



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

Jeffrey D. Davis  
President  
Empower Illinois Media Fund  
Empower Illinois  
118 N. Clinton Street  
Suite 102  
Chicago, IL 60661

AUG - 1 2007

RE: MUR 5568  
Empower Illinois Media Fund  
Empower Illinois

Dear Mr. Davis:

On July 12, 2007, the Federal Election Commission accepted the signed conciliation agreement submitted by Empower Illinois Media Fund in settlement of a violation of 2 U.S.C. §§ 441a(f), 433, and 434, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed with respect to both Empower Illinois Media Fund and Empower Illinois in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of receipt of the conciliation agreement. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

  
Jin Lee  
Attorney

Enclosure  
Conciliation Agreement

27044171349

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of )  
 ) MUR 5568  
3 Empower Illinois Media Fund )

4 **CONCILIATION AGREEMENT**

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7  
8 This matter was generated by a complaint filed with the Federal Election Commission  
9 (“the Commission”). See 2 U.S.C. § 437g(a)(1). The Commission found “reason to believe” in  
10 accordance with 2 U.S.C. § 437g(a)(2) that Empower Illinois Media Fund (hereinafter, “EIMF”)  
11 violated 2 U.S.C. §§ 433, 434, and 441a(f) of the Federal Election Campaign Act of 1971, as  
12 amended (“the Act”), by failing to register as a political committee with the Commission, by  
13 failing to disclose its contributions and expenditures, and by knowingly accepting contributions  
14 in amounts exceeding \$5,000 from individuals, and an investigation was conducted.

15 NOW, THEREFORE, the Commission and EIMF, having participated in informal  
16 methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as  
17 follows:

18 I. The Commission has jurisdiction over EIMF and the subject matter of this  
19 proceeding.

20 II. EIMF has had a reasonable opportunity to demonstrate that no action should be  
21 taken in this matter.

22 III. EIMF enters voluntarily into this agreement with the Commission.

23 IV. The pertinent facts in this matter are as follows:

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

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Applicable Law

1  
2           1.       The Act defines a political committee as “any committee, club,  
3 association, or other group of persons which receives contributions aggregating in excess of  
4 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000  
5 during a calendar year.” 2 U.S.C. § 431(4)(A).

6           2.       The Act defines the term “contribution” as including “anything of value  
7 made by any person for the purpose of influencing any election for Federal office ” 2 U.S.C.  
8 § 431(8)(A)(i); *see also, FEC v. Survival Education Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995)  
9 (where a statement in a solicitation “leaves no doubt that the funds contributed would be used to  
10 advocate [a candidate’s election or] defeat at the polls, not simply to criticize his policies during  
11 the election year,” proceeds from that solicitation are contributions).

12           3.       The Act requires all political committees to register with the Commission  
13 and file a statement of organization within ten days of becoming a political committee, including  
14 the name, address, and type of committee; the name, address, relationship, and type of any  
15 connected organization or affiliated committee; the name, address, and position of the custodian  
16 of books and accounts of the committee; the name and address of the treasurer of the committee;  
17 and a listing of all banks, safety deposit boxes, or other depositories used by the committee. *See*  
18 2 U.S.C. § 433.

19           4.       Each treasurer of a political committee shall file periodic reports of the  
20 committee’s receipts and disbursements with the Commission. *See* 2 U.S.C. § 434(a)(1). In the  
21 case of committees that are not authorized committees of a candidate for Federal office, these  
22 reports shall include, *inter alia*, the amount of cash on hand at the beginning of the reporting  
23 period, *see* 2 U.S.C. § 434(b)(1); the total amounts of the committee’s receipts for the reporting

1 period and for the calendar year to date, *see* 2 U.S.C. § 434(b)(2); and the total amounts of the  
2 committee's disbursements for the reporting period and the calendar year to date. *See* 2 U.S.C.  
3 § 434(b)(4).

4 5. The Act states that no person shall make contributions to any political  
5 committee that, in the aggregate, exceed \$5,000 in any calendar year, with an exception for  
6 political committees established and maintained by a state or national political party. *See*  
7 2 U.S.C. § 441a(a)(1)(C). Further, the Act states that no political committee shall knowingly  
8 accept any contribution in violation of the limitations imposed under this section. *See* 2 U.S.C.  
9 § 441a(f).

10 6. Under certain circumstances, organizations established under I.R.C. § 527  
11 may not qualify as political committees. The disclosure reports generally required of such  
12 Section 527 organizations are different from those required of political committees in format,  
13 timing and level of detail. There is substantial overlap in the content of disclosures required of  
14 such Section 527 organizations and the disclosures required of political committees; however,  
15 the Act has some additional disclosure requirements for political committees that are not  
16 required under the Internal Revenue Code. Unlike a political committee, a Section 527 may  
17 avoid disclosing certain receipts if it pays the highest corporate tax rate on such fund. In  
18 addition, an organization which does not trigger political committee status may accept  
19 contributions larger than \$5,000 and accept (for limited purposes) funds from corporate or union  
20 sources.

