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PRIVILEGED AND CONFIDENTIAL

October 2, 2008

Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Matter Under Review 6051

To whom it may concern:

I. Overview

On August 14, 2008, American Rights at Work, the AFL-CIO, Change to Win, and WakeUpWalMart.com ("Complainants") filed a complaint at the Federal Election Commission ("Commission" or "FEC"). Complainants allege, based on a newspaper article, that Wal-Mart resources were used for communications "expressly advocating" the election or defeat of one or more particular candidate(s), and that those communications were made to certain hourly Wal-Mart supervisors who were not part of Wal-Mart's "restricted class." As demonstrated below, these charges are false.

All of the activity at issue took place in the context of an ongoing effort by Wal-Mart to educate and train its managers about the potential impact of pending federal legislation known as the Employee Free Choice Act (EFCA). Wal-Mart is one of the many businesses that have long opposed this legislation, primarily because it would undermine the freedom workers now have to cast a secret ballot on whether to be represented by a union. Wal-Mart is actively working with Congress and others to generate an appreciation of Wal-Mart's perspective. As a practical matter, Wal-Mart strives to maintain a good working relationship with congressional officials and national opinion leaders—regardless of their political persuasion—in order to ensure open lines of communication about the merits of this legislation. Picking partisan sides is the last thing Wal-Mart was aiming for in its training about EFCA.

The training materials developed by Wal-Mart for supervisors who happened to be paid on an hourly basis were carefully prepared to steer well away from anything that reasonably could be deemed express advocacy of any candidate's election or defeat. The program was structured to educate management about pending EFCA legislation, the probability of its passage, the impact it could have on Wal-Mart's workforce and working conditions, and the proper ways for managerial personnel to interact with non-management associates if the subject of EFCA were to arise. The training required presenters to explicitly advise the audience of supervisors that Wal-Mart was *not* suggesting voting for or against any candidate or party. Any isolated, inadvertent statement by a trainer that went beyond the planned presentation into political commentary

would not have been authorized, would have violated company policy, and should not taint Wal-Mart's efforts to assure compliance with the federal campaign finance laws.

II. Description of the training program

The PowerPoint slides, related video clips, and presenter scripts presented to supervisors paid on an hourly basis are provided at Attachment 1. As is apparent from those materials, the training was overwhelmingly aimed at educating supervisors about the substance of EFCA, about how it could dramatically change working conditions, about how associates at Wal-Mart might raise questions about EFCA, and about how supervisors should respond to such questions to stay within legal requirements.

A total of 48 PowerPoint slides were presented in these training sessions. The one slide alluded to in the complaint that mentioned the upcoming elections (slide 36) was simply designed to explain that there was a significant likelihood that EFCA might pass. It provided:

> The EFCA Almost Passed in 2007
>
> - U.S. House of Representatives passed the bill 241 to 185 (about 25 Republicans voted for the bill).
> - Senate vote would have been 52 to 48; needed 60 votes to break filibuster, and President Bush threatened veto.
> - If Democrats win enough Senate seats and we elect a Democratic President in 2008, this will be the first bill presented.

These were reasonable statements based on prior votes, party leadership positions, and public statements of elected officials.[1]

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[1] *See* John McCormick, "*Obama Vows Union-boosting Law Will Pass; Presidential Hopeful Headlines Chicago Rally*," Chicago Tribune, p. 7, March 4, 2007; Tula Connell, "*Clinton: Under Bush, Working People Have Been Invisible*," AFL-CIO NOW Blog, June 9, 2007, *available at* http://blog.aflcio.org/2007/06/09/clinton-under-bush-working-people-have-been-invisible/; *Intn'l Fed. Of Prof. and Tech. Engineers AFL-CIO & CLC IFPTE 2008 Presidential Candidate Survey*, distributed July 6, 2007, *available at* http://www.ifpte.org/Downloads/Archives/In%20the%20News/2008_PresSurveys/PresidentSurvey08_Clinton.pdf (comments of Sen. Clinton); "*Gov. Bill Richardson Delivers Remarks at the Service Employees International Union Member Political Action Conference*," Political Transcript Wire (ProQuest Information and Learning and CQ Transcriptions, LLC), Sept. 17, 2007.

