

Record

October 2005

Federal Election Commission

Volume 31, Number 10

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Court Cases

Shays v. FEC

On August 29, 2005, the Commission filed with the U.S. Court of Appeals for the District of Columbia Circuit a petition for rehearing *en banc* of the court's July 15, 2005, ruling in this case. In that ruling, a three-judge panel of the appeals court affirmed the appealed portions of the district court's decision invalidating several Commission regulations that implement provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA). See the September 2005 *Record*, page 1.

In its petition for rehearing, the Commission argues that consideration by the full appeals court is necessary because the decision by the three-judge panel with respect to whether Representatives Christopher Shays and Martin Meehan have standing to bring this suit conflicts with the Supreme Court's findings in *McConnell v. FEC* and with the DC circuit's own decisions in prior cases.

The Commission also argues that rehearing is warranted because the three-judge panel's decision involves exceptionally important issues. First, the appeals court decision regarding standing effectively allows any

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Reports

October Reporting Reminder

The following reports are due in October¹:

- All principal campaign committees of House and Senate candidates must file a quarterly report by October 15. The report covers financial activity from July 1 (or the day after the closing date of the last report) through September 30.
- Principal campaign committees of Presidential candidates must file a report by October 15, if they are quarterly filers (the report covers financial activity from July 1 through September 30), or by October 20, if they are monthly filers (the report covers activity for the month of September).
- All national party committees, PACs and state and local party committees that elect to following a monthly filing schedule and state and local party committees required to file monthly because

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¹ Committees involved in the October 4, 2005, Special Election in California's 48th Congressional District may be required to file additional reports in October. See the September 2005 *Record*, page 6, for details.

Reports

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they engage in reportable federal election activity must file a monthly report by October 20. This report covers activity for the month of September.

Note that the October 15 reporting deadline falls on a weekend. Filing deadlines are not extended when they fall on weekends.

Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations²

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).

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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 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). The Commission's Public Disclosure Division will be open from 10 a.m. to 4 p.m. on Saturday, October 15th, to receive and process hand-delivered reports and reports received via first class mail.

For those filers who are not required to file their reports elec-

tronically, 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

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candidate to challenge nearly all Commission regulations without demonstrating any personal harm from a particular regulation. This interpretation of the court's standing requirements creates "uncertainty and instability in the law affecting constitutionally protected advocacy during the relatively short congressional election cycles." Second, the decision failed to give the required deference to the Commission's "exercise of its judgment in balancing the conflicting policies and First Amendment interests underlying this complex statute." The Commission thus requests that the court grant its petition for rehearing.

U.S. Court of Appeals for the District of Columbia Circuit, CV04-5352.

—Amy Kort

Augusti, Augusti for Congress v. FEC

On April 26, 2005, the U.S. District Court for the Western District of Tennessee granted in part the Commission's motion to dismiss this case, and on August 10, the plaintiff voluntarily dismissed the complaint. The court found that Mark A. Augusti lacked standing to challenge the FEC's final determination against Mark A. Augusti for Congress (the Committee) and its treasurer. The court also found that Mr. Augusti could not act as the Committee's *pro se* legal counsel and gave the Committee 30 days to retain a licensed attorney or the case would be dismissed for failure to prosecute. Mr. Augusti informed the court on June 2 that he did not intend to retain counsel for the Committee.

Background

On June 30, 2003, the Commission found reason to believe that the Committee had filed its 2002 Year End report 26 days late. See 2

U.S.C. §434(a). On May 19, 2004, the Commission made a final determination that the Committee had violated 2 U.S.C. §434(a) and assessed a \$750 civil money penalty. 11 CFR 111.43. The Commission did not accept the treasurer's absence from the country until mid-January as an "extraordinary circumstance" that prevented her from timely filing the report. 11 CFR 111.35(b)(1)(iii).

On June 2, 2004, Mr. Augusti replaced the treasurer, and on June 16, he and the Committee filed a *pro se* petition in court challenging the Commission's final determination.

