



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 07 2009

**Brian G. Svoboda
Kate Sawyer Keane
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2003**

**RE: MUR 6079
Democratic Freshmen PAC
James Smith, in his official capacity as treasurer
Democrats Win Seats PAC
Lawrence Wasserman, in his official capacity as treasurer
Victory in November Election PAC
Brian Kelly, in his official capacity as reasurer
Representative Debbie Wasserman Schultz
Representative Mike Thompson**

Dear Mr. Svoboda and Ms. Keane:

On October 1, 2008, the Federal Election Commission notified your clients, Democratic Freshmen PAC and James Smith, in his official capacity as treasurer; Democrats Win Seats PAC and Lawrence Wasserman, in his official capacity as treasurer; Victory in November Election PAC and Brian Kelly, in his official capacity as treasurer; Representative Debbie Wasserman Schultz; and Representative Mike Thompson, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. On April 30, 2009, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe your clients 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.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", with a long horizontal flourish extending to the right.

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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violated the Act by failing to report their affiliation and by making and receiving contributions in excess of the single contribution limit purportedly shared by the three committees.

The Respondent PACs deny that they are affiliated. While Reps. Wasserman Schultz and Thompson acknowledge their respective connections with DWS PAC and VINE PAC, both deny any connection between these two PACs, and they also deny having anything other than a purely symbolic title and position in Dem. Freshmen PAC. As discussed below, the available information does not support the conclusion that DWS PAC, VINE PAC, or Dem. Freshmen PAC are affiliated.

As discussed below, the available information does not support concluding that DWS PAC, VINE PAC, or Dem. Freshmen PAC are affiliated, and the Commission finds no reason to believe that any of the respondents violated the Act.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Representative Debbie Wasserman Schultz and Representative Mike Thompson are both Democratic Members of Congress.

VINE PAC, a nonconnected multicandidate committee that registered with the Commission on June 12, 2002, is a "leadership PAC" for Representative Thompson. See VINE PAC Response. VINE PAC, whose treasurer is Brian Kelly, has never reported affiliation with another political committee. VINE PAC denies that it is affiliated with either DWS PAC or Dem. Freshmen PAC. *Id.*

DWS PAC, a nonconnected multicandidate committee that registered with the Commission on June 13, 2006, is a "leadership PAC" for Rep. Wasserman Schultz. See

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DWS PAC Response. DWS PAC, whose treasurer is Lawrence Wasserman, has never reported affiliation with another political committee. DWS PAC denies that it is affiliated with either VINE PAC or Dem. Freshmen PAC. *Id.*

Dem. Freshmen PAC is a nonconnected multicandidate committee that initially registered with the Commission on November 29, 2006. Dem. Freshmen PAC was formed by lobbyists, James Smith, the committee's treasurer, and William C. Oldaker, its custodian of records. *See Eric Pfeiffer, Freshman Democrats Work With 'Rainmaker,' The Washington Times, May 31, 2007, at A01.* Dem. Freshmen PAC states that Smith is the PAC's only officer, that he established and runs the PAC, and that he is solely responsible for raising its funds and for determining how the funds are spent. Dem. Freshmen PAC Response at 1-2. Dem. Freshmen PAC denies being affiliated with either VINE PAC or DWS PAC. *Id.*

Dem. Freshmen PAC claims that it asked Reps. Thompson and Wasserman Schultz to serve as honorary co-chairs merely as a "show of support" to assist its fundraising efforts. *Id.* at 2. It asserts that the title and position did not signify any substantive responsibility in the operation, maintenance, or financing of the PAC. While Complainant provided a snapshot of Dem. Freshmen PAC's website that appears to identify only Reps. Thompson and Wasserman Schultz as its honorary co-chairs, Dem. Freshmen PAC states that several other Representatives were also named as honorary vice-chairs on invitations to its fundraisers and events.² *Id.* Complaint at 8, 9. Since the filing of the complaint, the two Representatives are no longer listed on the website as

² Freshman PAC identified the following Representatives as additional honorary co-chairs: Rahm Emanuel, Allen Boyd, Joe Crowley, Bart Stupak, Xavier Becerra, Paul Hodes, and Tim Walz.

honorary co-chairs. See <http://democraticfreshmen.org/about-dfp>. (last visited Feb. 26, 2009).

B. Analysis

Although nonconnected multicandidate committees can accept and make contributions of up to \$5,000, affiliated political committees share a single contribution limit under the Federal Election Campaign Act of 1971, as amended ("the Act"). See 2 U.S.C. §§441a(a), 441a(f), and 441a(a)(5). Committees are considered "affiliated" when they are established, financed, maintained, or controlled by the same person or group of persons.³ 11 C.F.R. §§ 100.5(g) and 110.3(a). Contributions made to or by such committees shall be considered to have been made to or by a single committee. 11 C.F.R. § 100.5(g).

