



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MUR 6459  
Iowa Faith and Freedom Coalition, *et al.* )

**STATEMENT OF REASONS**

The complainant in this matter alleges that the Iowa Faith and Freedom Coalition (“IFFC”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by hosting the group’s March 7, 2011, Spring Kick Off (“SKO”) event, whose roster of speakers included five potential presidential candidates.<sup>1</sup> The Office of the General Counsel (“OGC”) recommended that the Commission find that there is reason to believe that IFFC violated 2 U.S.C. § 441b(a).<sup>2</sup> Given the low dollar amount at issue and in consideration of the Commission’s resources, we voted to exercise the Commission’s prosecutorial discretion and dismiss this matter.<sup>3</sup>

**I. Background**

The complainant alleges that IFFC, a 501(c)(4) nonprofit corporation, violated 2 U.S.C. § 441b(a), by making a prohibited in-kind contributions to the prospective presidential candidates who spoke at the SKO event. The complainant claims that the event did not qualify for the candidate debate exemption to the definition of “contribution” set forth at 11 C.F.R. § 110.13.<sup>4</sup> The complainant further alleges that the widespread media coverage of the event was worth “millions of dollars” to the potential candidates.<sup>5</sup>

IFFC’s response asserts that “there was no in-kind contribution” because IFFC did not compensate any of the speakers.<sup>6</sup> The response further states that its Board Members invited speakers to the SKO event “who the Board Members thought are the people whom the attendees

<sup>1</sup> Speakers Herman Cain, Rick Santorum, Newt Gingrich, and Tim Pawlenty had not announced their candidacies, yet; Buddy Roemer disclosed his exploratory committee with the Commission on March 3, 2011, four days prior to the SKO event.

<sup>2</sup> First General Counsel’s Report at 11.

<sup>3</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985); MUR 6459 Certification (Oct. 16, 2012).

<sup>4</sup> Compl. at 3; Supp. Compl. at 1, 3.

<sup>5</sup> Supp. Compl. at 2-3.

<sup>6</sup> Resp. at 1.

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would be interested to meet, greet and hear,” and that “[n]one of the potential 2012 Republican Presidential Candidates who spoke during the [SKO event] ha[d] declared their candidacy.”<sup>7</sup> IFFC also noted that three speakers at the event were not potential candidates.<sup>8</sup> In sum, IFFC argues that (1) none of the SKO event speakers was a declared candidate; (2) IFFC did not compensate or promote any potential candidate; and (3) there were other speakers at the SKO event in addition to those identified as potential candidates.<sup>9</sup>

OGC recommended that the Commission find that there is reason to believe that Respondents violated 2 U.S.C. § 441b(a). Although OGC concluded (and we agree) that the media’s costs in covering events like the SKO are not contributions or expenditures,<sup>10</sup> OGC’s recommendation was based on the conclusion that IFFC’s costs of conducting the event, or a portion of them, were in-kind contributions to the event speakers who were testing the waters.<sup>11</sup> For several reasons, we voted to exercise the Commission’s prosecutorial discretion and dismiss this matter.

## II. Factual and Legal Analysis

Because IFFC is a corporation, anything of value provided for testing the waters activity, unless exempted, would constitute an impermissible in-kind contribution.<sup>12</sup> This prohibition includes both direct and indirect payments or gifts of money, services, or anything of value to a candidate.<sup>13</sup> The Commission’s regulations exempt from the definitions of contribution and expenditure those funds received, and payments made, solely to determine whether an individual should become a candidate (*i.e.*, “testing the waters” activity).<sup>14</sup> Only funds permissible under the Act may be used for “testing the waters” activities.<sup>15</sup> If the individual “testing the waters” subsequently becomes a candidate, the funds received are deemed contributions and must be reported as such.<sup>16</sup>

Commission regulations permit corporations to sponsor certain candidate appearances. For instance, a corporation may allow a candidate to address its restricted class at a corporate

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<sup>7</sup> *Id.* The Response also stated that none of the potential candidates, unlike the complainant, had exploratory committees. Resp. at 1. Roemer, however, disclosed his exploratory committee in a report to the Commission on March 3, 2011, four days before the event.

