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Mary Beth Maxwell

August 8, 2008

By Hand Delivery

Thomasenia P. Duncan
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Complaint Against Wal-Mart Stores, Inc. For Unlawful Corporate Expenditures

Dear Ms. Duncan:

American Rights at Work, the American Federation of Labor and Congress of Industrial Organizations, Change to Win and WakeUpWalMart.com submit this complaint of unlawful federal election activity against Wal-Mart Stores, Inc. ("Wal-Mart") pursuant to section 111.4 of the Commission's regulations.

On August 1, 2008, the *Wall Street Journal* reported (copy attached) that Wal-Mart had undertaken a campaign to persuade its employees explicitly to vote against Senator Barack Obama for President of the United States. Specifically, the *Journal* reported that in recent weeks "thousands" of Wal-Mart's store managers and department supervisors have been "summoned to mandatory meetings" at which the company informed these employees that Wal-Mart opposes the federal Employee Free Choice Act, its enactment could deny Wal-Mart employees a vote on whether to form a union, and their voting for Senator Obama and other Democrats would lead to its enactment.

The Employee Free Choice Act is strongly opposed by Wal-Mart because it would, in fact, go a long way toward rectifying the imbalance that currently exists between workers seeking to form unions and employers that oppose them. Currently, the law fails to effectively protect workers seeking to organize, and employers are able to violate the law with virtual impunity. This legislation would allow workers throughout the United States to decide whether or not to form a union. If an employer intimidates or obstructs a worker's free

choice, it would incur increased penalties. Senator Obama is a co-sponsor of the legislation, while his Republican opponent, Senator John McCain, opposes the bill and voted against bringing it to the Senate floor last year.

A Wal-Mart spokesman confirmed to the *Journal* that the meetings had taken place “nationwide.” They were led by human-resources managers who had “received training from Wal-Mart on the implications of the Employee Free Choice Act.” The *Journal* reported, on the basis of interviews with attendees from Maryland, Missouri and other states, that Wal-Mart made clear that “voting for Democratic presidential hopeful Sen. Barack Obama would be tantamount to inviting unions in” because the Employee Free Choice Act would become law. Notably, these meetings occurred against a backdrop, widely reported for some time, of similar “captive audience” meetings conducted by Wal-Mart among its non-supervisory employees as part of its longstanding campaign to persuade them to vote against union representation itself, a context that would not be lost on those subjected to the electoral captive-audience meetings reported by the *Journal*.

Notwithstanding Wal-Mart’s claim that it did not tell attendees how to vote, informing employees that it is imperative that Employee Free Choice Act not be enacted and, simultaneously, that their voting for Senator Obama and other Democrats would lead to its enactment constitutes express advocacy under well-established precedent. In *Federal Election Commission v. Massachusetts Citizens For Life, Inc.*, 479 U.S. 238 (1986), for example, the Supreme Court held that a nonprofit organization engaged in express advocacy when it urged readers to vote pro-life and then identified, in the same communication, the candidates whom it regarded as meeting this test. *See also* 11 C.F.R. § 100.22(a) (express advocacy includes “‘vote Pro-Life’ or ‘vote pro-Choice’ accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice”). As a Wal-Mart customer-service supervisor from Missouri told the *Journal*: “They were telling me how to vote.”

The Federal Election Campaign Act allows a corporation such as Wal-Mart to communicate express advocacy about federal candidates only to its restricted class, see 2 U.S.C. § 441b(a) and (b)(2)(A); 11 CFR § 114.3(a), including its executive or administrative personnel, and their families. 11 CFR § 114.1(j). However, the regulations make clear that the restricted class includes only those employees “who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.” 11 CFR § 114.1(c). “Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees” are expressly excluded from the restricted class. 11 CFR § 114.1(c)(2)(ii). In this regard, the *Journal* reported that department supervisors at Wal-Mart are hourly, not salaried, employees. In addition, the Wal-Mart spokesman referred to the persons who attended the meetings as “associates,” a term used by Wal-Mart to refer to its salespeople and other regular hourly employees.

Accordingly, based on the information reported by the *Wall Street Journal*, there is reason to believe that Wal-Mart Stores, Inc. has made prohibited corporate expenditures by expressly advocating against Senator Obama’s election to employees who were not in its

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restricted class in violation of 2 U.S.C. § 441b. We request that the Commission immediately open an investigation to determine whether a violation occurred and, if so, to take all appropriate steps to remedy that violation of federal election law.

The corporate headquarters of Wal-Mart Stores, Inc. are located at 702 SW 8th Street, Bentonville, Arkansas 72716-8611.

The addresses of the complainants are as follows:

American Rights at Work
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Suite 950
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AFL-CIO
815 16th Street, NW
Washington, DC 20006

Change to Win
Suite 900
1900 L Street, NW
Washington, DC 20036

WakeUpWalMart.com
1775 K Street, NW
Washington, DC 20036

Respectfully submitted on behalf of all
Complainants,



Mary Beth Maxwell

I declare under the penalty of perjury that all statements in the foregoing complaint made on the basis of my personal knowledge are true and correct to the best of my knowledge.



Mary Beth Maxwell

I, Annette M. Sabella, a Notary Public, hereby certify that on August 8, 2008,
personally appeared before me, Mary Beth Maxwell, _____ and
_____, who, being first duly sworn, signed this declaration.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in the day and year
written above.

Annette M. Sabella
NOTARY PUBLIC

My Commission expires: **Annette M. Sabella**
Notary Public, District of Columbia
My Commission Expires 11/14/2011