Court Decision

The court granted the Commission's motion to dismiss the case with respect to Mr. Augusti, finding that he lacked standing to challenge the administrative determination because he was not named as a respondent in the Commission's final determination and order. The court also found that Mr. Augusti could not challenge the Commission's final determination with respect to the Committee because he is not a licensed attorney. Although a litigant may appear in federal court either *pro se* or through counsel, a corporation or association, such as a political committee, must be represented by a licensed attorney. See *Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993) and *Cousino v. Nowicki*, No. 97-1905, 1998 WL 708700, at *1 (6th Cir. Oct. 2, 1998).

The court did not find that dismissal of the case with respect to the Committee was warranted. Although Mr. Augusti cannot represent the Committee in federal court, he did represent the Committee before the Commission. The court determined, as a result, that "the error was attributable to the candidate's ignorance of the procedural rules applicable in federal court." The court ordered the Committee to retain a licensed attorney to represent it in this action within 30 days of the court's order. On June 2, 2005, Mr. Augusti

informed the court that he would not be hiring counsel for the Committee and thus, he was withdrawing the complaint. On August 10, 2005, the Court signed an order dismissing the case. See the January 2005 *Record*, page 13.

U.S. District Court for the Western District of Tennessee, Memphis Division, 04-2454-D/An.

—Amy Kort

Cooksey v. FEC

On August 30, 2005, the U.S. District Court for the Western District of Louisiana granted the Commission's motion to dismiss this case. The court adopted the Report and Recommendation of the Magistrate Judge, finding that the defendant did not show grounds under the administrative fines regulations to challenge the Commission's final determination and its civil penalty assessment. 11 CFR 111.35. See the August 2004 *Record*, page 11.

U.S. District Court for the Western District of Louisiana, 304CV1152.

—Amy Kort

Advisory Opinions

AO 2005-7

Certain Commentaries and Editorials Are Prohibited Corporate Contributions if Coordinated

Bona fide news stories concerning federal elections are exempt from the definition of "contribution" and "expenditure," even when published by a media corporation co-owned by a federal candidate. The media corporation may also publish opinion columns written by the federal candidate provided that those col-

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Advisory Opinions

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umns are not “coordinated communications.” In addition, the federal candidate may purchase advertising space from the media corporation provided the candidate’s committee is charged the same standard rate charged to other advertisers.

Background

Andy Mayberry, a candidate for the U.S. House of Representatives for Arkansas’ 2nd District, co-owns Spirit Publications, Inc., an incorporated media company. Spirit Publications publishes and distributes *The East Ender*, a local newspaper that carries opinion columns and *bona fide* news stories, and the *Spirit Magazine*, a monthly publication. The circulation area of both periodicals is within Arkansas’ 2nd Congressional District. Mr. Mayberry is a regular opinion columnist for both periodicals.

Press Exemption

The Federal Election Campaign Act (the Act) and Commission regulations prohibit corporations from making any contribution or expenditure in connection with a federal election. 2 U.S.C. §441b(a); 11 CFR 114.1(a), 114.2(b)(1) and (b)(2). However, the rules exempt from the definitions of “contribution” and “expenditure” “any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication.” 11 CFR 100.73 and 100.132. This so-called press exemption applies to the costs of news stories that are *bona fide* news accounts, subject to certain conditions, even if the newspaper or magazine is owned or controlled by a candidate. Thus, the expenses of publishing and distributing editions of the *East Ender* containing *bona fide* news stories about federal elections and candidates are not contributions or expenditures because the news

stories are part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the circulation area. 11 CFR 100.73 and 100.132.

The press exemption does not apply, however, to commentaries and editorials that are distributed through facilities that are owned or controlled by a political party, political committee or candidate. 2 U.S.C. §431(9)(B)(i); 11 CFR 100.73 and 100.132. Therefore, any opinion columns written by Mr. Mayberry that are published and distributed through Spirit Publications are not exempt from the definitions of “contribution” or “expenditure” under the press or media exemption.

Coordinated Communications

Lacking an exemption, the Commission next considered whether publishing the columns would result in contributions from Spirit to the Mayberry campaign and thus be prohibited.

