

Record

July 2005

Federal Election Commission

Volume 31, Number 7

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Court Cases

Wisconsin Right to Life v. FEC

On May 9, 2005, a three-judge panel of the U.S. District Court for the District of Columbia dismissed this case, with prejudice, for the same reasons given in the court's August 17, 2004, decision to deny the plaintiff's request for a preliminary injunction. In that decision, the court found that the Supreme Court's reasoning in *McConnell v. FEC*, 124 S. Ct. 619 (2003), precluded the "as applied" challenge to the Bipartisan Campaign Reform Act (BCRA) presented by the plaintiff. The plaintiff's suit had asked the court to find the BCRA's prohibition on the use of corporate funds to pay for electioneering communications unconstitutional as applied to certain grass-roots lobbying activities. See the [September 2004 Record](#), page 1.

The plaintiff appealed this decision to the Supreme Court on May 23, 2005.

U.S. District Court for the District of Columbia, 04-1260.

—Amy Kort

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Reports

July Reporting Reminder

The following reports are due in July:¹

- All principal campaign committees of House and Senate candidates must file a quarterly report by July 15. The report covers financial activity from April 1 (or the day after the closing date of the last report) through June 30.
- Principal campaign committees of Presidential candidates must file a report by July 15, if they are quarterly filers (the report covers financial activity from April 1 through June 30), or by July 20, if they are monthly filers (the report covers activity for the month of June).
- National party committees, political action committees (PACs) following a monthly filing schedule and state, district and local party

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¹ Note that committees that file special election reports in connection with the August 2, 2005, Special General Election in Ohio may not be required to file their July Quarterly or 2005 mid-year report, as appropriate. See the [June 2005 Record](#), page 14, for additional information, including filing dates for candidates and committees involved in the Ohio special elections.

Reports

(continued from page 1)

committees that engage in reportable federal election activity must file a monthly report by July 20. This report covers activity for the month of June.

- All other filers must submit a mid-year report by July 31, covering financial activity from January 1 (or the day after the closing date of the last report) through June 30. Note that July 31 falls on a weekend. Reporting deadlines are not extended for non-working days. Reports sent via first class mail or courier must be received by the Commission before close of business on Friday, July 29.

Principal Campaign Committees Must File FEC Form 3Z-1

Principal campaign committees of candidates running in 2006 must file FEC Form 3Z-1 as part of their 2005

July Quarterly and Year-End reports. 11 CFR 104.19. The information provided on Form 3Z-1 allows opposing candidates to compute their “gross receipts advantage,” which is used to determine whether a candidate is entitled to increased contribution and coordinated party expenditure limits under the “Millionaires’ Amendment.” 2 U.S.C. §§441a(i) and 441a-1. Form 3Z-1 is included in the FEC Form 3 package, and need only be filed with the July 15 quarterly report and year-end report for the year preceding the general election for the office the candidate seeks.

New Reporting Forms and Electronic Filing Software

In February 2005, the Commission updated its electronic filing format to Version 5.2.0.1. FECFile Version 5.2, supported by the new format, is available for download from the FEC web site at <http://www.fec.gov/electfil/updatelist.html>. Committees using commercial software should contact their vendors for more information about this software release. Only reports filed in the new format will be accepted.

PACs and party committees that file on paper reporting forms must use the FEC’s revised Form 3X, which contains updated H schedules that conform to the revised allocation rules for PACs that took effect on January 1, 2005. (See the [December 2004 Record](#), page 1.) This version of the form is available on the FEC web site at <http://www.fec.gov/info/forms.shtml>. Filers will receive a copy with their report notices.

Filing Electronically

Under the Commission’s mandatory electronic filing regulations,

individuals and organizations² who 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 action, 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.

Timely Filing for Paper Filers

Reports sent by registered or certified mail or “overnight mail” must be postmarked by the filing date. If using overnight mail, the delivery service must receive the report by the mailing date. “Overnight mail” includes Priority or Express Mail having a delivery confirmation, or an overnight delivery service with an online tracking system. A committee sending its reports by certified mail should keep its mailing receipt with the postmark as proof of filing. 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 a receipt as proof that the report was transmitted.

