



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Mary M. Streett
Mayer, Brown, Rowe & Maw LLP
71 S. Wacker Drive
Chicago, IL 60606

JUN 14 2007

RE: MUR 5802
Congressman Rahm Emanuel;
Friends of Rahm Emanuel
and David Boul, in his official
capacity as treasurer

Dear Ms. Streett:

On August 31, 2006, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 30, 2007, the Commission found, on the basis of the information in the complaint, responses to the complaint, and publicly available information, that there is no reason to believe Congressman Rahm Emanuel, Friends of Rahm Emanuel and David Boul, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441b. 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 more fully explains the Commission's findings, is enclosed for your information.

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

Sincerely,

Thomasenia P. Duncan
General Counsel

A handwritten signature in black ink, appearing to read "Ann Marie Terzaken", is written over a horizontal line.

BY: Ann Marie Terzaken
Acting Associate General Counsel
for Enforcement

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: City of Chicago, Congressman Rahm Emanuel, and Friends of Rahm Emanuel and David Boul, in his official capacity as Treasurer MUR: 5802

I. INTRODUCTION

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This matter was generated by a Complaint filed with the Federal Election Commission by Kevin Edward White, former Republican candidate for the 5th Congressional District of Illinois in the 2006 election. *See* 2 U.S.C. § 437g(a)(1). The Complaint alleges that Congressman Rahm Emanuel and his principal campaign committee, Friends of Rahm Emanuel and David Boul, in his official capacity as Treasurer (the "Committee"), violated the Federal Election Campaign Act of 1971, as amended, ("the Act" and "FECA") by accepting and failing to report in-kind contributions from the City of Chicago (the "City").¹ 2 U.S.C. § 434(b).

The Complaint relies on information relating to the City's political patronage practices disclosed during the recent federal criminal trial of City officials to speculate that the City used municipal employees to circulate nominating petitions on behalf of Rahm Emanuel in the 2002, 2004 and 2006 election cycles. Complaint, Attachment 1, Letter to United States Attorney Patrick Fitzgerald dated August 3, 2006. If true, such use of City resources would constitute an in-kind contribution by a corporation, in violation of 2 U.S.C. § 441b(a). Moreover, the Committee's acceptance of such contributions and failure to disclose these contributions would violate 2 U.S.C. §§ 434(b) and 441b.

¹ This Complaint was filed by letters dated August 9, 2006 and August 15, 2006

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The Committee and the City deny the factual allegations and legal conclusions set forth in the Complaint. Joint Response of Congressman Rahm Emanuel and Friends of Rahm Emanuel ("Committee Resp.") at 2-4; City of Chicago Response ("City Resp.") at 1. As discussed below, the available information does not support opening an investigation into whether City made or the Committee accepted prohibited in-kind contributions. Thus, for reasons set forth below, the Commission found no reason to believe that any of the above-named Respondents violated the Act in this matter.

II. FACTUAL AND LEGAL ANALYSIS

A. Complaint

Complainant alleges that City of Chicago employees and resources were used to the benefit of various Democratic political campaigns and politicians, including Congressman Rahm Emanuel. Complaint, Attachment 1. Specifically, the Complaint alleges that City employees circulated petitions to get Emanuel's name on the ballot during the 2002, 2004 and 2006 campaigns, and that the employees were made to work on the Emanuel campaign as a condition of their employment with the City.² *Id.*

The Complainant's claims stem from the federal criminal convictions of former City officials, including several aides to Chicago Mayor Richard M. Daley. Robert Sorich, who served as Mayor Daley's Patronage Chief in the Office of Intergovernmental Affairs, was convicted of three counts of mail fraud in 2006 in connection with a scheme to subvert the City's formal hiring process by falsifying candidate screening, interview

² For the 2006 election cycle, the Illinois State Board of Elections established certain circulation, filing and registration deadlines for party candidates for statewide executive, congressional and legislative offices. Committee Resp. at 2-3. Candidates for the U.S. House of Representatives for the 5th Congressional District of Illinois were required to obtain 951 valid signatures from registered voters *Id.*

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and promotion records in order to reward political loyalists with City jobs.³ The Sorich trial included uncontested evidence that Sorich maintained a list of over 5500 individuals who were politically connected or loyal to politicians with relationships with the Daley administration, and who wanted favors from the City as a reward for their loyalty.

Complaint, Attachment 1. Some of these individuals were employed or seeking employment with the City, and some worked as volunteers for local political campaigns. This list was known as the "Sorich Clout List."

Complainant claims that the first and/or last names of forty volunteers involved in circulating petitions for Emanuel in 2006 were also City employees whose names appeared on the Sorich Clout List.⁴ *Id.* Complainant contends that City employees were "farmed out" to work on Emanuel's petition drive, and the Committee had an obligation to report these in-kind contributions from the City, pursuant 2 U.S.C. § 434(b).