#### 21 Factual Background

22 7. EIMF is an entity organized under Section 527 of the Internal Revenue  
23 Code. EIMF operated from an office located at 1816 Garfield Avenue, Aurora, Illinois 60505

1 under the direction of its President, Jeffrey D. Davis Its sister organization, Empower Illinois  
2 (“EI”), also is an entity organized under Section 527 of the Internal Revenue Code and operated  
3 from the same location.

4 8. EIMF filed a Notice of 527 Status with the Internal Revenue Service  
5 (“IRS”) on August 20, 2004 as a political organization under 26 U.S.C. § 527

6 9. EIMF did not register as a political committee with the Federal Election  
7 Commission.

8 10. From October 11, 2004 through October 24, 2004, EIMF spent \$69,780 on  
9 a television advertisement and \$5,762 on a radio advertisement that were broadcast in Illinois.  
10 The advertisements opposed Barack Obama’s candidacy in the 2004 race for U S. Senator from  
11 Illinois.

12 11. The advertisements debuted on October 12, 2004, the same day Obama  
13 and Alan Keyes, the Republican candidate for U.S. Senate, were scheduled to debate, only weeks  
14 before the election. The radio ad sought to reach out to voters by declaring, “On November 2nd,  
15 Illinoisans are going to make an important decision in the US Senate Race.” The ad then asked  
16 listeners a series of questions designed to make them become critical of Obama, such as “did you  
17 know that Obama opposed tougher penalties for gang bangers who kill innocent children? . . .  
18 And that Obama supported abortion even after the child was born alive?” At the end, the ad  
19 urges listeners to “stop . . . look . . . and listen,” to learn the “real” truth about Obama, and to log  
20 onto truthaboutobama.org so that they could “make an informed decision.”

21 12. Similarly, the television advertisement also asked viewers whether they  
22 knew “Obama opposes tougher sentences for gangs who kill . . . innocent children . . . Obama  
23 wants schools to teach sex . . . to kindergarteners . Obama supports aborting children even

1 when they are . . . born alive.” In the end, the advertisement tells viewers: “STOP; LOOK;  
2 LISTEN; LEARN THE TRUTH ABOUT OBAMA.”

3 13. During the 2004 election cycle, EIMF’s disbursements totaled \$83,042,  
4 most of which (\$75,542) was spent on the production and placement of two advertisements on  
5 radio (\$5,762) and television (\$69,780) opposing Barack Obama’s candidacy. EIMF spent the  
6 remaining \$7,500 on its two websites: empowerillinoismediafund.org and truthaboutobama.org,  
7 which were wholly dedicated to criticizing Obama’s voting record as a state senator and his  
8 candidacy for U.S. Senate.

9 14. EIMF conducted most of its fundraising through meetings with individuals  
10 and used scripts that largely focused on the need to finance a media campaign targeting Barack  
11 Obama. At these meetings, Barack Obama was the only candidate who was clearly identified or  
12 referred to when EIMF solicited funds from potential donors.

13 15. One script, entitled EIMF and EI Fall 2004 Plan, stated that EIMF’s  
14 purpose was to educate “potential voters” and the “Conservative Base” about Obama’s liberal  
15 voting record through an electronic media campaign which would include radio and television  
16 ads and two websites: empowerillinoismediafund.org and truthaboutobama.org EIMF hoped to  
17 make a “splash” with the conservative base by running a television spot concerning Obama from  
18 August 30th through September 2, 2004 to coincide with the Republican National Convention  
19 They were also told that the advertisement would “‘wake’ up the base to say, ‘hey, that’s right,  
20 we have to fight.’” EIMF told donors it would “be the first organization to begin running any  
21 kind of ads *for the U.S. Senate race in Illinois*” and that the ad “*would be seen as the first*  
22 *‘negative’ or issue comparison ad for the general election.*” In other words, EIMF solicited

1 funds to put the ad on the air by stating specifically that the ad was in connection with the Senate  
2 race and would be a “negative” ad against Obama.

3 16. Another script, the EI and EIMF Power Point Presentation, stated that the  
4 organizations’ objectives were: “Educating Potential Voters”; “Energizing the Conservative  
5 Base”; “Turning out Conservative Voters (increasing turnout in targeted areas).” The script also  
6 informed donors that both organizations had extensive research on Obama to counter the  
7 “honeymoon” that Obama was receiving from the media. Despite Obama’s recent attempts “to  
8 tame his voting record,” the script informed donors that “when you look at fact versus fiction  
9 you find an extremely liberal State Senator who has not accomplished much.”

