



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

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RE: MUR 5612
Service Employees International Union,
SEIU International Political Education &
Action Fund

Dear Messrs. Trister, Sullivan and Weinberg:

On November 18, 2004, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On February 3, 2005, your clients were notified of additional information submitted by the complainant.

On February 7, 2007, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Service Employees International Union or SEIU International Political Education and Action Fund violated 2 U.S.C. § 441b. A copy of the Factual and Legal Analysis is enclosed for your information.

The Commission has closed its file in this matter. Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

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If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan
Acting General Counsel



BY: Rhonda J. Vosdigh
Associate General Counsel
for Enforcement

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Service Employees International Union,
SEIU International Political Education & Action Fund

MUR: 5612

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission by the National Right to Work Legal Defense and Education Foundation, Inc. *See* 2 U.S.C.

§ 437g(a)(1). The Complaint alleges that the Service Employees International Union (“SEIU”) and the SEIU Political Education and Action Fund (“SEIU IPEA”), an SEIU non-federal separate segregated fund, violated the Federal Election Campaign Act of 1971, as amended (the “FECA”), by making prohibited contributions in the form of cash payments and the provision of in-kind labor to America Coming Together (“ACT”), a non-connected political committee with federal and non-federal accounts, during the 2004 election cycle. The Complaint also alleges that SEIU general treasury funds were used to support an ACT fundraising event, purportedly for the benefit of the Democratic National Committee (“DNC”).

For the reasons set forth below, the Commission found no reason to believe that the Service Employees International Union or the SEIU Political Education and Action Fund violated 2 U.S.C. § 441b.

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II. FACTUAL AND LEGAL ANALYSIS

Service Employees International Union (“SEIU”) is one of the largest labor unions in North America.¹ It consists of 1.8 million members in the United States, Canada and Puerto Rico working in four service industry divisions, namely health systems, long-term care, public services and property services. Andrew L. Stern has served as International President of SEIU since 1996. The SEIU Political Education and Action Fund (“SEIU IPEA”) is a separate non-federal political action fund established by SEIU to pay or reimburse wages, benefits and expenses of union members and staff assigned to public political activities.

According to the Complaint, SEIU pledged to spend \$65 million on various types of political activity in 2004. SEIU’s pledge appears to have included costs incurred by SEIU and its affiliates in communicating with its own members, as well as the activities of SEIU-affiliated federal and non-federal separate segregated funds.² As part of this effort, SEIU claimed to be the largest overall contributor to ACT’s get-out-the-vote (“GOTV”) drive in connection with the 2004 elections. In addition to substantial non-federal cash contributions to ACT from its separate segregated funds, the SEIU and its separate segregated funds made in-kind contributions of labor to ACT in the form of approximately 2,000 union employees who participated in the “SEIU Heroes” program, in which they took time off from their jobs, while being paid by SEIU, through SEIU-IPEA or the separate segregated fund of an affiliate union, to do full-time political work in the period leading up to the 2004 elections.

¹ The SEIU Committee on Political Education (“SEIU-COPE”) is a federally registered separate segregated fund, which maintains federal and non-federal accounts. SEIU-COPE is not a respondent in this matter.

² During 2004, SEIU filed communication expense reports with the Commission disclosing the use of \$2.1 million in union treasury funds for permissible political communications to its restricted class.

A. SEIU's Cash and In-Kind Contributions

During the 2004 election cycle, SEIU President Andrew Stern made several public statements indicating that the union intended to play an unprecedented role in the upcoming elections, including providing both financial and in-kind support for ACT's GOTV and voter registration efforts. As discussed below, SEIU committed millions of dollars and several thousand employees to help ACT reach out to potential voters through telephone banks, canvassing and voter registration drives.

1. Cash Contributions and Exempt Expenditures

ACT reported receiving \$4 million in non-federal contributions from SEIU, its affiliates, or their separate segregated funds. In its response to the Complaint, SEIU asserts that all direct contributions actually were from the accounts of its non-federal separate segregated funds. See

Chart A.