Under the Act and Commission regulations, a communication that is coordinated with a candidate or party is considered an in-kind contribution by the person paying for the communication. 2 U.S.C. §441a(a)(7)(B)(i); 11 CFR 109.21(b). Commission regulations provide for a three-prong test to determine whether a communication is a coordinated communication. The test considers whether the communication:

- Is paid for by a person other than a federal candidate, a candidate’s authorized committee, a political party committee or an agent of any of these;
- Satisfies one or more of six conduct standards (11 CFR 109.21(d)); and
- Satisfies one or more of four content standards (11 CFR 109.21(c)). See 11 CFR 109.21(a) and (b)(1).

Opinion columns authored by Mr. Mayberry satisfy the payment prong of the test because, although Mr.

Mayberry would write the columns, they would be paid for by Spirit Publications. Similarly, because Mr. Mayberry would be the author and editor of the opinion columns at the same time that he is a candidate for federal office, Spirit Publication’s continued publication of Mr. Mayberry’s opinion columns would satisfy the test’s second prong—conduct. The conduct standards focus on issues such as whether the candidate or the candidate’s agents “request or suggest” or are “materially involved” in the making and airing of a communication, or engage in “substantial discussion” about the communication. 11 CFR 109.21(a)(3) and (d)(1) through (3).

His opinion columns may also meet the test’s third prong—content. Four types of communications satisfy the content standard: (1) a public communication that expressly advocates the election or defeat of a clearly identified federal candidate; (2) a public communication that disseminates, distributes or republishes campaign materials; (3) electioneering communications; and (4) a public communication that refers to a political party or clearly identified federal candidate that is disseminated 120 days or fewer before an election and is directed to voters in the candidate’s jurisdiction. 11 CFR 109.21(c).

Mr. Mayberry’s opinion columns constitute public communications, so if any future opinion columns expressly advocate the election or defeat of a clearly identified federal candidate, those columns will satisfy the “express advocacy” content standard in 11 CFR 109.21(c)(3). Similarly, if future opinion columns disseminate, distribute or republish, in whole or in part, campaign materials prepared by Mr. Mayberry or any other federal candidate, or by an agent of either, those columns will satisfy the “republishing” content standard in 11 CFR 109.21(c)(2).

Opinion columns that contain a byline with Mr. Mayberry's name and photograph would meet the "120 day public communication" content standard if they are publicly distributed or disseminated within 120 days of an election for federal office and are directed to voters within his jurisdiction. Conversely, opinion columns that do not bear a byline with Mr. Mayberry's name or photograph and do not contain any other reference to a clearly identified federal candidate or party would not meet this content standard, regardless of when such columns are publicly distributed or disseminated.

Any editorial or commentary in the periodicals—including the candidate's opinion column—that satisfies any of the content standards discussed above would be an impermissible in-kind contribution. As such, it would also be an impermissible corporate expenditure. See U.S.C. §441b(b)(2) and 11 CFR 100.111

Payments for Ad Space

Finally, Mr. Mayberry's committee may purchase advertising space in *The East Ender* at the same standard rates that Spirit Publications sells such space to other advertisers, so long as that rate is the usual and normal charge for such advertising, and normal practices for assigning advertising space are followed, and payment terms for the Committee follow normal billing practices. 11 CFR 100.111(e).

Date Issued: August 18, 2005;
Length: 10 pages

—Amy Pike

AO 2005-9 Campaign May Pay Travel Expenses of a Federal Candidate's Minor Children

"Friends of Chris Dodd," the principal campaign committee of Senator Chris Dodd, may use campaign funds to pay for the travel expenses of Senator Dodd's minor children to accompany their parents

between their home in Connecticut and Washington, DC, provided that the parents are traveling to participate in functions directly connected to the senator's *bona fide* official responsibilities.

Background

Senator Dodd, a United States Senator from Connecticut, travels regularly between his home in Connecticut and Washington, DC in connection with his official duties, and his travel expenses are paid for in accordance with Senate rules and Commission regulations. Senator Dodd's wife also travels to Washington, DC to participate in events relating to Senator Dodd's official duties. When both parents travel between Connecticut and Washington, DC, the senator's two young daughters accompany their parents.