Two slides later (slide 38), after Wal-Mart's position against the legislation is described, the presenter is directed to read the following statement:

> You saw a moment ago how close this bill came to passing in 2007. Now we are in a year where many new leaders will be elected.
>
> As part of our culture at Wal-Mart, we have thought for years that what happens in the political world needed to stay there; as long as we were focused on our customers and Associates, everything else would take care of itself. Today, we realize that simply isn't the case.
>
> We do have a point of view on legislation like this that is potentially harmful to our business and we feel we have a duty to educate you on this issue as well because, as Shareholders in this company, through 401K and Profit Sharing, we all have an interest in these issues that could have a negative effect on our company.
>
> *We are not trying to tell you or anyone else how to vote or who a person can support. Republican, Democrat, or Independent; That is your own personal choice.* [emphasis added]
>
> However, we do want to encourage you to be informed on how congressional and presidential decisions could impact our personal lives and the company we work for.

While the slide makes generic reference to the obvious fact that many new leaders will be elected in 2008, the presentation (1) nowhere attempts to tell anyone how to vote and (2) simply educates supervisors about potential legislative and executive actions that could impact their personal and work situations. Indeed, the next slide (slide 39) hammered home the underlying point of the training: supervisors need to "[g]et in front of change" because the unions "will get cards signed now" and Wal-Mart "could be *unionized overnight* [emphasis in original]." The presenter then was instructed to read the following statement:

> It's important that we understand the potential implications of the proposed law.
>
> *If we aren't engaging with and addressing our Associates' concerns today, we might not have the chance to do it later.*
>
> *This change in the law would limit the ability of our Associates to make a fully educated decision about signing a union authorization card.* If they don't feel engaged and comfortable using the Open Door and communicating with us, they could be much more likely to let a moment of frustration push them into signing something they don't fully understand.

> And, *since an authorization card is valid for a year from the date that the Associate signs it*, you can bet that *many union locals will be out in full force this summer* making whatever promises necessary to get our Associates' signatures on file in anticipation of this bill becoming a law.
>
> If you aren't in touch with our Associates and aware of what's going on in our building, you could be unionized *seemingly* overnight. [all emphasis in original]

The presentation contains no candidate-related advocacy. Its message is apparent: the potential for legislation is great and there is an immediate need to address the authorization card process and hypothetical questions that supervisors might face from associates. Evaluated in the overall context, the presentation was simply an effort to educate supervisors on how to communicate with associates regarding union requests to sign authorization cards or other related questions that might arise.

III. There was no "express advocacy."

A. The legal framework

The underlying statute at issue, 2 U.S.C. § 441b(a), prohibits a corporate contribution or expenditure in connection with a federal election. Years of litigation have imposed a 'gloss' requiring that non-coordinated messages contain "express advocacy" in order to fall under the statutory ban. *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986); *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990). FEC regulations thus provide that a corporation is prohibited from "making expenditures with respect to a federal election . . . for communications to those outside the restricted class that expressly advocate the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party." 11 C.F.R. § 114.2(b)(2).

The Commission's regulatory definition of "expressly advocating" is found at 11 C.F.R. § 100.22.[2] "Restricted class" for a corporation is defined as "its stockholders and executive or administrative personnel, and their families, and the executive and administrative personnel of its

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[2] The relevant language provides, "Expressly advocating means any communication that . . .
(b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because--
(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." [cont'd next page]

subsidiaries, branches, divisions, and departments and their families." 11 C.F.R. § 114.1(j). The term "executive or administrative personnel" is defined at 2 U.S.C. § 441b(b)(7) and 11 C.F.R. § 114.1(c). Employees paid on an hourly basis are not included in this definition.

B. The Supreme Court's guidance on corporate speech

In *FEC v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652, 2669 (2007), when dealing with a standard virtually identical to the FEC's 'reasonable person' express advocacy standard, the Court stated, "Discussion of issues cannot be suppressed simply because the issues may also be pertinent in an election. Where the First Amendment is implicated, the tie goes to the speaker, not the censor." Also, importantly, the Court focused on "the communication's substance rather than on amorphous considerations of intent and effect." 127 S.Ct. at 2655.

These most recent pronouncements can be traced back to the Court's analysis many years earlier. In *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), the Court held that corporate expenditures to influence the outcome of a ballot referendum are protected by the First Amendment. The Court stated, "It is the type of speech indispensable to decision-making in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual." *Bellotti*, 435 U.S. at 777.

