

# Record

October 2006

Federal Election Commission

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## Reports

### October Reporting Reminder

Committees should take note of the following due dates for October reports:

- Third quarter reports for quarterly filers are due on October 15 (close of books, September 30);
- October monthly reports for monthly filers are due on October 20 (close of books, September 30); and
- Pre-general reports are due on October 26 (close of books, October 18). Candidate committees must file this report if their candidate is running in the general election. Political action committees (PACs) and party committees that file quarterly must file this report if they make contributions or expenditures in connection with a federal election during the October 1-18 reporting period. PACs and party committees that file on a monthly schedule **must** file a pre-general report in lieu of the regular November 20 monthly report.

Note that the October 15 reporting deadline falls on a weekend. Filing deadlines are not extended when they fall on weekends. Thus, reports must be timely filed by the filing deadline (see “Other Means of Filing” below).

(continued on page 2)

## Court Cases

### Wisconsin Right to Life v. FEC

On September 13, 2006, a three-judge panel of the U.S. District Court for the District of Columbia denied Wisconsin Right to Life, Inc.’s (WRTL) motion for a temporary restraining order and preliminary injunction that would have prevented the Commission from enforcing the corporate financing restrictions applicable to electioneering communications (EC) with regard to certain WRTL broadcast ads to be run before the 2006 primary and general elections.

### Background

Under the Federal Election Campaign Act (the Act) and Commission regulations, an EC is defined, with some exceptions, as any broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is publicly distributed within 60 days before the general election or 30 days before a primary election or a nominating convention for the office sought by the candidate. 2 U.S.C. §434(f)(3) and 11 CFR 100.29. Corporations may not make ECs using their general treasury

(continued on page 4)

## Reports

(continued from page 1)

In addition to filing the quarterly and pre-general reports, committees of House and Senate candidates active in the 2006 general election may also have to file 48-hour notices of last-minute contributions of \$1,000 or more. PACs and party committees filing on a quarterly basis may also need to file 48- or 24-hour reports of independent expenditures, depending upon the timing of their activities.

National party committees, PACs following a monthly filing schedule and certain state, district and local party committees must file a monthly report by October 20.<sup>1</sup> The report covers activity for the month of September. Also, these committees may have to file 48- or 24-hour reports of independent expenditures, depending upon the timing of their activities.

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## Electronic Filing Software

The Commission's current electronic filing format is version 5.3.1.0. Before filing their next report, FECFile users should confirm that they have downloaded version 5.3 of the software from the FEC web site at [www.fec.gov/electfil/FECFileIntroPage.shtml](http://www.fec.gov/electfil/FECFileIntroPage.shtml).

Committees using commercial software should contact their vendors to ensure that they have the latest software release. Only reports filed in the current format version will be accepted.

## Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations that receive contributions or make expenditures, including independent expenditures,<sup>2</sup> in excess of \$50,000 in a calendar year—or have reason to expect to do so—must file all reports and statements with the FEC electronically. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program will be considered nonfilers and may be subject to enforcement actions, including administrative fines. Reports filed electronically must be received and verified by 11:59 p.m. Eastern Time on the filing date.

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 copy of their reports with the Commission in order to speed disclosure.

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

<sup>2</sup> Disbursements for electioneering communications do not count toward the \$50,000 threshold for mandatory electronic filing. See 11 CFR 104.18(a).

## Timely Filing for Paper Filers

### Registered and Certified Mail.

October quarterly and monthly reports sent by registered or certified mail must be postmarked by the October 15 and 20 filing dates, respectively, to be considered timely filed. The pre-general report, however, must have a registered or certified postmark on or before October 23 in order to be considered timely filed. Please note that a certificate of mailing from the U.S. Postal Service is not sufficient to prove that a report is timely filed. A committee sending its reports by certified mail should keep its mailing receipt with the U.S. Postal Service postmark as proof of filing because the U.S. Postal Service does not keep **complete** records of items sent by certified mail. A committee sending its reports by registered mail should also keep its proof of mailing or other means of transmittal of its reports.

**Overnight Mail.** October monthly and quarterly reports filed via overnight mail<sup>3</sup> will be considered timely filed if the report is received by the delivery service on or before the October 15 and 20 filing dates, respectively. The pre-general report, however, must be **received** by the delivery service on or before the October 23 mailing date to be considered timely filed. A committee sending its reports by Express or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports.