<sup>8</sup> *Id.* at 2. IFFC generally contended that the “FEC does not have jurisdiction to hear this matter.” *Id.*

<sup>9</sup> *Id.* at 1-2.

<sup>10</sup> 2 U.S.C. § 431(9)(b)(i); 11 C.F.R. § 100.73.

<sup>11</sup> First General Counsel’s Report at 8.

<sup>12</sup> 11 C.F.R. § 100.72.

<sup>13</sup> 2 U.S.C. § 441b(b)(2).

<sup>14</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>15</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>16</sup> 11 C.F.R. § 100.72.

meeting, convention, or other function.<sup>17</sup> The Commission's regulations also establish an exemption for corporate-funded candidate appearances before employees of the corporation. Under this exemption, a presidential candidate may be excluded only pursuant to pre-established objective criteria.<sup>18</sup>

IFFC did not limit attendance at the SKO event to its restricted class or employees. Rather, the SKO event occurred at Point of Grace Church in Waukee, Iowa, reportedly before an estimated audience of 1,500 people.<sup>19</sup> Thus, the restricted class exemption does not appear to apply here. Nor does IFFC argue that the Commission's debate exception applies; in fact, IFFC concedes that it does not.

Nevertheless, the amounts involved in conducting the event appear to be relatively small. The event lasted approximately two hours and 20 minutes, approximately half of which was taken up by the five speakers at issue.<sup>20</sup> To determine the amount of any contribution by IFFC to each of the five speakers, its costs for staging the SKO event would have to be apportioned among each of these speakers.<sup>21</sup> The prorated amount for each speaker was likely small.<sup>22</sup>

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<sup>17</sup> 11 C.F.R. § 114.3(c)(2). A corporation's restricted class is limited to its stockholders and executive or administrative personnel, and their families. 11 C.F.R. § 114.1(j). The restricted class of a membership corporation consists of its members and executive or administrative personnel, and their families. *Id.*

<sup>18</sup> 11 C.F.R. § 114.4(b)(1)(ii).

<sup>19</sup> Thomas Beaumont, *GOP Presidential Hopefuls Push Moral Code at Iowa Forum*, Des Moines Reg., Mar. 7, 2011 (Supp. Compl., Attach. 1); IFFC Press Release, Oct. 11, 2011, available at <http://ffciowamedia.com/press/speaker-newt-gingrich-joins-the-line-up-for-iffcs-presidential-forum>.

<sup>20</sup> The speakers appeared for the following approximate amounts of time: Herman Cain (9 minutes); Rick Santorum (20 minutes); Buddy Roemer (16 minutes); Newt Gingrich (10 minutes); and Tim Pawlenty (12 minutes).

<sup>21</sup> 11 C.F.R. § 106.1(a).

<sup>22</sup> IFFC indicated there would be "candidate and issue-oriented literature tables" at the event. See IFFC Press Release, Mar. 6, 2011 (Supp. Compl., Attach. 3). Had the potential candidates also taken advantage of this additional benefit, the value of the in-kind contribution would also take into account the value of this additional benefit. However, it is not clear based on the available information which potential candidates took advantage of this opportunity before and after their own speeches.

Given the resources necessary to conduct an investigation and the limited likelihood that any violation involved a significant dollar amount, we voted to exercise the Commission's prosecutorial discretion and dismiss this matter.<sup>23</sup>

10/31/2012  
Date

Caroline C. Hunter  
Caroline C. Hunter  
Chair

10-23-12  
Date

Ellen L. Weintraub  
Ellen L. Weintraub  
Vice-Chair

11/1/2012  
Date

Donald F. McGahn, II  
Donald F. McGahn, II  
Commissioner

11/1/2012  
Date

Cynthia L. Bauerly  
Cynthia L. Bauerly  
Commissioner

11/1/2012  
Date

Matthew S. Petersen  
Matthew S. Petersen  
Commissioner

11/1/12  
Date

Steven T. Walther  
Steven T. Walther  
Commissioner

<sup>23</sup> Heckler, 470 U.S. at 821.

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