These principles have application to the present circumstances. Contrary to Complainants' assertion (Complaint, p. 2) that the Supreme Court somehow indicated in *FEC v. Massachusetts Citizens for Life, Inc.*, *supra*, that messages like those in the Wal-Mart training program are express advocacy, the Court there considered a publication to be express advocacy because it identified specific candidates as pro-life *and then urged voting pro-life*. This was, as the Court noted, "in effect an explicit directive." 479 U.S. at 249. Wal-Mart's messages were far different.

C. Application of the express advocacy standard to Wal-Mart's training program.

The presentation materials do not advocate any candidate's election or defeat. Under the reasonable person standard, the reference, "If Democrats win enough Senate seats and we elect a

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The FEC recently explained and defended this regulation in its August 14, 2008 Memorandum in Opposition to Preliminary Injunction, *The Real Truth About Obama v. FEC*, No. 3:09-cv-00483-JRS (E.D. Va., Complaint filed Jul. 27, 2008), pp. 12-17, *available at* http://www.fec.gov/law/litigation/rtao_fec_memo_opp_rtao_motion_pi.pdf. Significantly, a proposed ad that criticized Sen. Obama's position on abortion and asked, "Is this change that you can believe in?," was deemed in the Commission's pleading to fall short of express advocacy.

Democratic President in 2008, this will be the first bill presented," is a fact-based statement designed to educate the trainees about how likely EFCA passage was at that time. The subsequent reference, "Now we are in a year where many new leaders will be elected," is closely tied to an explicit statement that attendees are *not* being told who to vote for and is a clarification that they are encouraged to "be informed on how congressional and presidential decisions could impact our personal lives and the company we work for." These statements in context could be interpreted by a reasonable person as a means of convincing supervisors of the likelihood of EFCA passage (as a result of congressional and presidential approval) and the need, therefore, to take seriously the training being provided. The content of the presentation following these statements makes abundantly clear the real focus of the training: conveying the legal impact of authorization card signatures then being solicited and the appropriate ways to communicate with associates about EFCA questions.

There is nothing in the presentation materials that even remotely approaches the messaging that the Commission has found to be express advocacy in recent years. In MUR 5634, the "Let your conscience be your guide" pamphlet issued by the Sierra Club in the 2004 election cycle contrasted Sen. Kerry's positions with President Bush's and described Kerry as a "leader on cleaning up toxic waste sites" while saying President Bush "refused to support the 'polluter pays' principle."[3] The positions of these candidates, as well as two opposing Senate candidates, were noted with a check mark in a way making it obvious that certain candidates took the favored position more often. Further, the "Let your vote be your voice" heading on the interior of the pamphlet made it clear that this was an effort to advocate voting for particular candidates. There was no other plausible interpretation. There was no explicit statement that the sender was *not* suggesting how to vote. There was no overarching training program tied to a pending legislative battle and instruction on certain practices to be followed in the work setting. In other words, nothing in Wal-Mart's training program described above comes close to the Sierra Club situation.

In MUR 5440 involving The Media Fund, the FEC found express advocacy in three mailers and in a television ad.[4] One mailer (the "Education" mailer) had the statement: "We need a President who encourages pursuit of the American dream instead of dashing these hopes. John Kerry will make college affordable for every American." Another (the "Health Care" mailer) compared the presidential campaigns' policies and then had the statement, "George W. Bush and Dick Cheney

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[3] MUR 5634 Conciliation Agreement with Sierra Club, Inc., ¶¶ IV 7-10, executed Nov. 15, 2006, *available* on FEC website at http://eqs.nictusa.com/eqsdocs/00005815.pdf. *Compare* the Commission's finding of no express advocacy regarding the voter guide described in the Oct. 25, 2007 MUR 5874 Factual and Legal Analysis (Gun Owners of America, Inc.), pp. 2, 4, 5, *available at* http://eqs.nictusa.com/eqsdocs/000067A9.pdf (candidates rated on a scale of A+ to F).

