



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEB 20 2004

Vona L. Copp, Treasurer
Rescue California . . . Recall Gray Davis
921 11th Street, Suite 1200
Sacramento, CA 95814

RE: MUR 5367
Rescue California . . . Recall Gray Davis and
Vona Copp, as Treasurer

Dear Ms. Copp:

On August 17, 2003, the Federal Election Commission notified Rescue California . . . Recall Gray Davis and you, as Treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and information provided by other parties, the Commission, on February 3, 2004, found that there is reason to believe Rescue California . . . Recall Gray Davis and you, as treasurer, violated 2 U.S.C. § 441i(e)(1)(B), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause

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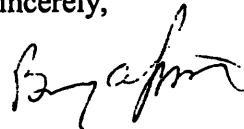
conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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

Sincerely,



Bradley A. Smith
Chairman

Enclosures
Designation of Counsel Form
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Rescue California . . . Recall Gray Davis and **MUR 5367**
 Vona L. Copp, as Treasurer

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Raquelle de la Rocha. *See* 2 U.S.C. § 437g(a)(1).

II. BACKGROUND

Complainant alleges that Darrell Issa, a U.S. Representative from California's 49th Congressional District, violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by "soliciting nearly half a million dollars in 'soft money' corporate contributions" on behalf of Rescue California . . . Recall Gray Davis ("Rescue California"). Rescue California, an unincorporated state ballot measure committee organized under section 527 of the Internal Revenue Code, fought to remove former California Governor Gray Davis from office through a recall process set forth in the California Constitution. Complainant alleges that in addition to soliciting non-Federal funds (i.e., funds not subject to the Act's limitations and prohibitions) on behalf of that committee, he caused a significant amount of prohibited corporate funds to be donated to it from Greene Properties, Inc., a corporation he owns with his wife.

Though complainant's allegations focus on Rep. Issa, the complaint raises questions as to whether Rescue California violated the Act's prohibition on entities established, financed, maintained, or controlled by Federal officeholders receiving non-Federal funds.

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III. FACTUAL AND LEGAL ANALYSIS

The Act, as amended by the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. 107-155, 116 Stat. 81 (March 27, 2002), provides, in pertinent part, that effective November 6, 2002, Federal officeholders *and entities established, financed, maintained, or controlled by Federal officeholders* may not solicit, receive, direct, transfer, spend, or disburse non-Federal funds “in connection with any election other than an election for Federal office,” unless such funds are subject to the Act’s contribution limits and prohibitions. 2 U.S.C. § 441i(e)(1)(B) (emphasis added). The recall election was such an election. Moreover, the available information indicates that Rescue California was established, financed, maintained, or controlled by Rep. Issa. Thus, Rescue California appears to have violated the Act by receiving non-Federal funds. 2 U.S.C. § 441i(e)(1)(B).

A. The Recall Election was an “Election Other than an Election for Federal Office.”

In Advisory Opinion 2003-12 (Flake), the Commission found that section 441i(e)(1)(B) applied not only to fundraising activities in connection with elections for state or local *office*, but also to ballot measure elections, like the California recall election. Rescue California is a state ballot measure committee that raised funds in connection with a state ballot measure election. Thus, like the committee at issue in Flake, Rescue California’s activities were in connection with “an election other than an election for Federal office.”

The requester in AO 2003-12 was U.S. Representative Jeff Flake, the chairman and founder of Stop Taxpayer Money for Politicians (“STMP”), an organization seeking to qualify an Arizona ballot measure repealing portions of that State’s campaign finance statute. *Id.* at 1. Rep. Flake asked the Commission, *inter alia*, whether STMP’s activities were “in connection with an

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election” within the meaning of section 441i(e)(1)(B). *Id.* at 4. The Commission answered that STMP’s activities were “in connection with any election other than an election for Federal office” pursuant to section 441i(e)(1)(B). *Id.* at 6. In reaching this conclusion, the Commission compared the term “any election other than an election for Federal Office” in section 441i(e)(1)(B) with language in section 441i(e)(1)(A) applying to activity “in connection with an election for Federal office,” and section 441b(a) which applies to elections “to any political office.” *Id.* Finding that Congress intended to set section 441i(e)(1)(B) apart from these more narrow provisions, the Commission advised the requester that section 441i(e)(1)(B) is “not limited to elections for a political office.” *Id.*

The Commission further found that,

[A]ll activities of a ballot measure committee “established, financed, maintained, or controlled” by a Federal candidate [or officeholder] are “in connection with any election other than an election for Federal office.” This includes activity in the signature-gathering and ballot qualification stage, as well as activity to win passage of the measure after it qualifies for the ballot. On the other hand, the Commission concludes that the activities of a ballot measure committee that is not “established, financed, maintained, or controlled” by a Federal [officeholder] are not “in connection with any election other than an election for Federal office” prior to the committee qualifying an initiative or ballot measure for the ballot, but are “in connection with any election other than an election for Federal office” after the committee qualifies an initiative or ballot measure for the ballot.

AO 2003-12 at 6. Consequently, if Rescue California was established, financed, maintained, or controlled by Rep. Issa, all of its activity, not just that after the recall qualified for the ballot, would be “in connection with an election other than an election for Federal office” and the committee would itself be subject to section 441i(e).

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B. Rescue California was Established, Financed, Maintained, or Controlled by Rep. Issa.

Because Rep. Issa provided Rescue California with seed money and needed capital throughout the ballot qualification period, and continued to fund the committee even after the recall measure qualified for the ballot, the available information indicates that he established, financed, and maintained Rescue California. To determine whether a Federal officeholder directly or indirectly established, financed, maintained, or controlled another entity and is therefore a “sponsor” of that entity, the Commission examines a variety of factors, set forth at 11 C.F.R. § 300.2(c)(2)(i) through (x). The Commission examines these non-exclusive factors “in the context of the overall relationship between the sponsor and the entity to determine whether the presence of any factor or factors is evidence that the sponsor directly or indirectly established, finances, maintains or controls the entity.” 11 C.F.R. § 300.2(c)(2).

