Record

August 2006 *Federal Election Commission* *Volume 32, Number 8*

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Court Cases

Davis v. FEC

Jack Davis, a candidate for the House of Representatives in New York's 26th District, has asked the U.S. District Court for the District of Columbia to declare certain provisions of the Bipartisan Campaign Reform Act (BCRA) known as the "Millionaires' Amendment" unconstitutional, and to issue an injunction barring the FEC from enforcing those provisions.

Background

Under the Millionaires' Amendment, candidates who spend more than certain threshold amounts of their own personal funds on their campaigns might render their opponents eligible to receive contributions from individuals at an increased limit. 2 U.S.C. 441a-1. For House candidates, the threshold amount is $350,000. This level of personal campaign spending could trigger increased limits for the self-financed candidate's opponent depending upon the opponent's own campaign expenditures from personal funds and the amount of funds the candidate has raised from other sources. If increased limits are triggered, then the eligible candidate may receive contributions from individuals

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Compliance

Policy Statement on Payroll Deduction Recordkeeping

On July 7, 2006, the Commission published a Statement of Policy to announce that retaining signed payroll deduction authorization forms (PDAs) is not the only way committees can satisfy the recordkeeping requirements for the resulting contributions. 71 FR 38513. The statement explains that other evidence may be acceptable, including records of the transmittal of funds from employers or collecting agents, such as spreadsheets, computerized records, wire transfer records, or other written or electronic records.

The Commission still considers the retention of PDAs to be a good recordkeeping practice and in some cases PDAs may serve as the best documentation of an authorized deduction.

Background

Corporations, labor organizations, and trade associations are prohibited from making contributions in connection with a federal election, but may establish and support a separate segregated fund (SSF). See 11 CFR 144.2(f). The sponsoring organization may—among other things—use a payroll

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at three times the usual limit of $2,100 per election and may benefit from party coordinated expenditures in excess of the usual limit.

Complaint

On March 30, 2006, the plaintiff, Jack Davis, declared his candidacy for the House seat in New York's 26th District. Mr. Davis intends to spend over $350,000 of his own funds on his campaign, expenditures which will trigger the requirements of the "Millionaires' Amendment," and may result in increased contribution limits for his opponent.

Mr. Davis contends that the Millionaires' Amendment infringes upon his First Amendment right to free speech and his Fifth Amendment right to equal protection. Mr. Davis also alleges that the additional disclosure requirements for self-financed candidates required by the Millionaires' Amendment impose an unfair burden on his right to speak in support of his own candidacy. He also asserts that the Millionaires' provisions "dramatically tilt the field" in favor of incumbents by allowing larger contributions and by not adequately factoring in large "war chests" of campaign funds raised in previous elections in determining whether a candidate is eligible to receive contributions at an increased limit.

On July 11, 2006, the district court granted the plaintiff's request that the case be heard by a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit, as required by 2 U.S.C. 437h.

—Gary Mullen

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FEC v. Club for Growth, Inc.

On June 5, 2006, the U.S. District Court for the District of Columbia issued a memorandum opinion and order denying Club for Growth, Inc.'s (the Club's) motion to dismiss. In its motion to dismiss, the Club claimed that because the Federal Election Commission (FEC) failed to follow proper procedures before bringing this lawsuit, the court lacked subject-matter jurisdiction. In the opinion denying the Club's motion, the court found that the FEC was in compliance with the enforcement provisions of the Federal Election Campaign Act (the Act). Specifically, the court found that the FEC's failure to provide timely notice of the administrative complaint constituted harmless error; the agency was entitled to deference in its conciliation procedures; and the Commission properly ratified its decision to file suit.

Background

The Democratic Senatorial Campaign Committee filed an administrative complaint with the Commission alleging, among other things, that the Club, a Virginia corporation registered with the Internal Revenue Service (IRS) as a political organization under Section 527 of the Internal Revenue Code, had improperly failed to register with the FEC as a political committee. On October 19, 2004, the Commission authorized an administrative investigation after finding reason to believe that the Club accepted contributions and made expenditures in excess of the $1,000 registration threshold, and violated the Act by failing to register as a political committee.