**Other Means of Filing.** Quarterly, monthly and pre-general reports sent by other means—including first class mail and courier—must be **received** by the FEC before close of business on the October 15, 20 and 26 filing deadlines, respectively. 2 U.S.C. §434(a)(5) and 11 CFR

<sup>3</sup> "Overnight mail" includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service's on-line tracking system.

104.5(e). Please note that October 15 is a Sunday. Please contact the Public Disclosure Office at 202/694-1120 for information on extended weekend hours and Saturday mail delivery, as the Commission does not extend filing deadlines to the next business day.

For those filers who are not required to file their reports electronically, paper forms are available on

the FEC’s web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency’s automated fax system (202/501-3413).

**Additional Information**

For more information on 2006 reporting dates:

- See the reporting tables in the January 2006 Record;
- Call and request the reporting

tables from the FEC at 800/424-9530 or 202/694-1100;

- Fax the reporting tables to yourself using the FEC’s Faxline (202/501-3413, document 586); or
- Visit the FEC’s web page at [http://www.fec.gov/info/report\\_dates.shtml](http://www.fec.gov/info/report_dates.shtml) to view the reporting tables online.

—Elizabeth Kurland

**Texas 22nd District Special Election Reporting**

The Special General Election to fill the U.S. House seat in the 22<sup>nd</sup> Congressional District vacated by Rep. Tom DeLay will be held on November 7, 2006. There are two possible special elections to fill this seat, but only one may be necessary. Under Texas law, if no candidate wins a majority of votes in the Special General Election, the top two vote-getters, regardless of party affiliation, will participate in a Special Runoff Election on a date to be set by the Governor after November 7. If a Special Runoff Election is held, the Commission will notify committees of the reporting dates for that election and the committees involved in both elections will be required to file Pre-General, Pre-Runoff, and Post-Runoff reports. Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more for the Special General Election between October 19 and November 4. Political committees must file 24-hour notices of independent expenditures that aggregate at or above \$1,000 between October 19 and November 5. This requirement is in addition to that of filing 48-hour notices of independent expenditures that aggregate \$10,000 or more at other times during a calendar year. Additionally, the 60-day electioneering communications time period for the Special General Election runs from September 8 through November 7.<sup>1</sup>

**If Only the Special General Is Held, Committees Must File:**

	Close of Books <sup>2</sup>	Reg./Cert./Overnight Mailing Date <sup>3</sup>	Filing Date
Pre-General	October 18	October 23	October 26
Post-General	November 27	December 7	December 7
Year-End	December 31	January 31	January 31

**If Two Elections Are Held, Committees Involved Only in the Special General Must File:**

	Close of Books <sup>2</sup>	Reg./Cert./Overnight Mailing Date <sup>3</sup>	Filing Date
Pre-General	October 18	October 23	October 26
Year-End	December 31	January 31	January 31

*1 Individuals and groups not registered as political committees with the FEC who make electioneering communications costing more than \$10,000 in the aggregate in the calendar year must disclose this activity to the Commission within 24 hours of the distribution of the communication. See 11 CFR 100.29 and 104.20. Political committees must report these communications as expenditures or independent expenditures under 11 CFR 104.3 and 104.4.*

*2 This date indicates the end of a reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered.*

*3 Reports filed electronically must be received and verified by 11:59 p.m. Eastern Time on the filing date. A committee required to file electronically that instead files on paper reporting forms will be considered a nonfiler. Reports filed on paper and sent by registered or certified mail must be postmarked by the mailing date above (please note that a “certificate of mailing” from the U.S. Postal Service is not sufficient to prove that a report is timely filed). 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 which the report is scheduled for delivery the next business day and is recorded in the service’s on-line tracking system. Reports sent by other means must be received by the Commission’s close of business on the filing date.*



## Court Cases

(continued from page 1)

funds.<sup>1</sup> 2 U.S.C. 441b(a)-(b) and 11 CFR 114.2 and 114.14.