Analysis

The Federal Election Campaign Act (the Act) identifies six categories of permissible uses of contributions accepted by a federal candidate, including "ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of Federal office." 2 U.S.C. §439a(a) and 11 CFR 113.2(a). In no case, however, may campaign funds be used for an expense that would exist irrespective of the candidate's campaign or duties as a federal officeholder, and thus be converted to "personal use." 2 U.S.C. §439a(b)(1) and 11 CFR 113.1(g). The question of whether payment of travel expenses constitutes personal use is dealt with by the Commission on a case-by-case basis. 11 CFR 113.1(g)(1)(ii).

Commission regulations specify that certain travel costs qualify as "ordinary and necessary expenses incurred in connection with" one's duties as a federal officeholder. These expenses specifically include the costs of travel for a federal officeholder and an accompanying spouse to participate in a function directly connected to *bona fide*

official responsibilities, such as a fact-finding meeting or an event at which the officeholder's services are provided through a speech or appearance in an official capacity. 11 CFR 113.2(a)(1)

While the regulations do not specifically include the costs of travel for accompanying children, the facts in this case are similar to those in Advisory Opinion 1995-20. In that opinion, the Commission approved the use of campaign funds to pay for the travel expenses of a federal candidate's minor children finding that even though the children themselves participated only occasionally in campaign events, the expenditure was required only because of the candidate's campaign. Similarly, Senator Dodd and his wife travel between their home in Connecticut and Washington, DC, to participate in functions directly related to Senator Dodd's *bona fide* official responsibilities as a holder of federal office. When Senator Dodd's minor children accompany him and his wife on these trips, the costs of the children's travel arise solely from the senator's duties as a federal officeholder. Such travel may be contrasted, for example, with family travel to vacation locales or other examples of personal uses of campaign funds. Therefore, payments for the travel expenses of minor children are a permissible use of campaign funds.

Date Issued: August 18, 2005;
Length: 5 pages

—Amy Pike

AO 2005-10 Federal Candidates and Officeholders Fundraising for Ballot Initiative Committees

U.S. Representatives Howard L. Berman and John T. Doolittle are not subject to the restrictions on federal candidates and officeholders of the Federal Election Campaign

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Advisory Opinions

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Act (the Act) when they solicit funds for ballot measure committees formed solely to support or oppose ballot initiatives on the California special election ballot. These ballot measure committees are not directly or indirectly established, financed, maintained or controlled by Representative Berman or Representative Doolittle, by anyone acting on their behalf or by any political party committee.

Background

On November 8, 2005, California will hold a statewide special election. Neither Representative Berman nor Representative Doolittle, nor any other federal candidate, will appear on the ballot for this election. However, the election will present ballot initiatives that represent major issues facing the constituents of Representatives Berman and Doolittle and touch on matters frequently before Congress.

Representatives Berman and Doolittle plan to raise funds for ballot measure committees formed solely to support or oppose these initiatives. These committees are not directly or indirectly established, financed, maintained or controlled by either of the Representatives or by any national, state, district or local party committee. Representatives Berman and Doolittle will fundraise for these ballot measure committees in their individual capacities and not on behalf of any party committee. They will not raise funds for public communications that would refer to either of them and that would be distributed in their respective congressional districts.

Analysis

Under the Act, federal candidates and officeholders, such as Representatives Berman and Doolittle, may not raise or spend funds in connection with an election for federal office, unless the funds are subject

to the limitations, prohibitions and reporting requirements of the Act. 2 U.S.C. §441i(e)(1)(A) and 11 CFR 300.61. In addition, federal candidates and officeholders may not raise or spend funds in connection with an election other than an election for federal office, unless the funds are within the contribution limits to candidates and political committees and from permissible sources under the Act. 2 U.S.C. §441i(e)(1)(B) and 11 CFR 300.62. See 2 U.S.C. §§441a(a)(1), (2), and (3). These restrictions on federal candidates and officeholders do not apply to the fundraising activities of Representatives Berman and Doolittle in the circumstances described above.