The Club received notification on July 21, 2005, from the FEC General Counsel that the Commission had found probable cause to believe the Club violated the Act and authorized filing a lawsuit in District Court if the parties could not reach an agreement. On September 19, 2005, the General Counsel notified the Club that the Commission rejected their September 14, 2005, offer and filed suit. See November 2005 *Record*, page 1.

Court Decision

The Club made three distinct arguments in support of its motion to dismiss, each rejected by the court for the reasons set out below.

First, the Club argued the FEC failed to provide timely notice of the allegations made against it. Under the Act, the Commission shall notify any person alleged to have committed a violation within five days after the FEC's receipt of the complaint. 2 U.S.C. 437g(a)(1). In this case, the FEC sent notice of the administrative complaint to Stephen Moore, who served as the Club's President, as well as Treasurer of the Club for Growth, Inc. PAC (the PAC). The notification was addressed to Mr.

Moore as Treasurer of the PAC. After realizing the error, the FEC sent notice to Mr. Moore again, this time addressing the document to him as President of the Club. In its opinion, the court did not agree with the Club's claim that this error resulted in untimely notification. Though the original (and timely) notice was sent to him in his capacity as PAC Treasurer rather than as President of the Club, the court noted that through Mr. Moore, the Club had notice.

In the motion to dismiss, the Club also argued that the FEC's conciliation proposals were not made in good faith. The Act requires the Commission to attempt, for a period of at least 30 days, to correct or prevent violations by informal means, and to enter into a conciliation agreement with any person involved. 2 U.S.C. 437g(a)(4)(A)(i). In assessing whether the FEC complied with this statutory provision, the court afforded high deference to the agency's action. The court's opinion also noted that the Club provided no evidence or argument to support this claim, except that they did not like the FEC's conciliatory offers. The opinion also reasoned that the Act requires the Commission to come to the conciliation table, but does not instruct it on the nature of its offerings. The court agreed with the FEC's argument that, in showing deference, the court should not scrutinize the FEC's conciliation offers.

Lastly, the Club argued that the Commission violated the Act by authorizing the lawsuit prior to the completion of the conciliation process. During the course of the conciliation process, the FEC General Counsel sent an undated letter to the Club indicating that the Commission had authorized suit be filed in District Court if the parties were unable to reach an agreement. Although the court held that the initial contingent suit authorization, prior to completion of the conciliation process, was contrary to law under 2 U.S.C. 437g(a)(6)(A), it found that the FEC cured the defective vote by later ratifying its first action. On December 5, 2005, the Commission reaffirmed authorization for the General Counsel to pursue litigation. In its opinion, the court noted that the FEC's reaffirmation constituted a subsequent review of evidence, and since the December 5 action came after 30 days of conciliation efforts, it was consistent with the requirements of the Act.

U.S. District Court for the District of Columbia, 05-1851(RMU).

—Elizabeth Kurland

Randall v. Sorrell (04-1528, 04-1530 and 04-1697)

On June 26, 2006, the U.S. Supreme Court issued a ruling in *Randall et al. v. Sorrell et. al.* finding that Vermont state laws that limit contributions and expenditures for nonfederal elections are unconstitutional.

Background

In 1997, Vermont enacted new campaign finance laws (Pub. Act. No. 64 (Act 64)) that imposed mandatory expenditure limits on the total amount a candidate for state office could spend during a two-year election cycle. The expenditure limits ranged from $2,000 to $300,000 depending on the state office sought. Incumbents seeking re-election were limited to spending no more than 85 to 90 percent of the applicable limit. Expenditures over $50 made by others on behalf of a candidate counted against the candidate's expenditure limit if they were facilitated, solicited or approved by the candidate's campaign, and also counted as a contributions in such an instance. Party expenditures that "primarily" benefited six or fewer candidates also counted against the candidate's expenditure limit, as well as the party's contribution limit.

