



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

General Robert A. Rosenberg
Armed Forces Communications and
Electronics Association
4400 Fair Lakes Court
Fairfax, VA 22033

NOV 14 2008

RE: MUR 6022

Dear General Rosenberg:

On June 11, 2008, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On November 6, 2008, the Commission found, on the basis of the information in the complaint, information provided by you, and information available to the public, that there is no reason to believe you violated 2 U.S.C. § 441b(a). 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 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,

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

cc: Stefan C. Passatino, Esq.
McKenna Long & Aldridge, LLP
1900 K Street, N.W.
Washington, DC 20006

28044221729

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Science Engineering, Inc. (d/b/a Science Applications International Corporation)
Robert A. Rosenberg
Gerald E. Connolly
Gerry Connolly for Congress and John Jennison,
in his official capacity as Treasurer

MUR: 6022

I. INTRODUCTION

This case involves allegations that Science Engineering, Inc. (d/b/a Science Applications International Corporation) ("SAIC") and Robert A. Rosenberg (collectively "SAIC Respondents") violated the Federal Election Campaign Act of 1971, as amended, ("the Act" and "FECA") by improperly soliciting SAIC employees to contribute to Gerry Connolly for Congress and John Jennison, in his official capacity as Treasurer (the "Connolly Committee") and that the Connolly Committee knowingly accepted or received prohibited contributions from SAIC. See 2 U.S.C. §441b(a) and 11 C.F.R. § 114.2(f).

A review of the available evidence indicates that the solicitations sent by a semi-retired, former employee went only to the "restricted class" of SAIC employees and were not coercive. Accordingly, the Commission found no reason to believe that either the SAIC Respondents or the Connolly Committee violated 2 U.S.C. §441b(a) and 11 C.F.R. § 114.2(f).

II. FACTUAL BACKGROUND

SAIC is a Fortune 500 scientific, engineering and technology applications company that frequently acts as a contractor for the U.S. Government. The SAIC Inc.

28044221731

Voluntary Political Action Committee ("VPAC") is the company's separate segregated fund. Robert A. Rosenberg is a part-time employee of SAIC who is classified as an "Unscheduled Professional" or consultant. From 1998-2003, Rosenberg held various management positions at SAIC, including Executive Vice President and General Manager for the National Capitol Region, but resigned from his management position for health reasons in October 2003.

A. Rosenberg Solicitations

In March 2008, Rosenberg contacted SAIC management and inquired as to legally permissible means for him to communicate with SAIC employees about supporting the candidacy of another SAIC employee, Gerald E. Connolly, who was seeking the Democratic nomination for Virginia's 11th Congressional District. *See* SAIC Response at 4. After consulting with counsel, SAIC decided that it would be permissible for Rosenberg to send an e-mail in support of Mr. Connolly's campaign provided the e-mail was sent only to those employees who were part of its exempt "restricted class" to which SAIC could send partisan political communications. *Id.*

SAIC's separate segregated fund, VPAC, maintains an online database of individuals who are in SAIC's "restricted class." *Id.* at 4-5; *see also* Declaration of Amy Childers ("Childers Decl."), attached to SAIC Response, at ¶ 3. This database is populated through regularly-scheduled, automated downloads using an SAIC Human Resources management software application called VOCUS, which is updated monthly, including during the week of April 21, 2008. Childers Decl. at ¶ 4.

On or about May 1, 2008, SAIC Assistant Vice President and Director for Policy and Political Programs Amy S. Childers, whose duties include administering VPAC,

28044221732

provided Rosenberg with an e-mail distribution list of 250 SAIC "restricted class" employees, which included: (1) names of SAIC managers who hold the rank of Senior Vice President or higher, and (2) those who hold the rank of Vice President or higher and also live or work in the Commonwealth of Virginia, State of Maryland or District of Columbia. Childers Decl. at ¶ 6. Childers also sent Rosenberg draft language for the solicitation, which Rosenberg edited before sending his solicitation via e-mail to the "restricted class" distribution list provided by SAIC on May 1, 2008. Declaration of Robert A. Rosenberg ("Rosenberg Decl."), attached to SAIC Response, at ¶ 5. Rosenberg did not send the e-mail to anyone outside of those on the distribution list provided by Childers. *Id.*