Concurring and Dissenting Opinions

Chairman Thomas issued a dissenting opinion on September 2. Vice-Chairman Toner and Commissioner Mason issued a concurring opinion on August 29. Commissioners Weintraub and McDonald issued a concurring opinion on September 2.

Date Issued: August 22; Length: 3 pages.

—Amy Kort

Advisory Opinion Requests

AOR 2005-13

Application of allocation and solicitation regulations for nonconnected committees (EMILY's List, August 26, 2005)

AOR 2005-14

National trade association as federation able to solicit PAC contributions from owners and personnel of franchisees that are members of the association's "Regional members" (Association of Kentucky Fried Chicken Franchisees, Inc., Political Action Committee, August 22, 2005)

AOR 2005-15

Political committee incorporating for liability purposes (Republican State Executive Committee of West Virginia, September 1, 2005)

Regulations

Notice of Proposed Rulemaking on Electioneering Communications

On August 18, 2005, the Commission approved a Notice of Proposed Rulemaking (NPRM) seeking comments on proposed changes to its rules defining "electioneering communications." The proposed changes would modify the definition of "publicly distributed" and the exemptions to the definition of "electioneering communications," consistent with the U.S. District Court for the District of Columbia's ruling in *Shays v. FEC*. In that decision the court ruled that the regulation limiting electioneering communications to communications publicly distributed "for a fee" exceeded the Commission's statutory authority to create exemptions and that the regulation exempting section 501(c)(3) organizations was not properly promulgated under the Administrative Procedure Act (APA).

Background

Generally speaking, electioneering communications are broadcast, cable or satellite communications that refer to a clearly identified federal candidate, are publicly distributed within 60 days before a general election or 30 days before a primary election and are targeted to the relevant electorate. 2 U.S.C. §434(f)(3)(A)(i) and 11 CFR 100.29(a)(1)-(3). In the Bipartisan Campaign Reform Act of 2002 (BCRA), Congress exempted certain communications from the definition of "electioneering communications," and specifically authorized the Com-

mission to promulgate regulations exempting other communications as long as the exempted communications do not promote, attack, support or oppose (PASO) a federal candidate. 2 U.S.C. §434(f)(3)(B)(iv).

Communications Distributed for a Fee

In its electioneering communications rules, the Commission defined “publicly distributed” as “aired, broadcast, cablecast or otherwise disseminated for a fee through the facilities of a television station, radio station, cable television system, or satellite system.” 11 CFR 100.29. The district court, however, found that the “for a fee” qualifier exceeded the Commission’s statutory authority because it could potentially exempt communications that PASO a federal candidate. As a result, the Commission proposes eliminating the phrase “for a fee” from the definition of “publicly distributed,” and requests comments on such issues as whether this approach would require extensive monitoring of radio and television programs to ensure that communications either fit the statutory press exemption or otherwise avoid meeting the definition of electioneering communication.

As an alternative, the Commission is considering a proposal to delete the phrase “for a fee” from the “publicly distributed” definition while also including a new exemption for communications that are not distributed for a fee and do not PASO a federal candidate. The Commission requests comments on this proposal. Moreover, it specifically asks whether it needs to provide some definition of PASO for this exemption, or any of the proposed exemptions discussed in the NPRM, to be meaningful and explicable to the regulated community, or whether the PASO standard is self-executing and understandable without further definition by the Commission.

Exemption for 501(c)(3) Organizations

The Commission also exempted from the definition of “electioneering communications” communications paid for by a 501(c)(3) organization. 11 CFR 100.29(c)(6). The district court found in *Shays v. FEC* that this exemption violates the APA because the explanation and justification for the rule did not address the “compatibility” of the Internal Revenue Service’s enforcement of the section 501(c)(3) prohibition on political activity with the requirements of the Federal Election Campaign Act (the Act). Specifically, the court found that the Commission did not discuss:

- Whether public communications that PASO a federal candidate would be viewed by the IRS as political activity that is prohibited for 501(c)(3) organizations;
- The risk, if any, that limited lobbying activity permitted for 501(c)(3) organizations could give rise ads that PASO a federal candidate; and
- The implications of allowing the IRS to “take the lead in campaign finance law enforcement.”