In addition to expenditure limits, Act 64 also imposed contribution limits ranging from $200 to $400 on individuals and political committees (including political parties) making donations to candidates and $2,000 on donations to parties. The national, state and local affiliates of a party were considered affiliated for purposes of the contribution limits. Although the expenditure limits in Act 64 were indexed for inflation, the contribution limits were not.

Act 64 was challenged in the U.S. District Court for the District of Vermont by a group of individual contributors, voters, candidates and political committees. The district court ruled that Act 64's expenditure limits were unconstitutional on First Amendment grounds, but upheld most of the contribution limits.

On appeal, a divided panel of the U.S. Court of Appeals for the Second Circuit upheld the contribution limits, and concluded that the expenditure limits "may" be constitutional. The appeals court found that the Vermont law was supported by compelling interests in preventing corruption, and the appearance of corruption, and an interest in limiting the amount of time state officials must spend raising funds for their campaigns.[1] The court of appeals remanded the case to the district court for it to determine whether the expenditure limits were narrowly tailored. Before the district court was able to take action on the remand, the parties sought review of the court of appeals ruling by the Supreme Court.

[1] *Landell v. Sorrell, 118 F. Supp. 2d 470 (Vt. 2000).*

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Court Cases

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Supreme Court Ruling

In its petition, the respondents asked the Supreme Court to overrule *Buckley v. Valeo*, 424 US 1 (1976), or in the alternative, to distinguish *Buckley* from the present case. In *Buckley* , the Supreme Court upheld federal election contribution limitations as constitutional, but held that expenditure limitations then contained in the Federal Election Campaign Act violated the First Amendment. The Court noted in *Buckley* that the need to prevent "corruption and the appearance of corruption" provided a sufficient justification for federal contribution limitations, but not for expenditure limitations because they impose a significantly more severe restriction on First Amendment rights.

In its ruling in *Randall v. Sorrell*, written by Justice Breyer, joined in full by Chief Justice Roberts, and joined in part by Justice Alito, the Court declined to overrule or distinguish *Buckley.* Instead, the Court concluded that the expenditure limits were not substantially different from those at issue in *Buckley*, and that Vermont's justification for imposing the limits was similar to Congress' rationale for imposing the expenditure limits overturned in *Buckley*. The Court also rejected the argument that expenditure limits are necessary to reduce the time spent fundraising, noting that the *Buckley* court had considered and rejected this justification for expenditure limits.

In regard to Act 64's contribution limits, the Supreme Court held that the limits in question were so severe as to violate the First Amendment. Basing their opinion again on *Buckley*, the Court said that it had to "determine whether Act 64's contribution limits prevented candidates from 'amassing the resources necessary for effective [campaign] advocacy'" by being too low and strict. In reviewing Act 64's limits, the Court noted that "contribution limits that are too low can also harm the electoral process by preventing challengers from mounting effective campaigns," concluding that the Vermont law limited contributions to an amount well below the limits at issue in *Buckley*, that the limits were well below the lowest amount ever previously upheld, and that they were the lowest limits in the nation. Based on its determination that these considerations amounted to "danger signs" that the Vermont contribution limits might be unacceptably low, the Court then considered whether the limits were "closely drawn" to match Vermont's interests in adopting the law.

The Court relied on five factors in deciding that the limits were not narrowly tailored: (1) the significant restrictions on funding for challengers, (2) the harm caused to contributors in terms of the right to associate in a political party, as represented by the limits imposed on the ability of a Vermont political party to assist its candidates' campaigns, (3) the treatment by Act 64 of certain volunteer expenses for travel and campaign materials as contributions, rather than as exempted expenses, (4) the lack of adjustment of the contribution limits for inflation, and (5) the lack of justifications that would warrant a low and restrictive contribution limit. Taken together, the Court ruled that these five factors led to the conclusion that Act 64's contribution limits were not narrowly tailored to prevent corruption, but instead threatened to impose excessive burdens on the First Amendment interests of candidates, parties and volunteers, and thus, violated the First Amendment.