Reports sent by any other means—including first class mail

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)

Scott E. Thomas, Chairman
Michael E. Toner, Vice Chairman
David M. Mason, Commissioner
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<http://www.fec.gov>

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. 11 CFR 104.18(a).

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).

Filing Frequency for PACs

PACs may file on either a semiannual or a monthly basis in non-election years. Committees wishing to change their filing frequency must notify the Commission in writing when filing a report under the committee's current schedule. Electronic filers must file this request electronically. A committee may change its filing frequency only once per calendar year. 11 CFR 104.5(c).

Filing Frequency for Party Committees

A state, district or local party committee that filed monthly in 2004 due to its federal election activity must notify the Commission in writing if it wishes to file semiannually in 2005. 11 CFR 104.5(b)(2). Electronic filers must file this request electronically.

Additional Information

For more reporting information on 2005 reporting dates:

- See the reporting tables in the [January 2005 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 (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.

—Amy Kort

Court Cases

(continued from page 1)

Citizens for Responsibility and Ethics in Washington v. FEC

On May 16, 2005, the U.S. District Court for the District of Columbia granted the FEC's motion for summary judgment in this case, and denied the plaintiff's motion for summary judgment, finding that the FEC's interpretation of the confidentiality provision of the Federal Election Campaign Act (FECA) is reasonable.

Background

On July 12, 2004, Citizens for Responsibility and Ethics in Washington (CREW), a nonprofit 501(c)(3) corporation, asked the FEC to provide it with an investigative report prepared by counsel for Westar Energy Company (Westar) regarding possible campaign finance violations by the company. CREW believed the report had been voluntarily forwarded by Westar to the FEC.

The FEC denied CREW's request for information, citing the "confidentiality provision" of the FECA. Under this provision, any "notification or investigation made under this section shall not be made public by the Commission without the written consent of the person receiving such notification or the person with respect to whom such investigation is made." 2 U.S.C. §437g(a)(12)(A).

CREW appealed the FEC's denial of its Freedom of Information Act (FOIA) request, arguing that the "confidentiality provision" does not apply to the Westar report. The FEC denied the appeal. The plaintiff filed a court complaint on September 30, 2004.

Court Decision

In court, the plaintiff argued that the Westar report does not fall under the FECA's confidentiality provision because that provision does not apply to matters in their pre-investi-

gatory stage. The FEC argued, to the contrary, that the provision applies to all information in its open enforcement files.

The standard for judicial review of an agency's construction of a statute it administers is called *Chevron* review, after the Supreme Court's decision in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). In *Chevron* review, the court asks first whether Congress has spoken to the precise issue at hand. If so, then the agency's interpretation of the statute must implement Congress's unambiguous intent. If Congress has not spoken explicitly to the question at hand, then court must ask a second question—whether the agency's rules are based on a permissible reading of the statute. If the agency's interpretation is reasonable, then the court must defer to that interpretation.

In this case, the court found that the Act's confidentiality provision does not speak to the precise issue at hand because it can support both the

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Campaign Guides Available

For each type of committee, a *Campaign Guide* explains, in clear English, the complex regulations regarding the activity of political committees. It shows readers, for example, how to fill out FEC reports and illustrates how the law applies to practical situations.

The FEC publishes four *Campaign Guides*, each for a different type of committee, and we are happy to mail your committee as many copies as you need, free of charge. We encourage you to view them on our web site (www.fec.gov).

If you would like to place an order for paper copies of the *Campaign Guides*, please call the Information Division at 800/424-9530.

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plaintiff's and the defendant's interpretations. Under the second step of *Chevron* review, the court found that the FEC's interpretation of the provision is reasonable because it "satisfies the heightened privacy concerns of the FECA confidentiality provision and minimizes the adverse consequences of public knowledge of that ignominious pre-investigatory status."

The plaintiff had also taken issue with the FEC's unwillingness, in response to their FOIA request, to acknowledge whether it had the Westar report at all. The FEC countered that acknowledging possession of the report would in itself reveal confidential information. The court concluded that the FEC acted appropriately and in the best interests of the confidentiality provision.

The court granted the FEC's request for summary judgment and denied the plaintiff's request for summary judgment. See the [November 2004 Record](#), page 5. CREW subsequently filed a motion for reconsideration of the court's decision.

U.S. District Court for the District of Columbia, 04-1672 (RMU).

