010. As I began to market the film, for the first time, I was informed that my film might require preclearance by the FEC in order for me to market and produce it. I was surprised at this news, because I thought I had a First Amendment right to produce and distribute films, and because I had watched Michael Moore produce and release Fahrenheit 9/11 in the Summer and Fall of 2004. I was not aware that his film had violated any laws and so I thought I could follow his example. Nonetheless, I followed advice and submitted my film to the FEC for an "advisory opinion," which I was told would instruct me on the do's and don't's of marketing and distribution of my film.

My request was submitted to the FEC on September 9, 2010. I was told I would receive advice by early October. But it is now October 29, 2010, and I have never received the promised "advisory opinion" from the FEC. My film was marketed in September and released in theatres on October 15. I honestly do not know why I went through the FEC's process if the FEC was not going to provide me the advice I requested at a time when it might be useful to my promotional activities.

To add insult to injury, the FEC has now taken the position that statements I made in promoting my film, without FEC guidance, might have crossed a legal line I was not entitled to cross. But this was precisely the reason why I came to the FEC for advice. This is very frustrating, because I did not say anything to promote my film that Michael Moore did not say about Fahrenheit 9/11. Michael Moore made many statements about his political intentions in making and marketing Fahrenheit 9/11. I am not aware that Michael Moore was ever required to defend his public statements that Fahrenheit 9/11 was intended to defeat President Bush. Yet I am being asked to defend a select few promotional statements out of many, many interviews I conducted.

I want to confirm that I undertook the production and distribution of I WANT YOUR MONEY for the purpose of making a commercial profit and I would not have undertaken the project but for that objective. I saw an opportunity to fill a void in the film market on the right side of the philosophical spectrum and to tap into that market. I would not have undertaken production of this film if I thought I could not sell the film and make a profit from it. My decisions to market the film were made with the objective of how to market it successfully, to sell as many theatre tickets as possible, and to produce as many revenues as I could. I charged license fees for promotional screenings. I raised money from investors to fund a printing and advertising all with the objective of increasing ticket sales. I decided to



release the film in the Fall of 2010, on timing similar to Fahrenheit 9/11, because that would be the time that moviegoers would be tuned into politics and would want to see a political film. My film's relevance is a limited window. I would not be able to sell tickets to this film in the middle of December, for example. In sum, I would not have undertaken production of this film if I thought I could not sell the film and make a profit from it. Therefore, I stand by my representations that I produced and marketed and distributed I WANT YOUR MONEY for the sole purpose of exploiting it commercially for a profit. In fact, I would not have undertaken to spend a year on this film for political or philosophical purposes without the prospect of making a commercial profit. Frankly, I do not have that financial luxury.

However, I did produce a film that I believe in, and I made that perfectly clear to the FEC. I have never hidden my own personal political beliefs. They are compatible with the message of I WANT YOUR MONEY. I narrated I WANT YOUR MONEY and in the opening of the film, which I provided to the FEC, I state that I chose to focus the content of my film (that I intended to sell for a commercial profit) on a topic very important to me: the national debt we are leaving to our children and its impact on the American dream. My submission to the FEC also quoted my commentary in the film: "This Democratic Congress must be replaced with one that will follow time-tested economic principles that will empower the American people to grow the economy. We need another '94-style congressional revolution, and you the people can make it happen." I said that in my film and I quoted it to the FEC in my submission of September 20, 2010. I was very up front about the political content of my film. But how am I supposed to promote a film, and discuss it in press interviews, when that is the message of the film? Deny or hide the message of the film? I make no apologies for making a film (that I intended to sell for a commercial profit) about a political topic I believe in. Michael Moore's personal political beliefs were quite clear in Fahrenheit 9/11 and in his press interviews, so why would I have to make a film incompatible with my philosophical beliefs or hide the message of the film in my press interviews?

Further, as a filmmaker, I cannot imagine any filmmaker making a film he does not believe in. Nor can I imagine a filmmaker promoting his artistic work—albeit for commercial profit—by telling the public "I don't believe in the message of my film" or "I hope my art has no public or social impact" or, in the case of a political documentary, "I hope nobody who sees my film is moved by its message to take any action." Who would buy tickets to that? So, my comments in interviews may not have been neatly circumscribed to fit within narrow and subjective legal boundaries set by the FEC, to disclaim any recognition or conception that people who view my film (for the price of a ticket) might be impacted politically one way or the other. But they are perfectly normal for someone selling a political film and trying to drive viewership to theatres. I guess more importantly, they do not change the fact that I made a film I believe in to sell it for a profit. Does the guy who sells t-shirts with political messages that he agrees with have to disclaim his beliefs in order to sell them? Is it against the law to sell something for a profit and at the same time say publicly that you hope your product affects people politically, particularly where the product you are selling is a documentary film?

In sum, I am in the business of making films for a profit. I have made three films and I am working on my fourth, and I have worked on many others. That is precisely what I set out to do when I decided to produce I WANT YOUR MONEY. Whether I WANT YOUR MONEY will make a profit remains to be seen. I did not have the large corporate backing that Michael Moore had for the Fahrenheit 9/11 marketing budget, so I was not able to advertise I WANT YOUR MONEY in the manner that Fahrenheit 9/11 was advertised nationally. But I set out to make a film I believed in and to market it as widely as possible in the Fall of 2010. That is the truth.

Frankly, I am deeply disheartened that, as a filmmaker, I have to explain myself in this way to my government in order to make a film about my government only to have a government agency criticize the content of my films as if my rights depend on their subjective judgments. Nobody should be subjected to this kind of treatment by our government. I hope this answers the FEC's concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ray Griggs', with a large, sweeping flourish at the end.

**Ray Griggs**  
**Producer/Director**