On May 14, 2008, Childers sent Rosenberg a second distribution list of an additional 137 SAIC "restricted class" employees who hold the corporate title of Assistant Vice President and who live or work in Virginia's 11th Congressional District. Childers Decl. at ¶ 7. Rosenberg sent a solicitation e-mail, which was virtually identical to his May 1st solicitation, to the second "restricted class" distribution list on May 14, 2008. Rosenberg Decl. at ¶ 6. Rosenberg did not send the e-mail to anyone outside of those on the distribution list provided by Childers. *Id.*

Both of Rosenberg's e-mails invited the "restricted class" recipients to attend a May 21, 2008 fundraiser being held by the Professional Services Council ("PSC"), a national trade association for the government professional and technical services industry, in support of the Connolly Committee. See May 1 and May 14 e-mails attached to Rosenberg Decl., Attachments 1 and 2. Both e-mail solicitations were sent to "restricted class" recipients as "blind carbon copies" which did not reveal the names of other

28044221733

recipients, except for two visible "carbon copies" to Childers and SAIC Senior Vice President for Government Affairs Jay Killeen. *Id.* The e-mails noted the "suggested contribution" of \$250 for the event. *Id.* The solicitations do not indicate that SAIC is in any way associated with the event or will be involved in soliciting, collecting or otherwise monitoring contributions to the Connolly Committee. Nor do the solicitations indicate on their face that they were directed at or received by anyone outside of SAIC's restricted class.

Disclosure reports indicate that the Connolly Committee received \$2,700 from SAIC personnel on the day of the PSC fundraiser and \$1,950 in the months thereafter. Disclosure reports also indicate that the Connolly Committee had received \$3,000 from SAIC personnel in the months preceding the PSC fundraiser solicitation. To date, all of the contributions the Connolly Committee has received from SAIC personnel total \$7,650.

B. Connolly Committee Contacts with SAIC

The Complaint cites a Washington Post.com article describing the e-mail solicitations, which states, "Connolly said he had nothing to do with the solicitation though he knew Rosenberg was planning it. 'I was aware of the fact that he was going to organize something for some SAIC employees who wanted to be supportive,' Connolly said." Complaint, Exhibit 2. The Complaint alleges that this is evidence that the Connolly Committee knowingly accepted contributions from SAIC employees that were the result of solicitations prohibited by Section 441b(a).

Connolly has been an employee of SAIC for six years and currently serves as Director of Community Relations in McLean, Virginia. The Connolly Committee's

28044221734

Response states that Connolly was only tangentially aware that Rosenberg, a fellow SAIC employee, was planning to elicit the support of other SAIC employees for the Connolly Committee. Connolly Committee Response at 3. Specifically, the Connolly Committee asserts that Connolly and Rosenberg had a single conversation soon after he announced his intention to run for Congress in which Rosenberg vaguely mentioned that he wanted to "organize something to support his campaign," and that neither Connolly nor the Connolly Committee knew about the solicitations until Connolly, as a member of SAIC's "restricted class," received a copy of the e-mail solicitation from Rosenberg on May 14, 2008. *Id.*

III. LEGAL ANALYSIS

The Act prohibits corporations from making contributions or expenditures in connection with any election for Federal office. 2 U.S.C. § 441b(a). Similarly, the Act prohibits government contractors from either making or soliciting contributions to political parties, committees or candidates for public office. 2 U.S.C. § 441c. These provisions also generally prohibit corporate/contractor officials from facilitating the making of contributions by ordering or directing subordinates or support staff to plan, organize or carry out a fundraising project as part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services. 11 C.F.R. § 114.2(f)(2).

Communications, including solicitations on behalf of federal candidates, to a corporation's "restricted class" are an exception to the general prohibition against corporate/contractor facilitation of contributions. *See* 11 C.F.R. § 114.3. A corporation and its officers may make partisan communications to its stockholders and executive or

28044221735

administrative personnel and their families. 2 U.S.C. § 441b(b)(2)(A). As long as these communications are aimed at this "restricted class," and the corporation does not otherwise use corporate resources to facilitate the contributions by means such as coercing employees to contribute, or by collecting and forwarding the contributions, such communications are not a violation of the FECA. See 11 C.F.R. § 114.2(f)(1).