In ascertaining whether committees are affiliated, the Commission considers a number of circumstantial factors in the context of the overall relationship of the committees to determine if the presence of any factor or factors is evidence of affiliation. See 11 C.F.R. §100.5(g)(4)(ii).⁴ Such factors include, but are not limited to:

- whether the allegedly affiliated committees have common overlapping officers or employees or common overlapping membership which indicates a formal or ongoing relationship;
- whether one committee participates in the governance of the other;

³ For example, in MUR 5328 (PAC to the Future), the Commission found affiliation where two leadership PACs were maintained by the same candidate, shared a common treasurer who admitted that the second PAC was formed to increase the candidate's donations, and made similar contributions. See FGCR dated August 18, 2003 and Commission Certification dated August 25, 2003.

⁴ The Commission may also consider other factors relevant to its inquiry. See 11 C.F.R. §100.5(g)(4)(ii) (stating "[s]uch factors include, but are not limited to ..." the enumerated factors) (emphasis added); see also AO 2000-28 ("The list of ten circumstantial factors set forth in 11 C.F.R. §100.3(a)(3)(ii) is not an exclusive list, and other factors may be considered.") (citing AOs 1999-39 and 1995-36).

- whether one committee provides funds or goods in a significant amount or on an ongoing basis to another committee or whether a committee arranges for funds in a significant amount or on an ongoing basis to be provided to the allegedly affiliated committee;
- whether a committee or its agent had an active or significant role in the formation of the allegedly affiliated committee;
- whether the allegedly affiliated committees have similar patterns of contributions or contributors which indicate a formal or ongoing relationship; and
- whether other factors, when viewed in context of the overall relationship between the committees, evidences that one established, financed, maintained, or controlled the other.

See 11 C.F.R. § 100.5(g)(4)(ii). *See also* MUR 5355 (Pryce Project), First General Counsel's Report dated April 28, 2004 at 6. While the Commission has not set specific thresholds in determining what combination or degree of factors is sufficient to support an affiliation, the Explanation and Justification for its regulation indicates that the presence of more than one factor is required to establish affiliation. *See* 54 Fed. Reg. 34,098, 34,099 (Aug. 17, 1989).

Complainant alleges that the committees are affiliated based on four of the factors set forth in the Commission's regulations: 1) Reps. Wasserman Schultz and Thompson, and their respective leadership PACs, somehow direct or govern Freshman PAC; 2) the presence of common or overlapping officers or employees; 3) DWS PAC and VINE PAC had an active or significant role in the formation of Dem. Freshman PAC; and 4) the three PACs have similar patterns of contributions and contributors. *See* 11 C.F.R. § 100.5(g)(4)(ii)(B), (E), (I), and (J). Complaint at 1-2. Respondents, however, have presented information that refutes many of the premises relied on in the complaint. As

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detailed below, an application of the criteria to the various facts does not support finding affiliation in this matter.

1. Ability or Authority to Direct or Govern Another Committee

Among the factors the Commission considers in evaluating affiliation is whether one committee has the ability or authority to direct or participate in the governance of another committee. Complainant contends that DWS PAC and VINE PAC's principals (Reps. Wasserman Schultz and Thompson) "are in essence running three PACs" based on ties with their own PACs and their positions as honorary co-chairs of Dem. Freshmen PAC. Complaint at 1.

Respondents assert that the honorary co-chair positions were merely symbolic and did not give either Rep. Wasserman Schultz or Rep. Thompson the authority or ability to direct or participate in the governance of Dem. Freshmen PAC. *See* 11 C.F.R. § 100.5(g)(4)(ii)(B). There is no information showing that either Rep. Wasserman Schultz or Rep. Thompson was involved in the day-to-day operations of Dem. Freshmen PAC, or that DWS PAC and VINE PAC otherwise directed or participated in the governance of Dem. Freshman PAC.

The Commission previously determined that in the absence of any evidence of participation in the day-to-day operations of the committee, an honorary chairmanship by itself does not establish control of a committee for purpose of affiliation. *See* MUR 5355 (VIEW PAC & Pryce Project), First General Counsel's Report dated April 28, 2004 at 9-10. In that matter, the Commission found that Rep. Deborah Pryce's simultaneous service as honorary chair of the unauthorized multicandidate committee and chair of her leadership PAC did not result in the affiliation of the two committees. *See* MUR 5355,

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Commission Certification dated June 8, 2004. The Commission came to a similar conclusion in MUR 5121(New Democratic Network) where it concluded that a multicandidate PAC was not affiliated with a candidate committee through a Representative (Cal Dooley), who served on an honorary executive committee of the PAC while simultaneously operating his own principal campaign committee. See Commission Certification dated November 19, 2003. Accordingly, the fact that Reps. Wasserman Schultz and Thompson are honorary co-chairs of Dem. Freshmen PAC, while leading their respective leadership PACs, does not by itself establish that Dem. Freshmen PAC is affiliated with either DWS PAC or VINE PAC.

