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Court Cases

FEC v. Colorado Republican Federal Campaign Committee (Colorado II)

On June 25, 2001, the U.S. Supreme Court, overruling the Court of Appeals for the 10th Circuit, held that the coordinated party expenditure limits at 2 U.S.C. §441a(d)(3) are constitutional. The Court ruled that party coordinated expenditures, unlike party expenditures made independently of any candidate or campaign, may be restricted to "minimize circumvention of [individual] contribution limits."

Section 441a(d) of the Federal Election Campaign Act (the Act) applies to expenditures party committees make "in cooperation, consultation, or concert" with a candidate's general election campaign. These coordinated expenditures are considered contributions under the Act, and are subject to limits calculated by a mathematical formula set forth in the statute. 2 U.S.C. §441a(d)(3)(A) and (B).

Background

1986 Senate Campaign. This case involved $15,000 worth of expenditures the Colorado Republican Party (the Party) made in 1986 for adver-

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Election Administration

NVRA Report to Congress

On June 21, 2001, the Commission unanimously approved a report to Congress concerning the impact of the National Voter Registration Act of 1993 (NVRA) on the administration of federal elections during the 1999-2000 election cycle. The FEC is required to submit such a report to Congress by June 30 of odd-numbered years.

The NRVA authorizes the FEC to develop a mail voter registration application form for federal elections and to consult with state election officers to prescribe regulations as necessary to comply with the law. Compiled by the FEC's Office of Election Administration, the report includes a number of recommendations from state officials, most focusing on technical procedures for the implementation of the NRVA. The report includes four recommendations that were sufficiently broad to be given to all states covered by the NRVA:

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tisements critical of Democratic Senate candidate Timothy Wirth. The Commission argued that those ads contained an "electioneering message" relating to a clearly identified candidate, and therefore represented coordinated expenditures by the Party. The Commission further maintained that these expenditures, when aggregated with previous expenditures by the Party, exceeded the statutory limits of §441(a)(d). The Party contended that the ads were not coordinated with any candidate and did not contain express advocacy, and thus they were not subject to the 441a(d) limits. The Party further argued that the 441a(d) limits violated its First Amendment rights.

Colorado I. In the first ruling on this case, the U.S. District Court for the District of Colorado concluded that the ads were not subject to the 441a(d) limits because they did not contain express advocacy. Having already ruled in the Party's favor, the court did not address the Party's constitutional challenge.

On appeal, the Court of Appeals for the 10th Circuit, agreeing with the FEC that a 441(a)(d) expenditure need only depict a clearly identified candidate and convey an electioneering message, reversed the district court's decision. The appeals court also held that the 441a(d) limits did not violate the Party's First Amendment rights.

On further appeal, the Supreme Court concluded that the Party's expenditures had not been coordinated with a candidate, and were instead independent expenditures. The Court also concluded that the 441a(d) limits were unconstitutional as applied to political parties' independent expenditures. The Court did not rule on the constitutionality of the limits on coordinated party expenditures, but instead remanded the case to the district court for further proceedings on that issue.

Colorado II. On February 23, 1999, the district court ruled that the coordinated expenditure limits were unconstitutional. The court concluded the FEC had failed to offer evidence that there was a compelling need for limits on coordinated party expenditures. In its opinion, the court equated coordinated party expenditures with a candidate's own campaign expenditures which, based on the Supreme Court's ruling in *Buckley v. Valeo*, cannot be limited. (See the April 1999 *Record*, p. 1.) The FEC appealed this decision to the Court of Appeals for the 10th Circuit, which affirmed the district court's decision on May 5, 2000. The FEC then appealed the circuit court's decision to the Supreme Court.

Current Decision

In arguments before the Supreme Court, the Party maintained that financial support of candidates was an inherent function of political parties. Therefore, any limitation of Party expenditures coordinated with its candidates would be a serious infringement of its speech and associational rights. The Party argued that such a limitation would impose a unique First Amendment burden on the Party, and such a burden could not be justified by any benefits gained in preventing corruption or the appearance of corruption.

