

Record

April 2006

Federal Election Commission

Volume 32, Number 4

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Regulations

Final Rules Defining “Solicit” and “Direct”

On March 13, 2006, the Commission approved final rules and explanation and justification that expand the definitions of “solicit” and “direct” as those terms relate to the raising and spending of federal and nonfederal funds. The rulemaking stems from court decisions in *Shays v. FEC* that invalidated the existing regulatory definitions of those terms.

Background

On July 15, 2005, the U.S. Court of Appeals for the District of Columbia upheld the U.S. District Court for the District of Columbia’s September 18, 2004 decision in *Shays v. FEC*. (See the September 2005 *Record*, page 1.) That decision invalidated several Commission regulations implementing provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA), including the regulations that define “to solicit” and “to direct.”

The Court of Appeals concluded that by limiting the definition of “to solicit” only to explicit, direct requests for money, thus permitting indirect requests for funds, the Commission’s regulatory definition allows candidates and parties to

(continued on page 2)

Reports

April Quarterly Reporting Reminder

All principal campaign committees of House and Senate candidates must file a quarterly report by April 15. 11 CFR 104.5(a). Principal campaign committees of Presidential candidates must file a report on April 15, if they are quarterly filers, or on April 20, if they are monthly filers.

Political action committees (PACs) and party committees that file on a monthly basis, including all national party committees and certain political action committees and state, district and local party committees, have a report due on April 20.¹ Other PACs and party committees must file a quarterly report by April 15.

Committees that will be involved in the April 11, 2006, Special General Election in California’s 50th Congressional District or in an intervening primary election may have

(continued on page 3)

¹ State, district and local party committees that have \$5,000 or more of aggregate receipts and disbursements in a calendar year for federal election activity (FEA) must file monthly. 11 CFR 300.36(c). For more information on new FEA rules see March 2006 *Record* page 3.

Regulations

(continued from page 1)

circumvent BCRA's prohibitions and restrictions on nonfederal funds and thereby violates "Congress's intent to shut down the soft-money system." As to the term "direct," the Court of Appeals held that the Commission's definition of "direct" was invalid because it effectively defined "direct" as "ask" and thus, like the definition of "solicit" and contrary to Congress's intent, limited "direct" to explicit requests for funds.

Final Rules

The Commission had approved a Notice of Proposed Rulemaking (NPRM) on September 28, 2005, seeking comments on proposed revisions to its definitions of the terms "solicit" and "direct." On November 15, 2005, the Commission held a public hearing to receive testimony

on the proposed revisions. (See December 2005 *Record*, page 7.) After considering the public comments and testimony, the Commission issued final rules.

Definition of "Solicit." The revised definition of "solicit" encompasses written and oral communications that, construed as reasonably understood in the context in which they are made, contain a clear message asking, requesting or recommending, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide something of value. Included in the regulations is a non-exhaustive list of examples of communications and statements that constitute solicitations. For instance, "Group X has always helped me financially in my elections. Keep them in mind this fall" would constitute a solicitation under the revised definition, whereas a statement such as "Thank you for your support of the Democratic Party" made during a policy speech would not.

Under the revised definition, a solicitation may be made directly or indirectly and mere statements of political support or guidance as to the application of the law do not constitute solicitations.

To "Direct." The new definition of "direct" focuses on guidance provided to a person who intends to donate funds. Specifically, "to direct" means to guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation, transfer of funds, or otherwise provide anything of value by identifying a candidate, political committee or organization for the receipt of such funds, or things of value. A contribution, donation, transfer or thing of value may be made or provided directly or through a conduit or intermediary.

As with the definition of "solicit," direction does not include merely providing information or guidance

as to the applicability of a particular law or regulation.

The final rules appeared in the *Federal Register* on March 20, 2006, and will become effective on April 19, 2006.

—Amy Pike

Rulemaking Petition Seeks EC Exemption

On February 16, 2006, the Commission received a Petition for Rulemaking seeking to exempt certain "grassroots lobbying" communications from the regulatory definition of "electioneering communications" (EC). The petition was submitted by the AFL-CIO, the Alliance for Justice, the Chamber of Commerce of the United States, the National Education Association and OMB Watch.

With certain exceptions, an EC is any "publicly distributed" television, radio or satellite communication that refers to a clearly identified federal candidate within 30 days before a primary election or 60 days before a general election. In the case of congressional candidates, the communication must also be targeted to the relevant electorate. See 11 CFR 100.29.

The Commission published a Notice of Availability in the *Federal Register* on March 16, 2006, seeking comments on whether to initiate a rulemaking in response to this petition. The deadline for comments is April 17, 2006. The full text of the notice is available on the FEC web site at <http://www.fec.gov> or from the FEC Faxline, 202/501-3413. Public comments must be in either written or electronic form to Brad C. Deutsch, Assistant General Counsel. Commenters are strongly encouraged to submit comments by email or fax to ensure timely receipt and consideration.