Justice Alito filed an opinion concurring in the judgment and joining the opinion in part, stating his separate view that the respondents did not adequately present reasons why the Court should reexamine *Buckley*. Justice Kennedy filed an opinion concurring in the Court's judgment but noting his skepticism of the current campaign finance legal system. Justice Thomas, joined by Justice Scalia, filed an opinion concurring in the Court's judgment striking down Act 64 as unconstitutional, but disagreeing with the Court's rationale on the grounds that, in their view, *Buckley* was wrongly decided. Justice Souter, joined by Justice Ginsberg and in part by Justice Stevens, filed a dissenting opinion in which they explain that they would have upheld Vermont's contribution limits, and would have declined to rule on the expenditure limits until further fact-finding was completed by the district court. Justice Stevens filed a dissenting opinion stating his belief that *Buckley's* decision on expenditure limits was wrong and should be overruled.

—Dorothy Yeager

Federal Register

Federal Register notices are available from the FEC's Public Records Office, on the web site at www.fec.gov/law/law_rulemakings.shtml and from the FEC Faxline, 202/501-3413.

Notice 2006-11
Statement of Policy; Recordkeeping Requirements for Payroll Deduction Authorizations (71 FR 38513, July 7, 2006)

Advisory Opinions

Advisory Opinion 2006-10 LLC's PSAs Permissible under FECA

Public service announcements created and broadcast by EchoStar Satellite LLC ("EchoStar") that feature federal candidates are not coordinated communications because they would qualify for the charitable solicitation exemption provided that both the solicitations and the organizations for which the funds are solicited comply with the requirements of 11 CFR 300.65.

Background

EchoStar, a limited liability company treated as a corporation for tax and FECA purposes, provides satellite TV service under the brand name "DISH Network." See 11 CFR 110.1(g). EchoStar plans to air public service announcements ("PSAs") nationwide featuring prominent Americans, including incumbent Members of Congress, promoting and soliciting donations to charitable organizations.

EchoStar will write the script for the PSAs, which will not include campaign materials or expressly advocate the election or defeat of a federal candidate. The PSAs will not mention a political party, campaign, or election, nor will the PSAs solicit contributions for any political campaign or committee. Furthermore, EchoStar will avoid making electioneering communications by airing the PSAs outside of the candidate's jurisdiction or prior to the applicable electioneering communication time period.

Analysis

The Act and Regulations define "contribution" and "expenditure" to include any gift of money or "anything of value" for the purpose of influencing a federal election. 2 U.S.C. 431(8)(A) and (9)(A); 11 CFR 100.52(a) and 100.111(a). An in-kind contribution includes an expenditure made by a person in cooperation with or at the request or suggestion of a candidate or the candidate's committees or agents. 2 U.S.C. 441a(a)(7)(B)(i). A coordinated communication is considered an in-kind contribution by the person paying for the communication unless the communication falls within an exception from the definition of contribution. 2 U.S.C. 441a(a)(7)(B)(i); 11 CFR 109.21(b). The Act and Commission regulations prohibit a corporation from making any contribution or expenditure in connection with a federal election. 2 U.S.C. 441b(a); 11 CFR 114.1(a); 11 CFR 114.2(b)(1) and (b)(2). Thus a corporation is prohibited from paying for a coordinated communication. See 11 CFR 109.22.

A communication may be considered coordinated if it fulfills a three-prong test. First, the communication must be paid for, in whole or in part, by a person other than the federal candidate or the candidate's committee. Second, the communication must fulfill at least one of six conduct standards set forth in 11 CFR 109.21(d). Third, the communication must meet at least one of the four content standards in 109.21(c). See 71 FR 33190 (June 8, 2006) (publishing revised Commission regulations regarding coordinated communications). The definition of coordinated communications contains exemptions, including one for certain endorsements and solicitations by federal candidates. See 11 CFR 109.21(f) – (h).

