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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTIONS COMMISSION

In re	)	
	)	
Rhode Islanders for Jobs and Tax Relief, Inc.,	)	**MUR 5919 (Pre-MUR 444)**
and Paul Pezzella	)	

STATEMENT OF REASONS OF CHAIRMAN ROBERT D. LENHARD, VICE CHAIRMAN DAVID M. MASON AND COMMISSIONERS HANS A. von SPAKOVSKY AND STEVEN T. WALTHER

This matter arises from self-reporting by Harrah's Entertainment and its wholly owned subsidiary Rhode Islanders for Jobs and Tax Relief, Inc. ("RIJTR"). The respondents are RIJTR and Paul Pezzella, an independent contractor who managed RIJTR's day-to-day operations. The Office of General Counsel ("OGC") recommended dismissing this matter as to both respondents with admonishment.[1] The Commission unanimously accepted the recommendations of OGC, except that it dismissed this matter as to RIJTR without admonishment.[2]

I. BACKGROUND

Internal controls at RIJTR prohibited employees and independent contractors, including Pezzella, from passing out campaign materials or otherwise advocating for candidates while working. In addition, RIJTR conducted compliance training, which Pezzella received and which directed employees and independent contractors not to advocate on candidates' behalf.[3] Nevertheless, on November 4, 2006, Pezzella, who ran RITJR's day-to-day operations,[4] sent a corporate e-mail to about 17,000 addresses on an RIJTR mailing list expressly advocating the election of a clearly identified federal candidate.[5] Within less than two hours of the Pezzella e-mail, RIJTR e-mailed a retraction to all recipients of the original e-mail and informed them that RIJTR had not authorized the original. The

[1] Proposed Factual & Legal Analysis ("FLA") at 4-5 (May 8, 2007).

[2] Voting affirmatively were Chairman Lenhard, Vice Chairman Mason, and Commissioners von Spakovsky, Walther, and Weintraub. At the time of the vote on this matter, and at present, the Commission is composed of five members, since one position has been vacant since March 15, 2007.

[3] Submission of David Satz, Harrah's vice president of governmental relations, at 2 (Nov. 30, 2006), *cited in* FLA at 2.

[4] FLA at 1.

[5] *Id.* at 2.

corporation then reprimanded Pezzella on November 5, contacted the Commission on November 6, and later provided a detailed submission to the Commission.[6]

II. DISCUSSION

The Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.* ("FECA"), prohibits corporations from making expenditures,[7] including independent expenditures,[8] in connection with federal elections. *Id.* § 441b(a) (2002); *see Austin v. Michigan Chamber of Commerce,* 494 U.S. 652, 657-66 (1990); *cf. First Nat'l Bank v. Bellotti,* 435 U.S. 765, 784-85 (1978). Because the corporate e-mail Pezzella sent expressly advocated the election of a federal candidate, the e-mail was an expenditure that FECA prohibits.

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OGC recommended that the Commission dismiss this matter, admonish both Respondents, and close the file. OGC's recommendation took into account the fact that (1) RITJR had made reasonable efforts to prevent employees and consultants from violating the law in this respect, (2) Pezzella's single e-mail was a limited use of corporate resources, (3) RITJR responded promptly, (4) RITJR subsequently swiftly investigated the matter and reported its findings to the Commission, and (5) RITJR likely will not involve itself in future federal elections. *See Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions),* 72 FED. REG. 16695, 16696-97 (F.E.C. April 5, 2007); *Statement of Policy Regarding Comm'n Action in Matters at the Initial Stage in the Enforcement Process,* 72 FED. REG. 12545, 12546 (F.E.C. March 16, 2007).[9]

