

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of)
) MUR 5568
 Empower Illinois Media Fund)

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4 **CONCILIATION AGREEMENT**

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8 This matter was generated by a complaint filed with the Federal Election Commission
9 (“the Commission”). See 2 U.S.C. § 437g(a)(1). The Commission found “reason to believe” in
10 accordance with 2 U.S.C. § 437g(a)(2) that Empower Illinois Media Fund (hereinafter, “EIMF”)
11 violated 2 U.S.C. §§ 433, 434, and 441a(f) of the Federal Election Campaign Act of 1971, as
12 amended (“the Act”), by failing to register as a political committee with the Commission, by
13 failing to disclose its contributions and expenditures, and by knowingly accepting contributions
14 in amounts exceeding \$5,000 from individuals, and an investigation was conducted.

15 NOW, THEREFORE, the Commission and EIMF, having participated in informal
16 methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as
17 follows:

18 I. The Commission has jurisdiction over EIMF and the subject matter of this
19 proceeding.

20 II. EIMF has had a reasonable opportunity to demonstrate that no action should be
21 taken in this matter.

22 III. EIMF enters voluntarily into this agreement with the Commission.

23 IV. The pertinent facts in this matter are as follows:

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OFFICE OF GENERAL
COUNSEL
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1 under the direction of its President, Jeffrey D. Davis. Its sister organization, Empower Illinois
2 (“EI”), also is an entity organized under Section 527 of the Internal Revenue Code and operated
3 from the same location.

4 8. EIMF filed a Notice of 527 Status with the Internal Revenue Service
5 (“IRS”) on August 20, 2004 as a political organization under 26 U.S.C. § 527.

6 9. EIMF did not register as a political committee with the Federal Election
7 Commission.

8 10. From October 11, 2004 through October 24, 2004, EIMF spent \$69,780 on
9 a television advertisement and \$5,762 on a radio advertisement that were broadcast in Illinois.
10 The advertisements opposed Barack Obama’s candidacy in the 2004 race for U.S. Senator from
11 Illinois.

12 11. The advertisements debuted on October 12, 2004, the same day Obama
13 and Alan Keyes, the Republican candidate for U.S. Senate, were scheduled to debate, only weeks
14 before the election. The radio ad sought to reach out to voters by declaring, “On November 2nd,
15 Illinoisans are going to make an important decision in the US Senate Race.” The ad then asked
16 listeners a series of questions designed to make them become critical of Obama, such as “did you
17 know that Obama opposed tougher penalties for gang bangers who kill innocent children? . . .
18 And that Obama supported abortion even after the child was born alive?” At the end, the ad
19 urges listeners to “stop . . . look . . . and listen,” to learn the “real” truth about Obama, and to log
20 onto truthaboutobama.org so that they could “make an informed decision.”

21 12. Similarly, the television advertisement also asked viewers whether they
22 knew “Obama opposes tougher sentences for gangs who kill . . . innocent children. . . . Obama
23 wants schools to teach sex . . . to kindergarteners Obama supports aborting children even

1 when they are . . . born alive.” In the end, the advertisement tells viewers: “STOP; LOOK;
2 LISTEN; LEARN THE TRUTH ABOUT OBAMA.”

3 13. During the 2004 election cycle, EIMF’s disbursements totaled \$83,042,
4 most of which (\$75,542) was spent on the production and placement of two advertisements on
5 radio (\$5,762) and television (\$69,780) opposing Barack Obama’s candidacy. EIMF spent the
6 remaining \$7,500 on its two websites: empowerillinoismediafund.org and truthaboutobama.org,
7 which were wholly dedicated to criticizing Obama’s voting record as a state senator and his
8 candidacy for U.S. Senate.

9 14. EIMF conducted most of its fundraising through meetings with individuals
10 and used scripts that largely focused on the need to finance a media campaign targeting Barack
11 Obama. At these meetings, Barack Obama was the only candidate who was clearly identified or
12 referred to when EIMF solicited funds from potential donors.

13 15. One script, entitled EIMF and EI Fall 2004 Plan, stated that EIMF’s
14 purpose was to educate “potential voters” and the “Conservative Base” about Obama’s liberal
15 voting record through an electronic media campaign which would include radio and television
16 ads and two websites: empowerillinoismediafund.org and truthaboutobama.org. EIMF hoped to
17 make a “splash” with the conservative base by running a television spot concerning Obama from
18 August 30th through September 2, 2004 to coincide with the Republican National Convention.
19 They were also told that the advertisement would “‘wake’ up the base to say, ‘hey, that’s right,
20 we have to fight.’” EIMF told donors it would “be the first organization to begin running any
21 kind of ads *for the U.S. Senate race in Illinois*” and that the ad “*would be seen as the first*
22 *‘negative’ or issue comparison ad for the general election.*” In other words, EIMF solicited

1 funds to put the ad on the air by stating specifically that the ad was in connection with the Senate
2 race and would be a “negative” ad against Obama.

3 16. Another script, the EI and EIMF Power Point Presentation, stated that the
4 organizations’ objectives were: “Educating Potential Voters”; “Energizing the Conservative
5 Base”; “Turning out Conservative Voters (increasing turnout in targeted areas).” The script also
6 informed donors that both organizations had extensive research on Obama to counter the
7 “honeymoon” that Obama was receiving from the media. Despite Obama’s recent attempts “to
8 tame his voting record,” the script informed donors that “when you look at fact versus fiction
9 you find an extremely liberal State Senator who has not accomplished much.”