[4] Conciliation Agreement with The Media Fund, ¶¶ IV, 27-30, executed Nov. 15, 2007, *available* on FEC website at http://eqs.nictusa.com/eqsdocs/000066D5.pdf.

have NO PLAN to lower healthcare costs. . . . For Florida's Families. The Choice is Clear." The third mailer ("Military Service" mailer) stated, "These Men Could Have Served in Vietnam, But Didn't." This was juxtaposed with pictures of President Bush and Vice President Cheney. It went on to state: "Vietnam was a long time ago. Some say it's not important now, while others must think it is . . . ." The television ad ("Stand Up") stated: "John Kerry fought and bled in the Vietnam War. He fought side by side with brothers who could not get out of the draft because they didn't have a rich father like George W. Bush. . . . You better wake up before you get taken out." The Commission found that these communications, taken as a whole, could only be interpreted by a reasonable person as advocacy of a particular candidate's election. Unlike the Wal-Mart training program, where the context demonstrates a non-advocacy meaning for the brief, factual references to upcoming elections, the MUR 5440 messages were not tied to any substantive descriptions of pending legislation or to specific practices the recipients were to follow when approached by fellow workers.[5]

In sum, there is no plausible basis for determining the materials and scripted presentations involved in Wal-Mart's training program for managerial personnel to be express advocacy. The Commission's regulations and precedent plainly lead to the conclusion that, taken as a whole, such communications *could* reasonably be interpreted by a reasonable person as *not* containing advocacy of the election or defeat of any candidate or party's candidates. Using the language at 11 C.F.R. § 100.22(b)(1), there was no electoral portion that is "suggestive of only one [advocacy] meaning" (since the references to possible election results were general, fact-based, and tied to an explicit statement saying no one was being asked to vote a particular way). Further, tracking § 100.22(b)(2), a "reasonable mind" could easily conclude that the references to potential election results simply "encourage" the managerial personnel in attendance to appreciate the likelihood of EFCA passage and follow through with being educated about the implications of EFCA and the proper ways to interact with non-management workers on the pressing topic of authorization cards and other EFCA issues.[6] Finally, as the Supreme Court has

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[5] Other examples where the FEC found express advocacy also involved communications with no non-electoral context. *See* MUR 5577/5620 Conciliation Agreement with National Association of Realtors—527 Fund, ¶¶ IV 13-19, executed June 18, 2007, *available* on FEC website at http://eqs.nictusa.com/eqsdocs/00005DB6.pdf (flyers stating, e.g., "Richard Burr—Building a Stronger North Carolina . . . One Neighborhood at a Time" and newspaper ads stating, e.g., "Some Promise. Congressman [name] Delivers."); MUR 5511/5525 Conciliation Agreement with League of Conservation Voters 527, ¶ IV 11, executed Dec. 11, 2006, *available at* http://eqs.nictusa.com/eqsdocs/00005905.pdf (door-to-door canvassing and phone banks stating, e.g., "So we encourage you to . . . vote for John Kerry in November" and mailing identifying candidate Pete Coors stating, "Warning: This candidate cares more about his bottom line than our kids' safety. Elect at your own risk.").

[6] In a similar vein, the Commission has recognized that corporations have significant flexibility to undertake communications essentially urging persons beyond their restricted class to favor or disfavor particular legislation. *See* Advisory Opinion 1984-57 (Pacific Gas & Electric Company), *available at* http://saos.nictusa.com/saos/searchao?SUBMIT=go&AO=1603; *see also*

indicated, any question about whether the communications are regulated should be resolved in favor of the speaker.

D. Isolated, inadvertent comments by EFCA training presenters do not create a violation by Wal-Mart.

In the lone newspaper article that formed the basis for the complaint, there is reference to a purported comment by a trainer to the effect, "I am not telling you how to vote, but if the Democrats win, this bill will pass and you won't have a vote on whether you want a union."[7] First, even if accurately reported, this type of 'ad lib' comment *still* does not meet the legal standard for express advocacy described above. In the context of the whole training presentation, this reasonably could be interpreted as a simple statement about the likelihood and impact of EFCA legislation.

Second, even if this isolated comment somehow did cross the line, the Commission has recognized the importance of not punishing corporate entities for an employee's isolated, unauthorized communications. Recently, for example, a majority of commissioners agreed that a subsidiary of Harrah's Entertainment should have all allegations of corporate express advocacy dismissed *and* should receive no admonishment because it was clear that the isolated communication by a contractor who ran the subsidiary on a day-to-day basis was not authorized and because the subsidiary had undertaken reasonable efforts to prevent such communication.[8]

Wal-Mart has a company-wide policy specifying that associates "may not use their work time or other Associates' work time for political activities." Statement of Ethics Policy, PD-10. This policy was thus in effect for the instructors at the training sessions. Further, the teaching materials made very clear exactly what was to be read to the training audience. There were explicit directions in this regard: "(read slide)" or "READ." Thus, any trainer who made an isolated deviation that stepped close to the express advocacy line did so without authorization and contrary to Wal-Mart's efforts to prevent this, just as was the case with the contractor at the Harrah's subsidiary.[9]

Feb. 7, 2000 MUR 4766 First General Counsel's Report (Phillip Morris Companies, Inc. et al.), pp. 22-25, *available at* http://eqs.nictusa.com/eqsdocs/00001CAD.pdf (ad opposing legislation, but with reference to "election time" and statement, "I'm going to remember this fall what politicians do this summer," found not to be express advocacy).