- All comments must include the full name postal service address.

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

800/424-9530
202/694-1100
202/501-3413 (FEC Faxline)
202/219-3336 (TDD for the
hearing impaired)

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Director

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<http://www.fec.gov>

- Emailed comments must be sent to either GRLECNOA@fec.gov or submitted through the Federal eRegulations Portal at www.regulations.gov. Attachments must be in Adobe Acrobat or Microsoft Word format.
- Faxed comments must be sent to 202/219-3923 with a paper copy follow-up.
- Paper comments or fax follow-up comments must be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463.

—Carlin E. Bunch

Federal Register

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

Notice 2006-3

Price Index Increases for Coordinated Party Expenditure Limitations (71 FR 14218, March 13, 2006)

Notice 2006-4

Rulemaking Petition: Exception for Certain "Grassroots Lobbying" Communications From the Definition of "Electioneering Communication" (71 FR 13557, March 16, 2006)

Notice 2006-5

Coordinated Communications, Supplemental Notice of Propose Rulemaking; Re-opening of Comment Period (71 FR 13306, March 15, 2006)

Notice 2006-6

Definitions of "Solicit" and "Direct," Final Rules (71 FR 13926, March 20, 2006)

Reports

(continued from page 1)

additional filing requirements in April. See the January 2006 *Record* and the February 2006 *Record*, page 4, for more details.

Electronic Filing Software

The Commission recently updated its electronic filing format to Version 5.3.1.0. FECFile Version 5.3, supported by the new format, is available for download from the FEC web site at <http://www.fec.gov/electfil/FECFileIntroPage.shtml>. Committees using commercial software should contact their vendors for more information about the latest software release. Only reports filed in the new format version will be accepted.

Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations² that receive contributions or make expenditures in excess of \$50,000 in a calendar year — or expect to do so — must file all reports and statements with the FEC electronically.

Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program will be considered nonfilers and may be subject to enforcement actions, including administrative fines. 11 CFR 104.18.

Senate committees and other committees that file with the Secretary of the Senate are not subject to the mandatory electronic filing rules, but may file an unofficial electronic copy of their reports with the Commission in order to speed disclosure.

² The regulation covers individuals and organizations required to file reports with the Commission, including any person making an independent expenditure. Disbursements made by individuals or unregistered entities for electioneering communications do not count toward the \$50,000 threshold for mandatory electronic filing. See 11 CFR 104.18(a).

Timely Filing for Paper Filers

Reports sent by registered or certified mail, by Express or Priority Mail with delivery confirmation or by overnight mail with an online tracking system must be postmarked, or deposited with the mailing service, by the filing deadline.³ A committee sending its reports by certified mail should keep its mailing receipt with the postmark as proof of filing because the U.S. Postal Service does not keep *complete* records of items sent by certified mail. A committee sending its reports by registered, Express or Priority mail, or by an overnight delivery service, should also keep its proof of mailing or other means of transmittal of its reports.

Reports sent by other means — including first class mail and courier — must be *received* by the FEC before it closes its doors on the filing deadline. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

For those filers who are not required to file their reports electronically, paper forms are available on the FEC's web site, <http://www.fec.gov/info/forms.shtml>, and from FEC Faxline, the agency's automated fax system, 202/501-3413.

Additional Information

For more information on 2006 reporting dates:

- See the reporting tables in the January 2006 *Record*;
- Call and request the reporting tables from the FEC at 800/424-9530 or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline at 202/501-3413 (document 586); or
- Visit the FEC's web page at http://www.fec.gov/info/report_dates.shtml to view the reporting tables online.

—Carlin E. Bunch

³ Note that April 15 falls on a weekend. Filing dates are not extended for weekends or holidays

Advisory Opinions

AO 2006-1:

Committee May Accept Discount in Normal Course of Business

A nonconnected political action committee may purchase bulk copies of a candidate's book at a discount if the publisher offers the same rate to others who buy books in bulk.

Background

Pac for a Change plans to purchase from a publishing company numerous copies of Senator Barbara Boxer's book *A Time to Run*. The publisher would sell the books to the committee at a bulk rate price, which is below the suggested retail price. The committee would then offer signed copies of the books to any person who raises at least \$100 for the committee within a certain time period.

Analysis

The Federal Election Campaign Act (the Act) and Commission regulations define a "contribution" to include anything of value given for the purpose of influencing a federal election. 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.52(a). "Anything of value" includes the provision of goods or services at less than the usual and normal charge. The usual and normal charge of goods means the market price of those goods at the time of the contribution.

In past advisory opinions, the Commission has concluded that discounts offered in a vendor's ordinary course of business do not result in contributions. (See AOs 2004-18, 2001-08, 1996-02, 1995-46, 1994-10, and 1993-20.) Since books bought in bulk normally are offered at discounted price, the publisher would not be making an in-kind contribution to the committee if the price Pac for a Change pays is the

usual and normal price paid by other bulk book purchasers.

