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Brian G. Svoboda

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June 25, 2009

Jeff S. Jordan  
Federal Election Commission  
General Counsel's Office  
999 E. Street, NW  
Washington, DC 20463

Re: MUR 6192

Dear Mr. Jordan:

On behalf of the Madison County Democratic Central Committee ("County Party"), this letter is submitted in response to the Complaint filed by Stephen Jellen, dated April 29, 2009. The Complaint claims that the County Party should have registered as a political committee with the Commission. But the Complaint fails to allege any facts that, if true, would have triggered any registration obligation. The Commission should find no reason to believe that the County Party violated the Federal Election Campaign Act of 1971 (the "Act"), as amended, and it should dismiss the matter immediately.

#### I. Facts

The Madison County Democratic Central Committee is a local political party committee organized under Illinois state law. Pursuant to Illinois law, it is registered with and files periodic disclosure reports of all of its financial activity with the Illinois Board of Elections. See 10 Ill. Comp. Stat. § 5/9-10. Illinois law does not impose any contribution limits on political contributions and permits corporate contributions. And the County Party raises and spends funds under Illinois law to support candidates for state and local office.

On April 29, 2009, complainant Stephen Jellen filed the present Complaint against the County Party. The Complaint tries to create the impression that the County Party should have registered as a political committee with the Commission and that, by raising funds under Illinois law as a county party in that state ordinarily would do, it has accepted contributions from prohibited sources and in amounts exceeding those allowed under the Act. To support this contention, the Complaint argues that (1) the County Party made a single contribution of \$1,000 to a federal

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candidate and (2) that "the [County Party] has paid for and directed creation [sic] and dissemination of campaign literature, mailings, media advertisements and web pages, as well as rallies, fundraisers and voting promotion of both federal and non-federal candidates." Complaint at 1. But the Complaint presents no copies of any actual communications, let alone any that refer to federal candidates. Rather, it simply attaches copies of the County Party's Illinois state campaign finance reports. These reports, in turn, show the sort of election-related expenses that any county party might ordinarily pay.

## II. Legal Analysis

### A. Legal Background

A local party committee becomes a political committee under the Act when its activity in connection with federal elections exceeds one of three registration thresholds:

*First*, registration is required when a local party committee makes more than \$1,000 in contributions or expenditures during a calendar year. 2 U.S.C. § 431(4)(C); 11 C.F.R. § 100.5(c). The Act defines "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." *Id.* § 431(8). And "expenditure" is similarly defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office." *Id.* § 431(9). As the Supreme Court held in *Buckley v. Valeo*, 424 U.S. 1 (1976), vagueness concerns require the definition of "expenditure" to apply only to communications containing express advocacy. *Id.* at 44 n.52.

*Second*, a local party committee must register if it spends more than \$5,000 on exempt party activities. 2 U.S.C. §§ 431(4)(C), (8) & (9). Exempt party activities include slate cards, sample ballots, and volunteer materials naming federal candidates, and voter registration and "get-out-the-vote" activities performed on behalf of a Presidential nominee. 2 U.S.C. §§ 431(8)(B)(v), (9)(B)(iv); 11 C.F.R. §§ 100.80, 100.87, 100.89. Only the federal share of an exempt activity expense counts toward the \$5,000 threshold. *See* FEC Adv. Op. 1999-04.

*Third*, registration is required if the committee raises more than \$5,000 in contributions. Funds are treated as contributions if they are provided in response to a solicitation indicating that a "portion of the funds received will be used to support or oppose the election of a clearly identified Federal candidate." 11 C.F.R. § 100.57; *see Fed. Election Comm'n v. Survival Educ. Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995).

Even if a group exceeds one of the registration thresholds, the Commission will not impose political committee status on an entity unless its "major purpose" is the nomination or election of federal candidates. *See Fed. Election Comm'n v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262

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(1986); *Buckley v. Valeo*, 424 U.S. at 78-79; Political Committee Status, 69 Fed. Reg. 68,056, 68,065 (Nov. 23, 2004) ("The 'major purpose' test is a judicial construct that limits the reach of the statutory triggers in FECA for political committee status.").

**B. The Complaint Fails to State Facts That, If True, Would Trigger "Political Committee" Status**

For the Commission to find reason to believe that a violation occurred, a complaint must set forth sufficient specific facts which, if proven true, would actually constitute a violation. *See* 11 C.F.R. § 111.4; Commissioners Mason, McDonald, Sandstrom, Smith, Thomas and Wold, Statement of Reasons, MUR 5141; Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960. "Unwarranted legal conclusions from asserted facts . . . or mere speculation, . . . will not be accepted as true." Statement of Reasons, MUR 5141; *see also* Commissioners Wold, Mason and Thomas, Statement of Reasons, MUR 4850 ("A mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents."). Because the Complaint does not meet this standard, it must be dismissed.

As described above, to qualify as a political committee under the Act, the Committee must have (1) made contributions or expenditures in excess of \$1,000 to federal candidates during a calendar year, (2) made "exempt" expenditures in excess of \$5,000 during a calendar year, or (3) raised federal contributions in excess of \$5,000 during a calendar year. The complaint fails to allege that the County Party has met any of these thresholds.

The Complaint alleges that the County Party should have registered as a political committee because it made a single \$1,000 contribution to Friends of Daniel Davis, the principal campaign committee of a candidate for federal office. But the Complaint misreads the law. To trigger political committee status, the County Party would have had to make contributions to federal candidates *in excess of* \$1,000 in a calendar year. And, as the County Party's disclosure reports indicate, it has not done so. The County Party's single \$1,000 contribution to Friends of Daniel Davis did not require registration with the Commission.

The Complaint also concludes that the County Party should have registered as a political committee based on the vague and unsubstantiated allegations that "the [County Party] has paid for and directed creation [sic] and dissemination of campaign mailings, media advertisements and web pages, as well as rallies, fundraisers and voting promotion of both federal and non-federal candidates." Complaint at 1. But the Complaint does not even try to identify a single communication sponsored by the County Party that contained express advocacy. The Complaint's "mere speculation" and "unwarranted legal conclusions" cannot support a reason to believe finding. *See* Statement of Reasons, MUR 5141.

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Thus, the Complaint presents no facts to show that any of the three conditions for political committee status have been met. It presents a single, \$1,000 contribution to a lone federal candidate, falling below the threshold for federal registration. It presents no facts to show that the County Party spent more than \$5,000 on the federal share of exempt activity. And it does not even allege that the County Party solicited federal contributions; it simply points out that the County Party raised funds under Illinois limits and restrictions, as one would expect an Illinois local party committee to do.

### III. Conclusion

For the reasons set forth above, the County Party respectfully requests that the Commission find no reason to believe that the County Party has violated the Act, and dismiss this matter.

Very truly yours,



Brian G. Svoboda  
Andrew H. Werbrock  
Counsel to the Madison County Democratic Central Committee

Enclosure (Statement of Designation of Counsel)



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STATEMENT OF DESIGNATION OF COUNSEL  
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The above-named individual and/or firm is hereby designated as my  
counsel and is authorized to receive any notifications and other communications  
from the Commission and to act on my behalf before the Commission.

6-24-2009  
Date

[Signature]  
Respondent/Client Signature

Chairman - MCDCC  
Title

RESPONDENT/CLIENT: Madison County Democratic Central Committee

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