Chart A
SEIU Cash Contributions to ACT

Description on Disclosure Report	Date of Contribution	Contribution Amount	Federal Share	Non-federal Share
Contribution to Non-federal Account	03/18/04	\$ 500,000.00	\$ -	\$ 500,000.00
Contribution to Non-federal Account	10/07/04	\$ 2,500,000.00	\$ -	\$ 2,500,000.00
Contribution to Non-federal Account	10/27/04	\$ 750,000.00	\$ -	\$ 750,000.00
Contribution to Non-federal Account	11/01/04	\$ 250,000.00	\$ -	\$ 250,000.00
Total		\$ 4,000,000.00		\$ 4,000,000.00

2. In-Kind Contributions

Numerous SEIU members, some of whom worked directly for SEIU or SEIU affiliates, took leaves of absence from their regular work to volunteer to do political work for ACT through SEIU's "worker-friendly" or "Heroes" program. While participating in the "Heroes" program,

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SEIU members' salaries, benefits and expenses were paid from the non-federal account of SEIU-affiliated separate segregated funds (i.e., SEIU IPEA or the SSFs of local chapters).

In April 2004, prior to dispatching these workers, SEIU and ACT entered into a written agreement regarding in-kind contributions from SEIU to ACT. *See* Attachment 1. The agreement provides, "SEIU personnel will work under the exclusive supervision and direction of ACT, and SEIU will have no authority to determine their assignments for ACT" and that SEIU will pay their compensation, living expenses and travel expenses through its non-federal political account ("SEIU IPEA"). *Id.* The agreement lists the kinds of activities the parties agree SEIU personnel will be assigned to support, and provides for the treatment of workers assigned to two different categories of assignments.³ The agreement provides that SEIU IPEA would, at the beginning of each month, estimate the value of the in-kind contribution to be provided to ACT that month. *Id.* Prior to the receipt of that month's contribution, ACT would have to determine the value of any work SEIU personnel might commit to the different categories of activities for that month. Prior to or upon ACT's receipt of that month's SEIU contribution, ACT would have to transfer from its federal account to its non-federal account, using its current allocation ratio, the appropriate federal funds to cover the federal share of in-kind contributions for certain categories work that SEIU personnel might perform during that month. At the end of the month, ACT was required to inform SEIU of the actual amount of its total in-kind contribution and the actual amount of activities performed in each category, so that the parties could both make the appropriate adjustments for their records. *Id.* at Section 4. The agreement also requires ACT to

³ "Category A" activities include public contact involving issue advocacy and non-express advocacy references to federal, state and local candidates in the course of voter identification and registration, and GOTV activities targeted on a geographic, demographic, or issue position basis. *Id.* "Category B" activities involve voter identification registration and GOTV efforts that target party or candidate preferences.

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deposit any monetary contributions it might receive from SEIU IPEA into its non-federal account and use the contributions for only certain categories of activities. *Id.* at Section 5.

During the period of April to November 2004, ACT disclosed that its non-federal account received \$18 million of in-kind contributions from SEIU and its separate segregated funds in the monthly reports it filed with the Commission. *See* Chart B.

Chart B
SEIU In-Kind Contributions to ACT

Description on Disclosure Report	Date of Contribution	Contribution Amount	Federal Share	Non-federal Share
Non-federal In-kind Labor (SEIU)	04/02/04	\$ 924,476.93	\$ -	\$ 924,476.93
Non-federal In-kind Labor (SEIU)	05/05/04	\$ 925,526.10	\$ -	\$ 925,526.10
Non-federal In-kind Labor (SEIU)	06/03/04	\$ 903,069.82	\$ -	\$ 903,069.82
Non-federal In-kind Labor (SEIU)	07/07/04	\$ 1,656,132.00	\$ -	\$ 1,656,132.00
Non-federal In-kind Labor (SEIU)	08/05/04	\$ 357,785.00	\$ -	\$ 357,785.00
Non-federal In-kind Labor (SEIU)	08/05/04	\$ 1,976,678.00	\$ -	\$ 1,976,678.00
Non-federal In-kind Labor (SEIU)	09/16/04	\$ 3,465,171.00	\$ -	\$ 3,465,171.00
Non-federal In-kind Labor (SEIU)	10/07/04	\$ 5,190,858.15	\$ -	\$ 5,190,858.15
Non-federal In-kind Labor (SEIU)	11/03/04	\$ 2,683,620.80	\$ -	\$ 2,683,620.80
TOTAL		\$ 18,083,317.80		\$ 18,083,317.80