10 17. The Power Point Presentation asserted that the “most efficient way to
11 reach voters is through paid media” and that the “paid media’s objective is to educate voters
12 about Obama’s true voting record, where he gets his support, and get them to visit
13 www.truthaboutobama.org.” The script further stated that this time, EIMF would begin reaching
14 the conservative base by placing the first television ad concerning Obama on October 11, 2004,
15 one day before the first debate between Obama and Keyes.

16 18. In addition to the fundraising meetings with individuals, EIMF sent a
17 solicitation via electronic mail on October 11, 2004. The solicitation informed potential donors
18 about EIMF’s media campaign designed to expose the “gap of information about Obama’s
19 record and his public profile” and asked whether they knew that “AS CHAIRMAN OF THE
20 HEALTH & HUMAN SERVICES COMMITTEE OBAMA VOTED TO HAVE SEX
21 EDUCATION TAUGHT TO CHILDREN IN KINDERGARTEN?” The solicitation then
22 requested them to contribute and help EIMF “reach THOUSANDS OF ILLINOIS VOTERS.”

1 19. The Commission concludes that contributions received in response to
2 EIMF's solicitations that clearly indicated the funds received would be used to defeat Barack
3 Obama in the 2004 general election caused EIMF to surpass the \$1,000 statutory threshold. *See*
4 2 U.S.C. § 431(4)(A). EIMF received its first \$1,000 in contributions in August 2004. During a
5 fundraising meeting held on August 23, 2004, EIMF raised \$30,000 when it used the EIMF and
6 EI Fall 2004 Plan script described in paragraph 15.

7 20. EIMF accepted contributions from individuals in amounts exceeding
8 \$5,000. During the 2004 election cycle, EIMF accepted approximately \$70,000 in contributions
9 in amounts exceeding \$5,000 per individual.

10 21. Since the 2004 election, EIMF has effectively ceased active operations. It
11 has raised no contributions and limited its disbursements to legal and administrative costs.

12 22. EIMF contends that it acted with a good faith belief that its activities in
13 connection with the 2004 elections were in compliance with applicable laws and regulations.

14 V. EIMF committed the following violations:

15 1. EIMF violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a
16 political committee as of August 2004.

17 2. EIMF violated 2 U.S.C. § 441a(f) by knowingly accepting contributions in
18 amounts exceeding \$5,000 from individuals.

19 VI. EIMF will cease and desist from violating 2 U.S.C. §§ 433 and 434 by failing to
20 register and report as a political committee. EIMF will cease and desist from violating 2 U.S.C.
21 § 441a(f) by accepting contributions in excess of the limits set forth in the Act. In addition,
22 Jeffrey D. Davis will cease and desist from engaging in activities that result in violations of
23 2 U.S.C. §§ 433, 434, and 441a(f).

1 VII. EIMF will pay a civil penalty to the Federal Election Commission in the amount
2 of Three Thousand dollars (\$3,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

3 VIII. EIMF will file reports with the Commission containing all information required to
4 be disclosed by federal political committees for its activities from August 20, 2004 until
5 December 31, 2006. The Commission agrees that EIMF may fulfill this obligation by submitting
6 copies of reports filed with the Internal Revenue Service ("IRS") for activities during this period,
7 if supplemented with additional information required of federal political committees. Such
8 supplementation would include, but not be limited to, the information contained on the summary
9 pages of reports filed by political committees. To the extent that EIMF's reports filed with the
10 IRS do not cover all of EIMF's activities from August 20, 2004 until December 31, 2006, EIMF
11 will file the appropriate FEC reports with the Commission.

12 IX. EIMF agrees to register and report to the Commission as a political committee in
13 the event that it receives additional contributions and/or makes expenditures for the purpose of
14 influencing federal elections, and will comply with any and all applicable provisions of the Act
15 and Commission regulations.

16 X. The Commission, on request of anyone filing a complaint under 2 U.S.C.
17 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
18 with this agreement. If the Commission believes that this agreement or any requirement thereof
19 has been violated, it may institute a civil action for relief in the United States District Court for
20 the District of Columbia.

21 XI. This agreement shall become effective as of the date that all parties hereto have
22 executed same and the Commission has approved the entire agreement.

1 XII. EIMF shall have no more than 30 days from the date this agreement becomes
2 effective to comply with and implement the requirements contained in this agreement and to so
3 notify the Commission.

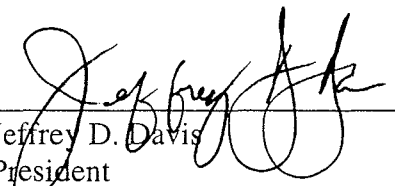
4 XIII. This Conciliation Agreement constitutes the entire agreement between the parties
5 on the matters raised herein, and no other statement, promise, or agreement, either written or
6 oral, made by either party or by agents of either party, that is not contained in this written
7 agreement shall be enforceable.

8 FOR THE COMMISSION:

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10 Thomasenia P. Duncan
11 ~~Acting~~ General Counsel

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13
14 BY:  Ann Marie Terzaken 7/27/07
15 Rhonda J. Vosdingh ~~Ann Marie Terzaken~~ Date
16 ~~Acting~~ Associate General Counsel
17 for Enforcement

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20 FOR EIMF:

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24  4-16-07
25 Jeffrey D. Davis Date
26 President
27 Empower Illinois
28 Empower Illinois Media Fund
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