[7] Zimmerman and Maher, *Wall Street Journal*, Aug. 1, 2008, p. A1, *available at* http://online.wsj.com/article/SB121755649066303381.html.

[8] MUR 5919 Statement of Reasons of Chairman Robert D. Lenhard, Vice Chairman David M. Mason and Commissioners Hans A. von Spakovsky and Steven T. Walther, Sept. 27, 2007, *available at* http://eqs.nictusa.com/eqsdocs/00006560.pdf.

[9] In an article published the same day the complaint was filed in this matter, there is reference to a recording of a training presenter who purportedly indicated she would talk about the company,

IV. Keeping things in perspective

A. The supervisors are managerial personnel.

It is critical to place this training program in proper perspective. First, all of the hourly supervisors asked to attend the training sessions were classified as supervisors at Wal-Mart under applicable National Labor Relations Act (NLRA) rules.[10] Though paid on an hourly basis, these workers hold the title of "Supervisor" in their job description, and they regularly participate in the following managerial functions: hiring, promotions, transfers, coaching, evaluating, scheduling, and/or assigning work. As a matter of law, these persons would not be part of any bargaining unit if any union were to win certification at Wal-Mart. Thus, taking into account the careful balance Congress sought to achieve with the 1976 Federal Election Campaign Act ("FECA") Amendments between the political interests of employer management on one hand and labor organizations on the other, there is no sound *policy* reason to treat communications to Wal-Mart's hourly supervisors as a violation of law—even if such communications had crossed over into express advocacy.[11]

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unions, and "a little bit of politics." Maher and Zimmerman, *Wall Street Journal*, Aug. 14, 2008, p. A3, *available at* http://online.wsj.com/article/SB121867433681738991.html?mod=googlenews_wsj. Ostensibly, she went on to state: "If Democrats get the votes they need and elect a Democratic president, they said it will be the first bill presented and that's scary." Again, under the FEC's regulation and precedent, even addition of "that's scary" does *not* constitute express advocacy given the overall content of the training presentation being made to teach managers how to deal with EFCA questions that might arise in the workplace. Any 'hint' of who to vote for that is extrapolated from her "scary" reference should not be attributed to Wal-Mart, which had 'no politics' policies in place and instructions carefully prescribed to prevent any such message.

[10] For purposes of describing management employees, labor law does not exclude hourly workers. "Supervisors," those not subject to the reach of collective bargaining for "employees," are defined at 29 U.S.C. § 152(11) as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

[11] In 1975, the FEC issued a controversial advisory opinion allowing Sun Oil Company to solicit any and all employees for contributions to the company PAC. During legislative deliberations to reconstitute the FEC after *Buckley v. Valeo*, 424 U.S. 1 (1976), Congress clarified who could be solicited for PAC contributions *and* who could be sent "communications on any subject" (now codified at 2 U.S.C. § 441b(b)(4) and (2)(A)). This is laid out in *Legislative History of the*

B. Most of the hourly supervisors are stockholders.

Second, most of those in management receiving EFCA training were either salaried managers or stockholders of Wal-Mart—and thus were within the restricted class. Respondent calculates that only 15.3% of those receiving EFCA training would constitute hourly supervisors who were not stockholders. (Wal-Mart is aware of FEC guidance on when employee stockholders can be deemed stockholders for purposes of the solicitation and communication rules,[12] and the foregoing calculation applies that guidance.) Thus, even if Wal-Mart had funded messaging that was "express advocacy," it would have reached a relatively small percentage of supervisors technically outside the restricted class because they are compensated on an hourly basis. Further, because Wal-Mart provided explicit notice during the training sessions that it was *not* suggesting how anyone should vote, and promptly clarified this position in the immediate aftermath of the news story that precipitated the complaint, the FEC would be well-served to deem any perceived transgression fully cured and not worthy of punishment.[13]