The Commission argued that coordinated expenditures should be limited not only because they are equivalent to contributions, but also because unlimited coordinated party expenditures would allow individuals to evade the contribution limits applicable to their direct contributions to candidates. Because individuals can give much larger contributions to parties than to candidates, if parties' coordinated spending were unlimited, individuals would have an incentive to make large contributions to parties, who would then be able to spend more of those contributors' dollars on a particular candidate than the individual contribution limits would allow. This circumstance would allow individuals and other contributors to circumvent the contribution limits upheld in *Buckley v. Valeo*.

In upholding the constitutionality of coordinated party expenditure limits, the Court:

- Rejected the Party's argument that unrestricted coordinated spending is essential to the nature of parties, finding that parties have functioned effectively during the previous three decades, during which the coordinated expenditure limits were in place.
- Rejected the Party's argument that parties primarily act to elect particular candidates, finding that "parties are [also] necessarily the instrument of contributors . . . whose object is not to support the party's message or to elect party candidates, but rather to support a specific candidate for the sake of a

Federal Election Commission
999 E Street, NW
Washington, DC 20463

800/424-9530
202/694-1100
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position on one, narrow issue, or even to support any candidate who will be obliged to contributors."

- Found that a party is not in a unique position vis-à-vis other political spenders, such as wealthy individuals, PACs and media executives, all of whom could coordinate expenditures with a candidate's campaign. Instead, precisely because political parties can efficiently amplify their members' power through aggregating contributions and broadcasting messages, they are in a position to be used to circumvent contribution limits.

Citing testimony provided by political scientists in friend-of-the-court briefs, the Court agreed with the Commission that there was a serious threat of abuse from unlimited coordinated party expenditures. The Court concluded: "Despite years of enforcement of the challenged limits, substantial evidence demonstrates how candidates, donors, and parties test the limits of the current law, and it shows beyond serious doubt how contribution limits would be eroded if inducement to circumvent them were enhanced by declaring parties' coordinated spending wide open."

See also the October 2000 *Record*, p.6, the July 2000 *Record*, p. 1.

U.S. Supreme Court, 00-191; U.S. Court of Appeals for the 10th Circuit, 99-1211.❖

— *Jim Wilson*

FEC v. NRA (85-1018)

On June 29, 2001, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the National Rifle Association (the NRA) and its lobbying organization, the NRA American Institute for Legal Action (ILA), violated the Federal Election Campaign Act's (the Act) ban on corporate contributions and expenditures during the 1978 and 1982 election cycles. 2 U.S.C. §441b(a). While the district court had ruled that the NRA also violated the ban in 1980, the appellate court determined that during 1980 the NRA qualified for a constitutionally-mandated exemption from the ban. As a result, the appeals court remanded the case to the lower court in order to have civil penalties calculated based on the 1978 and 1982 violations alone.

Background

During the 1978, 1980 and 1982 election cycles, the NRA paid $37,833 of the Political Victory Fund's expenses for federal election activity, including payments for newspaper advertisements, direct mailings and other materials that supported or opposed individual candidates. The Political Victory Fund then distributed some of these materials to NRA members, firearms dealers and other related organizations. The Political Victory Fund later reimbursed the NRA for these expenses and reported the disbursements as independent expenditures on its FEC disclosure reports.

In 1985, the Commission filed a civil suit against the NRA, the ILA and the Political Victory Fund, claiming that they had violated the Act's prohibition on corporate contributions and expenditures.

In response, the NRA argued that its payments on behalf of the Political Victory Fund were for that committee's administrative expenses and, thus, permissible under the Act.[1] The NRA also challenged the constitutionality of the Act as applied to its activities, arguing that the organization should qualify for the so-called *MCFL* exemption that allows certain nonprofit political corporations to make independent expenditures.