B. The Responses

The City of Chicago denies knowledge of the alleged violations, and states that any misuse of City resources is contrary to its express policies, particularly the Consent

³ In March 2007, another former member of the Daley administration, former Streets and Sanitation Commissioner Al Sanchez, was charged with rigging City hiring to reward loyal campaign workers for the Hispanic Democratic Organization. Chicago Tribune, "Ex-Daley aid indicted," March 23, 2007. Other City officials convicted of mail fraud along with Sorich included Timothy McCarthy, Sorich's assistant, John Sullivan, the Managing Deputy Commissioner for the Department of Aviation, Patrick Slattery, Director of Staff Services in Streets & Sanitation, and Daniel Katalinic, Deputy Commissioner of the Street Operations Bureau who pleaded guilty and became the chief witness for the government.

⁴ Despite Complainant's allegations, there is no information to support the contention that Congressman Emanuel's campaigns engaged in similar conduct in 2002 and 2004. Complainant states, "That City of Chicago resources were used unlawfully on previous Emanuel campaigns, in 2002 and 2004, is by now well-documented," but provides no such documentation. *Complaint*, Attachment 1 at 1. He simply refers to the forty names on the Clout list and states that this "coupled with other information already public shows that last fall Emanuel's campaign again misused such resources." *Id.* We have researched media reports about Congressman Emanuel in general and the Sorich trial in particular, yet have found none of the "well-documented" evidence of misuse of City resources by Emanuel or his campaigns in 2002 or 2004, as implied in the *Complaint*.

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Decree entered into in accordance with *Shakman v. Democratic Organization of Cook County*, 569 F. Supp. 177, 187 (N.D. Ill. 1983) (prohibiting the use of political activity as a factor in the City's general hiring).⁵ City Resp. at 1-2. The City also states that these and other allegations related to its hiring practices are already under investigation by the United States Attorneys Office for the Northern District of Illinois. *Id.* Moreover, the City emphasizes that any of its employees who have violated its policies as to the misuse of City resources have been or are in the process of being removed from City employment and/or investigated and prosecuted by the United States Attorneys Office. Finally, the City maintains that it continues to fully cooperate with the United States Attorneys office regarding these allegations.

In March 2007, the City agreed to a settlement of a civil lawsuit that precipitated the *Shakman* Consent Decree. This settlement requires the City to take corrective action designed to prevent unlawful political discrimination in employment with the City. In addition to an Executive Order forbidding various patronage practices, the settlement establishes a \$12 million settlement fund for victims, continues the court-appointed monitoring for two more years, and remands the investigation of complaints filed after June 1, 2007 to the City's Inspector General. This is additional evidence that the City remains focused on addressing the underlying conduct at the heart of the Complaint, and that it is taking affirmative steps to confront the misuse of City resources in political activity.

⁵ The misuse of City resources (*i.e.*, the awarding of City jobs or promotions based on political work or affiliations), as in the scheme employed by Sorich and his co-conspirators is also a violation of City ordinance. See CHICAGO MUN. ORD. § 2-74-090(C) (prohibiting offer of individual services "or other valuable consideration for any appointment, proposed appointment, promotion or proposed promotion, or any advantage in a position in the city service").

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In response to the Complaint, the Committee denies knowledge of any improper use of City resources and asserts that it knows of no information that would indicate the petition circulators were anything other than volunteers, acting without compensation. Committee Resp. at 3. The Committee further avers, without conceding the point, if such misuse occurred it would have been without Committee knowledge or approval. *Id.* In support of its claims assertions, the Committee submits the affidavit of its campaign volunteer coordinator in charge of collecting signatures for petitions. *Id.*

In his affidavit, John Borovicka, the Emanuel campaign committee volunteer responsible for obtaining the signatures necessary for Rahm Emanuel's name to appear on the Democratic ballot in 2006, asserts that in September 2005, he spoke with approximately ten Democratic Committeemen from wards and suburban townships in the 5th Congressional District to solicit assistance with circulating "Petitions for Nomination" on behalf of Congressman Emanuel.⁶ *Id.* at 3. Borovicka requested that committeemen assist in obtaining signatures for the Emanuel petitions, and avers that the committeemen did not ask him for anything in exchange for their agreement to gather signatures for the petitions, and he did not promise or offer the committeemen anything in return for their service. Affidavit of John Borovicka (Borovicka Aff.) at ¶¶ 4-6. Borovicka further states that he did not discuss how the committeemen should go about collecting signatures. *Id.* at ¶ 7. He asserts that at no time did he request or know of any request to have City of Chicago employees provide services or anything else of value to the Committee in the petition drive or anything else. *Id.* at ¶¶ 8-9. He concludes by stating that three weeks prior to December 12, 2005, he arranged to pick up the signed and notarized petitions, he

⁶ Ward and township committeemen are popularly elected political party officers, not public officials, that serve four-year terms, are elected at the general primary election and must be residents of the ward or township they represent. Committee Resp. at 3.

then reviewed the petitions and delivered them to the General Counsel of the Democratic Party of Illinois to be filed with the Illinois State Board of Elections. *Id.* at ¶ 10.