Length: 3 pages

Date: February 28, 2006

—Meredith E. Metzler

AO 2006-2:

LLC Does Not Qualify as Membership Organization

A proposed limited liability company (LLC) does not qualify as a membership organization under the Federal Election Campaign Act (the Act). As a result, individuals who pay dues to the company cannot qualify as "members" and cannot, as such, be solicited for contributions to the LLC's separate segregated fund or sent express advocacy communications. Only the company's owners and executive and administrative personnel fall within its restricted class.

Background

FEC regulations prohibit an LLC that elects to be taxed as a corporation from making contributions or expenditures in connection with federal elections. However, it may establish an SSF and may make express advocacy communications to its restricted class. For an incorporated membership organization, the restricted class consists of its unincorporated members and executive and administrative personnel, plus the families of both those groups. For other corporations, the restricted class includes executive and administrative personnel, stockholders and the families of both those groups.

The definition of membership organization includes any unincorporated association, trade association, cooperative, corporation without capital stock that:

- Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization;
- Expressly states the qualifications of membership;

- Makes formal organizational documents available to its members;
- Expressly solicits persons to become members;
- Expressly acknowledges the acceptance of membership, e.g., via membership card; and
- Is not organized primarily for the purpose of influencing an election for federal office. 11 CFR 100.134(e)-(g) 114.1(e)(1)-(3).

Analysis

Robert Titley proposes to establish a for-profit LLC that would be taxed as a corporation. It would be owned by a group of individuals, the Founders, who would make capital investments in the LLC, and receive profits, incur losses, and distributions of distributable cash in accordance with their ownership interests. They (and the Managers they choose) would control the business affairs of the organization. The LLC would produce a web site to express views on candidates and issues and would establish an SSF with the intention of soliciting contributions from "Participating Members," i.e., those who pay dues to access a password-protected section of the web site. Those Participating Members could serve on the Policy Board, which would be empowered to help shape the issue positions expressed on the web site and approve or disapprove the Company's choices for recipients of SSF contributions.

Although the proposed LLC seeks to qualify as a membership organization, the Commission determined that the LLC would be, for the purposes of the Act, a for-profit corporation owned by stockholders, the Founders. Assuming the Participating Members would meet the definition of "member" if the LLC qualified as a "membership organization," none of them, as Participating Members, would be vested with the power and authority to operate or administer the LLC. That authority rests solely with the Founders, who are stockholders rather than members.

Since the LLC does not qualify as a membership organization, it may not solicit its Participating Members for SSF contributions or make express advocacy communications to them. Only the LLC's owners, administrative and executive staff, and their families are within the organization's restricted class.

Length: 5 pages

Date Issued: March 1, 2006

—Carlin E. Bunch

AO 2006-6:

Millionaires' Amendment Applied to California Special Election

For purposes of the Millionaires' Amendment, candidates running in California's 50th District special general election must count all personal spending from the beginning of the election cycle to the date of the special general election as expenditures for that election. If a special general election runoff is necessary, it will be held on the same day as the regularly-scheduled California primary election. Given that fact, candidates running in both of those elections must count personal spending between the date of the special general and the runoff/primary date as expenditures for both the special general and the primary. If a runoff election is not held, all post-special general election personal spending will count toward the primary.

Background

Francine Busby, a candidate for Congress in California's 50th District, is running in both the special general election — to replace former Congressman, Randy "Duke" Cunningham for the remainder of the 109th Congress — and the regularly-scheduled primary election for that seat.

The special general election will be held on April 11, 2006. The candidate receiving a majority of the votes in that election will be declared the winner. If no candidate

receives a majority of the votes, a runoff will be held on June 6, 2006, which is the same day as the regularly-scheduled primary election. Like Ms. Busby, most of the candidates running in the special general are also running in the primary election.

Millionaires' Amendment

Under the Millionaires' Amendment, House candidates may become eligible to receive contributions at an increased limit and may benefit from increased coordinated party expenditures if they are running against an opponent(s) whose personal campaign spending exceeds \$350,000¹ during the election cycle. 2 U.S.C. 441a-1(a)(1)(A).

An election cycle begins the day after the most recent election for a given office and ends on the date of the next election for that office. For purposes of the Millionaires' Amendment only, primary elections and general elections are considered separate election cycles and runoff elections are included as part of the cycle for the election that triggered the runoff.

An expenditure from personal funds made during a particular election cycle is considered to have been made for the purpose of influencing that election, unless designated for another campaign, and counts toward the \$350,000 threshold for that election. 11 CFR 104.19.

Application to the California Special

The application of the Millionaires' Amendment to California's 50th District elections (and, thus, Ms. Busby's campaign) will differ depending on whether a runoff election is necessary to determine the special election winner.

