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VIA HAND DELIVERY

May 11, 2010

Kim Collins
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 6263

Dear Ms. Collins:

We write as counsel to The Committee to Re-Elect Artur Davis to Congress and Byron Perkins, Treasurer (collectively, the "Federal Committee"), in response to a complaint filed by Rev. Frederick Jackson Zylman, III on March 17, 2010 (the "Complaint"). The Complaint asserts that the Federal Committee violated 2 U.S.C. § 439a(a)(5) by making donations to Congressman Davis's gubernatorial campaign (the "State Committee") which allegedly violated Alabama state law.

The Commission has already decided that § 439a(a)(5), which allows federal campaigns to make "donations to State and local candidates subject to the provisions of State law," does not incorporate state laws into the Federal Election Campaign Act of 1971, as amended (the "Act"). The statute's reference to "State law" means only that the Act does not preempt state contribution limits to state candidates. *See* Factual and Legal Analysis, MUR 5826 (Mark Green) (April 13, 2007). The Complaint's erroneous interpretation would require the Commission to interpret and enforce all 50 states' campaign finance laws. Even if the Complaint presented any violation of Alabama law, it would still state no violation of federal law. Accordingly, the Commission should find no reason to believe that the Federal Committee violated the Act, and it should dismiss this matter immediately.

A. Factual Background and Legal Analysis

1. *The Federal Committee Did Not Violate 2 U.S.C. § 439a(a)(5).*

Representative Artur Davis currently serves Alabama's 7th Congressional District in the U.S. House of Representatives. The Federal Committee is Rep. Davis's principal campaign committee. Rep. Davis is also currently running for Governor of Alabama.

In relevant part, § 439a provides as follows:

> (a) *Permitted uses.* A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual—
>
> ...
>
> (5) for donations to State and local candidates subject to the provisions of State law ... .

2 U.S.C. § 439a(a)(5). The Commission's regulations closely mirror this provision of the Act. *See* 11 C.F.R. § 113.2(d) ("In addition to defraying expenses in connection with a campaign for federal office, funds in a campaign account or an account described in 11 CFR 113.3: ... (d) May be donated to State and local candidates subject to the provisions of State law ... .").

The Complaint alleges no independent violation of the Act. Rather it alleges that the Federal Committee provided funds to the State Committee in violation of *Alabama* law, and hence violated § 439a(a)(5). It alleges, *inter alia*, that Alabama law required the State Committee to register with the state at an earlier date, to report additional contributions to the state, and to only accept donations from the Federal Committee at certain times. Respondents reject these allegations; Rep. Davis and his respective campaigns complied at all times with applicable law.

But, as the Commission has already held, the Complaint's allegations present no violation of *federal law*. Section 439a(a)(5)'s reference to the "provisions of State law" was not intended to create a super-federal statute incorporating the laws of all fifty states. Rather, it simply affirms that the states retain the authority to regulate the financing of their own non-federal elections.

The Commission addressed almost identical allegations in MUR 5826, using reasoning that applies equally here. In that instance, a complaint alleged that Representative Mark Green made a donation from his federal principal campaign committee to his Wisconsin gubernatorial campaign committee in violation of Wisconsin law, and therefore, violated 2 U.S.C. § 439a(a)(5). *See* Factual and Legal Analysis, MUR 5826 (April 13, 2007). A unanimous

Commission found no reason to believe there was a violation of the Act because, "a violation of state law does not create a violation of Section 439a(a)(5)." *Id.* at 3.[1]

To adopt the Complaint's reading of § 439a(a)(5) would not only require reversal of a unanimously held Commission position. It would also require the Commission to begin interpreting state campaign finance laws across the country. A complainant need not present his allegations to the responsible state enforcement agency; he could go to the Commission instead, in hope of a better result. He could go to both, sowing the potential for an inconsistent result. But as the Commission said long ago, "state laws concerning the manner of qualification of candidates ... are interests of the states and not covered in the act." FEC Regulations, *Explanation and Justification*, House Document No. 95-44 at 51 (1977). The Complaint presents no violation of § 439a(a)(5).

Nor does the Complaint present any other violation of any other "statute or regulation over which the Commission has jurisdiction ... ." 11 C.F.R. § 111.4(d)(3). While the Complaint references a May 19, 2009 letter from the Commission to the Federal Committee regarding its fundraising after Rep. Davis had evidenced interest in running for governor, it also notes the Federal Committee's response: that Rep. Davis remained a federal candidate until April 17, 2009, when he formally became a candidate for governor. *See* Form 99 (June 19, 2009). The Complaint presents no evidence that Rep. Davis had earlier terminated his federal candidacy, whether by announcing he would no longer run for Congress, or by missing the filing deadline for Congress. *See, e.g.*, 11 C.F.R. 110.3(c)(4). Hence, the Complaint presents no facts to support any allegation of any untimely fundraising or refunds, or any other purported "Misuse of Federal Campaign Funds." Complaint at 6.

[1] The Factual and Legal Analysis in MUR 5826 spells out three reasons why the Complaint's interpretation of § 439a(a)(5) is incorrect. Factual and Legal Analysis, MUR 5826, at 3. The first is that "Section 439a(a)(5) is permissive, particularly when compared to the prohibitions contained in Section 439a(b) and the qualified campaign expense provisions of 11 C.F.R. § 9002.11(a)." *Id.* Second is that the "'subject to ... State law' clause serves merely to advise a transferor that state law is not preempted with respect to federal-to-state transfers"; it was "not [included] to make state law a subject of enforcement for the Commission." *Id.* at 3, 8. Third is that "states are uniquely situated to address violations of their own laws and can adequately do so here." *Id.* at 3. "[T]he Commission does not believe it should expend its resources to investigate alleged violations of state law." Factual and Legal Analysis, MUR 5826 at 8.

B. Conclusion

Accordingly, the Commission should find no reason to believe that Respondents violated the Act and should dismiss this matter immediately.

Very truly yours,

Brian G. Svoboda
Graham M. Wilson
Counsel to Respondents

Enclosures