10 17. The Power Point Presentation asserted that the “most efficient way to  
11 reach voters is through paid media” and that the “paid media’s objective is to educate voters  
12 about Obama’s true voting record, where he gets his support, and get them to visit  
13 [www.truthaboutobama.org](http://www.truthaboutobama.org).” The script further stated that this time, EIMF would begin reaching  
14 the conservative base by placing the first television ad concerning Obama on October 11, 2004,  
15 one day before the first debate between Obama and Keyes.

16 18. In addition to the fundraising meetings with individuals, EIMF sent a  
17 solicitation via electronic mail on October 11, 2004. The solicitation informed potential donors  
18 about EIMF’s media campaign designed to expose the “gap of information about Obama’s  
19 record and his public profile” and asked whether they knew that “AS CHAIRMAN OF THE  
20 HEALTH & HUMAN SERVICES COMMITTEE OBAMA VOTED TO HAVE SEX  
21 EDUCATION TAUGHT TO CHILDREN IN KINDERGARTEN?” The solicitation then  
22 requested them to contribute and help EIMF “reach THOUSANDS OF ILLINOIS VOTERS.”

1                   19.     The Commission concludes that contributions received in response to  
2     EIMF's solicitations that clearly indicated the funds received would be used to defeat Barack  
3     Obama in the 2004 general election caused EIMF to surpass the \$1,000 statutory threshold. *See*  
4     2 U.S.C. § 431(4)(A). EIMF received its first \$1,000 in contributions in August 2004. During a  
5     fundraising meeting held on August 23, 2004, EIMF raised \$30,000 when it used the EIMF and  
6     EI Fall 2004 Plan script described in paragraph 15.

7                   20.     EIMF accepted contributions from individuals in amounts exceeding  
8     \$5,000. During the 2004 election cycle, EIMF accepted approximately \$70,000 in contributions  
9     in amounts exceeding \$5,000 per individual.

10                  21.     Since the 2004 election, EIMF has effectively ceased active operations. It  
11     has raised no contributions and limited its disbursements to legal and administrative costs.

12                  22.     EIMF contends that it acted with a good faith belief that its activities in  
13     connection with the 2004 elections were in compliance with applicable laws and regulations

14                  V.     EIMF committed the following violations:

15                         1.     EIMF violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a  
16     political committee as of August 2004.

17                         2.     EIMF violated 2 U.S.C. § 441a(f) by knowingly accepting contributions in  
18     amounts exceeding \$5,000 from individuals.

19                  VI.     EIMF will cease and desist from violating 2 U.S.C. §§ 433 and 434 by failing to  
20     register and report as a political committee. EIMF will cease and desist from violating 2 U.S.C.  
21     § 441a(f) by accepting contributions in excess of the limits set forth in the Act. In addition,  
22     Jeffrey D. Davis will cease and desist from engaging in activities that result in violations of  
23     2 U.S.C. §§ 433, 434, and 441a(f).



VII. EIMF will pay a civil penalty to the Federal Election Commission in the amount of Three Thousand dollars (\$3,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VIII EIMF will file reports with the Commission containing all information required to be disclosed by federal political committees for its activities from August 20, 2004 until December 31, 2006. The Commission agrees that EIMF may fulfill this obligation by submitting copies of reports filed with the Internal Revenue Service ("IRS") for activities during this period, if supplemented with additional information required of federal political committees. Such supplementation would include, but not be limited to, the information contained on the summary pages of reports filed by political committees. To the extent that EIMF's reports filed with the IRS do not cover all of EIMF's activities from August 20, 2004 until December 31, 2006, EIMF will file the appropriate FEC reports with the Commission.

IX. EIMF agrees to register and report to the Commission as a political committee in the event that it receives additional contributions and/or makes expenditures for the purpose of influencing federal elections, and will comply with any and all applicable provisions of the Act and Commission regulations.

X. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

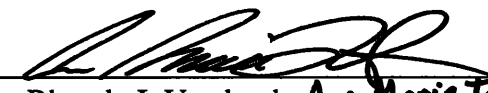
XI. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

XII. EIMF shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission

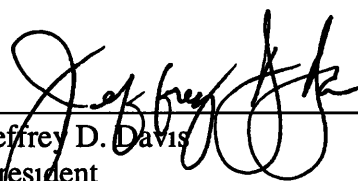
XIII. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomasenia P. Duncan  
~~Acting~~ General Counsel

BY:  Ann Marie Terzakon Date 7/24/07  
~~Rhonda J. Vosdingh~~  
~~Acting~~ Associate General Counsel  
for Enforcement

FOR EIMF:

  
Jeffrey D. Davis  
President  
Empower Illinois  
Empower Illinois Media Fund

4-16-07  
Date