The regulations exempt from the definition of "coordinated communications" public communications in which the federal candidate solicits funds for a 501(c) non-profit organization as long as the organization (1) does not engage in activities in connection with an election or (2) the organization's principal purpose is not to conduct election activity, and the solicitation is not to raise funds for activities in connection with an election. 11 CFR 109.21(g) and 300.65. To qualify for this exemption, the public communications may not promote, support, attack, or oppose the soliciting candidate or the candidate's opponent. 11 CFR 109.21(g).

EchoStar's PSAs are satellite communications and thus are within the definition of a public communication. 11 CFR 100.26.

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Commission Calendar Always Up-to-Date

Between issues of the *Record*, you can stay up-to-date on the latest FEC activity by visiting the Commission Calendar on our web site at http://www.fec.gov/Fec_calendar/maincal.cfm. The Calendar lists Commission meetings, reporting deadlines, conferences and outreach events, advisory opinion and rulemaking comment periods and other useful information. Each calendar entry links directly to the relevant documents, so you can quickly access detailed information on the subjects that interest you.

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Advisory Opinions

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The federal candidates will appear in the PSAs to solicit funds for charitable organizations and will not promote, support, attack, or oppose their candidacies or those of their opponents. See AO 2003-25. As a result, the PSAs will qualify for the solicitation exemption as long as the organizations qualify as 26 U.S.C. 501(c) organizations and the solicitations comply with 11 CFR 300.65. See 11 CFR 109.21(g).

Additionally, if the PSAs are distributed more than 90 days before a Congressional candidate's election or 120 days before a presidential candidate's election, or outside the featured candidate's jurisdiction, the PSAs would not fulfill the content prong of the coordination test regardless of their subject matter. See 11 CFR 109.2(c)(4); 71 FR 33190 (June 8, 2006). However, if the communications were distributed during the applicable time period within the candidate's jurisdiction and did not solicit funds for a 501(c) organization, the PSAs would be considered coordinated communications.

Since the proposed PSAs qualified for the charitable solicitation exemption, the Commission did not consider the application of the press exemption.

Date Issued: June 30, 2006
Length: 7 pages
—Meredith E. Metzler

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Advisory Opinion 2006-17 Berkeley Electric Cooperative, Inc. (BEC)

An electric cooperative may solicit its executive and administrative personnel and its members for contributions to its own separate segregated fund (SSF) and to the SSF of an affiliated organization. Furthermore, the cooperative may use proposed forms to solicit contributions from its executive and administrative personnel and its employees who are members, and it may use payroll deduction to collect and forward the contributions.

Background

The Berkeley Electric Cooperative, Inc. (BEC) is an incorporated electric distribution cooperative. BEC is composed of dues-paying members who agree to purchase electricity from the cooperative and comply with all other provisions of the organization's Articles of Incorporation and Bylaws. Many of BEC's employees, including executive and administrative personnel, are also members of BEC. The Berkeley Electric Cooperative, Inc. Political Action Committee (BEC PAC) is registered with the FEC as a federal PAC.

The National Rural Electric Cooperative Association (NRECA) is a non-profit corporation under the District of Columbia Cooperative Association Act. NRECA was established to provide informational services to rural electric cooperatives and others seeking the advancement and development of rural electrification in the United States. ACRE is NRECA's federally registered PAC. The Commission previously determined that NRECA is affiliated with its member cooperatives.[1] BEC is a member cooperative of NRECA. Thus, BEC is affiliated with NRECA.

BEC wishes to use a specific form to solicit contributions for BEC PAC and ACRE. The proposed form would offer three options for contributing:

- Recommended contribution amounts to be deducted from the employee's paycheck each pay period;
- A one-time contribution, determined by the contributor; or
- An election not to participate.

The form notes that the contribution amounts are merely suggestions and employees may elect to give more or less. Additionally, the form indicates the voluntary nature of contributions and the political purpose of BEC PAC.

BEC has asked the Commission to address the following questions:

- May BEC solicit its executive and administrative personnel, and its members, including members who are employees, for contributions to BEC PAC?
- May BEC solicit its executive and administrative personnel, and its members, including members who are employees, for contributions to ACRE?
- If BEC may solicit these persons for contributions, may it use proposed solicitation forms, and may it collect contributions from them by via payroll deduction plans?