At or about the same time that it received SEIU's in-kind contributions, ACT would transfer funds from its federal account to its non-federal account in accordance with the procedures outlined by the Commission in AO 1992-33 (Democratic National Committee), in an effort to compensate the non-federal account for what it contended to be the federal share of any allocable federal and non-federal activities of the in-kind labor received from SEIU.⁴

4. In AO 2003-37 (Americans for a Better Country), the Commission addressed the issue of the appropriate spending of federal and non-federal funds by unincorporated, non-connected political committees with federal and non-federal accounts. Citing the Supreme Court's findings in *McConnell v. Federal Election Commission*, 124 S. Ct. 619 (2003), AO 2003-37 instructed non-connected political committees that voter drive activity of the kind at issue is entirely or in part for the purpose of influencing a federal election because "voter registration, voter identification ... and generic campaign activity all confer substantial benefits on Federal candidates." Accordingly, expenditures, including in-kind contributions and independent expenditures made in voter identification, registration and GOTV efforts that are for the purpose of influencing a federal election, but do not refer to any clearly identified candidate,

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ACT made transfers in an effort to reimburse its non-federal account for the federal share of these allocated expenditures

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3. Discussion

It is unlawful for a labor organization to make a contribution or expenditure to any candidate, campaign committee, or political party or organization in connection with any election

should be allocated between federal and non-federal accounts, pursuant to 11 C.F.R. § 106.6. The appropriate percentage to be allocated to the federal and non-federal accounts should be based on the content of the message and the portion of the communications that are targeted at affecting the federal election.

In January 2005, the Commission adopted allocation regulations that were more stringent in certain respects than the requirements set forth in AO 2003-37 and, in so doing, explicitly superseded the opinion. *See Explanation and Justification for Regulations on Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Non-connected Committees, Final Rules, 69 Fed Reg. 68,056, 68,063 (Nov. 23, 2004).* The new regulations revised the funds expended method of calculating the allocation ratio for administrative expenses and costs of generic voter drives to include the use of at least 50% federal funds, revised the method of calculating allocation ratios for certain types of voter drives, and provided new rules for determining the federal portion of the allocation ratio for the direct costs of fundraising, among other things. *See id.*

to federal office.⁵ See 2 U.S.C. § 441b(a). The Complaint cites public statements made by SEIU President Andrew Stern, including a November 1, 2004 SEIU press release, as the basis for asserting that SEIU made illegal contributions to ACT. See “Anatomy of an Election Strategy: The Facts on SEIU’s Role in Bringing Home a Victory for America’s Working Families,” Nov. 1, 2004. See also “A Union Chief’s Bold New Tack,” *Business Week Online*, Jul. 28, 2004.

a. Cash Contributions

SEIU’s response to the Complaint asserts that all statements made publicly by its staff or leadership concerning expenditures or contributions to ACT refer to funds paid to that organization’s non-federal account. See SEIU Response. This is confirmed by ACT’s federal and non-federal disclosure reports. SEIU also emphasizes that these contributions ACT’s non-federal account were paid out of the non-federal accounts of its own separate segregated funds, and were not from the “dues and fees” in its general treasury fund. *Id.* SEIU states, “No general treasury funds were used to support independent expenditures or contributions to federal candidates or campaigns.” *Id.* at 2. Finally, SEIU asserts that any federal independent expenditures the Complaint attributes to SEIU actually were made by the federal account of its separate segregated fund, SEIU-COPE, with permissible monies donated by union members.

The Commission has no information inconsistent with SEIU’s representation, and ACT’s disclosure reports, indicating that all cash contributions were deposited in ACT’s non-federal account and did not include union treasury funds. Accordingly, the Commission finds no reason to believe that SEIU violated 2 U.S.C. § 441b(a) with respect to its cash contributions or direct communication expenditures.

⁵ The FECA establishes specific exceptions to this general prohibition, which allow a labor organization to make internal communications to its restricted class, sponsor a nonpartisan voter registration or get-out-the-vote campaign, or establish a separate segregated fund to be used for political purposes. See 2 U.S.C. § 441b(b)(2).