—Amy Kort

Compliance

MUR 5183: Corporate Contributions

The Commission has entered into two separate conciliation agreements, one with the Reverend Jesse L. Jackson, Sr., the Rainbow/PUSH Coalition, Inc., (Rainbow) and Citizenship Education Fund, Inc., (CEF), and another with the Democratic National Committee (DNC). In the agreements, the respondents admit to violating the Federal Election Campaign Act's (the Act) prohibition on corporate contributions. These conciliation agreements

prohibit future misconduct by the respondents and require \$200,000 in civil penalties, which are equally divided between the DNC and the other group of respondents.

Background

The Act prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. In addition, the law prohibits any officer or director of any corporation from consenting to any expenditure or contribution by the corporation. 2 U.S.C. §441b. An extension of credit is considered a contribution unless the credit is extended in the ordinary course of business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.¹ With limited exceptions not applicable here, the prohibition on corporate contributions also extends to non-profit corporations such as Rainbow and CEF.

In September 2000, Reverend Jackson, founder of Rainbow and CEF, and other Rainbow representatives (collectively, the Jackson respondents) reached an agreement with officials from the DNC that various Democratic Party committees would provide funds to the Jackson respondents to offset the costs of a speaking tour that would benefit Democratic candidates. The speaking tour involved over 120 events between September and November 2000, over 80 percent of which were described as "DNC/

Coordinated Campaign" events on Reverend Jackson's itineraries. Most of the events, according to the itineraries, included the appearance of Democratic Senate or Congressional candidates. A DNC employee was detailed to work out of Rainbow's offices in Chicago as the tour coordinator. The trip coordinator briefed Democratic Party officials concerning the tour.

Rainbow's ledgers and vendor invoices show that Reverend Jackson's travel between September and November 2000 cost approximately \$750,000. Although a portion of this travel related to other Rainbow activities, the majority of travel was election-related. Invoices for these expenses, including charter air, lodging, meal and communication expenses, were billed directly to Rainbow, CEF and a political action committee also founded by Reverend Jackson. Rainbow and CEF paid the majority of these expenses.

To fulfill the DNC's agreement to fund up to \$450,000 of Reverend Jackson's election-related travel that would benefit federal candidates, the DNC arranged to pay \$250,000 to Rainbow and to have the Democratic Congressional Campaign Committee and the Democratic Senatorial Campaign Committee each pay \$100,000 to either Rainbow or CEF. However, while the respondents contend that the payments were intended to be made before the expenses were incurred, the payments were in fact made after Rainbow and CEF incurred expenses for the partisan get-out-the-vote and voter registration campaign. Indeed, as of election day, November 7, 2000, Rainbow still had an outstanding advance to the DNC of approximately \$350,000, and full payment was not made by the DNC until December 6, 2000.

Conciliation Agreements

Reverend Jackson, Rainbow and CEF admitted in their conciliation agreement to making corporate contributions to the DNC in the form of prohibited corporate advances.

¹ A corporation may extend credit to a candidate or political committee in its capacity as a commercial vendor. A commercial vendor is any person who provides goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services. 11 CFR 116.1(c) and 116.3(b)-(c).

These respondents agreed to pay a \$100,000 civil penalty and to cease and desist from further such violations of the Act.

In the DNC's conciliation agreement, the DNC and its treasurer, Andrew Tobias, admitted to violating the Act's prohibition on corporate contributions by receiving contributions from Rainbow and CEF. The respondents agreed to pay a \$100,000 civil penalty and to cease and desist from further violations of 2 U.S.C. §441b.

In addition, both the Jackson respondents and the DNC respondents agreed to revise the handbooks and guidance on compliance with election law used by their employees, contractors and volunteers to emphasize that incorporated non-profit organizations may not advance funds to perform partisan get-out-the-vote and voter registration activities that are coordinated with any federal political committees. The regular training provided to staff for the 2006 and 2008 elections will include instructions on avoiding such violations of the law.

Additional Information

For additional information on this case, please visit the Commission's Public Records Office or consult the [Enforcement Query System](#) on the FEC's web site and enter case number 5183.

