



RICHARD H. AUSTIN  
SECRETARY OF STATE

MICHIGAN  
DEPARTMENT  
OF STATE  
LANSING, MICHIGAN 48918

November 2, 1993

Ms. Judith L. Corley  
Perkins Coie  
607 Fourteenth Street, NW  
Washington, DC 20005-2011

Dear Ms. Corley:

This is in response to your request for a declaratory ruling under the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended. Specifically, you ask whether contributions made by individuals that are transmitted to a candidate through a third party count as contributions by both the individual contributor and the third party.

Your ruling request was presented in response to a request submitted by Timothy Sponsler on behalf of Venture Capitol, whose proposed donor network of business persons would operate in much the same way as EMILY's List. The response to Mr. Sponsler is attached to this response and incorporated by reference.

As stated in that ruling, contributions made by individual members are not attributable to EMILY's List as long as the decision to contribute is left to the individual. However, pursuant to section 31 of the Act [MCL 169.231], if EMILY's List controls or directs the individual's contribution, the contribution is attributable to both the individual and EMILY's List for purposes of contribution limits.

In response to your request, Mr. Robert LaBrant of the Michigan Chamber of Commerce submitted written comments as authorized under section 15(2) of the Act. [MCL 169.215(2)] Those comments have been carefully considered, and many were addressed in the ruling issued to Venture Capitol. However, a comment not dealt with in that ruling must be addressed here.

Specifically, Mr. LaBrant maintains that EMILY's List at least "directs" the contributions of its members. Pointing out that the dictionary definition of "direction" includes the "management, supervision or guidance of some action," Mr. LaBrant states:

"EMILY'S LIST requires as an act of membership the pledge to contribute at least \$100 to two or more candidates during that election cycle who have been endorsed by EMILY'S LIST. As Ann Lewis

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said in her interview in Political Woman by requiring checks to be returned to EMILY'S LIST they are able to track the actions taken by its members. They can send follow-up letters to those who don't contribute. Eventually, the member who chooses not to contribute to any candidates that EMILY'S LIST has profiled in its support mailings, will begin to receive follow-up letters and telephone calls that will ultimately pressure the member to finally make good on his/her pledge to make (2) \$100 contributions to candidates endorsed by EMILY'S LIST.

"So much for freedom not to choose."

According to the facts you and Mr. Sponsler have presented, an individual who has joined EMILY's List receives regular mailings and newsletters describing candidates who the individual may choose to support. Although the individual has agreed to eventually support two candidates, she or he may decide not to contribute to any candidate named in the mailing. If, as Mr. LaBrant asserts, EMILY's List begins to dun members who have failed to contribute by sending follow-up letters and making telephone calls, at some point EMILY's List may arguably direct or control the individual's decision to contribute.

However, you have stated that EMILY's List does not telephone members or send separate follow-up letters to those who have not fulfilled their pledges.<sup>1</sup> In the 1992 election cycle, for example, EMILY's List made a series of 14 mailings. In the tenth mailing, a paragraph was added urging members who had not contributed to consider doing so at this time. No further communication was directed at members who had chosen not to contribute.

There is no bright line test that establishes when an individual's contribution is "directed" by another. This line would be extremely difficult to draw given the First Amendment speech and associational rights implicated by the interaction of EMILY's List and its members. However, it is clear that "direction" is something beyond informing individuals who have voluntarily joined a membership organization that persons who share their ideology are running for political office and worthy of support. As long as the individual decides whether or not to contribute and, if so, which candidate to support, EMILY's List does not direct or control the individual member's contribution.

As a consequence, EMILY's List may collect and deliver contributions its members choose to make to Michigan candidates. However, costs incurred in this process, including the cost of the postage paid, pre-addressed envelopes mailed back to EMILY's List and the cost of sorting and delivering contributions to the recipient candidate committees, are considered in-kind contributions to the candidates and must be reported by the candidate committees and by EMILY's List. If qualified to operate as an independent committee, EMILY's List may not

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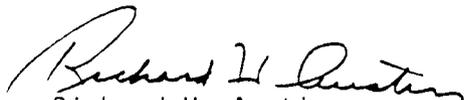
<sup>1</sup>. There is no suggestion that a member's "pledge," which was removed from the Act's definition of "contribution" by 1989 PA 95, is in any way enforceable.

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contribute more than \$34,000 in an election cycle to a gubernatorial candidate committee. If not so qualified, EMILY's List may not contribute more than \$3,400 to that committee.

This response is a declaratory ruling concerning the facts and questions presented.

Sincerely,

  
Richard H. Austin

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