Special General with No Runoff. If a runoff election is not required, the special general election cycle will run from November 3, 2004, to April 11, 2006, the date of the spe-

cial election. All expenditures from candidates' personal funds made between those dates will be considered expenditures for the special general election, and will count toward the \$350,000 threshold for that election. Candidate spending between April 12 and June 6 will count toward the primary election.

If, under this scenario, Ms. Busby's expenditures from personal funds exceed the \$350,000 threshold during the special general or primary election periods, she would trigger the reporting requirements of the Millionaires' Amendment. Within 24 hours after exceeding the threshold, her campaign committee would have to file an "Initial Notification of Expenditures from Personal Funds" (FEC Form 10) and would file additional notifications each time her subsequent personal expenditures for that election exceed \$10,000. 11 CFR 400.21(b) and 400.22(b). The committee would file a copy of each Form 10 with the FEC and with the opposing candidates in the affected election and those candidates' national party committees.

Similarly, if Ms. Busby's committee receives a Form 10 from any of her opponents during the applicable special general or primary election periods, the timing of the expenditures would determine which election threshold would apply. Expenditures from personal funds made during the special general election cycle must not be aggregated with expenditures from personal funds made during the primary.

With that in mind, the Busby campaign would compare the amount of personal spending disclosed on the Form 10 with Ms. Busby's own personal spending during the comparable period to arrive at an "opposition personal funds amount." If the calculation relates to primary election spending, the campaign would also need to compare the campaigns' gross receipts, as disclosed on FEC Form 3Z-1. 11

¹ This is the threshold amount for House races. 11 CFR 400.9(b).

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Advisory Opinions

(continued from page 5)

CFR 400.10(a)(3). If the resulting amount exceeds \$350,000, the Busby campaign would qualify for increased contribution and coordinated party expenditure limits and would file FEC Form 11 to disclose that fact. 11 CFR 400.30(b) and 400.31(e).

As an eligible committee, the Busby campaign could solicit and accept contributions of up to \$6,300 (three times the individual contribution limit of \$2,100) for use only during the appropriate election cycle — i.e., special general or primary. The committee must stop accepting contributions at the increased limit when:

- It raises 100% of its opposition personal funds amount in contributions at the increased limit;
- Ms. Busby's expenditures from personal funds make her committee ineligible for increased limits; or
- The opposing candidate, whose spending triggered the increased limits, ceases to be a candidate. 11 CFR 400.31 and 400.32.

If at the end of the election cycle — whether special general or primary — the campaign has any excess contributions raised at the increased limit, those funds must be disposed of within 50 days after the election. These excess contributions may not be spent in connection with any other election, nor may they be redesignated for another election. 11 CFR 400.50–400.54.

Campaigns must also take stock of the personal contributions the candidate has made during the cycle. If any portion of those personal funds was not used for expenses relating to that election, the remaining funds may be transferred to a future election, but must be counted as personal expenditures for that election. The committee must use a reasonable accounting method to determine what portion of a transfer is derived from the candidate's personal funds. 11 CFR 110.3(c)(4).

Special General with Runoff. If a special general election runoff is held, the special election cycle will extend to the date of that runoff, June 6, 2006. Since June 6 is also the date of the regularly-scheduled primary election, the period between April 12 and June 6 also comprises the primary election cycle. As a result, personal spending during that period would count against the \$350,000 thresholds for both the runoff and the primary election. This conclusion is limited, however, to the specific circumstances present in California where no candidate running in the special general runoff will be running against the same opponent in both the special general runoff and the primary election.

Accordingly, if Ms. Busby participates in both the special general runoff and the primary election, her campaign must aggregate expenditures from personal funds for both elections to determine whether her spending exceeds the applicable threshold with respect to her special general runoff opponents and thus triggers the requirement to file FEC Form 10. As described above, the campaign must file copies of Form 10 within 24 hours after spending exceeds the threshold with the FEC, opposing candidates in the affected election(s) and those candidates' national party committees. With respect to Ms. Busby's opponents in the primary, her campaign must only aggregate expenditures from personal funds made between April 12 and June 6, 2006 to determine whether her spending exceeds the applicable threshold for purposes of filing FEC Form 10.

On the other side of the equation, the Busby campaign would also use her aggregate expenditures from personal funds receipts to calculate the opposition personal funds amount for the special runoff and the primary election. As noted above, only the primary election calculation should include the gross receipt figures disclosed on Form 3Z-1 of the 2005

year-end report. The calculation for the special runoff would merely compare candidates' personal spending during the applicable period.

The Commission emphasized that Ms. Busby's committee must comply with all other requirements of the Millionaires' Amendment regulations, such as the disposal of excess contributions after the election and the repayment of personal loans. 2 U.S.C. 441a-1(a)(4) and 441(a)(j).