—Amy Kort

Regulations

Civil Penalties Adjusted for Inflation

On June 9, 2005, the Commission adopted final rules that apply cost-of-living adjustments to the maximum amount of civil penalties that can be assessed for certain violations of the Federal Election Campaign Act, the Presidential Election Campaign Fund Act and the Presidential Primary Matching Pay-

ment Account Act. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996, requires that at least once every four years the FEC and other executive agencies adjust for inflation the top amount of their current civil penalties.

The Inflation Adjustment Act provides that the adjustment is determined according to the increase in the Consumer Price Index (CPI) since the last year that the penalties were adjusted. The adjusted amounts are then rounded in accordance with the Inflation Adjustment Act's rounding rules. 28 U.S.C. §2641 nt (5)(a). The Commission last examined its civil penalty rules under the Inflation Adjustment Act in January 2002, but no adjustments were required after the application of the rounding formula. The current adjustments to the penalty amounts took effect on June 15, 2005, when the final rules were published in the *Federal Register*, and only apply to violations that occur after this effective date.

Violations that Are Not Knowing and Willful

Since 1997, the maximum civil penalty for a violation that is not knowing and willful has been the greater of \$5,500 or an amount equal to any contribution or expenditure involved in the violation. 11 CFR 111.24(a)(1). Under the 2005 adjustment, the \$5,500 civil penalty amount is increased to \$6,500.

Knowing and Willful Contributions Made in the Name of Another

The Bipartisan Campaign Reform Act of 2002 raised the maximum civil penalty amount for knowing and willful violations of the prohibition on contributions made in the name of another to an amount that does not exceed the greater of \$50,000 or 1,000 percent of

PACronyms, Other PAC Publications Available

The Commission annually publishes an alphabetical listing of acronyms, abbreviations and common names of political action committees (PACs).

For each PAC listed, the index provides the full name of the PAC, its city, state, FEC identification number and, if not identifiable from the full name, its connected, sponsoring or affiliated organization.

This index is helpful in identifying PACs that are not readily identified in their reports and statements on file with the FEC.

To order a free copy of PACronyms, call the FEC's Disclosure Division at 800/424-9530 or 202/694-1120.

PACronyms is also available on diskette for \$1 and can be accessed free on the FEC web site at www.fec.gov.

Other PAC indexes, described below, may be ordered from the Disclosure Division. Prepayment is required.

- 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).
- An alphabetical list of organizations sponsoring PACs showing the name of the PAC and its identification number (\$7.50).

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.

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the amount involved in the violation. 2 U.S.C. §437g(a)(5)(B) and (6)(C); 11 CFR 111.24(a)(2)(ii). Because this penalty amount was last changed in 2002, the adjustment reflects the CPI increase since that year. After applying the rounding rules, the Commission increased the maximum penalty amount for these violations to \$55,000 (or 1,000 percent of the amount involved in the violation).

Violations of Confidentiality

Any Commission member or employee, or any other person, who makes public any notification or investigation under 2 U.S.C. §437g without the written consent of the person receiving the notification, or the person with respect to whom such investigation is made, is subject to a fine. Since 1997, the maximum penalty for such a violation has been \$2,200 or, if the violation is knowing and willful, \$5,500. 11 CFR 111.24(b). Under the 2005 inflation adjustment, the \$2,200 penalty amount remains unchanged after the application of the rounding rules, but the knowing and willful penalty amount is increased to \$6,500.

Penalty Schedule for 48-Hour Notices

Principal campaign committees are required to report, within 48-hours of receipt, any contributions of \$1,000 or more that are received after the 20th day, but more than 48 hours, before any election. 2 U.S.C. §434(a)(6). Under the Commission's administrative fines regulations, the Commission assesses civil penalties for violations of this reporting requirement based on a schedule of penalties that the Commission adopted in 2000. Under this schedule, the civil penalty amount for each notice not filed timely was \$100 plus 10 percent of the amount of the contribution not timely reported. The penalty is also increased for prior

violations. 11 CFR 111.44. Under the 2005 inflation adjustment, the new base civil penalty amount is \$110.

Other Penalty Amounts

The Commission also examined the maximum civil penalties at 11 CFR 111.24(a)(2)(i) for "knowing and willful" violations and the schedule of penalties for reporting violations at 11 CFR 111.43. However, under the rounding rules, no changes were appropriate at this time for these civil penalty amounts.

