



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
U.S. Representative Darrell Issa) **MUR 5367**
Rescue California . . . Recall Gray Davis)
And Vona Copp, as Treasurer)

**STATEMENT OF REASONS OF
COMMISSIONER ELLEN L. WEINTRAUB**

I approved the General Counsel's recommendation to take no further action and close the file in this matter. While I agree with that result, I write separately to clarify that the result in this matter is in no way dictated by the reasoning expressed in my concurring statement in Advisory Opinion 2005-10 (issued to Representatives Berman and Doolittle).

Representatives Berman and Doolittle sought the Commission's advice as to whether they could "raise funds for committees that are formed solely to support or oppose initiatives on the November 8, 2005 California statewide special election ballot; and that are neither established, financed, maintained or controlled by" federal candidates or officeholders.¹ I specifically stated in my concurrence that "[i]ts import is limited to those circumstances where a federal candidate seeks to raise funds for a ballot measure committee that he or she does not establish, maintain, finance, or control . . ."² In Matter Under Review ("MUR") 5367, by contrast, the Commission determined that there was Reason to Believe ("RTB") that Representative Issa *did* establish, finance, and maintain the ballot measure committee, Rescue California . . . Recall Gray Davis ("Rescue California").³ I have not seen any evidence to suggest to me that this finding

¹ Advisory Opinion Request 2005-10 at 1, available at <http://www.fec.gov/aos/2005/aor2005-10.pdf>.

² Advisory Opinion 2005-10, Concurring Statement of Commissioner Ellen L. Weintraub and Commissioner Danny Lee McDonald, at 5.

³ MUR 5367, Factual and Legal Analysis supporting RTB finding against Respondent Representative Darrell Issa, at 4-6

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was erroneous. Thus, contrary to the suggestion in the General Counsel's Report, my opinion in Advisory Opinion 2005-10 does not lead to the result in MUR 5367.

Moreover, the ballot measure in this MUR was integrally related to a candidate election. Indeed, the ballot question had two parts: it asked whether then-Governor Gray Davis should be recalled, and if so, which of the candidates listed on the ballot should replace him. A gubernatorial election, even in a year when no federal candidates are on the ballot, is clearly an "election other than an election for Federal office," which is subject to the restrictions of 2 U.S.C. § 441i(e)(1)(B).⁴ This fact, too, distinguishes MUR 5367 from Advisory Opinion 2005-10, which asked only about off-year, issue-based ballot measures, not candidate elections.

I voted to take no further action and close the file for the simplest of reasons: After an investigation spanning more than 18 months, the Commission's lawyers found no evidence that Representative Issa did anything wrong. At the RTB stage, I thought it was worth investigating whether Representative Issa was using corporate funds from Greene Properties in a manner prohibited by the Bipartisan Campaign Reform Act ("BCRA"). Our counsel investigated and determined that the funds used by Representative Issa to support Rescue California were all, in fact, his personal funds (although some were temporarily transferred in and out of his Greene Properties account). Moreover, counsel did not present any evidence that Representative Issa engaged in any BCRA-prohibited solicitations of funds for Rescue California. The Commission has previously made clear that an officeholder's use of his own funds presents no potential for corruption.⁵ The only other respondent, Rescue California itself, is defunct. For these reasons, it does not seem to me to be worthwhile to pursue this matter further.

As specifically stated in the Concurring Statement of Commissioners Weintraub and McDonald in Advisory Opinion 2005-10, our reasoning in that opinion was "narrow in scope." I did not intend it then, nor do I now, to become an avenue for federal candidates or officeholders to avoid the soft money restrictions of BCRA anytime there is a ballot measure on the ballot. I would not want my vote in this MUR to be misconstrued as endorsing such a view.

November 10, 2005


Ellen L. Weintraub, Commissioner

⁴ Arguably, the Commission could have found that Representative Issa's activities in support of Rescue California were all driven by his aborted pursuit of the governorship and therefore exempt from BCRA's limitations under 2 U.S.C. § 441i(e)(2). Representative Issa's counsel went so far as to assert that Rescue California was affiliated with Representative Issa's gubernatorial campaign committee, although the two had separate contribution limits. At the RTB phase of the Commission's analysis, however, the Commission took the position that since Rescue California was a ballot measure committee, not a campaign committee, § 441i(e)(2) did not apply.

⁵ See Advisory Opinion 2004-25 (issued to Senator Corzine).