



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR s 6051 and 6052
Wal-Mart Stores, Inc.)

**STATEMENT OF REASONS OF
COMMISSIONERS CYNTHIA L. BAUERLY & ELLEN L. WEINTRAUB**

In August 2008, the Federal Election Commission received two complaints containing what we believe are very serious charges regarding alleged political coercion by Wal-Mart Stores, Inc. of its employees. Specifically, the complaints alleged that Wal-Mart conducted mandatory meetings with its store managers and supervisors at which the corporation expressed opposition to the pending Employee Free Choice Act and stated that voting for then-Senator Obama and other Democrats would result in its passage. Under the Act, communications to employees outside of a corporation's restricted class are prohibited under 2 U.S.C. § 441b(a) if such communications expressly advocate the election or defeat of a clearly elected federal candidate or the candidates of a clearly identified political party.

The information contained in the complaints came primarily from a very detailed Wall Street Journal article that ran on August 1, 2008. The article contained several troubling quotes from Wal-Mart employees, including a statement that "[t]he Wal-Mart human resources managers who run the meetings don't specifically tell attendees how to vote in November's election, but make it clear that voting for Democratic presidential hopeful Sen. Barack Obama would be tantamount to inviting the unions in" and "[t]he meeting leader said, 'I am not telling you how to vote, but if the Democrats win, this bill won't pass and you won't have a vote on whether you want a union'...I'm not a stupid person. They were telling me how to vote."¹

¹ Ann Zimmerman and Kris Maher, *Wal-Mart warns of Democratic Win*. Wall Street Journal, August 1, 2008.

29044234777

In its response to the complaint, Wal-Mart provided copies of the guide that was provided by Wal-Mart management to presenters for use during the mandatory meetings. After reviewing these printed materials, the Office of General Counsel recommended that the Commission find no reason to believe a violation occurred.

We agree that the printed materials themselves do not contain express advocacy. Wal-Mart's response, however, also acknowledged that some presenters may have made comments during the presentations that went beyond the scripted materials. The statements contained in the Wall Street Journal article coupled with the company's admission that what some managers said at the meetings may have differed from the materials contained in the guide, raised sufficient questions to warrant further inquiry.

These facts prevented us from supporting the recommendation to find no reason to believe a violation of the Act occurred.² Accordingly, Commissioner Bauerly moved to find reason to believe Wal-Mart Stores, Inc. violated 2 U.S.C. § 441b(a) and 11 CFR § 114.2(b) in order to authorize a limited investigation into whether the scripts and printed materials reflected the discussions at the meetings, which Wal-Mart was unable confirm. Chairman Walther and Commissioner Weintraub supported the motion, but without a fourth vote, the motion failed 3-3. The Commission then voted to close the file.³

We take allegations of coercion very seriously. There was not enough information at this stage of the proceeding conclusively to determine that Wal-Mart either did or did not attempt to coerce its employees into voting against Democratic candidates in the November 2008 election. That is why we voted to find reason to believe a violation occurred, in order to authorize a limited investigation so that we could determine the facts.⁴ What we did not have was sufficient information to find *no* reason to believe a violation occurred, given the public statements of the employees and corporation's response.

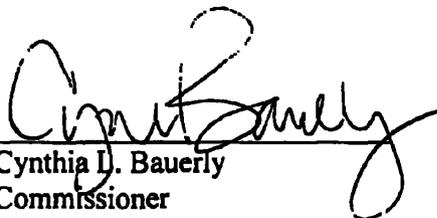
² See Certification in MUR 6051 and MUR 6052, dated April 15, 2009.

³ Chairman Walther and Commissioners Bauerly and Weintraub voted to find reason to believe Wal-Mart violated the Act; Vice-Chairman Petersen and Commissioners Hunter and McGahn voted against the motion.

⁴ The Federal Election Campaign Act of 1971, as amended ("the Act") requires that the Commission find "reason to believe that a person has committed, or is about to commit, a violation" of the Act as a predicate to opening an investigation into the alleged violation. 2 U.S.C. § 437g(a)(2). "Reason to believe" is a threshold determination that by itself does not establish that the law has been violated. In fact, "reason to believe" determinations indicate only that the Commission found sufficient legal justification to open an investigation to determine whether there is probable cause that a violation of the Act has occurred. See 2 U.S.C. § 437g(a)(3), (4).

29044234778

5/11/2009
Date


Cynthia J. Bauerly
Commissioner

5/11/2009
Date


Ellen L. Weintraub
Commissioner

29044234779