Additional Information

The final rule and its Explanation and Justification were published in the June 15, 2005, *Federal Register* (70 FR 34633) and are available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml.

—Amy Kort

Announcement of Effective Date for Travel Rules for Certain Presidential Candidates

The Commission has published the effective date for amendments to the candidate travel rules at 11 CFR 9004.6 and 9004.7, which address payment for travel by publicly funded Presidential candidates in the general election. Changes to these two regulations were part of a rule-making that amended a number of rules on candidate travel. The final rules were published in the *Federal Register* on December 15, 2003, (68 FR 69583) and the majority of the rules took effect on January 14, 2004. Under the Presidential Campaign Fund Act, however, changes to 11 CFR 9004.6 and 9004.7 cannot be promulgated until the rules have been before Congress for 30 legislative days. The final rules stated that the effective date for these regulations would be published in a future notice in the *Federal Register*. The effective date was April 2, 2004, but publication of this date was inadvertently delayed until June 9, 2005.

The Commission notes that the 2003 publication of the final rules, in combination with the inadvertent delay in the publication of this effective date notice, may have caused some confusion about which regulations were applicable to publicly funded Presidential candidates during the 2004 general election. In light of these circumstances, the Commission intends to exercise its discretion by not pursuing potential violations of the travel reimbursement rules in 11 CFR 9004.6(b)(2) and 9004.7(b)(5) and (8) that occurred between April 2, 2004, and June 9, 2005, so long as the reimbursement for campaign travel was provided in accordance with either the old rules or the revised rules. In addition, for travel reimbursements that occurred during the 2004 general election cycle, calculations based on either the pre- or post-revision rules will be permissible in the context of audits or repayment of public funds under 26 U.S.C. §9007.

The Effective Date Notice was published in the June 9, 2005, *Federal Register* (70 FR 33689) and is available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml.

—Amy Kort

Public Hearing on Proposed Rules

On May 17, 2005, the Commission held a public hearing to receive testimony on proposed rules regarding:

- Federal candidate and officeholder solicitation at state, district and local party committee fundraisers;
- The definition of "agent" for the Commission's coordinated and independent expenditure rules and nonfederal funds regulations; and
- Payroll deductions for contributions to trade association separate segregated funds (SSFs).

Ten witnesses, representing election law practitioners, campaign

reform groups, party committees, unions and trade associations testified before the Commission.

Solicitation at Party Fundraisers

Under the Federal Election Campaign Act (the Act), federal candidates, officeholders and their agents may not solicit, receive, direct, transfer or spend nonfederal funds in connection with federal or nonfederal elections except under limited circumstances. See 2 U.S.C. §441i(e); 11 CFR part 300, subpart D. However, the Act permits them to speak or be featured guests at state, district and local party fundraisers, where nonfederal funds may be raised. See 2 U.S.C. §441i(e)(3).

Currently, Commission regulations permit federal candidates and officeholders to speak at such fundraisers “without restriction or regulation.” See 11 CFR 300.64. However, in *Shays v. FEC* the court found that, although this regulation was a permissible interpretation of the statute, the Commission’s Explanation and Justification for the regulation had not satisfied the “reasoned analysis” requirement of the Administrative Procedure Act (APA). The court remanded the regulation to the Commission for further action consistent with its opinion. In response, the Commission approved a Notice of Proposed Rulemaking (NPRM) seeking comments on proposals either to revise the Explanation and Justification for this rule or to revise the rule itself.

At the hearing, Larry Noble, from the Center for Responsive Politics, Donald Simon, from Democracy 21, and Paul Ryan, from the Campaign Legal Center, testified that the Commission’s existing regulation is inconsistent with the framework of the Bipartisan Campaign Reform Act of 2002 (BCRA) and urged the Commission to revise the rule to prohibit federal candidates and officeholders from soliciting nonfederal funds at state party committee fundraisers. These witnesses fielded Commissioners’ questions about what might

constitute a solicitation by a federal candidate or officeholder at such an event and expressed their view that steps could be taken to ensure that candidates solicited only funds that were within the Act’s limits and source prohibitions at such events.

