



FEDERAL ELECTION COMMISSION
Washington, DC 20463

JUL 28 2009

Cleta Mitchell, Esquire
Foley & Lardner, LLP
3000 K Street, NW – Suite 500
Washington, DC 20007

RE: MUR 6166
Republican National Lawyers Association

Dear Ms. Mitchell:

On February 5, 2009, the Federal Election Commission notified your client, the Republican National Lawyers Association, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On July 14, 2009, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe your client violated the Act. Accordingly, the Commission closed its file 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). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Jack Gould, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **Respondent: Republican National Lawyers Association**

MUR 6166

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6 **I. INTRODUCTION**

7 This matter was generated by a complaint filed with the Federal Election Commission by
8 Brian Melendez, Chair, Minnesota Democratic-Farmer-Labor Party. See 2 U.S.C. § 437g(a)(1).

9 **II. FACTUAL AND LEGAL ANALYSIS**

10 The Complaint alleges that the Republican National Lawyers Association ("RNLA"), a
11 Section 527 organization, made prohibited contributions to Coleman for Senate 08, the Coleman
12 Minnesota Recount Committee, and the Republican Party of Minnesota ("the Committees"). The
13 alleged prohibited contributions purportedly came from funds raised by the RNLA through a
14 solicitation posted on the RNLA's website. The Complaint concludes that there is a "strong
15 inference that the RNLA is supporting Coleman's recount efforts with soft money." Complaint
16 at 3. The Complaint further alleges that the RNLA and the Committees failed to disclose the
17 purported contributions in violation of the Federal Election Campaign Act of 1971, as amended
18 (the "Act"). *Id.* at 4. Finally, the Complaint alleges that the RNLA has not registered as a
19 political committee with the Commission, but should have because it made contributions in
20 excess of \$1,000 to Norm Coleman's recount effort. *Id.*

21 The RNLA asserts in its response to the Complaint that it has not made any contributions
22 to the Committees. The RNLA also claims that it has not supported Norm Coleman's recount
23 efforts with soft money. Further, the RNLA contends that because it has not made any
24 contributions, it has nothing to report and it is not required to register with the Commission.

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1 The RNLA was formed in 1985 and files reports with the Internal Revenue Service
2 ("IRS") under Section 527 of the Internal Revenue Code. See 26 U.S.C. § 527. In papers filed
3 with the IRS in December 2008, the RNLA described its primary exempt purpose as follows:

4 The Republican National Lawyers Association is the principal
5 national organization of Republican Lawyers. Members and local
6 chapters have pledged that they will support the objectives of the
7 Association, which are advancing professionalism of lawyers
8 generally, advancing open, fair and honest elections at all levels of
9 American Society in a non-discriminatory manner, and advancing
10 career opportunity. The RNLA further builds the Republican Party
11 goals and ideals through a nationwide network of supportive
12 lawyers who understand and directly support Republican policy,
13 agendas and candidates.

14
15 RNLA 2007 Return of Organization Exempt From Income Tax.

16 The RNLA's solicitation states, *inter alia*, "Please help the Republican National Lawyers
17 Association stop Al Franken from stealing the election" and "You can make the difference. As
18 the recount in the Minnesota Senate Race continues the RNLA needs assistance to help ensure a
19 fair and honest result." The solicitation asks the viewer to contribute to the RNLA in specified
20 amounts ranging from \$35 to \$5,000, or in any amount of their choosing. The solicitation also
21 contains a disclaimer stating "corporate funds are accepted." Although the available information
22 does not indicate when the RNLA's solicitation was posted on its website, a link to the RNLA's
23 solicitation appeared in an article titled "Stop Al Franken From Stealing the Election," which
24 was posted on Newsmax.com on January 7, 2009.

25 **A. The Available Information Does Not Support the Allegation that the**
26 **RNLA Made Prohibited Contributions to the Committees**

27 The Complaint alleges that the RNLA, which accepts corporate contributions, made
28
29 prohibited contributions to the Committees. However, the Complaint does not identify any

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1 particular contributions. The Committees deny receiving any contributions from the RNLA, and
2 the Committees' FEC disclosure reports do not indicate the receipt of any such contributions
3 through March 31, 2009. The RNLA similarly denies making any contributions to any of the
4 Committees. The most recent disclosure report the RNLA filed with the IRS, covering the period
5 through December 31, 2008, which appears to pre-date the RNLA solicitation, does not disclose
6 any contributions to the Committees.¹

7 More broadly, the RNLA's IRS disclosure reports covering the period 2000-2008 do not
8 disclose any contributions to a candidate for federal office or a political committee registered
9 with the Commission. All of the RNLA's disclosed disbursements have been for staff salaries,
10 contractors, and consultants. Accordingly, the available information does not support the
11 Complaint's allegation that the RNLA has made prohibited contributions to the Committees.