2. Common or Overlapping Officers

Another factor the Commission considers in evaluating affiliation is the existence of common or overlapping officers or employees that indicates a formal or ongoing relationship between the committees. See 11 C.F.R. § 100.5(g)(4)(ii)(E). There is no allegation as to any common or overlapping officers between VINE PAC and DWS PAC. Further, Dem. Freshmen PAC claims that its treasurer, James Smith, is the PAC's only officer or employee, and that he solely controls the PAC. Dem. Freshmen PAC Response at 1-2.

While Reps. Wasserman Schultz and Thompson both have a role with Dem. Freshman PAC, which satisfies a portion of the criteria, the responses indicate that these honorary roles apparently lacked the sort of duties, responsibilities, or authority over Dem. Freshman PAC's activities that would demonstrate a formal or ongoing relationship between the committees. Like the honorary positions held by Reps. Pryce and Dooley in

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MURs 5355 and 5121, these roles are not equivalent to the officer or employee status contemplated by the regulation for the purpose of determining affiliation.

3. Committees' Role in Formation

Another factor the Commission considers is whether a committee or its agent had an active or significant role in the formation of another committee. See 11 C.F.R. § 100.5(g)(4)(ii)(I). The available information does not show that any of the committees or their agents had a role in the formation of the other committees. VINE PAC was formed in 2002, long before DWS PAC and Dem. Freshman PAC were formed, and without the involvement of DWS PAC or Dem. Freshman PAC. Similarly, DWS PAC was formed before Dem. Freshman PAC was formed, and without the involvement of VINE PAC or Dem. Freshman PAC. Notwithstanding the Complainant's speculation, the responses establish that neither VINE PAC and Representative Thompson, nor DWS PAC and Representative Wasserman Schulz, were involved in the formation of Dem. Freshman PAC. Dem. Freshman PAC claims to have been established solely by its treasurer, Mr. Smith (who has no role in either of the other two PACs).

4. Similar Patterns of Contributions or Contributors

Another factor in evaluating affiliation is whether a formal or ongoing relationship between the committees can be inferred from extremely similar patterns of contributions or contributors. See 11 C.F.R. § 100.5(g)(4)(ii)(J). This factor, however, must be viewed with the understanding that committees with similar positions and objectives, such as supporting Democratic candidates for the House of Representatives, might be expected to attract support from some of the same donors, and to provide support to some of the same candidates. Indeed, the Commission recognizes that

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“committees with similar political viewpoints and objectives may tend to make contributions to the same candidates and receive contributions from the same donors even though the committees are completely independent.” See Explanation and Justification, Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations, and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,100 (Aug. 17, 1989).

Notwithstanding such natural correlations, examining patterns of contributions and contributors in the committees’ disclosure reports could “provide objective evidence of affiliating conduct.” 54 Fed. Reg. 34,100. An unusually high correlation in the source of receipts (donors) or the use of funds (contributions) could be an indication that the committees were being financed and controlled by same group of persons. As discussed below, however, given that each PAC supports Democratic candidates for the House of Representatives, the PACs do not have a surprisingly high correlation in terms of the identity of their donors. While there is a stronger correlation in terms of the candidates and committees to which they contributed, we do not conclude that this correlation alone is conclusive as to whether the PACs are affiliated.

Dem. Freshmen PAC claims that, consistent with its stated purpose, it contributed mainly to 2006 freshmen House candidates who were seeking reelection in 2008. It claims that VINE PAC’s and DWS PAC’s contribution patterns show a broader focus; less than half of VINE PAC’s contributions went to some of the same 2008 freshmen candidates and only one-third of DWS PAC’s contributions went to some of these same candidates. These figures are reflected in Table 1 below.

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TABLE 1

Total PAC Contributions To Candidates During 2008 Cycle

| PAC | Total # of Candidates | # of Candidates or Committees Receiving Contributions from two or more PACs |
|-------------------|-----------------------|---|
| Dem. Freshmen PAC | 29 | 24 (85%) |
| VINE PAC | 59 | 24 (40.7%) |
| DWS PAC | 83 | 28 (33.7 %) |

Similarly, Dem. Freshmen PAC asserts that less than one-third of its donors also contributed to VINE PAC or DWS PAC, that less than 10 percent of DWS PAC's donors also contributed to Dem. Freshmen PAC, and that less than 15 percent of VINE PAC's donors also contributed to Dem. Freshmen PAC. These figures are reflected in Table 2 below. Further, only 5 donors contributed to all three PACs.