William McGinley, representing the National Republican Senatorial Committee, Thomas Josefiak, representing the Republican National Committee, and Robert Bauer, from Perkins Coie LLP, urged the Commission not to revise the current rule permitting federal candidates and officeholders to speak at state party fundraising events without restriction or regulation. They voiced strong support for revising the Explanation and Justification, instead arguing that the BCRA’s requirements do not compel the Commission to change the regulation. Mr. McGinley and Mr. Josefiak warned of a chilling effect on candidates’ speech if they were not allowed by the regulation to speak without restriction at such fundraisers. Mr. Bauer argued that a candidate’s appearance at a fundraiser is a solicitation in itself, and, thus, there is no logic in a reading of the statute that says the federal candidate or officeholder can appear at a fundraiser but cannot solicit funds.

Agent Definition

The Commission has requested comments on proposed revisions to the definitions of “agent” used in its rules on coordinated and independent expenditures and its regulations regarding nonfederal funds. These definitions currently provide that an agent is “any person who has actual authority, either express or implied” to perform certain, specified actions, but do not include persons acting only with apparent authority. The Commission proposed revising its regulations at 11 CFR 109.3 and 300.2(b) to conform to the *Shays* decision, which held that the Commission had not provided adequate explanation of its decision to exclude “persons acting only with ap-

parent authority” and, therefore, had not satisfied the reasoned analysis requirement of the APA.

Mr. Noble, Mr. Ryan and Mr. Simon all supported the addition of apparent authority to the definition of agent for these rules, arguing that this change both represents the most sensible reading of the statute and is consistent with the Commission’s actions in past enforcement matters where individuals with apparent authority were treated as agents. However, Karl Sandstrom, representing the Association of State Democratic Chairs, argued that adding apparent authority to the definition of agent in these rules risks capturing the activities of volunteer fundraisers who may be acting without the express knowledge of the candidate and who may raise money for a number of candidates, both federal and nonfederal. Mr. Sandstrom argued that the definition of agent should not extend to individuals that candidates are not in a position to control.

Payroll Deduction

The Commission has proposed amendments to its rules regarding

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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 2005-15

Travel on Behalf of Candidates and Political Committees, Announcement of Effective Date (70 FR 33689, June 9, 2005)

Notice 2005-16

Inflation Adjustments for Civil Monetary Penalties, Final Rules (70 FR 34633, June 15, 2005)

Enforcement Query System Available on FEC Web Site

The FEC's web site offers an Enforcement Query System (EQS), a 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.

Currently, the EQS contains complete public case files for all MURs closed since January 1, 2001. 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 system offers additional case information and navigation tools, including:

- A Case Summary section that includes the name of a respondent committee treasurer and any prior committee treasurer; and
- An On-Line Tutorial to help users to utilize the system's search capabilities more fully.

The Enforcement Query System may be accessed on the Commission's web site at www.fec.gov.

Regulations

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contributions to the SSF of a trade association by the restricted class of the trade association's corporate members. Currently, Commission regulations prohibit a trade association's corporate members from using a payroll deduction or check-off system for employee contributions to the trade association's SSF. See 11 CFR 114.8(e)(3).

The proposed rules would permit a corporate member of a trade association to provide incidental services to collect and forward contributions from its restricted class employees to the trade association's SSF, including a payroll deduction or check-off system, upon written request from the trade association. Under the proposed rules, a corporate member that provides such services would be required to provide the same services for contributions to the SSF of any labor organization that represents employees of the corporation, upon written request from the labor organization and at a cost not to exceed the actual expenses incurred.

Witnesses at the hearing supported the proposed rule to allow trade association corporate members to provide payroll deduction for contributions to the trade association's PAC. Diane Casey-Landry, from America's Community Bankers, and Pamela Whitted, from National Stone, Sand and Gravel Association, testified that the proposal would allow more individuals to participate in the political process. Ms. Casey-Landry suggested that payroll deductions are a preferred method of payment because they allow individuals to manage payments over time and that automated payments of all kinds have become prevalent. Laurence Gold, from the American Federation of Labor and Congress of Industrial Organizations, agreed that the statute does not preclude such payroll deductions. However, Mr. Gold asked that the proposed rule be amended to include the subsidiar-

ies and affiliates of the corporation in the provision providing payroll deduction services to labor organizations. Mr. Gold argued that this revision would better track the language of the statute. Ms. Casey-Landry disagreed, stating that the proposed rule strikes the correct balance.