This exemption is based on the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life (MCFL)*, 479 U.S. 238 (1986). In that case, the Court held that the Act's general prohibition of corporate-financed independent expenditures could not constitutionally be applied to nonprofit ideological corporations that possess three specified features that preclude them from presenting the kinds of dangers at which the prohibition is directed.[2] See also *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990).

District Court Decision

The district court rejected the NRA's argument that its payments to the Political Victory Fund were merely for administrative expenses. The court also concluded that the NRA, unlike MCFL, did not qualify for the constitutionally-mandated exemption from the Act's prohibition of corporate independent expenditures. The NRA, the court stated, had not been formed for the express purpose of promoting political ideas and pursued a variety of activities, many of which were not political. The court also stated that the NRA had no policy of

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[1] *Section 441b(b)(2)(C) permits a corporation acting as the connected organization of a political action committee to pay for the committee's "establishment, administration, and solicitation of contributions."*

[2] *The three features set forth in* MCFL *are:*

1. *The organization is a nonprofit ideological corporation formed "for the express purpose of promoting political ideas, and cannot engage in business activities."*
2. *It has "no shareholders or other persons affiliated so as to have a claim to its assets or earnings."*
3. *It has not been established by a corporation or labor union and has a policy "not to accept contributions from such entities."*

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refusing contributions from business corporations. The court fined the NRA and ILA $25,000 for making prohibited contributions and expenditures, and it imposed a separate $25,000 civil penalty against the Political Victory Fund for receiving prohibited corporate contributions.

Appeals Court Decision

Statutory Claims. On appeal, the NRA again argued that its payments on behalf of the Political Victory Fund were permissible payments of administrative expenses. In addition, the NRA argued that its:

- In-kind contributions of corporate materials and facilities were allowable under Commission regulations that permit persons to use corporate facilities for election-related activity, so long as they reimburse the corporation within a commercially reasonable time for the market value of the production of the materials (11 CFR 114.9 (c)); and
- Payments to NRA employees working for Political Victory Fund on the campaigns of federal candidates were permissible because those payments did not meet the statutory definition of "contribution" at 2 U.S.C. §431(8)(A).

The appeals court, however, deferred to the Commission's interpretation of the definition of administrative expenses at 11 CFR 114.1(b), which allows corporations to cover only the overhead and start-up costs of their political action committees. The court also deferred to the Commission's interpretation of 11 CFR 114.9(c), which allows only stockholders and employees acting as volunteers to use corporate facilities to produce materials in connection with a federal election.[3] Finally, relying on FEC Advisory Opinion 1984-24, the court held that the NRA's payments to its employees who were working for the Political Victory Fund on candidates' campaigns were prohibited corporate contributions under the definition of "contribution" at section 441b(b)(2), which addresses corporate activity. The FEC's advisory opinions, the court stated, are entitled to deference. They "not only reflect the Commission's considered judgment made pursuant to congressionally delegated law-making power, but [they] also have binding legal effect."

Constitutional Challenge. In its appeal, the NRA also renewed its claim that, under the *MCFL* decision, it was exempt from the ban on corporate contributions. The NRA argued that it was "not formed to amass capital, and its resources reflect not the 'economically motivated decisions of investors and customers, but rather its popularity in the political marketplace.'"

The Commission argued that, unlike MCFL, the NRA does not have a narrow political focus but instead performs a wide variety of nonpolitical services for its members. The Commission also argued that the NRA's extensive business activities and its acceptance of corporate contributions distinguished it from the kinds of corporations exempted by the Supreme Court in *MCFL*.

The appellate court stated that "the Commission must demonstrate that the NRA's political activities threaten to distort the electoral process through the use of resources that, as *MCFL* put it, reflect the organization's 'success in the economic marketplace' rather than the 'power of its ideas.'" The court concluded that the Commission had "failed to demonstrate that the NRA resembles a business firm more closely than a voluntary political association."