OGC's reasoning supporting dismissal with admonishment is correct when applied to the individual respondent, Pezzella, who fully deserved admonishment. However, the corporation itself did not authorize the corporate expenditure. The individual respondent was solely responsible for the e-mail in question; RIJTR advised him at least twice not to take part in candidates' campaigns,[10] and the e-mail violated both RIJTR policy and FECA. The Commission agreed with OGC's recommendation that this matter should be dismissed with respect to RIJTR for all of the reasons described above, but concluded, especially in view of the corporation's comprehensive and swift response, that an admonishment to RIJTR was unwarranted. *See Statement of Policy Regarding Comm'n Action in Matters at the Initial Stage in the Enforcement Process,* 72 FED. REG. at 12546; *In re Kirk Shelmerdine Racing, LLC,* Matter Under Review ("MUR") 5563, Statement of Reasons ("SOR") of Comm'r von Spakovsky at 1, 5-6 (F.E.C. Sept. 29, 2006) (rejecting admonishment of corporation, in part because the value of its independent expenditure was substantially lower than what

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[6] *Id.* at 3.

[7] *Defined in* 2 U.S.C. § 431(9) (2002); *see generally McConnell v. FEC,* 540 U.S. 93, 191-92 (2003), *cited in Anderson v. Spear,* 356 F.3d 651, 663-66 (6th Cir.), *cert. denied,* 543 U.S. 956 (2004); *FEC v. Massachusetts Citizens for Life, Inc.,* 479 U.S. 238, 248-49 (1986) (citing *Buckley v. Valeo,* 424 U.S. 1, 42, 44 n.52, 80 (1976)); *Center for Individual Freedom v. Carmouche,* 449 F.3d 655, 665 & n.7 (5th Cir. 2006) (citing *Anderson,* 356 F.3d at 664-65), *cert. denied,* ____ U.S. ____, 127 S.Ct. 938 (2007); *Political Committee Status,* 72 FED. REG. 5595, 5597 (F.E.C. Feb. 7, 2007).

[8] *Defined in* 2 U.S.C. § 431(17).

[9] *See* FLA at 4-5.

[10] *See supra* at 1.

OGC had originally calculated);[11] *In re Local 21, United Assoc. Plumbers,* MUR 5523, SOR of Chairman Thomas, Vice Chairman Toner & Comm'rs Mason, McDonald & Weintraub at 1-2 (F.E.C. Sept. 21, 2005) (rejecting admonishing a union for using its website to expressly advocate the election of, and solicit contributions for, a federal candidate, because the "website's relatively small amount of traffic and the respondent's prompt removal of the material in question suggest[ed] that the impact of the apparent violation was minimal and that the expenditures ... were negligible");[12] *In re Wisconsin Right to Life, Inc.,* MUR 5522, SOR of Vice Chairman Toner at 1, 3 (F.E.C. Feb. 18, 2005) (rejecting admonishing a corporation, because even if it used corporate money for express advocacy, the amounts were *de minimis*).[13]

In addition, admonishing the corporation under this circumstances may be counterproductive in that it may discourage other corporations in similar circumstances from self-reporting. *Cf. Policy Regarding Self Reporting of Campaign Finance Violations (Sua Sponte Submissions)*, 72 FED. REG. at 16696-97.

September 27, 2007

Robert D. Lenhard
Chairman

David M. Mason
Vice Chairman

Hans A. von Spakovsky
Commissioner

Steven T. Walther
Commissioner

[11] *Available at* http://eqs.sdrdc.com/eqsdocs/00005876.pdf (all Internet sites visited June 7, 2007).

[12] *Available at* http://eqs.sdrdc.com/eqsdocs/00004922.pdf.

[13] *Available at* http://eqs.sdrdc.com/eqsdocs/00002E04.pdf. In a separate contemporaneous action, Wisconsin Right to Life contended it was not a "qualified nonprofit corporation" under Commission regulations. *See Wisconsin Right to Life, Inc. v. FEC,* 466 F. Supp.2d 195, 197 n.2 (D.D.C. 2006) (citing 11 C.F.R. § 114.10 (2002)), *aff'd*, 551 U.S. ____, 127 S.Ct. 2652 (2007); *see generally In re Jerry Falwell Ministries, Inc.,* MUR 5491, SOR of Vice Chairman Toner & Comm'rs Mason & Smith at 2-4 (F.E.C. July 22, 2005) (reviewing the law on *MCFL* corporations), *available at* http://eqs.sdrdc.com/eqsdocs/0000467D.pdf.

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