Additional Information

The Notices of Proposed Rule-making, public comments submitted in response to these proposals and a transcript of the hearing are available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml.

—Amy Kort

Advisory Opinions

AO 2005-5

Federal Candidate/Officeholder's Use of Funds from Nonfederal Exploratory Committee

U.S. Representative Ray LaHood, a federal candidate and officeholder who is also exploring a gubernatorial candidacy, may use funds remaining in his gubernatorial exploratory committee's account to make donations in connection with nonfederal elections because the funds in this account were raised in accordance with the Federal Election Campaign Act's (the Act) contribution limits and source prohibitions. See 11 CFR 300.62. Representative LaHood's exploratory committee funds may also be refunded to donors and donated to charitable organizations that do not engage in election activity.

Background

Under the Act, federal candidates and officeholders, their agents and any entities directly or indirectly established, financed, maintained or controlled by a federal candidate/officeholder can only solicit, receive, direct, transfer, spend or disburse

funds in connection with a nonfederal election if those funds are consistent with the limits and prohibitions of the Act and also comply with state law. The Act provides a limited exception from this requirement for federal candidates and officeholders who are also state or local candidates and are raising and spending funds solely in connection with their own nonfederal campaigns. 2 U.S.C. §§441i(e)(1)(B) and 441i(e)(2); 11 CFR 300.62 and 300.63.

Analysis

Representative LaHood, who is considering a candidacy for Governor of Illinois, has established an exploratory campaign committee, Ray LaHood for Illinois (the Committee). Although not required under the Act, all funds raised by and for the Committee have been in amounts and from sources that are in compliance with the Act's limits and prohibitions.

If Representative LaHood decides not to announce a gubernatorial candidacy, he may use the funds remaining in the Committee's account for donations to state and local candidates and to the nonfederal accounts of party organizations, so long as the donations are consistent with state law. Because the Committee's funds are in compliance with the Act's limits and prohibitions, donations in connection with nonfederal elections would be permissible. For the same reason, Representative LaHood may also use those funds to make refunds to donors, provided that such refunds are consistent with state law.

Finally, Representative LaHood may use the Committee's funds to make donations to charitable groups organized under section 501(c)(3) of the Internal Revenue Code that do not conduct election activity, so long as the donations are consistent with state law. Donations to section 501(c)(3) organizations that conduct no election activity of any kind do not involve the transfer or spending of funds in connection with a federal

or nonfederal election and, thus, are not subject to the restrictions on federal candidates/officeholders. See AO 2003-32.

Date Issued: June 10, 2005;
Length: 5 pages.

—Amy Kort

Advisory Opinion Requests

AOR 2005-7

Application of media exemption to local newspaper and magazine owned by federal candidate; campaign's purchase of ad space in these publications (Andy Mayberry and Andy Mayberry for Congress, May 26, 2005)

AOR 2005-8

Permissibility of national bank's donations to state candidate's legal defense fund (California State Senator Mike Machado, June 14, 2005)

Outreach

Feedback Needed on Proposed Conference for Nonconnected Committees

The FEC is considering hosting a one-day seminar in Washington, DC, on November 16, 2005, to address the concerns of nonconnected committees (i.e., PACs **not** sponsored by a corporation, union or trade association). Discussion topics for this conference would include fundraising, reporting and communications, and workshops would address recent changes to the campaign finance law, such as allocation and solicitation rules for PACs.

To help us gauge interest and effectively plan this seminar, we need your feedback. If you would be interested in attending, please send an email to Conferences@fec.gov. Be sure to include your name, the name of your PAC, mailing address, fax and phone numbers, and also tell us what type of nonconnected commit-

tee you represent (e.g., partnership, unincorporated business, leadership PAC, unincorporated group of citizens, etc.).

—Amy Kort

FEC to Hold State Outreach Workshops in July and August

As part of the FEC's State Outreach Program, Public Affairs Specialists conduct informal meetings in different cities across the country to brief PACs, party committees and candidate committees on areas of the law specific to their needs. This summer, FEC staff will hold workshops in the following cities:

- Savannah, GA, July 26-27 (note that there is a waiting list for some portions of this program);

(continued on page 10)

FEC Accepts Credit Cards

The Federal Election Commission accepts American Express, Diners Club and Discover Cards, in addition to Visa and MasterCard. While most FEC materials are available free of charge, some campaign finance reports and statements, statistical compilations, indexes and directories require payment.