Applied to the current situation, the available information indicates:

- Rep. Issa had an active and significant role in the formation of Rescue California. 11 C.F.R. § 300.2(c)(2)(ix);
- Rep. Issa provided funds in a significant amount to Rescue California. 11 C.F.R. § 300.2(c)(2)(vii); and
- Rep. Issa caused and arranged funds in a significant amount to be provided to Rescue California on an ongoing basis. 11 C.F.R. § 300.2(c)(2)(viii).

1. Rep. Issa had an active role in Rescue California’s formation.

Rep. Issa provided Rescue California with “seed money.” 11 C.F.R. 300.2(c)(2)(ix). On May 8, 2003, Issa’s company, Greene Properties, provided the first donation reported by Rescue California in the amount of \$100,000. Greene Properties apparently donated these funds before Rescue California had even filed its May 12, 2003 Statement of Organization with the California

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Secretary of State. Rescue California used this donation to finance the newly formed committee's activities. As such, Rep. Issa played an essential role in Rescue California's formation – its financing.

2. Rep. Issa donated or caused to be donated funds in a significant amount to Rescue California.

In his August 7, 2003 speech withdrawing from the race, Rep. Issa stated, "I will continue with my wife's support to fund the effort to recall Gray Davis" Rene Sanchez and Kimberly Edds, *Calif. Gubernatorial Race Shapes Up*, Washington Post, August 7, 2003.

Reports filed with the California Secretary of State demonstrate the extent of Rep. Issa's financial involvement. Since May 8, 2003, Rep. Issa has donated or caused to be donated \$1,845,000, a facially significant amount, to Rescue California both through Greene Properties and in his own name. *See* 11 C.F.R. § 300.2(c)(2)(vii). The following chart shows donations to Rescue California by Greene Properties, presumably caused to be donated by Rep. Issa:

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DATE	AMOUNT	DESCRIPTION
May 8, 2003	\$100,000	Direct donation.
May 19, 2003	\$100,000	Payment from Greene Properties to Bader & Associates on behalf of Rescue California for "Petition Circulation" costs.
May 23, 2003	\$245,000	Direct donation.
May 30, 2003	\$200,000	Direct donation.
June 5, 2003	\$155,000	Direct donation.
June 10, 2003	\$200,000	Direct donation.
June 13, 2003	\$150,000	Direct donation.
June 20, 2003	\$130,000	Direct donation.
June 24, 2003	\$250,000	Payment from Greene Properties to Bader & Associates on behalf of Rescue California for "Petition Circulation" costs.
July 2, 2003	\$180,000	Direct donation.
August 4, 2003	\$50,000	Direct donation.
TOTAL:	\$ 1,760,000	

As the chart demonstrates, Greene Properties donated \$1.76 million to Rescue California.¹ Rep. Issa also donated \$85,000 to Rescue California in his own name. Thus, Rep. Issa has caused significant payments to be made to Rescue California. In addition, these funds were donated regularly – indeed, almost weekly during the first two months of the crucial signature gathering period – indicating that the donations were made on an “ongoing basis.” In total, more than 60% of Rescue California’s \$3,053,772 in total reported receipts came from Greene Properties or Rep. Issa. These facts strongly indicate that in addition to financing Rescue California, Issa “maintained” that committee. 2 U.S.C. § 441i(e)(1)(B); 11 C.F.R. §§ 300.2(c)(2)(vii)-(viii).

¹ Though several of these donations were reported as loans, the available information provides no indication that any party intended for the loans to be repaid

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Rep. Issa donated a “significant amount” to rescue California. 11 C.F.R.

§ 300.2(c)(2)(vii)-(viii). His role in providing Rescue California with its seed money, infusing the committee with needed cash throughout the ballot qualification period, and continuing to fund the committee even after the recall measure qualified for the ballot, indicates that he established, financed, and maintained Rescue California.

C. Rescue California Appears to Have Violated 2 U.S.C. § 441i(e)(1)(B).

Section 441i(e)(1)(B) prohibits entities “established, financed, maintained, or controlled” by Federal officeholders from soliciting, receiving, directing, transferring, spending, or disbursing non-Federal funds in connection with any election other than an election for Federal office. 2 U.S.C. § 441i(e)(1)(B). As a consequence, an entity established, financed, maintained, or controlled by a Federal officeholder, like Rescue California, cannot receive funds from sources otherwise prohibited from making contributions in connection with elections for Federal office. *See* 2 U.S.C. § 441i(e)(1)(B). Under section 441b(a), corporations are prohibited from making contributions in connection with elections for Federal office. Thus, Rescue California was prohibited from receiving corporate donations. However, disclosure forms filed with the California Secretary of State reveal \$1,894,200 in corporate donations to Rescue California.

Section 441i(e)(1)(B) similarly prohibits Rescue California from receiving funds in excess of the Act’s contribution limits for Federal elections. *See also* 2 U.S.C. § 441a(a). The Act permits individuals and multicandidate political committees to contribute up to \$5,000 per year to “any other political committee.” 2 U.S.C. §§ 441a(a)(1)(C), (2)(C). Thus, Rescue California was prohibited from receiving donations from permissible sources in excess of that amount. However, forms filed with the California Secretary of State reveal that Rescue

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California received approximately \$447,786 in donations in excess of the Act's limits from individuals and multicandidate committees.

Based on the foregoing, there is reason to believe Rescue California violated 2 U.S.C. § 441i(e)(1)(B).

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