Date issued: March 10, 2006

Length: 8 pages

—Gary Mullen

Advisory Opinion Requests

AOR 2006-7

Information on authorized committee's web site regarding sales of candidate's book (J.D. Hayworth, February 16, 2006)

AOR 2006-8

For-profit corporation's ability to provide, for a fee, a service for individuals to forward contributions to political and non-profit organizations (Matthew Brooks, January 27, 2006)

AOR 2006-9

Ability of partnership to issue contribution check attributed only to the individual partners when the check is drawn for convenience only (Russell L. Smith, February 22, 2006)

AOR 2006-10

Permissibility and timing of airing public service announcements that feature members of Congress (EchoStar Satellite LLC, February 21, 2006)

AOR 2006-11

Allocation between state party committee and a federal candidate for the costs of a mass mailing (Washington Democratic State Central Committee, February 27, 2006)

Statistics

PACs Raise \$477.4M in 2005

Federal political action committees (PACs) ended 2005 with record percentage gains in receipts, disbursements and contributions when compared to the last non-election year. They raised \$477.4 million dollars this year — 27 percent more than in 2003 — and spent \$394.1 million — 37 percent more than in 2003. PAC contributions totaled

\$140.5 million, up 33 percent from the last non-election year. They also had 23 percent more cash-on-hand and 12 percent less outstanding debt.

The total number of PACs also increased by 320, from 4,023 in 2003 to 4,340 in 2005. Roughly two-thirds of the new committees were nonconnected PACs.

For more information, including breakdowns by party affiliation and PAC type, see the March 8 press release entitled “PAC Financial Activity Surges in 2005” on the web site: <http://www.fec.gov>.

Court Cases

LaRouche v. FEC

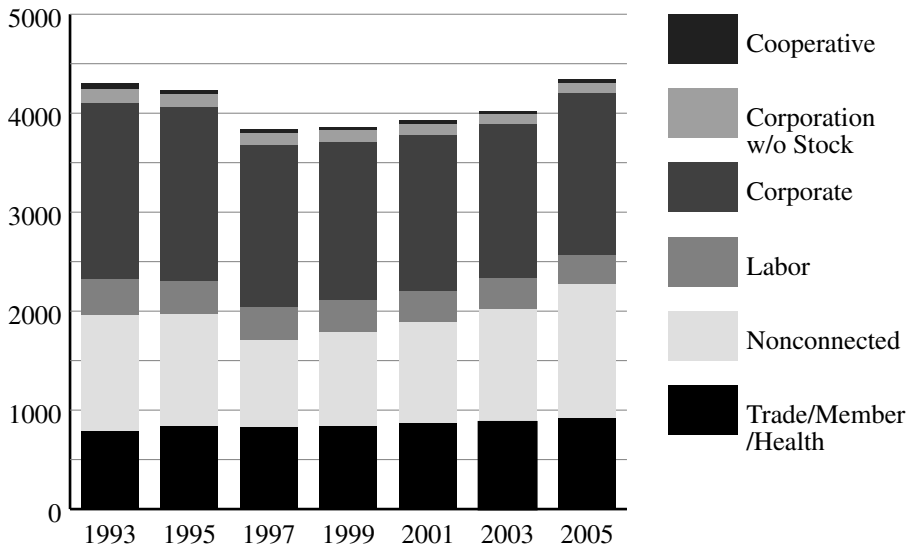
On March 3, 2006 the U.S. Court of Appeals found that the FEC acted appropriately when it determined that the Lyndon LaRouche’s Committee for a New Bretton Woods must repay \$222,034 in federal matching funds received during Mr. LaRouche’s bid for the 2000 Democratic presidential nomination.

All presidential campaigns must submit to an audit by the FEC if they accept public matching funds during the primary campaign. The LaRouche committee received \$1,448,389 in federal matching funds. The majority of these funds were paid to seven vendors that provided fundraising and advertising services for the past three nominations that LaRouche had sought; LaRouche was the vendors’ sole client. The committee received \$222,034 in public funds in connection with “mark-up charges” paid to these vendors.