If the Commission decides to keep the exception for 501(c)(3) organizations, it will need to make a finding based on a well-developed record regarding these three areas of concern. The Commission requests data regarding these issues, including information on how 501(c)(3) organizations generally operate under the tax code. The Commission also requests information concerning how 501(c)(3) organizations functioned under the Commission’s existing rule during the last election cycle, in order to build an administrative record that might support the rule.

In addition, the NPRM proposes amending the current rule to provide an exemption for communications by 501(c)(3) organizations provided that the communications do not PASO a federal candidate and are

not paid for by a 501(c)(3) organization that is directly or indirectly established, financed, maintained or controlled by a federal candidate or officeholder. The Commission asks whether limiting the exemption to non-PASO communications adequately address the court’s concerns because the exemption would no longer turn on the IRS’s view of political activities. The Commission also seeks information concerning whether it is common for federal candidates or officeholders to establish, finance, maintain or control 501(c)(3) organizations and whether there is a greater likelihood that such organizations would pay for communications that PASO federal candidates.

Other Alternatives

As alternatives to these proposed modifications to the current section 501(c)(3) exemption, the Commission is also considering two additional options. First, it could repeal both the 501(c)(3) exemption and the regulatory exemption for certain communications made by state and local candidates. 11 CFR 100.29(c)(5) and (c)(6). Instead, the Commission would rely only on the exemptions that Congress created in the BCRA, which include an exemption for certain materials appearing in a news story, editorial or commentary, communications that are a reportable expenditure or independent expenditure and candidate debates. Second, the Commission could exempt from the definition of electioneering communication all communications that do not PASO a federal candidate. This proposal would employ the exemption authority authorized by Congress to its fullest extent. The Commission requests comments on either of these two proposals.

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Regulations

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Petition for Rulemaking to Exempt Ads Promoting Films, Books and Plays

The Commission has also granted a related Petition for Rulemaking that asks the Commission to revise its electioneering communication rules to exempt ads for political documentary films, books and plays.¹ The premise for the Petition is that ads for such films, books and plays would not be covered by the statutory exemption for communications “appearing in a news story, commentary, or editorial distributed through the facilities of any broadcast station.” 2 U.S.C. §434(f)(3)(B) and 11 CFR 100.29(c)(2).

Having considered the comments it received, the Commission proposes to amend its regulations to exempt communications promoting movies, books or plays, as long as the communications are run within the ordinary course of business of the persons that pay for such communications and the communications do not PASO a federal candidate. The Commission seeks comments on a number of issues concerning this proposal. For example, the Commission asks whether the exemption should be based on the actual or projected release date of the movie or book, so that it would only apply to movies or books that are shown during, or are released within six months of, the electioneering communications window. The Commission also questions whether the proposed rule appropriately limits the exemption to persons who pay for such communications in the ordinary course of their business. Finally, the Commission seeks information concerning the burden such a rule would place on advertisers and how advertisers responded

¹ The Notice of Availability was published in the Federal Register (69 FR 52461). The Commission received seven comments.

to the Commissions existing rule during the last election cycle.

Comments

All comments must be addressed to Ms. Mai T. Dinh, Assistant General Counsel, and submitted in either electronic, fax or hard copy form by September 30, 2005. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Hard copy comments should be sent to the Federal Election Commission, 999 E Street NW, Washington, DC 20463. Faxed comments should be sent to 202/219-3923, with a hard copy follow-up to insure legibility. Electronic mail comments should be sent to ECdef@fec.gov or submitted through the Federal eRegulations Portal at www.regulations.gov. All comments must be submitted in writing and include the full name and postal service address of the commenter. Comments that do not contain this information will not be considered.

Public Hearing

The Commission will hold a hearing on the proposed rules on October 19 and, if necessary, October 20. Anyone wishing to testify at the hearing must file written comments by the due date and must include a request to testify in their comments.

