



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In re)
)
Association of Community Organizations for)
Reform Now (ACORN)) **MUR 5843**
Give Missourians a Raise, Inc., and)
Sherwin Carroll in his official capacity as treasurer)

**STATEMENT OF REASONS OF VICE CHAIRMAN DAVID M. MASON AND
COMMISSIONER HANS A. von SPAKOVSKY**

The Missouri Republican State Committee filed the complaint in this matter alleging that Respondents violated the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.* ("FECA"). The Office of General Counsel ("OGC") recommended that the Commission find no reason to believe ("RTB") that a FECA violation occurred. *See* 2 U.S.C. § 437g(a)(2) (2002). However, instead of finding no RTB, the Commission voted to dismiss this matter.¹

I. BACKGROUND

Respondent Give Missourians a Raise, Inc. ("GMAR") is a Missouri state ballot-initiative committee that promoted a state minimum-wage ballot initiative in 2006. It hired Respondent Association of Community Organizations for Reform Now ("ACORN") to promote the initiative by canvassing door-to-door.² The complaint alleges that while supporting the initiative, ACORN and GMAR expressly advocated the election of Claire McCaskill to the United States Senate. The complaint further alleges that Respondents violated FECA by not registering as political committees and reporting as FECA requires. *See* 2 U.S.C. §§ 433 (1980), 434 (2004).³

To support the allegations, the complaint refers to an Internet video in which Josephine Perkins, a former ACORN employee, claims three people from ACORN – Brian Montague and

¹ Voting affirmatively were Chairman Lenhard, Vice Chairman Mason, and Commissioners von Spakovsky, Walther, and Weintraub. The Commission has five members, because one member has left the Commission.

² ACORN Resp. at 1-2 (Dec. 7, 2006).

³ Compl. at 1-3 (Oct. 11, 2006).

two other people named "Jeff" and "Johanna" – directed individuals associated with ACORN to solicit votes for McCaskill.⁴ The complaint also quotes what it identifies as an October 10, 2006, *Roll Call* story describing the video. The story says that in the video, the former employee alleges, and ACORN denies, that ACORN terminated her "after she notified the teams she supervised that it was illegal for them to campaign for McCaskill while being paid by ACORN and" GMAR.⁵ Complainant has no personal knowledge of the allegations in the video or story, and no one has sworn to them.⁶

In its response, ACORN denies that its written materials and employee training referred to McCaskill.⁷ GMAR denies it is a political committee or engaged in express advocacy.⁸

ACORN provides sworn statements from two individuals who trained ACORN field managers and two field managers who attended the training:

- ACORN trainer Johanna Sharrad denies she trained field managers to work for or say anything about McCaskill while doing door-to-door get-out-the-vote ("GOTV") activity. She is unaware of any ACORN staff doing so, and states that if they did, they were not authorized to do so. She also states that ACORN dismissed Perkins before training began.⁹
- ACORN trainer Amy Busefink denies (1) that she conducted training seeking workers to get registered voters to support McCaskill, (2) that ACORN staff and she mentioned working or seeking votes for McCaskill while working on the GOTV effort, and (3) that she told workers to go door-to-door and ask three specific questions about McCaskill.¹⁰ Busefink may have made these three statements, because in another video Perkins alleges ACORN instructed workers to ask when going door-to-door: "Are you familiar with Miss McCaskill? Are you in support of Miss McCaskill? Can we count on you to vote for Miss McCaskill?"¹¹

⁴ *Id.* at 1 (citing *ACORN and McCaskill*, PUB DEF VIDEO REPORT), available at <http://www.youtube.com/watch?v=oJ6SrZODbHg> (all Internet sites visited Oct. 25, 2007).

⁵ *Id.* at 2.

⁶ See, e.g., *id.* at 1-3.

⁷ See ACORN Resp. at 2.

⁸ GMAR Resp. at 1 (Dec. 6, 2006) (GMAR "is not a political committee under [FECA] and did not make expenditures for the purpose of influencing federal elections.").

⁹ Dec. of Johanna Sharrad at 1-2 (Dec. 4, 2006).

¹⁰ Dec. of Amy Busefink at 1 (Oct. 24, 2006).

¹¹ *More ACORN Allegations*, PUB DEF VIDEO REPORT, available at <http://www.youtube.com/watch?v=jsT0LdeVomc>.

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- ACORN field managers Rosemary Collins and Shirley Ollie maintain that (1) the training did not discuss, and they never heard anyone mention, working for or saying anything about McCaskill while going door-to-door, (2) they never heard any training seeking to get workers to get registered voters to support McCaskill, (3) they never heard anyone tell workers to go door-to-door and ask the three specific questions about McCaskill, and (4) they never heard Sharrad tell people they would be fired if they did not seek support for McCaskill while going door-to-door.¹²

ACORN also provides scripts it instructed canvassers to use when going door-to-door, and the scripts do not mention McCaskill.¹³

However persuasive these sworn statements may be, ACORN provides nothing that persuasively rebuts the allegation in the video that Montague directed individuals associated with ACORN to support McCaskill. None of the sworn statements, for example, came from him.

II. DISCUSSION

A. Political Committees, Registration Requirements, and Reporting Requirements

FECA defines a political committee as a committee, club, association or other group of persons¹⁴ that receives more than \$1,000 in contributions¹⁵ or makes more than \$1,000 in expenditures¹⁶ in a year. 2 U.S.C. § 431(4). The statute also establishes registration requirements for political committees, *id.* § 433(a), (b), reporting requirements for political committees, *e.g.*, *id.* § 434(a), (b), and reporting requirements for independent expenditures.¹⁷ *Id.* § 434(c), (d), (g).