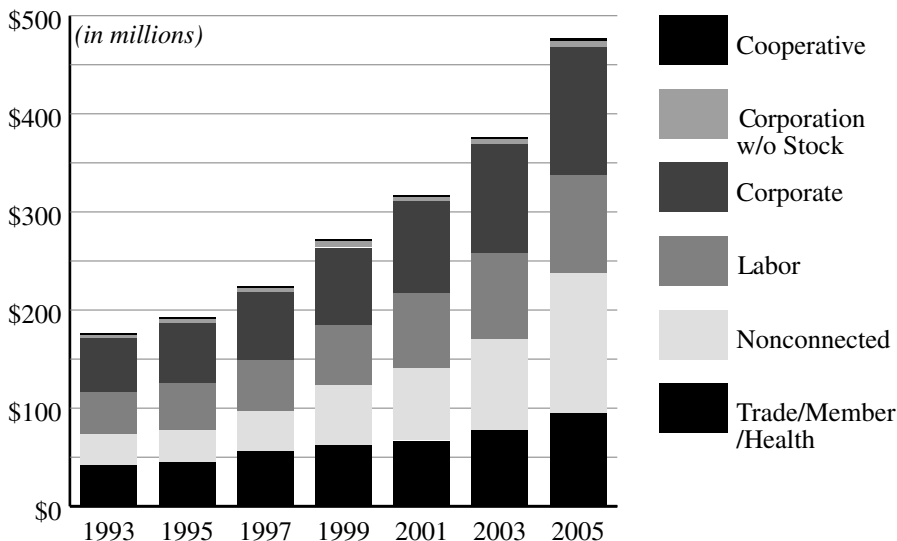
The FEC found that the committee had not provided adequate documentation for these mark-up charges and thus they were not qualified campaign expenses. The court confirmed that the committee did not prove to the FEC that these charges were a qualified campaign expense; therefore, the FEC’s order that the committee must repay the charges was not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” as the committee had alleged. Additionally, the court held that the committee had not expressly sought judicial review of LaRouche’s petition for administrative rehearing and, therefore, the court did not have jurisdiction to reconsider that issue. For more information on this case see the following 2004 *Record* articles: June, page 7; September, page 3; November, page 3.

—Carlin E. Bunch

Number of PACs in Non-Election Years



PAC Receipts in Non-Election Years



Compliance

MUR 5453: Excessive and Prohibited Contributions

The Commission has entered into conciliation agreements with several parties regarding the making and receipt of excessive and prohibited contributions and with the Giordano for U.S. Senate Committee for improper reporting. The respondents agreed to pay civil penalties totaling to more than \$156,000.

Background

The definition of contribution includes, among other things, any gift, loan or advance. According to the laws in effect at the time of the incidents, individuals could contribute up to \$1,000 per election and \$25,000 per year.¹ Corporations and national banks were and are prohibited from making contributions or expenditures; this includes any direct or indirect payment and anything other than normal or usual business practices. The law also prohibits contributions in the name of another, e.g., reimbursing someone for a contribution they made.

Excessive Contributions. On July 14, 2000, Giordano and his committee obtained a \$300,000 loan at Patriot National Bank. The same day, Salvatore Trovato, Philip Giordano's father-in-law, gave him \$300,000, which the campaign used for the collateral on the loan. Although the Act allows candidates to receive "gifts of a personal nature which had been customarily received prior to candidacy," the Commission's inves-

tigation revealed that Mr. Trovato had never given a gift of this size to any of his children. As a contribution, Mr. Trovato's gift exceeded the \$1,000 per election limit by \$298,000, assuming he intended to give both to the primary and general elections.

Additionally, the Commission found reason to believe that the Patriot National Bank violated the Act, since it appeared that the loan was not made in the ordinary course of business, but based on the evidence uncovered during the investigation the Commission decided to take no further action against the bank.

Corporate Contributions. In April 2000, Michael Watts, Senior Vice-President of Arthur A. Watson & Co., Inc. suggested to Thomas Willsey, the President of the corporation, that the corporation reimburse employees for making contributions to the Giordano Committee with corporate treasury funds. Mr. Watts, with the consent of Mr. Willsey, asked employees to make contributions to the Giordano committee with the understanding that they would receive payment from the Company to offset the amount of the contribution through an adjustment in compensation. These employees included Greg Bedula, James Nelson and William Wittman, each of whom made \$2,000 contributions on behalf of themselves and their wives. Mr. Watts also made such a contribution. The Commission found reason to believe that these contributions made in the name of another were made on a knowing and willful basis. In the ensuing investigation, some respondents claimed that they relied upon a company officer's statements that outside counsel had approved the reimbursement scheme.

Additionally, on October 14, 2000, the Giordano committee received a direct corporate contribution of \$2,500 from En-Tech Corporation. The committee did not refund the prohibited contribution.

Improper Disclosure. In 2000, the Giordano Committee treasurer was James S. Paolino, and from 2000 to July 2001, the deputy treasurer was Thomas M. Ariola, Jr. The Commission named Mr. Paolino in his personal capacity for acceptance of excessive contributions. The Commission also found that he understated the committee's receipts on disclosure reports by over \$21,000.

Mr. Ariola was also named in his personal capacity for knowing and willful acceptance of excessive and corporate contributions, of which more than \$12,000 was not refunded. He was also found to have underreported the committee's receipts by over \$18,000.

Conciliation Agreements

Mr. Trovato agreed to conciliate the matter, but contended that he did not intend, or understand, that anything he was doing was contrary to law. He paid a \$99,000 civil penalty in two installments.

