



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FIRST CLASS MAIL

Joseph D. Thornton, Esq.
Smith Peterson Law Firm LLP
35 Main Place, Suite 300
P.O. Box 249
Council Bluffs, Iowa 51502

JUL 29 2009

RE: MUR 6136
Steve Scheffler
Iowa Christian Alliance

Dear Mr. Thornton:

On December 2, 2008, the Federal Election Commission (the "Commission") notified your clients, the Iowa Christian Alliance (the "ICA") and Steve Scheffler (collectively the "Respondents"), of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint and information provided by your clients, the Commission, on July 15, 2009, voted to dismiss the allegation relating to the e-mail newsletter issued by the ICA on September 12, 2008. On July 15, 2009, the Commission also found there is no reason to believe that the ICA violated 2 U.S.C. § 441d in connection with the e-mail newsletter issued by the ICA on September 12, 2008. Further, the Commission found there is no reason to believe that the Respondents violated the Act in connection with an e-mail invitation, dated September 14, 2008. Accordingly, on July 15, 2009, the Commission closed the file in this matter. The Factual and Legal Analysis explaining the Commission's decision is enclosed.

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).

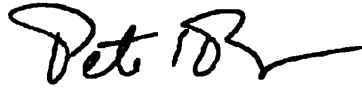
The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

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Joseph D. Thornton, Esq.
MUR 6136
Page 2 of 2

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

Sincerely,

A handwritten signature in black ink, appearing to read "Pet Bl", with a long horizontal flourish extending to the right.

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: The Iowa Christian Alliance
 Stephen Scheffler

MUR 6136

I. FACTUAL BACKGROUND

This matter arises out of a complaint alleging that Steve Scheffler, the President of the Iowa Christian Alliance, and the Iowa Christian Alliance ("the ICA") violated campaign finance laws by endorsing Senator John McCain for president and U.S. Senate candidate Christopher Reed in the 2008 general election.

The ICA is registered as a non-profit corporation with the Iowa Secretary of State's Office.¹ http://www.sos.state.ia.us/Search/corp/corp_summary.
http://www.sos.state.ia.us/Search/corp/corp_summary It is not registered with the Commission as a political committee. Steve Scheffler is the current president of the ICA and also a member of the organization's Board of Directors.
<http://www.iowachristian.com/contacts>. The available information indicates that the ICA retains a state lobbyist, Norman Pawlewski. *Id.* According to the Iowa Legislature, Mr. Pawlewski is registered to lobby exclusively with Iowa's House of Representatives and Senate. <http://www.coolice.legis.state.ia.us>. Mr. Pawlewski is not an officer or member of the ICA's Board of Directors. <http://www.iowachristian.com/contacts>. According to its website, the ICA, which is not affiliated with any political party, provides visitors with regular updates regarding the Iowa state legislature, guest columns, links to news articles

¹ The ICA is registered as a non-profit corporation pursuant to Chapter 504, the Revised Iowa NonProfit Corporation Act. Corporations may organize under this chapter for any lawful purpose not for pecuniary profit.

on a variety of subjects, political party platform information, generic voter information, as well as talking points on issues such as abortion, the economy, education, gambling, and security. <http://www.iowachristian.com>.

The ICA website has available for download copies of its voter guides for the 2008 Presidential Caucuses as well as general election voter guides for state and federal races, including the 2008 presidential race.² <http://www.iowachristian.com>. The website also includes a statement that the ICA is prohibited as a non-profit organization from endorsing federal candidates, including any candidates in the 2008 presidential election. <http://www.iowachristian.com/news/html>. This statement also indicates that the ICA Board of Directors voted to prohibit the ICA's officers from endorsing candidates, but the remaining members of the ICA's Board of Directors were allowed to endorse candidates personally and not on behalf of the organization. *Id.*

