

JUN 27 2007

BEFORE THE FEDERAL ELECTION COMMISSION

FEDERAL ELECTION COMMISSION
SECRET

In the Matter of)
Empower Illinois Media Fund)
Empower Illinois)
)

MUR 5568

JUN 27 3:02

SENSITIVE

GENERAL COUNSEL'S REPORT #3

I. ACTIONS RECOMMENDED

(1) Accept the signed Conciliation Agreement with Empower Illinois Media Fund; (2) take no further action as to Empower Illinois; (3) dismiss as a matter of prosecutorial discretion the allegation that Jack Roeser violated the Act by making an excessive contribution to EIMF; (4) find no reason to believe that Jack Roeser violated the Act by making an excessive contribution to EI; and (5) close the file.

II. INTRODUCTION

The Commission previously found reason to believe that Empower Illinois Media Fund (hereinafter "EIMF"), which is organized under Section 527 of the Internal Revenue Code, violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a political committee during the 2004 election cycle, and violated 2 U.S.C. § 441a(f) by accepting excessive contributions. See First General Counsel's Report.

We recommend that the Commission accept the attached signed conciliation agreement negotiated with EIMF, which includes the payment of a \$3,000 civil penalty, conduct

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1 prohibitions, and disclosure obligations.

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3 **III. DISCUSSION**

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Thus, we recommend that the Commission accept the signed Conciliation Agreement with Empower Illinois Media Fund.

B. EMPOWER ILLINOIS

The Commission previously found reason to believe that Empower Illinois ("EI") violated 2 U.S.C. §§ 433, 434, and 441a(f) by failing to register as a political committee with the Commission, by failing to report contributions and expenditures, and by knowingly accepting contributions in excess of \$5,000. Although EI raised \$19,500, we did not find sufficient evidence to establish that EI obtained contributions through solicitations clearly indicating that the funds received would be targeted to the election or defeat of a clearly identified federal candidate. *See FEC v. Survival Education Fund, Inc.*, 65 F.3d 285 (2d Cir. 1995). In addition, EI did not spend funds on paid political advertisements and limited its expenses to website development and maintenance and administrative activities. Accordingly, because we found insufficient evidence to establish that EI received contributions under 2 U.S.C. § 431(8)(A) or made expenditures under 2 U.S.C. § 431(9)(A), we recommend that the Commission take no further action as to EI.

C. JACK ROESER

The remaining respondent is Jack Roeser, who was a donor to EIMF and EI. The Commission previously voted to take no action with respect to the allegation that Roeser made excessive contributions to EIMF and EI. In the context of the Commission's prior decision to focus the investigation on EIMF and EI, we recommend that the Commission exercise its

1 prosecutorial discretion and dismiss the allegation that Roeser violated 2 U.S.C. § 441a(a) by
2 making an excessive contribution to EIMF. *See, e.g.*, MURs 5511/5525 (Swift Boat Veterans),
3 General Counsel's Report #3 at 8-9 (dismissing SwiftVets donors). In addition, because the
4 investigation has not established that EI is a political committee, we recommend that the
5 Commission find no reason to believe that Jack Roeser violated 2 U.S.C. § 441a(a) by making an
6 excessive contribution to EI.

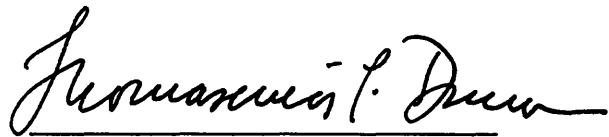
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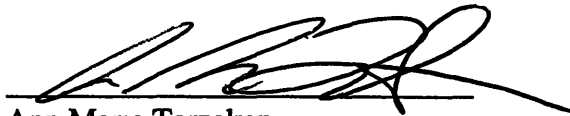
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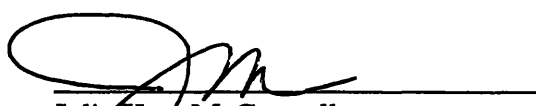
1 **IV. RECOMMENDATIONS**


- 2 1. Accept the attached Conciliation Agreement with Empower Illinois Media Fund;
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4 2. Take no further action with respect to Empower Illinois;
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6 3. Dismiss as a matter of prosecutorial discretion the allegation that Jack Roeser violated
7 2 U.S.C. § 441a(a) by making an excessive contribution to Empower Illinois Media
8 Fund;
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10 4. Find no reason to believe that Jack Roeser violated 2 U.S.C. § 441a(a) by making an
11 excessive contribution to Empower Illinois;
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13 5. Approve the attached Factual and Legal Analysis for Jack Roeser;
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15 6. Approve the appropriate letters; and
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17 7. Close the file.

15 6/27/2007
16 Date


Thomasenia P. Duncan
General Counsel


Ann Marie Terzaken
Acting Associate General Counsel for Enforcement


Julie Kara McConnell
Acting Assistant General Counsel


Jin Lee
Attorney

- 35 Attachments:
36 A. Proposed Signed Conciliation Agreement
37 B. Factual and Legal Analysis