Mr. Watts agreed to pay a \$15,000 civil penalty. Arthur A. Watson & Co. agreed to pay a \$16,000 civil penalty. The Commission took into account Mr. Willsey's cooperation with the investigation and participation in the conciliation process in arriving to his penalty amount; he agreed to pay \$13,000. Without admitting or denying all of the Commission's allegations, Messrs. Bedula, Nelson and Wittman agreed to pay \$1,000 each in civil penalties.

En-Tech Corporation agreed pay a \$1,250 civil penalty.

In 2003 Philip Giordano was imprisoned for a 37-year term on charges unrelated to this investigation. As such, the Commission took no further action with respect to him. The Commission also found that the committee should pay all the funds that remain in its accounts as a civil penalty; this amounts to over \$900. Mr. Paolino agreed to pay a \$5,500 civil penalty. Since Mr. Ariola coop-

¹ These incidents occurred before the implementation of the Bipartisan Campaign Reform Act of 2002. Today, the limit for individual contributions to candidate committees is \$2,100 per election with a \$40,000 biennial limit for total individual contributions to candidate committees.

erated with the Commission investigation and facilitated its resolution, he agreed to a \$2,500 civil penalty. The penalties paid by Mr. Ariola and Mr. Paolino also reflected their financial conditions.

Dissenting Statement of Reasons

On December 12, 2005, Commissioner Michael Toner issued a dissenting Statement of Reasons regarding the civil penalty issued against Mr. Trovato.

—Carlin E. Bunch

Information

IRS Report on Political Activity Compliance by Exempt Organizations

Federal tax law prohibits organizations exempt from tax under 26 U.S.C. § 501(c)(3) from participating in campaigns for or against the election of candidates to public office.¹ The Internal Revenue Service has issued a report with executive summary on the results of its examination of political activity by exempt organizations during the 2004 election campaign. The report and executive summary are available at http://www.irs.gov/pub/irs-tege/final_paci_report.pdf and http://www.irs.gov/pub/irs-tege/exec_summary_paci_final_report.pdf. The initiative was a result of strong indications of increasing political activity by tax-exempt organizations, including churches, and IRS' concern over the dramatic increase

¹ Section 501(c)(3) prohibits tax-exempt organizations (including churches) from "participat[ing] in, or interven[ing] in (including the publicizing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

in the amount of money financing campaigns.

The results of the examinations show that there is a lack of understanding of the relevant federal tax rules. Some level of prohibited political activity by section 501(c)(3) organizations was found nearly three-quarters of the 82 cases reviewed. Most of these examinations concerned one-time, isolated occurrences of prohibited political campaign activity. In three cases to date, however, the prohibited activity was egregious enough to warrant proposing revocation of the organizations' tax-exempt status. Statistics from this investigation are available at http://www.irs.gov/pub/irs-tege/one_page_statistics.pdf.

In connection with the report, the IRS also unveiled new procedures for handling similar issues during the 2006 election season. These procedures are available at http://www.irs.gov/pub/irs-tege/paci_procedures-feb_22_2006.pdf. As part of its approach to combating this activity, the IRS has issued Fact Sheet 2006-17: Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations. This publication, available at <http://www.irs.gov/newsroom/article/0,,id=154712,00.html>, provides additional guidance to charities regarding political activities. This educational effort will help ensure that charities have enough advance notice of the statutory rules against engaging in political campaign activities. Kicking off the campaign, IRS subject matter experts joined private sector representatives in a panel discussion webcast for the Tax Talk Today program on March 14. To see this program, visit the Program Topics page at <http://www.taxtalktoday.tv>.

—Submitted by the IRS

800 Line

Campaign Travel

The material that follows answers frequently asked questions about travel on behalf of candidates and political committees.

Who is considered a "campaign traveler?"

A "campaign traveler" is any individual traveling in connection with a federal election on behalf of a candidate, a political party committee or any other political committee. Members of the news media are included in the definition of campaign traveler when they travel with a candidate. See 11 CFR 100.93(a)(3)(i)(A).

May a non-commercial aircraft be used for travel related to a campaign?

Yes. A corporation, partnership, individual or other entity, may provide a candidate or other political committee travel on a conveyance that is not offered for commercial passenger service. However, precautions must be taken so that no prohibited or excessive contributions result.

Who may pay for the use of the aircraft?

The committee may pay the service provider for all campaign travelers traveling on behalf of that candidate or committee. Alternatively, the committee may choose to receive an in-kind contribution from the service provider rather than making a reimbursement so long as the service provider may make an in-kind contribution and the amount of the contribution does not exceed the limitations of the Federal Election Campaign Act. For every campaign traveler, including members of the news media, for whom payment is not made, he or she must pay the

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service provider the full value of his or her transportation as determined below. See 11 CFR 100.93(b)

How is the value air travel determined?