The court found, however, that the $7,000 and $39,786 in corporate contributions that the NRA received in 1978 and 1982, respectively, were substantial enough to risk turning it into a "potential conduit for the corporate funding of political activity" during these years. Thus, the court found no constitutional barrier to applying the Act's prohibitions to the NRA for those two years. In 1980, however, the NRA received only $1,000 in corporate contributions, an amount which, in the court's view, did not demonstrate that the organization was acting as a conduit for corporate contributions. Therefore, the court held that the NRA was not in violation of the Act for contributions and expenditures it made to the Political Victory Fund during that year.

Penalties

The appeals court ordered that the case be remanded to the district court to recalculate penalties against the NRA, the ILA and the Political Victory Fund based solely on the 1978 and 1982 violations.

U.S. Court of Appeals for the District of Columbia Circuit, 00-5163.✥

—Amy Kort

[3] *The individuals must reimburse the corporation, within a commercially reasonable time, for the usual market price for producing the materials.*

New Litigation

Jeremiah T. Cunningham v. FEC

On June 22, 2001, the Robert W. Rock for Congress Committee (the Committee) and its treasurer, Jeremiah T. Cunningham, filed suit against the Federal Election Commission in the U.S. District Court for the Southern District of Indiana, Indianapolis Division. The complaint appeals a civil money penalty

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- An alphabetical list of all registered PACs showing each PAC's identification number, address, treasurer and connected organization ($13.25).
- A list of registered PACs arranged by state providing the same information as above ($13.25).
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The Disclosure Division can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St., NW.

the Commission assessed against the committee and its treasurer, and claims that the Commission's assessment of that penalty was erroneous, excessive and not warranted.

Background. Mr. Cunningham alleges that, on December 12, 2000, he mailed to the Commission the Committee's 2000 30-Day Post General Report, which was due December 7, 2000. Mr. Cunningham maintains that in mid-January he noticed the Committee's report was not posted on the Commission's Web site, and that he then sent an additional copy of the report to the Commission. The Commission received that report on February 6, 2001.

In March 2000, the Commission found reason to believe that the Committee and Mr. Cunningham had violated 2 U.S.C. §434(a), which requires the timely filing of reports by political committees. The Commission sent Mr. Cunningham and the Committee a "reason to believe" notice, which included a civil money penalty, assessed under the Administrative Fine regulations, of $4,500 for failing to file the report.[1] 11 CFR 111.43. The notice informed Mr. Cunningham and the Committee that they had 40 days to either pay the civil money penalty or challenge the Commission's finding. Mr. Cunningham claims that he did not receive the notice because he ceased to receive mail at the address he had given the Commission.

In May 2001, the Commission made a final determination that the Committee and Mr. Cunningham violated 2 U.S.C. §434(a) and assessed a $4,500 civil money penalty for the violation. Plaintiffs filed suit against the Commission on June 22, 2001.

Relief. The plaintiffs ask that the court set aside or modify the determination and civil money penalty imposed by the Commission.

U.S. District Court for the Southern District of Indiana, Indianapolis Division, (P01-0897 C BS).✥

—Amy Kort

[1] *Under the Administrative Fine regulations, reports that are received more than 30 days after the filing date are considered to be nonfiled. Election sensitive reports that are received less than 4 days before an election are considered to be nonfiled. A 30-day post general report is not an election sensitive report.*

Election Administration

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- States should develop and implement an on-going, periodic training program for relevant motor vehicle and agency personnel regarding their duties and responsibilities under the NVRA as implemented by state law.
- States should require motor vehicle and agency offices to promptly transmit information regarding voter registration applicants electronically to the appropriate election office with the documentation to follow.
- States should devise a procedure whereby voters may cast a provisional ballot at the polls on election day under circumstances prescribed by state law.
- States should adopt the practice of mailing a forwardable notice to all persons who are removed from the voter registration list whose mail has not previously been returned as undeliverable.✥

—Phillip Deen

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Election Administration

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Voting System Standards

On June 21, 2001, the Commission approved for public comment a draft of Volume I of the voluntary voting system standards (VSS). The primary goal of the VSS is to provide a means for state and local election officials to assure the integrity of computer-based election systems. Independent testing laboratories use these standards to test voting system hardware and software. This draft is an expanded and revised set of standards for computer-based voting systems written in response to field experience and technological developments not predicted by the 1990 standards.