The complaint generally alleges that the ICA and Mr. Scheffler violated the Federal Election Campaign Act of 1971, as amended ("the Act") by endorsing presidential candidate John McCain and U.S. Senate candidate Christopher Reed in the 2008 general election. In support of her allegations, the complainant provided three documents: a copy of an ICA e-mail newsletter ("e-newsletter"), dated September 12, 2008; the ICA's statement regarding its policy on endorsements; and a copy of an e-mail invitation to a fundraising event benefiting U.S. Senate candidate Christopher Reed. While the ICA statement is publicly available through the ICA

² The website includes a statement by the ICA's counsel stating that the organization's 2008 Presidential Voter Guide complied with 11 C.F.R. § 114.4(e)(5). Briefly, this statement indicates that the ICA did not prepare or distribute its voter guide in concert with any candidate or political committee and no portion of the voter guide expressly advocated the election or defeat of one or more clearly identified candidate. <http://www.iowachristian.com>.

website, it is unclear how the complainant obtained copies of the other two documents as she does not appear to be listed as an original recipient of either e-mail.

The e-newsletter, which was apparently issued to members of the ICA Email Network, contains an article/guest editorial by Mr. Pawlewski and a second section informing readers that the ICA voter guides were available for immediate order. In his article, entitled "Why Do the Heathen Rage," Mr. Pawlewski outlines his reasons for supporting the McCain-Palin ticket and states that he "can now, with confidence, vote for McCain-Palin" and "will do whatever I can to see the McCain-Palin ticket in the victory lane this November." Mr. Pawlewski also criticizes presidential candidate Barack Obama, stating that "he had no resume worthy of the presidency of this great nation." The article concludes with a WALL STREET JOURNAL article discussing Governor Palin's experience as Alaska's chief executive.

The complaint also includes an e-mail invitation, dated September 14, 2008, to a reception and fundraiser in support of U.S. Senate candidate Christopher Reed. The invitation was sent by Iowa Right to Life President Kim Lehman. According to the invitation, the event was co-hosted by Mr. Scheffler, Ms. Lehman and Iowa Right to Life Federal PAC. Mr. Scheffler's association with the ICA is not mentioned in the solicitation. The ICA is not listed anywhere on the invitation as a host, sponsor, or guest.

The respondents deny that they violated the Act and note that the complaint does not detail which sections of the Act they are supposed to have violated. According to the response, the guest editorial carried in the September 12th e-newsletter was intended only to set out Mr. Pawlewski's personal opinions. The respondents contend that the ICA did not have anything to do with issuing the invitation to the Reed fundraiser and asserts that

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the complainant does not present any evidence that the organization had any involvement with the event. The response also notes that Mr. Scheffler was involved in the fundraiser in his personal capacity and not as president of the ICA. According to the response, Mr. Scheffler's lending his name to the invitation was not in violation of "the Board's policy" regarding endorsing candidates for public office, but even if it was, it is an internal matter and not a violation of the Act.

II. LEGAL ANALYSIS

The complaint does not specify which sections of the Act the respondents violated; however, the complaint does allege that the respondent nonprofit corporation and its president violated the Act by endorsing the election of Presidential candidate John McCain via an ICA-sponsored e-newsletter.

The Act prohibits any corporation, including nonprofit corporations such as ICA, from making contributions or expenditures from its general treasury funds in connection with any election for federal office.³ 2 U.S.C. § 441b(a). In addition, any officer or director of any corporation is prohibited from consenting to such contributions or expenditures. *Id.* This prohibition includes making independent expenditures, which are expenditures that expressly advocating the election or defeat of a clearly identified candidate and that are "not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their

³ For purposes of Section 441b, a "contribution" includes "any direct or indirect payment, distribution, loan, advance, deposit, gift of money, or any services, or anything of value" made to a candidate, including all in-kind contributions. 2 U.S.C. § 441b(b)(2) and 11 C.F.R. § 114.1(a)(1). The term "expenditure" is defined to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing an election for Federal office." See 2 U.S.C. § 431(9)(A)(i).

agents, or a political party committee or its agents.”⁴ 2 U.S.C. § 431(17)(A), (B); 11 C.F.R. § 100.16.