WRTL originally filed suit in the U.S. District Court for the District of Columbia on July 28, 2004, asking the court to find the prohibition on the use of corporate funds to pay for ECs unconstitutional as applied to what it calls “grassroots lobbying” communications planned for the period before the 2004 elections. After the district court both denied WRTL’s motion for a preliminary injunction and dismissed WRTL’s complaint, WRTL appealed to the Supreme Court. On January 23, 2006, the Supreme Court vacated the judgment and remanded to the district court to reconsider the merits of WRTL’s “as applied” challenge. The district court held a hearing on September 18, 2006, regarding motions for summary judgment as to WRTL’s 2004 ads.

The Plaintiff’s current proposed efforts involve paying for broadcast advertisements that would air before the 2006 primary and general elections asking Wisconsin listeners to contact U.S. Senators Kohl and Feingold to urge them to stop what WRTL says are efforts by the Senate Democratic Leadership to hold up further action on the proposed Child Custody Protection Act. Senator Kohl is up for re-election in 2006 and the planned ads would run during the EC periods for Wisconsin’s primary and general elections.

According to WRTL, the ads would constitute *bona fide* grassroots lobbying because they express an opinion on pending Senate legislative activity, urge listen-

ers to contact their Senators and do not refer to any political party or support or attack any candidate. WRTL argued that the ads were not the “functional equivalent of express advocacy;” thus, there was no constitutional justification for the prohibition on corporate payments for these ads or for requiring the ads to be paid for through WRTL’s political action committee (PAC). WRTL asserted that, in this instance, the EC financing restrictions unconstitutionally burdened its First Amendment rights of free speech, free association and petitioning the government.

### Court Decision

The three-judge court rejected WRTL’s August 25, 2006, motion for a temporary restraining order and preliminary injunction regarding its planned 2006 ads, finding that WRTL had not demonstrated that it was entitled to relief under the four applicable factors: (1) whether WRTL had a substantial likelihood of success on the merits; (2) whether WRTL would suffer irreparable harm in the absence of an injunction; (3) whether an injunction would cause substantial injury to the other party; and (4) whether the public interest would be furthered by the injunction.

*Substantial likelihood of success on the merits.* The court found that WRTL’s constitutional claim failed to “tip the scale in favor of” an injunction. The court stated that the restrictions on corporate financing of ECs are presumed constitutional. In *McConnell v. FEC*, 540 U.S. 93 (2003), the Supreme Court discussed the fact that a corporation has alternative methods of communicating its messages when the Court concluded that the EC restrictions are facially constitutional. In this case, the Defendants argued that the prohibition is consistent with the First Amendment because, among other things, WRTL retains these alternative methods of communication. Although the

district court is currently considering whether these alternatives are in fact constitutionally adequate, the three-judge court found that it could not now conclude that WRTL would succeed on the merits based on an incomplete record.

*Whether plaintiff would suffer irreparable harm if an injunction was not granted.* The court concluded that the actual limitation on WRTL’s freedom of speech is not nearly as great as WRTL had argued. While the court agreed that, absent a preliminary injunction, WRTL has forever lost the opportunity to use its general treasury funds to run the planned ads, it noted that WRTL is not precluded from forwarding its message in other ways. The EC provisions do not prohibit the speech in question; they only require that corporations and labor organizations engaging in such speech channel their spending through PACs. WRTL can also communicate its message through non-broadcast media, such as newspapers and the Internet. Moreover, the court noted that WRTL could spend unlimited corporate funds to lobby via broadcast ads for the enactment of the Child Custody Protection Act so long as the ads omit any clear references to Senator Kohl.

*Whether an injunction would cause substantial injury to other parties.* It is the statutory duty of the FEC to enforce the campaign finance law. The court found that enjoining the FEC from performing its statutory duty would constitute a substantial injury to the agency that would be far greater than “WRTL’s harm from an FEC administrative investigation which carries little threat of imminent or certain sanction.”

*Whether the public interest would be furthered by the injunction.* Finally, the court found that granting the injunction would not further the public interest. The Supreme Court has determined that the EC prohibition serves

<sup>1</sup> Commission regulations provide an exception allowing “qualified nonprofit corporations” to pay for electioneering communications. 11 CFR 114.2(b)(2). However, WRTL alleges that it does not meet the definition of a qualified nonprofit corporation. 11 CFR 114.10.

compelling governmental interests. *McConnell*, 540 U.S. at 205. The three-judge court noted that the Supreme Court has made it clear that “as applied challenges,” such as WRTL’s, are permitted and has commanded the district court to consider WRTL’s case on the merits with regard to its planned 2004 ads. However, the three-judge court did not find that these actions, without more, eliminated the presumption of the prohibition’s constitutionality or that the balance of hardships favored WRTL in this case.