The Commission seeks comments on the revised standards, including proposed criteria to:

- Expand existing provisions for offering direct feedback to the voter, indicating contests where an under-vote or over-vote is detected;
- Further enable voters with disabilities to cast ballots and election officials with disabilities to operate systems without assistance;
- Assure that Internet voting systems are as accurate, reliable and secure as other forms of voting systems;
- Expand the reporting responsibilities of the voting system vendor to ensure system quality; and
- Address recordkeeping, auditing and reporting activities with respect to the configuration of the voting system.

This report does not discuss administrative or management functions, nor does it address the problems of determining what constitutes a vote or remedying the lack of uniform recount procedures, such as those encountered in Florida during the recent elections.

Comments on the standards in this draft must be received no later than 60 days after notice has been published in the *Federal Register*. Copies of the proposed standards may be found on the FEC Web site at www.fec.gov/elections.html, or may be requested by contacting the Office of Election Administration at 202-694-1095. All comments should be addressed to Penelope Bonsall, Director, Office of Election Administration, Federal Election Commission, 999 E Street NW., Washington, DC 20463 and must be submitted in either electronic or written form. E-mail comments should be sent to VSS@fec.gov. Those sending their comments by e-mail must include their full name, e-mail address and postal address or the comments will not be considered.✥

—Phillip Deen

Advisory Opinions

AO 2001-7

Nonaffiliation of Limited Liability Company PAC with PACs of Its Five Corporate Owners

For the purposes of the Federal Election Campaign Act (the Act) and Commission regulations, the Nuclear Management Company, LLC (NMC) is not affiliated with any of its five owner corporations because ownership, control and decision-making authority over NMC is equally divided among the corporations. As a result, NMC's Political Action Committee (NMCPAC) is not affiliated with the PACs of its owner companies. Moreover, since NMC functions as a partnership under the Act and is not affiliated with any of its owner corporations, it cannot act as the connected organization of NMCPAC.

Affiliation

Under the Act and Commission regulations, committees established by the same corporation, person or group—including any parent, subsidiary, branch, division, department or local unit of a given entity—are affiliated. 2 U.S.C. §441a(a)(5) and 11 CFR 100.5(g)(2) and 110.3(a)(1)(ii). Entities other than corporations, such as partnerships and limited liability companies, may also be affiliates. See AOs 2000-36, 1997-11 and 1992-17; see also AO 1996-38.

In cases where one entity is not an acknowledged subsidiary of another, Commission regulations provide for an examination of various factors, considered in the context of an overall relationship, in order to determine whether the entities are affiliated and, thus, whether their respective PACs are affiliated. Relevant factors include:

- A controlling interest in voting stock;

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- The ability of one sponsoring organization or committee to participate in the governance of another sponsoring organization or committee through formal rules or through formal or informal practices;
- The authority or ability to hire, appoint, demote or otherwise control the decision-making agents of another sponsoring organization or committee;
- An overlap of officers or employees in a manner that indicates a formal or ongoing relationship between the organizations or committees;
- The provision of, or arrangement for, funds or goods in a significant amount or ongoing basis to another sponsoring organization or committee;
- An active or significant role in the formation of another sponsoring organization or committee; and
- A shared pattern of contributions or contributors indicating a formal or ongoing relationship (11 CFR 110.3(a)(3)(ii)).

Contributions made to or by affiliated committees are considered to have been made to or by a single committee for the purposes of the Act's contribution limits. 2 U.S.C. §441(a)(5) and 11 CFR 100.5(g)(2), 110.3(a)(1) and 110.3(a)(1)(ii). Additionally, a corporation may solicit contributions to its PAC from the restricted class of its subsidiaries or other affiliates. 2 U.S.C. §441b(b)(4)(A)(i) and 11 CFR 114.5(g)(1).