Additional Information

The NPRM was published in the August 24, 2005, *Federal Register* (70 FR 49508) and is available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml and from the FEC faxline, 202/501-3413.

—Amy Kort

Commission Extends Comment Periods for Proposed Rules

The Commission has extended until September 29, 2005, the periods for public comment on proposed rules regarding:

- The definition of “federal election activity” (FEA); and
- State and local party committee payments for the salaries of employees who spend 25 percent or less of their compensated time during a month on activities in connection with a federal election or FEA.

The proposed rules respond to the district court decision in *Shays v. FEC*, which invalidated several Commission regulations that were found to be inconsistent with the intent of Congress or improperly promulgated.¹ The Commission held hearings on these rules on August 4,

¹ On July 15, 2005, the U.S. Court of Appeals for the District of Columbia upheld the appealed portion of the district court’s decision. See the September 2005 Record, page 1.

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 2005-23

Definition of Federal Election Activity; Reopening of comment period (70 FR 51302, August 30, 2005)

Notice 2005-24

State, District and Local Party Committee Payments of Certain Salaries and Wages; Reopening of comment period (70 FR 51302, August 30, 2005)

2005, and witnesses at the hearings suggested that the Commission seek additional information that may assist it in its decisionmaking.

The Notices of Proposed Rule-making for these proposed rules are available on the FEC web site at http://www.fec.gov/pdf/nprm/fea_definition/notice_2005-13.pdf and http://www.fec.gov/pdf/nprm/state_party_wages/notice_2005-12.pdf. See the September 2005 *Record*, page 4, and the June 2005 *Record*, pages 1 and 3.

—Amy Kort

Alternative Dispute Resolution

ADR Program Update

The Commission recently resolved nine additional cases under the Alternative Dispute Resolution (ADR) program. The respondents, the alleged violations of the Federal Election Campaign Act (the Act) and the final disposition of the cases are listed below.

1-3. The Commission reached agreement with LeSueur for Congress '04 and Eddie "Edie" D. Ingrim, its treasurer, regarding their failure to include required disclaimers in political advertising. The respondents acknowledged that inadvertent violations of the Act occurred when disclaimers were omitted from political advertising. They agree that an appropriate aggregate civil penalty in these matters would be \$10,000, but contended that financial hardship prevents the Committee from paying any civil penalty. The respondents submitted financial documentation in support of this claim of financial hardship, and the Commission agreed that no civil penalty shall be owed.

With regard to two other respondents named in these cases, Lamar

Outdoor Advertising and Lamar Advertising Company, the ADR Office recommended the case be dismissed, and the Commission agreed and closed the file. (ADR 197/MUR 5434, ADR 237/MUR 5521 and ADR 240/5608)

4. The Commission reached agreement with the Nebraska Republican Federal Campaign Committee and Demarus Carlson, its treasurer, regarding their failure to report disbursements. The respondents agreed to pay a \$10,000 civil penalty and acknowledged that the failure to file accurate reports of the Committee's financial activity was due to internal staffing problems and difficulties with software. These problems caused several disbursements to be omitted from the 2003 Year End Report. Also, the respondents have not had time to implement all of the corrective procedures adopted as a means of resolving an earlier case referred to the ADR Office by the FEC's Reports Analysis Division. The respondents reiterated their commitment to the earlier terms of settlement (ADR 226) and agreed, as stated in the earlier settlement agreement, to send a minimum of four officers and/or staff of the Committee to an FEC seminar on federal election campaign reporting requirements within 12 months of the effective date of the agreement. They will also create and maintain in the Committee's offices a resource center to guide the Committee in complying with the requirements of the Act and amend internal procedures to provide for an additional review of the Committee's reports before the reports are submitted to the Commission. (ADR 254*)

5. The Commission dismissed the matter involving Jene M. Witte regarding alleged violations of the Act's disclaimer requirements. The ADR Office recommended the case be closed, and the Commission

agreed and closed the file. (ADR 267/MUR 5558)