B. Dismissal versus No RTB

In 2007, the Commission described the difference between dismissing and finding no RTB. The Commission will dismiss a matter or part of a matter when it

¹² Dec. of Rosemary Collins at 1 (Dec. 7, 2006); Dec. of Shirley Ollie (Dec. 7, 2006).

¹³ See ACORN Resp. Attach.

¹⁴ Defined in 2 U.S.C. § 431(11) (2002).

¹⁵ Defined in *id.* § 431(8); see generally *FEC v. Survival Education Fund*, 65 F.3d 285, 295 (2d Cir. 1995).

¹⁶ Defined in 2 U.S.C. § 431(9); see generally *McConnell v. FEC*, 540 U.S. 93, 191-92 (2003), cited in *Anderson v. Spear*, 356 F.3d 651, 663-66 (6th Cir.), cert. denied, 543 U.S. 956 (2004); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 248-49 (1986) (citing *Buckley v. Valeo*, 424 U.S. 1, 42, 44 n.52, 80 (1976)); *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 665 & n.7 (5th Cir. 2006) (citing *Anderson*, 356 F.3d at 664-65), cert. denied, ____ U.S. ____, 127 S.Ct. 938 (2007); *Political Committee Status*, 72 FED. REG. 5595, 5597 (F.E.C. 2007).

¹⁷ Defined in 2 U.S.C. § 431(17).

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does not merit further use of Commission resources, due to factors such as the small amount or significance of the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an investigation, or when the Commission lacks majority support for proceeding ... for other reasons.

Statement of Policy Regarding Comm'n Action in Matters at the Initial Stage in the Enforcement Process, 72 FED. REG. 12545, 12546 (F.E.C. 2007). By contrast, the Commission will find no RTB in a matter or on part of a matter when – considered in light of the response and publicly available information – it does not “give rise to a reasonable inference that a violation has occurred.” *Id.* This includes occasions when alleged facts – even if one assumes they are true – “would not constitute a violation of the law.” *Id.*; *cf.* FED. R. CIV. P. 12(b)(6) (2000).¹⁸ Unlike a dismissal, a finding of no RTB in effect provides a clean bill of health to respondents *vis-à-vis* the issue at hand. *See id.* at 12545-46.

C. Dismissal of this Matter

In this matter, OGC correctly found weak support for the claim that ACORN expressly advocated the election of McCaskill, a flaw that undermines Complainant’s claims.¹⁹ The complaint is based solely on allegations in an Internet video and a newspaper story to which no one has sworn, and Complainant itself claims no personal knowledge of the alleged facts. Furthermore, the video appears principally concerned with employment disputes, including allegations of theft and nonpayment of wages. GMAR even goes so far as to assert that the complaint is “as thin as homeopathic soup that was made by boiling the shadow of a pigeon that had starved to death[.]”²⁰ Whatever the merits of this particular statement, the weakness of the evidence Complainant presents leads the Commission to conclude (1) that the alleged FECA violations – if they occurred – may have been of limited effect and cost and (2) in any event, that this matter does not merit further use of Commission resources, due to the vagueness and weakness of the evidence and likely difficulty in locating and securing cooperation from non-respondent witnesses Montague and Perkins. Therefore, the Commission voted to dismiss this matter.

However, the Commission declined to go a step further and find no RTB, because the ACORN response, by providing nothing that persuasively rebuts the allegation about Montague, does not sufficiently refute the allegations in the complaint. Even if the Commission accepts as true the sworn statements from the two ACORN trainers and the two ACORN field managers, these statements do not refute the allegation that Montague, and therefore ACORN and by extension GMAR, directed individuals associated with ACORN to support McCaskill. The

¹⁸ The *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process* also discussed when the Commission will find RTB, *see* 72 FED. REG. at 12545, and when the Commission will dismiss with admonishment. *See id.* at 12546.

¹⁹ *See supra* nn. 15-16.

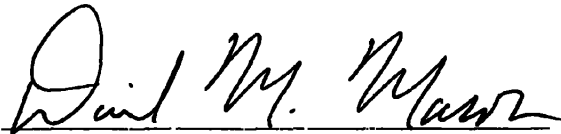
²⁰ GMAR Resp. at 3 (quoting Abraham Lincoln, *SPEECHES & WRITINGS 1832-1858* at 769 (Library of Am. 1989) (from Sixth Lincoln-Douglas Debate)).

Commission, of course, does not presume that the allegation about Montague is true. *Cf.* 2 U.S.C. § 437g(a)(2). Nevertheless, without anything that persuasively rebuts the allegation about him, the Commission cannot give what in effect is a clean bill of health to Respondents.

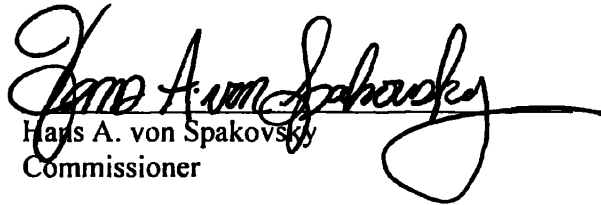
III. CONCLUSION

For the foregoing reasons, the Commission voted to dismiss this matter.

December 31, 2007



David M. Mason
Vice Chairman



Hans A. von Spakovsky
Commissioner

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