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b. In-Kind Contributions

The Complaint contends that union workers who participated in the SEIU "Heroes" program (*i.e.*, voter registration and GOTV campaigns sponsored by ACT) were paid with monies from SEIU's general treasury funds. *See* Complaint at ¶¶ 5, 13. In its Response, SEIU states that it did not use general treasury funds to pay the salaries, benefits and expenses of employees participating in the Heroes program, which were paid by the non-federal accounts of SEIU-affiliated separate segregated funds, and that all in-kind contributions were made to ACT's non-federal account. *See* SEIU Response. SEIU also states that, to its knowledge, its employees participating in the Heroes program engaged in non-partisan activity and did not participate in express advocacy or electioneering communications. *Id.*

In furtherance of his effort to prove treasury funds were used to pay for in-kind contributions, Complainant submitted a second Supplemental Affidavit, which included a redacted copy of a document entitled, "Local Union Information Packet." *See* Supplemental Affidavit of Stefan Gleason ("Gleason Aff."), Ex. A. This document appeared to be payroll instructions and reimbursement procedures for SEIU employees participating in the Heroes program, which seems to corroborate SEIU's position that union treasury funds were not used to pay the salary and working benefits of SEIU employees being detailed to ACT. *Id.* Based on this document, it appears that any Local shop that did not have a non-federal account, was to make sure that the employees were paid with non-federal funds by estimating each participating employee's salary, benefits and expenses, and submitting a reimbursement request and a copy of the check used to pay the total amount to the national office. Once the national office received the request, the Local would have been reimbursed for the salary, benefits and expenses from the SEIU IPEA non-federal account. *Id.* SEIU IPEA submitted a response denying that treasury

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funds were used for prohibited purposes and asserting that the allegations made by Complainant were unsubstantiated and incorrect. SEIU IPEA Response dated June 21, 2005. Accordingly, the Commission finds no reason to believe that SEIU IPEA violated 2 U.S.C. § 441b in connection with allegations in this Complaint.

Disclosure reports ACT filed with the Commission for the 2004 election cycle indicate that in-kind contributions made by SEIU were reported as having been received by ACT's non-federal account. It also appears that each of the in-kind contributions that SEIU attributed to its separate segregated funds' non-federal accounts were disclosed by ACT.

⁶ Accordingly, the Commission finds no reason to believe that SEIU or SEIU IPEA violated the FECA in making in-kind contributions to ACT.

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B. The ACT Fundraiser

The Complaint alleges that SEIU used general treasury funds to support a fundraiser sponsored by ACT, for the benefit of the DNC, in which donors who contributed \$1,000 to \$5,000 to ACT received "gifts" of artwork donated by various local artists. Complaint at ¶ 6. Support for these allegations comes from an article about the fundraising event hosted at the Carl Solway Gallery and sponsored by ACT and graphic arts company, Gemini Graphic Editions Limited ("Gemini G.E.L."). See Complaint, Exh. C. The article makes no mention of the SEIU and simply describes the event as a fundraiser "[t]o support current Democratic Party candidates."⁷ *Id.*

SEIU's response states that it was not involved in the planning, administering or financing of the ACT artwork fundraiser. See Service Employees International Union Response dated January 5, 2005 ("SEIU Response").

The only support for allegations that SEIU participated in or that the DNC benefited from an ACT artwork fundraiser comes from an article about the event which contained information that is specifically refuted. Yet, the article cited in the Complaint makes no mention of SEIU or the DNC, and simply states that funds raised during the event would be used "to support current

⁷ The article states, "[t]he works are 'free' when an individual makes a minimum contribution of \$1,000, with a \$5,000 limit if the funds support the federal Democratic ticket. ACT has already collected upwards of \$750,000 from donations in exchange for limited-edition prints on display here and elsewhere."

Democratic Party candidates." *See* Complaint, Exh. C. The information available to the Commission, including the response from SEIU, indicates that the artwork fundraiser was an event sponsored by ACT, and that SEIU played no role in supporting the event.

Accordingly, the Commission finds no reason to believe that SEIU violated 2 U.S.C. § 441b by using general treasury funds were used to finance or otherwise support the "Artists Coming Together" fundraiser.

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