12 **B. The Available Information Does Not Support the Allegation that the**
13 **RNLA and the Committees Failed to Disclose Contributions**

14
15 The Complaint alleges that if the Committees have received contributions from the
16 RNLA, they and the RNLA would have to disclose those contributions, which they failed to do.
17 As discussed above, the available information does not indicate that the RNLA made any
18 contributions to the Committees. Accordingly, the available information does not support this
19 allegation.

¹ The RNLA's mid-year disclosure report, which covers the period of January 1, 2009 through June 30, 2009, is not due to the IRS until July 31, 2009.

**C. The Available Information Does Not Support the Allegation that
the RNLA is Required to Register with the FEC as a Political
Committee**

The Complaint states that “[a]ny political committee that makes contributions or expenditures aggregating in excess of \$1,000 during a calendar year must file a statement of organization with the FEC,” and alleges that “[i]f the RNLA has made contributions to Coleman’s recount effort in excess of \$1,000, it would have been required to register as a political committee,” concluding that the RNLA “failed to do so.” Complaint at 4.

The Complaint misstates the Act’s political committee threshold, which is satisfied by an organization *receiving* more than \$1,000 in contributions or making more than \$1,000 in expenditures during a calendar year. 2 U.S.C. § 431(4)(A). The Act defines “contribution” to include “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.” 2 U.S.C. § 431(8)(A)(i). A gift, subscription, loan, advance, or deposit of money or anything of value made by any person in response to any communication soliciting a contribution is a contribution to the person making the communication if the communication indicates that any 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(a).

Finally, the term “expenditure” is defined to include “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.” 2 U.S.C. § 431(9)(A)(i).

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1 To address overbreadth concerns, the Supreme Court has held that only organizations
2 whose major purpose is campaign activity can potentially qualify as political committees under
3 the Act. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for*
4 *Life*, 479 U.S. 238, 262 (1986). The Commission has long applied the Court's major purpose
5 test in determining whether an organization is a "political committee" under the Act, and it
6 interprets that test as limited to organizations whose major purpose is federal campaign activity.
7 *See Political Committee Status: Supplemental Explanation and Justification*, 72 Fed. Reg. 5595,
8 5597, 5601 (Feb. 7, 2007).

9 **1. Contributions**

10 The RNLA solicitation was issued after the 2008 Minnesota Senate election and indicates
11 that the funds received will be used "to help ensure a fair and honest result." Under Commission
12 regulations, donations for such recount activities are not "contributions." 11 C.F.R. §§ 100.91,
13 100.151. Moreover, the available information does not indicate whether the RNLA has received
14 more than \$1,000 in response to the solicitation.

15 **2. Expenditures**

16 The Complaint alleges that the RNLA solicitation purports to use donations received in
17 response "to combat Franken's legal efforts, creating a strong inference that the RNLA is
18 supporting Coleman's recount efforts with soft money." Complaint at 3. The Complaint does
19 not allege specific expenditures that meet the \$1,000 expenditure threshold for political
20 committee status, and other available information does not indicate any such expenditures.

21 According to Michael B. Thielen, the RNLA's Executive Director, the RNLA has
22 engaged in the following activities in connection with the recount: (1) created on its website a

1 page serving as a resource for archiving news articles; (2) initiated an e-mail recruitment effort
2 for volunteers (attorneys and non-attorneys) to participate in the statewide recount; and (3)
3 distributed and posted on its website a "White Paper" specifically addressing the electoral
4 process in Minnesota and the issues raised in connection with the 2008 election between Norm
5 Coleman and Al Franken. See Affidavit of Michael B. Thielen ¶¶ 6-10, Exhibit A to the RNLA's
6 Response, at 2.

7 From the available information, it does not appear that the RNLA meets the statutory
8 threshold for political committee status through making expenditures.

9 **3. Major Purpose**

10 In any event, the available information indicates that federal campaign activity is not the
11 RNLA's major purpose. As noted above, the RNLA's exempt purpose under Section 527 of the
12 Internal Revenue Code is "advancing the professionalism of lawyers generally, advancing open,
13 fair and elections at all levels of American Society in a non-discriminatory manner, and
14 advancing career opportunity." See *supra* at 2. Moreover, the RNLA's IRS disclosure reports do
15 not disclose any contributions to federal candidates or political committees. Finally, there is
16 nothing on the RNLA's website indicating involvement in federal campaigns. Accordingly, the
17 available information does not support the Complaint's allegation that the RNLA is required to
18 register as a political committee.

19 **III. CONCLUSION**

20 Based on the foregoing, the Commission finds there is no reason to believe that the
21 Republican National Lawyers Association violated the Act in this matter.

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