Nonaffiliation of NMCPAC

NMC is a joint venture limited liability company that has not elected to be treated as a corporation by the IRS.[1] Each of five member corporations owns an equal share of NMC. Each owner company has its own separate segregated fund (SSF). NMCPAC has not received any financial support from NMC, the owner companies or their SSFs.

Even though some of the circumstances described in the affiliation factors are present in NMC's relationship to its member corporations, ownership and control of NMC are sufficiently divided and diffuse among the five owning members that none is affiliated with the joint venture.[2] In the case of NMC, each corporation owns a 20 percent interest, giving no single owner a controlling interest. Each owner company has equal representation on the board of directors, and most actions by NMC require a majority of the entire board, with a few matters requiring a three-fourths majority or unanimity. Therefore, except when unanimity is required, no one company can prevent an action by the board. Additionally, although each owner company, through its representation on the NMC's board of directors, has the ability to participate in the governance of NMC and to participate in the hiring and the exercise of authority over its officers, no company has substantially more authority than any other.

Moreover, aside from the owner companies' representatives on the NMC board of directors, no officers or employees have employment both through NMC and any owner company.[3] A substantial number of NMC's officers and employees were formerly employed by the member companies, which suggests a formal or ongoing relationship between the owner companies and NMC. The former officers or employees of no one company, however, constitute

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[1] A multi-member limited liability company that does not have publicly traded shares and does not elect to be treated as a corporation by the IRS is treated as a partnership for the purposes of the Act. 11 CFR 110.1(g)(2) and (3).

[2] The Commission has in the past concluded that the members of a joint venture company were affiliated with that company, based upon the control each member had over the company. When two companies owned equal shares and shared control equally, they were both affiliates of the joint venture. When only one had a controlling interest, only this company was affiliated with the joint venture.

[3] One exception was a vice president from one of the member corporations who was a "loaned executive" at NMC and who, as of July 1, 2001, was an officer only of NMC.

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Advisory Opinions

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the dominant part—or anywhere near a substantial plurality—of the officers or employees of NMC.

NMC and its owner companies exchange a significant amount of funds as part of their business arrangement; however, they exchange these funds as part of an arrangement of payment for services, and no owner provides the dominant or substantial plurality of funds for NMC's operations. See 11 CFR 110.3(a)(3)(ii)(G). Although four of the five owning members of NMC founded the company and thus took a significant role in its formation, the significance of this fact is reduced because of the number of founders.

Finally, neither the owner companies nor their PACs have given NMCPAC administrative or "material financial" support, nor have they directed or encouraged the provision of funds to or by NMCPAC. NMCPAC does not have a formal or ongoing relationship with any of the PACs of these owner companies, and NMCPAC does not share officers in common with any of these PACs. See 11 CFR 110.3(a)(3)(ii)(E).

As a result of all of these factors, NMC is not affiliated with any of its owner companies, and NMCPAC is not affiliated with the PACs of any of the member companies for the purposes of the Act and Commission regulations.

Consequences of Nonaffiliation

NMCPAC does not share contribution limits with any of the owner corporations' PACs and does not need to apportion to them any part of contributions it makes. NMCPAC does not need to list any of these PACs on its Statement of Organization, nor does it need to amend its Statement of Organization as new owners become members of the joint venture.[4]

Connected Organization

As noted above, a multi-member limited liability company that does not elect to be treated as a corporation by the IRS, as NMC has not, is considered a partnership under Commission regulations. 11 CFR 110.1(g)(2) and (3). Typically, partnerships cannot act as the connected organization of a PAC.[5] AO 1991-1 and 1990-20. In the past, the Commission has treated joint venture partnerships differently as a result of those partnerships' ownership by, and affiliation with, corporations. See AOs 1996-49, 1994-11 and 1992-17; see also AO 1997-13. If corporations comprise the entire ownership of a partnership, the partnership may act as the connected organization of its PAC, so long as the partnership is affiliated with at least one of the corporations. See AO 1997-13, 1996-49 and 1994-11.