[1] *See Advisory Opinion 1999-40 for additional information.*

Analysis

May BEC solicit its executive and administrative personnel and its members, including members who are employees, for contributions to BEC PAC?

Yes. Under the Act and Commission regulations, a membership organization or a cooperative may solicit contributions to its SSF from its members and its executive and administrative personnel. See 2 U.S.C. 441(b)(4)(C) and 11 CFR 114.7(a). Therefore, BEC may solicit its executive and administrative personnel, and its members, including employees who are members, for contributions to BEC PAC.

May BEC solicit its executive and administrative personnel and its members, including members who are employees, for contributions to ACRE?

Yes. In Advisory Opinion 1999-40, the Commission determined that, as affiliates of NRECA, distribution cooperatives are local units of NRECA and may act as collecting agents for contributions to NRECA's SSF, ACRE. Thus, BEC may solicit, collect and forward contributions from its restricted class for ACRE. Because BEC and NRECA are affiliated, their SSFs are considered one political committee and share contribution limitations. See 11 CFR 114.7(k)(1).

If BEC may solicit these persons for contributions, may it use proposed solicitation forms, and may it collect contributions from them by via payroll deduction plans?

Yes. Under the Act and Commission regulations, SSFs must inform employees of the political purpose of the fund and indicate that any employee or member solicited may refuse to contribute without reprisal. Additionally, it must be clear that any contribution guidelines are merely suggestions and the individual may contribute more or less or nothing and individuals will not be advantaged or disadvantaged in accord with the amount they contribute. See 11 CFR 114.5. All written solicitations for contributions to the organization's PAC that is addressed to an employee must contain statements that comply with these requirements. The Commission determined that the proposed form meets all FEC requirements in this regard.[2]

The Act and Commission regulations allow a corporation to enroll members of its restricted class in a payroll deduction plan that deducts contributions from payroll checks to make contributions to the SSF. See 11 CFR 114.2(f)(4). Therefore, BEC may use payroll deduction to collect and forward contributions to BEC PAC from solicitable class. Additionally, BEC may use payroll deductions to collect contributions to ACRE because it is collecting agent for ACRE. BEC may pay any and all costs incurred for soliciting and transmitting funds to ACRE since they are affiliated.[3]

Length: 8 pages
Date: June 23, 2006
—Michelle Ryan

[2] *The proposed form identifies five different categories of employees: supervisory, hourly employees, non-supervisory hourly employees, supervisory salaried employees, non supervisory salaried employees and salaried staff. The Commission advised BEC to modify the form to clarify that BEC is only soliciting contributions from its solicitable class.*

[3] *See Advisory Opinion 2000-15 for additional information regarding the ability of affiliated entities to act as collecting agents, using a payroll deduction plan.*

Enforcement Query System Available on FEC Web Site

The FEC continues to update and expand its Enforcement Query System (EQS), a web-based search tool that allows users to find and examine public documents regarding closed Commission enforcement matters. Using current scanning, optical character recognition and text search technologies, the system permits intuitive and flexible searches of case documents and other materials.

Users of the system can search for specific words or phrases from the text of all public case documents. They can also identify single matters under review (MURs) or groups of cases by searching additional identifying information about cases prepared as part of the Case Management System. Included among these criteria are case names and numbers, complainants and respondents, timeframes, dispositions, legal issues and penalty amounts. The Enforcement Query System may be accessed on the Commission's web site at www.fec.gov.

Currently, the EQS contains complete public case files for all MURs closed since January 1, 1999. In addition to adding all cases closed subsequently, staff is working to add cases closed prior to 1999. Within the past year, Alternative Dispute Resolution (ADR) cases were added to the system. All cases closed since the ADR program's October 2000 inception can be accessed through the system.

Advisory Opinions

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Advisory Opinion 2006-18 Committee May Promote Candidate's Book Sales

A campaign committee may incur costs to promote the candidate's book without violating the ban on personal use of campaign funds because the candidate will donate all royalties to charity.

