



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MUR 6520  
National Association of Realtors, *et al.* )

**STATEMENT OF REASONS OF  
CHAIRMAN LEE E. GOODMAN**

The Complaint in this matter alleges that the National Association of Realtors ("NAR"), the Massachusetts Association of Realtors, and the Berkshire Board of Realtors (collectively "the Respondents") violated the Federal Election Campaign Act of 1971, as amended ("the Act") by conditioning membership in the NAR and thus access to a professional tool, the Multiple Listing Service, upon paying dues to an organization that intended to make independent expenditures.<sup>1</sup> In essence, the Complaint alleged that the organization's expenditure of membership dues to fund independent expenditures constitutes unlawful coercion, as defined by the Act, of dues paying members who pay membership dues because they deem membership in the organization and access to membership benefits to be financially advantageous. The Commission "exercise[d] its prosecutorial discretion to dismiss this matter" based on "the specific conduct alleged here, including the payment of standard dues to a voluntary membership organization in exchange for services that the member perceives as a benefit to her business."<sup>2</sup> I write separately to observe that a voluntary professional association's expenditure of treasury funds, derived from membership dues, to fund independent expenditures does not constitute "coercion" or "financial reprisal" of individual members under the Act.

The Act and Commission regulations prohibit coercion of two types of contributions in connection with federal elections. First, the Act prohibits a separate segregated fund from "mak[ing] a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal."<sup>3</sup> Second, Commission regulations prohibit a corporation from facilitating a contribution by means of "coercion, such as the threat of a detrimental job action, the threat of

<sup>1</sup> MUR 6520 (National Association of Realtors, *et al.*), Complaint. A fuller version of the facts of this matter is set forth in the Factual & Legal Analysis at Section II and is incorporated herein by reference.

<sup>2</sup> MUR 6520 (NAR), Factual & Legal Analysis at 6.

<sup>3</sup> 2 U.S.C. § 441b(b)(3)(A); *see also* 11 C.F.R. § 114.5(a).

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any other financial reprisal, or the threat of force, to urge any individual to *make a contribution or engage in fundraising activities on behalf of a candidate or political committee.*<sup>4</sup> Neither of those prohibitions applies to an individual's voluntary choice to join a professional association or to the association's decision to spend its membership dues revenues on political expenditures.

First, the Respondents allegedly intend to fund independent expenditures either directly from NAR's treasury or through the Congressional Fund, an FEC registered independent-expenditure only committee ("IEOPC"). Although established by NAR, the Congressional Fund is not an SSF.<sup>5</sup> Consequently, the Act's prohibition against coerced contributions to SSFs does not apply to the conduct alleged in the Complaint.

Second, Commission regulations prohibiting organizations like NAR from "facilitating" individual contributions to candidates and political committees through the use of coercive practices do not prohibit NAR from requiring membership dues payments to NAR and spending its dues revenues on political expenditures. In *Citizens United v. FEC*,<sup>6</sup> the Supreme Court held that corporations may make unlimited independent expenditures using corporate treasury funds. Although the Act prohibits corporations from making contributions in connection with any federal election,<sup>7</sup> the decision in *Citizens United* opened the way for corporations to make contributions to IEOPCs.<sup>8</sup> NAR, an incorporated membership organization, therefore may permissibly use its general treasury funds, raised through mandatory membership dues, to finance — directly or through an IEOPC like the Congressional Fund — independent expenditures intended to influence a federal election.

For the forgoing reasons, conditioning membership and related financial and professional benefits of membership upon the payment of dues to a professional association that makes independent political expenditures from its dues revenues is not a violation of the Act.

<sup>4</sup> 11 C.F.R. § 114.2(f)(2)(iv) (emphasis added).

<sup>5</sup> See Advisory Op. 2012-18 at 2 (Nat'l Right to Life Comm.) (concluding that a corporation's payments for the establishment, administration, and solicitation of an IEOPC were not exempt from the definition of a contribution or expenditure because "an [IEOPC] is not an SSF"); Advisory Op. 2010-09 at 5 (Club for Growth) (same).

<sup>6</sup> 558 U.S. 310 (2010).

<sup>7</sup> See 2 U.S.C. § 441b(a).

<sup>8</sup> See *SpeechNow.org v. FEC*, 599 F.3d 686, 692-96 (D.C. Cir. 2010) (en banc); see also Advisory Op. 2010-11 (Commonsense Ten) (permitting an IEOPC to solicit and accept unlimited contributions from corporations); MUR 6344 (United Public Workers, *et al.*), Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn II and Matthew S. Petersen at 2 (the Commission's coercion regulations "do not apply to [a corporation or labor organization's] independent campaign efforts").

