FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Democratic Party of Hawaii, and	)	MUR 5518
Lynn Matusow, in her official capacity as	)	
Treasurer	)	
	)	

STATEMENT OF REASONS OF COMMISSIONERS HANS A. von SPAKOVSKY AND ELLEN L. WEINTRAUB
(Appropriate scope of the political party meeting exemption in the definition of "Federal Election Activity")

This matter arises from a complaint filed against the Democratic Party of Hawaii claiming, among other things, that an invitation sent to Democratic Party members for their statewide precinct meetings in 2004 was "Federal Election Activity" ("FEA") and therefore subject to the funding restrictions and reporting requirements of the Federal Election Campaign Act ("FECA"), as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), 2 U.S.C. § 431 *et seq.* The Office of General Counsel ("OGC") agreed that the letter mailed by the Democratic Party of Hawaii constituted FEA because it satisfied the requirements of 2 U.S.C. § 431(20)(A)(iii).[1] OGC recommended that the Commission find "reason to believe" ("RTB") that FECA violations occurred, but recommended taking no further action because of the small amount of money involved (only $2,572). In keeping with our recent policy of not finding RTB when we do not intend to pursue the matter further, the Commission voted unanimously to dismiss the complaint. We write separately to explain the reasons for our votes.

[1] "Federal election activity" includes "a public communication that refers to a clearly identified candidate for Federal office . . . and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate)."

The Invitation, a Necessary Cost of the Convention, Was *Not* Federal Election Activity

OGC recommended an RTB finding based on conduct centered around the Democratic Party of Hawaii's invitation to upcoming party precinct meetings.[2] The invitation, however, was not FEA. FEA is defined at 2 U.S.C. § 431 (20)(A), and specifically excluded from the definition are "the costs of a State, district, or local political convention." 2 U.S.C. § 431(20)(B)(iii). This exemption is set forth in our regulations at 11 C.F.R. §100.24(c)(3) (exempting "[t]he costs of a State, district, or local political convention, meeting or conference"). *See also Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 Fed. Reg. 49,064, 49,070 (July 29, 2002).

The costs of the Democratic Party of Hawaii's precinct meetings plainly fall within this exemption and are not FEA, and the invitations, being a necessary part of the meetings, are similarly exempt. We believe that the "convention, meeting or conference" exemption must be read to include all *bona fide* attendant and incidental "costs" of such a meeting. Such "costs" include those expenses that would apparently not meet the definition of FEA, such as venue rental, and expenses for sound and lighting equipment, entertainment, and catering, but also those expenses that, if incurred outside the context of a party meeting, could constitute FEA, such as the cost of materials for attendees, voter registration activities conducted at the event, and, of course, the invitations. Any other interpretation would render the exemption meaningless; it would amount to saying that convention expenses are not FEA, except when they are.

Precinct meetings or party conventions cannot be held without mailing invitations to the party's members. In addition to information about the time and location of the precinct meetings, the invitation contained language explaining the purpose of these meetings and why it was important for Democratic Party members to attend: to "help[] select our candidate to take back our country from George W. Bush in November."[3] To hold that such statements take the invitations outside the exemption would lead to an untenable result – invitations to party meetings could not explain the meeting's purpose -- and would undermine the exemption that Congress itself fashioned for precisely these types of party activities.

State, district, or local political conventions, meetings, and conferences are categorically defined not to be FEA. While Congress limited other FEA exemptions to apply only when no Federal candidates were referenced, no such limitation was placed on the party convention exemption.[4] Thus, such conventions, meetings, and conferences –

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[2] The Democratic Party of Hawaii paid for the invitation with $1,646 from its nonfederal account, and $926 from its Federal account. The Party treated this expense as an allocable administrative/overhead expense, paying 36% of the total cost with Federal funds. *See* 11 CFR 106.7(d)(2)(ii).

[3] *Complaint* at 3.

[4] Compare the party convention exemption at 2 U.S.C. § 431(20)(B)(iii) to the other exemptions to the definition of FEA at 2 U.S.C. § 431(20)(B). The other three exceptions are not categorical,[4] and two

along with their related costs – are not appropriately the subject of Commission scrutiny regardless of their content.

Had this invitation been mailed more broadly than it was, and in sufficient numbers to raise questions about whether it was a *bona fide* invitation, or if it was really just a fundraising or advocacy piece masquerading as an invitation, this would be a different case. There is no dispute, though, that this was a genuine invitation to very real party events. FECA includes a specific exemption for "the costs of a . . . political convention," and that exemption necessarily extends to the costs of everything required to conduct such a meeting, including the costs of producing and mailing invitations.

Conclusion

This matter was properly dismissed because the activities engaged in by the Democratic Party of Hawaii were not "Federal Election Activity" and, therefore, could not be regulated by the Commission under FECA.

February 23, 2007

Hans A. von Spakovsky
Commissioner

Ellen L. Weintraub
Commissioner

contain specific content controls. For example, a public communication is not FEA if it "refers solely to a clearly identified candidate for State or local office," and is otherwise not Type I or II FEA. *See* 2 U.S.C. § 431(20)(B)(i). Similarly, grassroots campaign materials are not FEA, so long as they "name or depict only a candidate for State or local office." *See id* at § 431(20)(B)(iv). Had Congress intended the convention exemption to cover only conventions dealing with State and local candidates, then it would have included a limitation similar to the one found in subsections (i) and (iv).