Because NMC is not affiliated with any of its owner corporations for the purposes of the Act, however, it cannot act as a connected organization for NMCPAC. Thus, if NMC paid any of NMCPAC's expenses, these payments would be contributions to NMCPAC. NMC cannot make contributions to NMCPAC because such contributions would be attributed not just to NMC, but also to its members, the owner companies, all of which are corporations.[6] 11 CFR 110.1(g)(2), 110.1(e)(1) and (2).

General Guidance on Services and Materials for NMCPAC

In past advisory opinions, the Commission explained how an incorporated entity might provide services and materials to a nonconnected PAC that the corporation's personnel (acting as individuals) established, organized and directed. See AO 2000-20, 1997-26 and 1997-15. Following these guidelines, NMC may give some assistance to NMCPAC without being considered a connected organization under 2 U.S.C. §431(7) and 11 CFR 100.6 and without making a prohibited corporate contribution:

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[4] *If the structure and operations of NMC remain essentially the same, each company in the expanded ownership group will have no greater share of the ownership and management than an owner company presently holds. Thus, these new companies would also not be affiliates of NMC. NMCPAC currently erroneously lists the Wisconsin Public Service Corporation PAC as an affiliate and must amend its Statement of Organization to delete this reference.*

[5] *A connected organization is that corporation which may use its general treasury funds to pay for the costs of establishing, administering or soliciting contributions for an SSF, without that activity resulting in a contribution or expenditure. 2 U.S.C. §441b(b)(2)(C) and §431(7) and 11 CFR 100.6(a).*

[6] *Additionally, because none of the corporations is NMCPAC's connected organization, NMCPAC does not need to include the names of its owner companies in the name of its PAC.*

- NMC may provide legal and accounting services to NMCPAC without charge so long as such services are rendered by a regular employee of NMC and are provided solely to ensure compliance with the Act. 2 U.S.C. §§431(8)(B)(ix)(II) and (9)(B)(vii)(II); 11 CFR 100.7(b)(14) and 100.8(b)(15).
- NMCPAC may pay NMC the usual and normal charge within a commercially reasonable time for the use of office facilities such as telephones. See AO 1979-22.
- If NMC or its employees provide other goods and services, these must be paid for in advance. See 2 U.S.C. §431)8)(A) and 11 CFR 100.7(a)(1). See also AOs 1997-26 and 1997-15; 11 CFR 114.2(f) and 116.3.[7]

Date Issued: June 8, 2001; Length: 12 pages.✥

—Amy Kort

The FEC Takes Visa and Mastercard

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A0 2001-8

Use of Campaign Funds to Purchase Candidate Autobiography for Distribution to Contributors

Senator Arlen Specter's principal campaign committee, Citizens for Arlen Specter (the Committee), may use campaign funds to purchase copies of the Senator's autobiography to distribute to campaign contributors. The purchase would not result in a conversion of campaign funds to personal use by the Senator; nor would the purchasing arrangement between the Committee and the book publisher result in a prohibited corporate contribution from the publisher to the Committee.

Background

The Committee plans to purchase copies of Senator Specter's autobiography in bulk from the publisher and give copies to donors who have given $1,000 to the campaign.

The Committee will pay the standard bulk rate made available by publishers to large purchasers. Senator Specter will not receive any royalties as a result of the Committee's purchase. The publisher will give the royalties attributable to the sale to charity.

Personal Use of Campaign Funds

Under the Federal Election Campaign Act (the Act) and Commission regulations, a candidate and the candidate's committee have wide discretion in making expenditures to influence the candidate's election, but may not convert excess campaign funds to the personal use of the candidate or any other person. 2 U.S.C. §§431(9) and 439a; 11 CFR 113.1(g) and 113.2(d); see also Advisory Opinions 2001-03, 2000-40, 2000-12 and 2000-02.