Commission regulations establish a uniform valuation scheme for campaign travel that does not depend on whether the service provider is a corporation, labor organization, individual, partnership, limited liability company or other entity. The rules apply to federal candidates, including publicly funded Presidential candidates, and any other individuals traveling on behalf of candidates, party committees and other political committees where the travel is in connection with a federal election.

The regulations provide three valuation methods that apply in different situations, requiring:

- The lowest unrestricted and non-discounted first class airfare available for the dates traveled, or within seven calendar days, for travel between two cities with regularly scheduled first-class airline service;
- The lowest unrestricted and non-discounted coach airfare available for the dates traveled, or within seven calendar days, for travel between two cities with no regularly scheduled first-class airline service that are served by regularly scheduled coach service;
- The charter rate for a comparable commercial airplane of sufficient size to accommodate all of the campaign travelers for travel between two cities not served by regularly scheduled first-class or coach airline service, or between such a city and a different city with regularly scheduled first class or coach commercial airline service.

See 11 CFR 100.93(c).

When must payment be made for campaign-related air travel?

Commission regulations no longer require advance payment for the use of non-commercial aircraft. Payment must be made within seven calendar days of the departure of the flight. For multi-stop travel over a period of more than one day, a campaign traveler may elect to pay for separate flights at separate times by calculating separate seven day periods for each flight departing on a different day. See 11 CFR 100.93(c).

Do these rules apply to other modes of travel?

No. For other modes of travel not operated for commercial passenger service, such as limousines, other automobiles, trains, helicopters and buses, a political committee must pay the service provider an amount equal to the normal and usual fare or rental charge for a comparable commercial conveyance that is capable of accommodating the same number of campaign travelers. Payment for travel must be made within 30 calendar days from the receipt of the invoice, but no more than 60 calendar days following the date the travel commenced. See 11 CFR 100.93(d).

—Michelle L. Ryan

Web Site

E&J Compilation Now Available on FEC Web Site

The complete compilation of the Explanations and Justifications for Federal Election Commission Regulations (E&Js) is now available on the agency's web site. Hyperlinked indexes make the online E&J much easier to navigate than its voluminous paper predecessor. The electronic version also has the advantage of being continuously updated, making it a more useful research tool.

The compilation includes all E&Js written to accompany rules promulgated between 1975 and the present. E&Js are *Federal Register* notices and Congressional documents that provide supplemental information concerning Commission regulations. Indexes enable researchers to locate E&Js by publication date and by regulatory citation, and a conversion table tracks citation changes resulting from statutory amendments.

Please click on the "Law & Regulations" link on the FEC's home page or visit http://www.fec.gov/law/cfr/ej_main.shtml to use this convenient resource.

—Elizabeth Kurland

New Search Engine for FEC Web Site

Finding information on the FEC's web site just got easier. On March 27, the agency launched an upgraded search engine that provides better, more accurate results than its predecessor.

The new search engine, powered by Google, offers several new features. The key match feature, for example, highlights selected in-demand pages and lists them first in the search results. Other features suggest synonymous search terms and spelling alternatives that may improve results. The new search engine also has an advanced search capability and offers tips on how to search in a Google-based engine.

In addition to the functional improvements, the new search engine also enhances the appearance of the site. While the search field remains in the upper right corner of the FEC's home page and looks the same as before, the pages it produces have a new look and feel that is more in keeping with the rest of the agency's site.

To try the new search engine, please visit our web site at <http://www.fec.gov>.

—Carlin E. Bunch

Roundtable Workshops: What's New for 2006

Date & Time	Subject	Intended Audience
June 7, 2006 9:30–11:00 a.m.	Rule changes and other legal developments affecting nonconnected committees active in 2006 federal elections.	This group includes PACs sponsored by partnerships, unincorporated groups of citizens, leadership PACs and other political organizations as defined in §527 of the Internal Revenue Code.
June 14, 2006 9:30–11:00 a.m.	Rule changes and other legal developments affecting SSFs active in 2006 federal elections and their connected organizations.	This group includes PACs sponsored by corporations, labor organizations, membership organizations and trade associations.
June 21, 2006 9:30–11:00 a.m.	Rule changes and other legal developments affecting federal candidates and their campaign committees.	Federal candidates and their committees' representatives.
June 28, 2006 9:30–11:00 a.m.	Rule changes and other legal developments affecting party committees active in 2006 federal elections.	The national party committees and state and local committees involved in federal elections.

To register, contact the FEC at 800/424-9530 (press 6)
or visit <http://www.fec.gov/info/outreach.shtml#roundtables>.

Correction

2006 Coordinated Party Expenditures

The coordinated party expenditure chart in the March *Record* mistakenly identifies Rhode Island and Hawaii as states that have only one representative in the U.S. House. Both states actually have two House members. As such, the coordinated party expenditure limit for House nominees in those states is \$39,600, rather than the \$79,200 limit that applies to states with only one representative. The \$79,200 limit listed for Senate nominees is correct.

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