However, the general prohibition against corporate contributions and expenditures contains an exception that permits a corporation, including an incorporated membership organization, to endorse a federal candidate and “communicate the endorsement to its restricted class...provided that no more than a *de minimis* number of copies of the publication which includes the endorsement are circulated beyond the restricted class.” 11 C.F.R. § 114.4(c)(6). A corporation’s restricted class includes its stockholders, executive or administrative personnel, and their families. 11 C.F.R. § 114.1(j). In the case of an incorporated membership organization, its restricted class includes its members and executive or administrative personnel, and their families.⁵ *Id.* Moreover, Commission regulations allow a corporation to publicly announce an endorsement of a federal candidate so long as disbursements associated with the publication of the endorsement are *de minimis*. 11 C.F.R. § 114.4(c)(6)(i).

We have no information regarding what costs, if any, the ICA incurred in putting together and issuing the e-newsletter, but it is likely they were *de minimis*. As the Commission noted in its *Explanation and Justification* relating to Internet Communications, “there is virtually no cost associated with sending e-mail communications, even thousands of e-mails to thousands of recipients...” See 71 Fed. Reg. 18589, 18596 (April 12, 2006). Notwithstanding the respondent’s reference to the

⁴ Independent expenditures made by persons, other than political committees, in an aggregate amount or value in excess of \$250 during a calendar year must be reported to the Commission. See 2 U.S.C. §§ 431(17) and 434(c). A person who makes an independent expenditure aggregating \$10,000 or more at any time up to the twentieth day before the date of an election is required to file a report describing the expenditure with the Commission within 48 hours. 2 U.S.C. § 434(g)(2)(A); 11 C.F.R. § 109.10(c).

⁵ We lack sufficient information to determine whether the ICA qualifies as an incorporated membership organization.

ICA's position on endorsing candidates, assuming that the ICA's inclusion of the article in question in an e-newsletter served as an endorsement of McCain, the costs associated with it may be excepted from the definition of expenditure if the newsletter's distribution was limited to the organization's restricted class and to a *de minimis* number beyond the restricted class. However, it is impossible to conclude based on the available information whether the ICA sent its e-newsletters only to members of its restricted class or whether recipients included more than a *de minimis* number of members of the general public. The e-newsletter itself indicates only that it was sent to the "ICA Email Network."⁶

In view of the insufficiency of the information and the *de minimis* amount involved, the Commission dismissed the allegation that the ICA and Steven Scheffler violated the Act with respect to the e-newsletter, dated September 12, 2008. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

Whenever a person makes a disbursement for the purpose of financing a "public communication" that expressly advocates the election or defeat of a clearly identified candidate or solicits contributions, such communication must clearly state the name and identifying information of the person who paid for it. 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(a). A public communication includes any broadcast, cable or satellite communication, telephone bank, mass mailing, or general public political advertising. 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. A public communication does not include communications over the Internet, except for communications placed for a fee on another person's Website. 11 C.F.R. § 100.26.

⁶ We do not know who was part of the "ICA Email Network." It does not appear that the general public is able to access the ICA's e-newsletter or sign up to receive the e-newsletter on its publicly accessible website.

In this matter the ICA's newsletter did not require a disclaimer because it was communicated via e-mail, which is not a public communication. 11 C.F.R. § 100.26. Accordingly, the Commission finds no reason to believe that the ICA violated 2 U.S.C. § 441d.

The complaint also alleges that the respondents violated the Act by advocating the election of U.S. Senate candidate Christopher Reed in connection with a fundraising event for the candidate. There is no information to suggest that Steve Scheffler's co-hosting a fundraiser in support of U.S. Senate candidate Christopher Reed constituted a violation of the Act by him or the ICA. It is clear from the face of the invitation that Mr. Scheffler was involved in the event as an individual and not as the ICA's president or a member of its Board of Directors. The ICA's name does not appear anywhere on the invitation, and the complainant presents no evidence that the organization was otherwise involved in the event. Because there is no information demonstrating that Mr. Scheffler or the ICA violated any provision of the Act in connection with this fundraising event, the Commission finds no reason to believe that Steve Scheffler or the ICA violated the Act in connection with the September 14, 2008, fundraising event.

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