TABLE 2

Total Contributions Received by PACs during 2008 Cycle

| PAC | Total # of Contributors | # of Donors Making Contributions to two or more PACs |
|-------------------|-------------------------|--|
| Dem. Freshmen PAC | 43 | 18 (41.8%) ⁵ |
| VINE PAC | 79 | 10 (12.6%) |
| DWS PAC | 134 | 13 (9.7 %) |

Our review of the PACs' disclosure reports show some correlation, but not a surprisingly high pattern in terms of receipts from donors who also contributed to at least one of the other two PACs. Dem. Freshmen PAC received 62% of its total contribution

⁵ The percentage is more than the figure ("less than one-third") claimed by Dem. Freshmen PAC.

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receipts from donors who gave to at least one of the other two PACs. VINE PAC received 28 percent of its receipts from donors who gave to at least one of the other two PACs. Finally, DWS PAC received 27 percent of its total contribution receipts from donors who gave to at least one of the other two PACs.

The disclosure reports show a much higher correlation in terms of each PAC's contributions to candidates or committees also receiving contributions from at least one of the other two PACs. Notably, 99 percent of Dem. Freshmen PAC's contributions went to candidates or committees receiving contributions from at least one of the other two PACs. DWS PAC made 77.7 percent of its contributions to candidates and committees receiving support from at least one of the other two PACs. Finally, VINE PAC made 94 percent of its contributions to candidates or committees receiving support from at least one of the other two PACs. These figures are reflected in Table 3 below.

TABLE 3

Total 2008 Contribution Amounts

| PAC | Total Receipts | Total Receipts From Donors Giving to at least one other PAC | Total Contributions | Total Contributions to Candidates or Committees supported by at least one other PAC |
|-------------------|----------------|---|---------------------|---|
| Dem. Freshmen PAC | \$168,130 | \$104,000 (62%) | \$78,300 | \$77,300 (99%) |
| VINE PAC | \$332,668 | \$91,000 (28.2%) | \$271,000 | \$255,000 (94%) |
| DWS PAC | \$555,052 | \$148,000 (26.6 %) | \$485,679 | \$377,600 (77.7%) |

While the table shows a significant correlation in the PACs' contributions, Respondents argue that their asserted contribution and contributor patterns are not such that would indicate the formal or ongoing relationship between the committees that is required under the Commission's regulations to find affiliation. See 11 C.F.R.

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§ 100.5(g)(4)(ii)(J). Accordingly, the contribution and contributor patterns of the PACs can be explained by their similar objectives and goals, as opposed to being conclusive evidence of a formal relationship that amounts to affiliation. See Explanation and Justification, Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations, and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,100 (Aug. 17, 1989).

In MUR 5355 (VIEW PAC & Pryce Project), the Commission found that a significant percentage (75.6%) of contributions to common committees did not necessarily indicate affiliation. See First General Counsel's Report dated April 28, 2004 at 14. The significant correlation between the PACs' contribution patterns in this case may be similarly explained by Dem. Freshmen PAC's limited focus on supporting the same types of candidates already being supported, to a larger extent, by VINE PAC and DWS PAC. Thus, while the high correlation could be viewed as a possible indication of affiliation, it is not as persuasive when viewed in the context of all the other factors.

5. Other Affiliation Factors

The available information also does not show that other relevant affiliation factors are satisfied in this instance. For example, the available information does not show that any of the PACs provides significant funds or support to each other on an ongoing basis. See 11 C.F.R. § 100.5(g)(4)(ii)(H). In fact, the PACs did not contribute to each other.

6. Conclusion

As a single affiliation factor is not a sufficient basis to find affiliation, the acknowledged presence of a similar pattern of contributions or contributors is not decisive in this matter. In prior enforcement matters, the Commission has not found

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affiliation even though more than one affiliation factors were present. *See* MUR 5355, First General Counsel's Report dated April 28, 2004 at 15 and Commission Certification dated June 8, 2004. (No affiliation where common treasurer and address, and overlap in contribution patterns); MUR 5121, First General Counsel's Report dated October 3, 2003 at 18 and Commission Certification dated November 19, 2003. (No affiliation where same person was candidate for his own principal campaign committee and also co-chairman of another committee's honorary executive committee, and some overlap in contribution patterns).

Accordingly, there is no reason to believe Democratic Dem. Freshmen PAC and James Smith, in his official capacity as treasurer; Democrats Win Seats PAC and Lawrence Wasserman, in his official capacity as treasurer; Victory in November Election PAC and Brian Kelly, in his official capacity as treasurer; Representative Debbie Wasserman Schultz; and Representative Mike Thompson violated the Act.