6. The Commission dismissed the matter involving Amy Otis-Wilborn regarding alleged violations of the Act's disclaimer requirements. The ADR Office recommended the case be closed, and the Commission agreed and closed the file. (ADR 272/MUR 5592)

7. The Commission reached agreement with Capri Cafaro for Congress, Ronald Silvestri, its treasurer, and Renee Cafaro, regarding excessive contributions. The respondents acknowledged that violations of the Act inadvertently occurred and agreed to pay a \$1,000 civil penalty. In an effort to avoid similar errors in the future, they agreed to have a Committee representative attend an FEC seminar within 12 months of the effective date of the agreement. (ADR 242/MUR 5510)

8. The Commission reached agreement with Amalgamated Transit Union—COPE and Oscar Owens, its treasurer, concerning their failure to file 48-hour reports of independent expenditures. The respondents acknowledged that a violation of Act occurred, explaining they had not previously made independent expenditures and did not understand the timeframe for reporting these expenditures. In an effort to avoid similar errors in the future, they agreed to pay a \$5,000 civil penalty and to develop an FEC compliance manual containing updated information. (ADR 244*)

9. The Commission reached agreement with Freshmen PAC and David Metzner, its treasurer, regarding their failure to report disbursements. The respondents acknowledged that a violation of the Act occurred. After their 2004 July Quarterly Report was filed, they determined, while responding to an FEC request for information, that two disbursements made during the reporting period had not cleared

*This case was internally generated within the Commission.

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Alternative Dispute Resolution

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the bank by the end of the reporting period. They stated that the disbursements were overlooked in preparing the report because the checks had not cleared the bank. According to the respondents, they have created procedures to avoid similar errors in the future, such as changing to a monthly filing schedule, establishing an additional bank depository for contributions and retaining an FEC reporting consultant to confirm bank reconciliation and prepare FEC reports. In order to resolve this matter and ensure future compliance with the Act, they agreed to compile a Compliance Manual detailing procedures and to maintain internal controls to educate their staff about the campaign finance laws. (ADR 249*)

—Amy Kort

Upcoming 2005 Conferences and Seminars

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

October 25-26, 2005

Crowne Plaza Hotel
San Antonio Riverwalk
San Antonio, TX

Seminar for Nonconnected PACs and 527 Organizations

November 16

FEC Headquarters
Washington, D.C.

Outreach

Campaign Finance Law Training Conference in San Antonio

On October 25 and 26 the Commission will hold a conference in San Antonio, TX, for House and Senate campaigns, political party committees and corporations, labor organizations, trade associations, membership organizations and their respective PACs. The conference 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.

The conference will be held 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 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

Seminar for Nonconnected Political Action Committees

On November 16, 2005, the Commission will hold a one-day seminar for nonconnected committees (i.e., PACs not sponsored by a corporation, union, trade association or nonprofit membership organization) at the FEC, 999 E Street, NW., Washington, D.C. This seminar is recommended for:

- Treasurers of leadership PACs, partnership PACs and other non-connected PACs;
- Staff of the above organizations who have responsibility for compliance with federal campaign finance laws;
- Attorneys, accountants and consultants who have clients that are nonconnected PACs or unregistered section 527 organizations; and
- Anyone who wants to gain in-depth knowledge of federal campaign finance law as it applies to non-connected PACs and unregistered section 527 organizations.

The seminar will address issues such as fundraising and reporting. Commissioners and experienced FEC staff will specifically discuss recent changes to the campaign finance law, such as new allocation and solicitation rules for non-connected PACs.

The registration fee for this seminar is \$100 per attendee, which

covers the cost of the seminar, materials, a reception and refreshments. Payment is required prior to the seminar. A full refund will be made for all cancellations received before November 14. Complete registration information is available on the FEC web site at http://www.fec.gov/info/conference_materials/nonconn_seminar.shtml, along with the seminar agenda and a list of hotels located within walking distance of the FEC. Further questions about this seminar should be directed to the Information Division by phone at 1-800/424-9530 (or locally at 202/694-1100) or via e-mail at Conferences@fec.gov.

—Amy Kort

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