Here, the Complaint alleges that the e-mail solicitation sent by Rosenberg violated the Act because it may have been sent to SAIC employees outside of the restricted class to which such solicitations are allowed. The Complaint alleges that the use of the "blind carbon copy" for the recipients prevented complainants from identifying all of the recipients, which leaves open the possibility that someone outside of the restricted class received the solicitation. The SAIC Respondents expressly deny this allegation and provided sworn declarations by Childers and Rosenberg attesting that the e-mail distribution lists sent to Rosenberg were limited to the company's restricted class. The sworn statement submitted by Childers emphasizes that she used the VOCUS software to ensure that the distribution list only included "restricted class" employees, Childers Decl. at ¶¶ 3-4, 6-7, and Rosenberg attests that he did not send the solicitation to anyone outside of the distribution lists provided by Childers. Rosenberg Decl. at ¶¶ 5-6. We have no information that would cast doubt upon the veracity of these statements.

The Complaint also alleges that the Rosenberg solicitation e-mail was coercive because it came from a former SAIC manager, who still maintains power and authority at SAIC, and because the e-mail did not include a disclaimer informing the recipients that they were free to disregard the solicitation without fear of reprisal. The Complaint again points to the fact that Rosenberg blind copied the e-mail's recipients, and notes that

complainants allegedly received a copy of the e-mail anonymously, as evidence that "non-restricted" SAIC employees might have received the e-mail and been intimidated or feared reprisal if they voiced objections. Complaint at 3.

As discussed above, Rosenberg declares that he only sent the solicitation e-mail to individuals on the distribution list provided by Childers, which Childers attests included only "restricted class" members. SAIC Respondents also aver that Rosenberg is not a corporate officer or agent of SAIC, but a part-time, "unscheduled professional" with no subordinates or supervisory responsibilities and no management authority whatsoever, who does not exercise control or influence over decisions related to the hiring, compensation, promotion or termination of any SAIC personnel, including the individuals to whom he sent the e-mail. SAIC Response at 4. Moreover, the e-mail did not indicate that the company would collect, monitor or track contributions or other efforts made by SAIC employees in support of the Connolly Campaign.¹ Although a solicitation for the company's separate segregated fund requires disclaimer language making it clear that the employee has a right to refuse to contribute without any reprisal, there is no such requirement for solicitations to the "restricted class" on behalf of political committees other than the connected organization's separate segregated fund. 2 U.S.C. § 441b(b)(2)(A), 11 C.F.R. § 110.11(f)(2). Based on the available information, the Commission found there is no reason to believe that Science Engineering, Inc. (d/b/a

¹ The Commission has found evidence of coercion where companies have made employee contributions to a candidate mandatory or kept track of which employees did and did not contribute. See, e.g., MUR 5379 (Penelas) (finding reason to believe Section 441b had been violated and entering into conciliation with Respondents to settle violations, where company Vice President and Chief Operating Officer issued a solicitation e-mail directing all employees to "pull out your checkbooks" because employees were "expected" to financially support the candidate up to the statutory maximum, and appointed a designated employee to track and report all employee contributions).

28044221736

Science Applications International Corporation) and Robert A. Rosenberg violated 2 U.S.C. § 441b(a).

The Complaint also alleges that the Connolly Committee knowingly accepted prohibited contributions from SAIC and its employees. *See* 2 U.S.C. § 441b(a), 11 C.F.R. § 114.2(d). Although there is no information upon which to conclude that the solicitation was coordinated with the Connolly Committee, the limitation of the solicitation to members of SAIC's restricted class would make such coordination permissible. 11 C.F.R. § 114.3(a)(1). In discussing revisions to 11 C.F.R. § 114.3, the Commission noted that communications directed solely to the restricted class may be coordinated with candidates and political committees without transforming such exempt restricted class communication into an in-kind contribution. 60 Fed. Reg. 64260, 64265 (Dec. 14, 1995). Accordingly, there is no basis on which to conclude that SAIC made, or the Connolly Committee accepted, prohibited in-kind contributions. 2 U.S.C. § 441b(a). Based on the available information, the Commission found no reason to believe that Gerald E. Connolly and Gerry Connolly for Congress and John Jennison, in his official capacity as Treasurer, violated 2 U.S.C. § 441b(a).

28044221737