Federal Election Campaign Act Amendments of 1976 (GPO) ("*Legislative History*"), pp. 350-355 (remarks of Sen. Cannon), pp. 907-910 (remarks of Reps. Hays and Moore), pp. 1082-1083 (remarks of Reps. Brademas and Rhodes). Those amendments cut back on the ability of corporations to solicit *all* employees, except when using 'twice yearly' procedures (*see* 2 U.S.C. § 441b(b)(4)), but imposed a reporting requirement (opposed by organized labor) for certain internal communications (now at 2 U.S.C. § 431(9)(B)(iii)). The 1976 legislative solution was referred to as an effort to achieve an "equitable balance between the rights of corporations and labor unions" (Rep. Brademas, *Legislative History*, p. 1083) and an effort "to take away some of the unfair tilt of the 1974 law toward organized labor," (Rep. Rhodes, *id.*). Although the solicitation/communication compromise reached in 1976 relied largely on a definition of "executive or administrative personnel" that excludes persons paid on an hourly basis (2 U.S.C. § 441b(b)(7)), the real distinction—best described by Rep. Brademas—was between "managerial employees" and other employees. *Id.*, p. 1082. *See also International Association of Machinists and Aerospace Workers v. FEC*, 678 F.2d 1092, 1100-03 (D.C. Cir. 1982) (en banc), *aff'd mem.*, 459 U.S. 983 (1982) (upholding solicitation rule, recounting legislative history, and equating executive or administrative personnel with "career," "leadership" or "upper echelon" personnel).

[12] *See* Advisory Opinion 1998-12 (Ashland Inc.) and opinions cited therein, *available* on FEC website at http://saos.nictusa.com/saos/searchao?SUBMIT=go&AO=691.

[13] Wal-Mart promptly informed the press and public that its training was not intended to endorse any candidate or party and that any trainer who inadvertently made any comment to the contrary was not authorized to do so. *See* n. 7, *supra*. An advisory was sent internally to Wal-Mart managers advising them of this important consideration. *See* Attachment 2.

C. Required training is normal and necessary.

Third, the Commission should not be led away from the central issue by insinuations of 'forced' training. The EFCA training was an educational effort to make sure management: (1) understood the proposed legislation; (2) understood how it might be generating some activity and communication among Wal-Mart associates; (3) learned the rules for what could and could not be communicated to associates asking questions; and (4) used only proper means to advise associates about the repercussions of signing an authorization card if EFCA were to become law. The complaint and much of the related media coverage inaccurately portray the training at issue as though it were somehow improper to require Wal-Mart supervisors to attend. It is a very standard practice in the business world (and in the world of government, for that matter) to require managers to take certain training to assure understanding of, and compliance with, applicable rules and to foster good working relationships with non-management employees. Wal-Mart itself has a long and impressive history of training its associates in human resources issues (e.g., work rules, pay systems, equal opportunity responsibilities, and new legal requirements).[14] Training managers in these areas insures that non-management workers are given accurate information when questions arise and gives such workers assurance that they will be dealt with in a professional, fair manner by knowledgeable supervisors. Thus, Wal-Mart should not be subjected to any prejudice simply because it has required managers (including hourly supervisors) to attend training sessions.

V. Conclusion

For the foregoing reasons, Wal-Mart respectfully submits that the Commission should find no reason to believe any violation occurred or, alternatively, simply dismiss the complaint herein. Wal-Mart has every right to communicate to all its employees its views about pending legislation believed to have serious negative consequences for the company, its associates, and its customers. The training program at issue was carefully planned and structured so that it would *not* contain express advocacy. The scant evidence of isolated 'ad libs' purportedly made by one or two presenters that went slightly beyond the scripted messaging should not be used as a basis for launching a time-consuming, resource-intensive investigation. Wal-Mart has widely issued

[14] Recent training for managers, for example, has covered diversity in the workplace, the Family and Medical Leave Act, the Health Insurance and Portability and Accountability Act, conducting performance reviews, Equal Employment Opportunity rules, and leadership training. Indeed, over 80 different training sessions have been offered to various Wal-Mart manager groups over the last 24 months, and most of these included some hourly managerial personnel.

clarifying statements that it does *not* endorse any candidates or any party and has redoubled its efforts to assure that none of its future training sessions will make any references that even remotely could be perceived as political advocacy. That is where this should end.

Sincerely,

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