The Complaint provides no information inconsistent with the Committee's claims that it never had any discussions with any Committeemen, or anyone else, about who should be collecting signatures on the petitions or how they should be collected, that all of the Committeemen who were asked to circulate petitions agreed to do so voluntarily, and that all of the petition collectors were volunteers. Committee Response at 3; *see also* Borovicka Aff. at ¶¶ 1-5.

III. DISCUSSION

It is unlawful for a corporation to make a contribution or expenditure to any candidate, campaign committee, or political party or organization in connection with any election to any political office. *See* 2 U.S.C. § 441b(a). Additionally, it is a violation of Section 434(b) of the Act for a campaign committee that receives in-kind contributions to fail to report such contributions. 2 U.S.C. § 434(b). Available information does not support Complainant's claim that the City may have made in-kind contributions to the Emanuel campaign.

The publicly available information, including media reports about the Sorich trial, provides no indication that forty individuals referenced in the Complaint were anything other than volunteers. The Clout List contained the names of individuals who were seeking jobs with the City or other political favors from Sorich. While some individuals named on the Clout List may have been City employees, others simply had connections to high profile political figures. Thus, the fact that forty individuals flagged by

Complainant have names or surnames that appear on the Clout List does not mean they were employed by the City of Chicago during the relevant time period, if at all.

Even if some of the forty individuals in question were City employees in September 2005, the fact that they collected signatures for Emanuel's petition drive does not mean they violated the Act. The definition of "contribution" in the Act specifically excludes "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 2 U.S.C. § 431(8)(B)(i); *see also* 11 C.F.R. § 100.74. Thus, if the individuals were volunteers who solicited the signatures on their own time and without compensation, rather than as a condition of their employment, their activities would not constitute in-kind contributions.⁷

The publicly available information and the record developed during the Sorich trial indicates that those City officials who participated in the illegal employment scheme were acting contrary to the express policies of the City and the *Shakman* Consent Decree. The information also indicates that apart from those who participated in the scheme, and were later charged or convicted of violating these policies, City employees were not engaging in political activities on City time or as a condition of their employment with the City. Moreover, it appears that the inclusion of one's name on the Sorich Clout List was primarily a reward for individuals who benefited from certain political favor, or had performed volunteer services for political candidates supported by Mayor Daley.⁸ No

⁷ The Emanuel petitions also appear to have been circulated during the weekends and notarized on Mondays, a fact acknowledged in the Complaint. *See* Complaint, Attachment 1 at 3. Therefore, even if those forty Emanuel individuals whose names appear on the Clout List and as signature collectors on the petitions were City employees, the value of their services would not be considered contributions absent some evidence that they were coerced or required to do so as a condition of their employment. There is no indication of such coercion in this matter.

⁸ One media report claims Katalinic testified at trial that he and "his political group of city employees crisscrossed the Chicago area for the mayor [Daley], U.S. Rep. Rahm Emanuel (D-Ill.) and pro-Daley

information has been presented that individuals, including City employees, may have been singled out or “punished” for not engaging in political activities.

Any person who believes a violation of the Act has been committed may file a complaint with the Commission. 2 U.S.C. § 437g(a)(1). The Commission may find “reason to believe” and commence an investigation in a complaint-generated matter if the complaint “sets forth sufficient specific facts which, if proven true, would constitute a violation of [the Act].” MUR 4960 (In re Hillary Clinton), Statement of Reasons, citing 11 C.F.R. § 111.4(a) and (d). However, in reviewing a complaint at the reason-to-believe stage, “[u]nwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true.” *Id.* (citations omitted). The complaint in this matter is nothing but “unwarranted legal conclusions from asserted facts” and “mere speculation.” Indeed, Complainant’s legal conclusions are “unwarranted” in large part because they depend on “mere speculation.”

In this instance, no information has been presented to support allegations that petition collectors were anything other than volunteers, collecting petitions on their own volition and time, even if they were City employees. As such, there is no basis to investigate whether the City made, or the Campaign knowingly accepted, in kind contributions by using City employees to circulate petitions on behalf of the Campaign. The allegations in the Complaint cannot surmount the bar against complaints supported only by “unwarranted legal conclusions from asserted facts” or “mere speculation” as

candidates,” but neither this nor any other articles provide additional details about when, where or how work for Emanuel was done, or any specific involvement by Emanuel and/or his campaign committee. Chicago Tribune, “Court Told Jobs Built Patronage Battalion,” June 1, 2006. The primary focus of this and all articles on the Sorich trial was the conduct of those City officials involved in the illicit hiring scheme and not on those who are alleged to have benefited from their groups of political workers.

described by the Commission in its Statement of Reasons in MUR 4960. Further, it appears that the concerns underlying the complaint, namely requiring City employees to engage in federal political activity as a condition of employment, were addressed in the criminal prosecution of City officials and the recent civil settlement.

Accordingly, the Commission found no reason to believe that the City of Chicago, Congressman Rahm Emanuel and Friends of Rahm Emanuel and David Boul, in his official capacity as Treasurer, violated 2 U.S.C. § 441b. The Commission also found no reason to believe that Congressman Rahm Emanuel and Friends of Rahm Emanuel and David Boul, in his official capacity as Treasurer, violated 2 U.S.C. § 434(b).

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