Background

The Kay Granger Campaign Fund seeks to promote the candidate's children's book *What's Right About America: Celebrating Our Nation's Values* using paid committee personnel, the committee's web site and the committee's mailing list of e-mail addresses. The committee sought to advertise the book on the campaign web site and provide information on how to order a copy of the book. Paid committee personnel would plan book-related events, draft and send e-mails to the mailing list and handle any public or press inquiries about the book. The costs incurred by the committee would be more than a *de minimis* expense. The candidate and the publisher arranged for all royalties to be paid directly to 501(c)(3) charitable organizations, with the candidate reporting income and taking deductions to the IRS only as required and permitted by tax law.

Analysis

A candidate's campaign committee has wide discretion in the use of campaign funds but neither the candidate nor any other person may use contributions for personal use. 11 CFR 113.1(g) and 113.2(e)(5). Personal use of campaign funds occurs when a "contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 2 U.S.C. 439a(b)(2). An author's book-marketing expenses exist irrespective a candidate's campaign, thus ordinarily a candidate's campaign committee may not use contributions to pay the expense. *See* AO 2006-7 (permitting the use of campaign funds to market a candidate's book on the campaign committee's website where the candidate retained the royalties but the committee incurred only *de minimis* expense). In this situation, since Representative Granger's royalties will be donated to two charitable organizations, the committee may promote the book using campaign funds because the candidate will not personally gain from the use of campaign assets for the expenses. *See* 11 CFR 113.1(g)(2) (providing that the donation of campaign funds to a charitable organization is not personal use).

The Commission expressed no opinion as to the application of House rules or tax law, as those areas fall outside its jurisdiction.

Length: 4 pages
Date: June 23, 2006
—Meredith E. Metzler

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Advisory Opinion Request

AOR 2006-21

Application of the Millionaires' Amendment to personal funds spent before primary to attack a presumptive general election opponent (Senator Maria Cantwell and Cantwell 2006, July 11, 2006)

Compliance

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deduction system to collect and forward contributions from members of its restricted class to the SSF. 11 CFR 114.2(f)(4)(i). The SSF must maintain records allowing the Commission to determine that the source and amount of contributions are accurately reported. See 11 CFR 104.14(b)(1) and 104.8(b). In the past, the Commission has required original signed PDAs as proof that an SSF had fulfilled its recordkeeping requirements for payroll deductions under 11 CFR 104.14(b)(1).

Evidence of Recordkeeping

As a result of the policy statement, the Commission no longer requires original PDAs as the sole proof that a committee has fulfilled its recordkeeping requirements with respect to payroll contributions. The Commission continues to encourage committees to retain original PDAs, but will now accept other forms of documentation including spreadsheets, wire transfer records, or other electronic or written records.

—Meredith E. Metzler

Nonfilers

Congressional Committees Fail to File Reports

The Fleming for U.S. Senate Campaign Committee and the Bill Bowlin for Senate Committee failed to file 12-Day Pre-Runoff reports for the June 27, 2006, Senate runoff election in Mississippi. The Maatta for Congress Campaign Committee failed to file a 12-Day Pre-Runoff report for the South Carolina, District 1 runoff election also held on June 27, 2006.

Prior to the reporting deadline, the Commission notified committees of their filing obligations. Committees that failed to file the required reports were subsequently notified that their reports had not been received and that their names would be published if they did not respond within four business days.

The Federal Election Campaign Act requires the Commission to publish the names of principal campaign committees if they fail to file 12-day pre-election reports or the quarterly report due before the candidate's election. 2 U.S.C. 437g(b). The agency may also pursue enforcement actions against nonfilers and late filers on a case-by-case basis.

—Meredith E. Metzler

Information

FEC Names New Staff Director

On July 10, 2006, Patrina M. Clark began her tenure as Staff Director of the Federal Election Commission, succeeding Acting Staff Director Robert Costa. In her new position, Ms. Clark is responsible for managing the overall operation of the Commission.