Commission regulations define "personal use" of campaign funds as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g). Commission regulations list a number of purposes that would constitute personal use. 11 CFR 113.1(g)(1)(i). Where a specific use is not listed as personal use, the Commission makes a determination on a case-by-case basis. 11 CFR 113.1(g)(1)(ii).

In this case, Committee funds will be used to defray an expense that would not exist irrespective of the Senator's campaign, given that:

- The books will be used solely for distribution to the contributors.[1]
- The quantity purchased by the Committee will not exceed the number needed for the described distribution.
- The Senator will receive no royalties or income and will declare no tax deductions as a

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[7] Although the requester did not provide details or ask about proposed future arrangements where NMCPAC would not be a separate segregated fund, the Commission provided this advice as general guidance based on Commission regulations and the AOs listed above.

[1] The distribution of the books may be viewed as an expression of thanks to contributors for supporting past campaigns and an incentive to provide support for the Senator's reelection campaign.

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result of the sale of these books to the Committee.
- The sales will not increase the Senator's opportunity to receive future royalties.[2]

Possible In-Kind Corporate Contributions

The Committee's bulk purchase of the books at a discounted rate raises the issue of whether the publisher is making a prohibited in-kind corporate contribution. See 2 U.S.C. §441b(a); 11 CFR 114.2(b). Under the Act and Commission regulations, the term "contribution" includes giving "anything of value" for the purpose of influencing an election. 2 U.S.C. §§431(8)(A)(i) and 441b(b)(2); 11 CFR 100.7(a)(1) and 114.1(a)(1). The term "anything of value" includes the provision of goods or services at less than the usual and normal charge. 11 CFR 100.7(a)(1)(iii)(A) and 100.7(a)(1)(iii)(B). In the past, the Commission has concluded that the purchase of goods or services at a discount does not result in a contribution when the discounted items are made available in the ordinary course of business and on the same terms and conditions to the vendor's other customers that are not political organizations or committees. See Advisory Opinions 1996-2, 1995-46 and 1994-10.

Since the Committee would pay the usual and normal charge for this type of bulk purchase, it will not receive an in-kind corporate contribution from the publisher.

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—Jim Wilson

[2] *In addition, no royalties will result from the distribution of the books because the Committee does not plan to sell the books.*

Outreach

FEC Regional Conference in Denver for Candidates, Parties and PACs

This October, the Federal Election Commission will hold a comprehensive, two and one-half day regional conference in Denver. This conference is designed to help federal political committees and candidates understand and comply with the federal campaign finance law. The conference will provide an overview of the basic provisions of the federal election law and discuss specific requirements that apply to candidates, political parties and corporate, labor and trade association PACs (as well as their sponsoring organizations).

The conference will consist of a series of workshops presented by Commissioners and experienced FEC staff, and a representative from the Internal Revenue Service will be available to answer election-related tax questions.

The conference will be held October 2-4, 2001, at the Westin Westminster, 10600 Westminster Blvd., Westminster, Colorado (Denver metro area). The registration fee for the conference is $360, which covers the cost of the conference, reception, materials and meals. The registration fee and the registration form, which is available by mail and on line, must be received by August 31. A late registration fee of $10 will be added as of September 1. A full refund will be made for all cancellations made before that date.

A room rate of $158 single or double is available for hotel reservations made by August 31. Call (303) 410-5000 or (800) 937-8461 and specify the Federal Election Commission room block. After August 31, room rates are based on availability. Free parking is located across from the hotel.

Registration

Conference registrations will be accepted on a first-come, first-served basis. Attendance is limited, and other FEC conferences have sold out this year, so please register early.

For registration information, call Sylvester Management Corporation at (800) 246-7277 or send an e-mail to toni@sylvestermanagement.com. To fill out a conference registration form on line, visit www.fec.gov/pages/infosvc.htm#Conferences.

For specific program information about this conference, call the Federal Election Commission's Information Division at (800)424-9530 (press 1, then 3) or (202)694-1100 or view the program at the FEC Web address listed above.✥

—Phillip Deen

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