Walk-in visitors and those placing requests by telephone may use any of the above-listed credit cards, cash or checks. Individuals and organizations may also place funds on deposit with the office to purchase these items. Since prepayment is required, using a credit card or funds placed on deposit can speed the process and delivery of orders. For further information, contact the Public Records Office at 800/424-9530 or 202/694-1120.

Outreach

(continued from page 9)

- Denver, CO, August 10-11; and
- Portland, OR, August 23-24.

Registration for these programs is free. Visit the FEC web site at www.fec.gov/info/outreach.shtml#state for additional information, including workshop schedules for each program. For additional information about this outreach program, or to register for one of the sessions, call the FEC's Information Division at 1-800/424-9530 (or locally, 202/694-1100) or send an email to Conferences@fec.gov with your contact information (name, organization, phone number, fax number and email address). Please identify the particular city in which you wish to attend a session.

—Amy Kort

Campaign Finance Law Training Conferences in San Diego and San Antonio

In September and October the Commission will hold conferences for House and Senate campaigns, political party committees and corporations, labor organizations, trade associations, membership

Upcoming 2005 Conferences

Conference for Campaigns, Parties and Corporate/Labor/Trade PACs

September 14-15, 2005
Hyatt Regency Islandia
San Diego, CA

Conference for Campaigns, Parties and Corporate/Labor/Trade PACs

October 25-26, 2005
Crowne Plaza Hotel
San Antonio Riverwalk
San Antonio, TX

organizations and their respective PACs. The conferences will consist of a series of workshops conducted by Commissioners and experienced FEC staff who will explain how the federal campaign finance law applies to each of these groups. Workshops will specifically address recent changes to the campaign finance law and will focus on fundraising and reporting rules. A representative from the IRS will be available to answer election-related tax questions.

Conference in San Diego

The San Diego Conference will be held September 14-15 at the Hyatt Regency Islandia. The registration fee for this conference is \$350, which covers the cost of the conference, materials and meals. A \$10 late fee will be added to registrations received after August 17.

The Hyatt Regency Islandia is located on Mission Bay, near Sea World, at 1441 Quivira Road, San Diego, CA, 92101. A room rate of \$129 per night, single or double, is available to conference participants who make reservations on or before August 17. After August 17, room rates are based on availability. To make hotel reservations, visit the hotel's online reservations web page at https://resweb.passkey.com/Resweb.do?mode=welcome_ei_new&eventID=19000, or call 619-224-1234. To receive the conference rate, you must indicate that you are attending the FEC conference.

Conference in San Antonio

The San Antonio Conference will be held October 25-26 at the Crowne Plaza Hotel San Antonio Riverwalk. The registration fee for this conference is \$350, which covers the costs of the conference, materials and meals. A \$10 late fee will be added to registrations received after September 30.

The Crowne Plaza Hotel is located at 111 Pecan Street East, San Antonio, TX, 78205, in San Antonio's famous Riverwalk area. A \$129 room rate, single or double, is

available for conference participants who make reservations on or before September 30. To receive this special rate, you must mention that you are attending the FEC conference. After September 30, room rates are based on availability. Call 1-888-623-2800 to make reservations.

Registration Information

Complete registration information for FEC conferences is available on the FEC web site at <http://www.fec.gov/info/outreach.shtml#conferences>.

Please direct all questions about conference registration and fees to Sylvester Management Corporation at 1-800/246-7277. For questions about the conference program, call

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This issue of the *Record* and all other issues of the *Record* starting with January 1996 are available on the FEC web site as PDF files. Visit the FEC web site at <http://www.fec.gov/pages/record.shtml> to find monthly *Record* issues.

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* lists *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.

the FEC's Information Division at 1-800/424-9530 (or locally at 202/694-1100) or send an e-mail to Conferences@fec.gov.

Please note that the FEC suggests that you wait to make your hotel and air reservations until you have received confirmation of your conference registration.

—Amy Kort

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Need FEC Material in a Hurry?

Use FEC Faxline to obtain FEC material fast. It operates 24 hours a day, 7 days a week. Hundreds of FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

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