Prior to her appointment, Ms. Clark served as Regional Executive Director for Naval District Washington. As the senior civilian official in the region, she managed the Human Resources, Information Technology, Comptroller and Public Affairs offices, among other activities. Before her service with the Department of the Navy, she held a number of key positions with the Internal Revenue Service, most recently as Director, Cooperative Efforts and Strategic Support.

A Texas native, Ms. Clark began her undergraduate studies at the University of Texas as a National Merit Scholar and University of Texas Presidential Scholar. She completed her undergraduate studies at Thomas Edison State College with an emphasis in Communications and Human Resources Management. Ms. Clark has a graduate certificate from the Cornell University School of Industrial Labor Relations in Human Resources Management and a Master's Certificate in Project Management from George Washington University (GWU). She was awarded a joint certificate in Advanced Public Policy Leadership from the Brookings Institution and GWU, and is a graduate of GWU's Senior Executive Development Program. She recently completed Georgetown University's Senior Executive Leadership Continuing Studies Certificate Program and is certified as a Senior Human Resources Professional by the Human Resources Certification Institute.

Publications

FEC *Annual Report 2005* Available Online

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Shays Rulemaking Supplement Available

A *Record* supplement summarizing the regulatory changes the Commission made in the last year as a result of the *Shays v. FEC* litigation is now available on the FEC web site. Printed copies are available from the Information Division.

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The web site also provides copies of the *Annual Record Index* for each completed year of the *Record*, dating back to 1996. The *Annual Record Index* list *Record* articles for each year by topic, type of Commission action and, in the case of advisory opinions, the names of individuals requesting Commission action.

You will need Adobe® Acrobat® Reader software to view the publication. The FEC's web site has a link that will take you to Adobe's web site, where you can download the latest version of the software for free.

Outreach

Workshop on General Election Filing Requirements

The Commission will host a roundtable workshop at its Washington, DC, headquarters this fall on general election filing requirements. Intended as a general session for all types of political organizations and committees, this workshop will address special issues that arise with FEC filing in the last months of the election year. Workshop topics will include:

- Tricky filing schedules for all FEC filers in October
- The Post-General Report required of all FEC filers
- The Post-Election Detailed Summary Page (filed by campaigns)
- 48-hour notices of contributions (filed by campaigns)
- 48-hour and 24-hour reports of independent expenditures (filed by PACs and parties) and
- 24-hour notices of electioneering communications (filed by individuals and 527 organizations)

Immediately following the workshop, attendees will have the opportunity to talk with the analyst who reviews their report at a "meet and greet" with campaign finance analysts from the FEC's Reports Analysis Division.

The workshop is scheduled for September 6, 2006, from 9:30 to 11:00 a.m. at the FEC's headquarters in Washington, DC, with the "meet and greet" following immediately afterwards from 11:00 to 11:30 a.m. There is no charge. Attendance is limited to 30 people and pre-registration is required. Registration is accepted on a first-come, first-served basis. Please call (202/694-1100) or e-mail Conferences@fec.gov the Commission prior to registration to ensure space is available. The registration form is available on the FEC's web site at http://www.fec.gov/outreach.shtml#roundtables and from Faxline, the FEC's automated fax system at 202/501-3414 (request document 590). For questions about the program, please e-mail Conferences@fec.gov or call the Information Division at 1-800/424-9530 (press 6) or locally at 202/694-1100.

—Dorothy Yeager

All political committees should provide a current e-mail address on their Statement of Organization (FEC Form 1), and committees that file electronically must provide one. It's important to keep all contact information on the Statement of Organization up-to-date, because the FEC uses it to send committees important compliance information. As the agency begins to communicate with committees electronically, keeping the committee's e-mail address current will be even more important. E-mail communication will allow the agency to provide more timely and tailored information to committees, in addition to saving tax dollars. Watch for more information about this exciting new program and be sure to keep your committee's e-mail address current on your Form 1. The form is available from the Commission or on its web site at www.fec.gov/info/forms.shtml

A message from the FEC Information Division
www.fec.gov / 800-424-9530 / info@fec.gov

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