U.S. District Court for the District of Columbia, CV04-1260 (DBS, RWR, RJL).

—*Carrie Hoback*

## Regulations

### Final Rules: Contribution Limits between Authorized Committees

On September 14, 2006, the Commission approved regulations that implement an earlier statutory increase in the limit on contributions from one federal campaign to another from \$1,000 to \$2,000 per election.

#### Background

Under the Act and FEC regulations, a candidate’s authorized committee may not support more than one candidate. 2 U.S.C. 432(e)(3)(A); 11 CFR 102.12(c)(1) and 102.13(c)(1). However, these provisions have long exempted from the definition of the term “support” contributions of \$1,000 or less, per election, from one authorized committee to another authorized committee. 2 U.S.C. 432(e)(3)(B) (2004); 11 CFR 102.12(c)(2) and 102.13(c)(2). In the 2005 Appropriations Act, Congress amended 2 U.S.C. 432(e)(3)(B) to increase the exempt amount from \$1,000 to \$2,000 per election. The amount was not indexed for inflation.

### Final Rules

The Commission voted to update its regulations to reflect the statutory change by amending the definitions of “support” in its regulations. No notice or comment period was required as the regulations simply restate the statute provided by Congress. The Final Rules became effective on the date of publication in the *Federal Register*, September 20, 2006, and are available on the FEC web site at [http://www.fec.gov/law/law\\_rulemakings.shtml#authtoauth](http://www.fec.gov/law/law_rulemakings.shtml#authtoauth).

—*Meredith Metzler*

### Request for EC Lobbying Exemption Denied

On August 29, 2006, the Commission approved a Notice of Disposition ending its consideration of a rulemaking petition that sought to exempt certain “grassroots lobbying” communications from the electioneering communications (EC) rules. See April 2006 *Record*, page 2. The Notice clarifies that—while the Commission has decided not to initiate a rulemaking at this time—it may consider doing so in the future.

The Commission considered but did not approve a draft interim final rule that would have exempted certain radio and television communications from the definition of electioneering communication provided they were “grassroots lobbying communications.” The proposed rule would have defined a “grassroots lobbying communication” as any communication that:

- References a clearly identified federal candidate, but refers to that candidate only in his or her capacity as an incumbent public officeholder, does not reference the incumbent public officeholder’s character, qualifications, or fitness for public office, and does not refer to any federal election or political party;
- Has as its subject a public policy

- issue under consideration by Congress or the Executive Branch;
- Urges the public officeholder to take a particular position or action with respect to the public policy issue or urges the general public to contact the incumbent public officeholder for the purposes of encouraging such position or action;
- Does not promote, attack, support, or oppose any candidate for the office sought by the incumbent public officeholder; and
- References the record or position of the public officeholder only by quoting that officeholder’s own public statements or reciting that officeholder’s official actions, such as a vote.

Currently, such ads are subject to funding restrictions and disclosure requirements if they otherwise satisfy the EC definition. See, for example, 11 CFR 100.29, 104.20, and 114.14.

The Notice of Disposition announcing the Commission’s decision not to proceed with a rulemaking at this time appeared in the September 5, 2006, *Federal Register*. 71 FR 52295. The notice and other documents related to this rulemaking are available on the web at [http://www.fec.gov/law/law\\_rulemakings.shtml#lobbying](http://www.fec.gov/law/law_rulemakings.shtml#lobbying).

—*Myles Martin*

### Need FEC Material in a Hurry?

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Use a touch tone phone to dial 202/501-3413 and follow the instructions. To order a complete menu of Faxline documents, enter document number 411 at the prompt.

## Nonfilers

### Committees Fail to File Pre-Election Reports

Three committees failed to file a 12-day pre-primary report in connection with the Florida primary election held on September 5, 2006:

- Neree for U.S. Congress;
- Chagnon for US Congress; and
- Harms for Congress.

Eight committees also failed to file 12-day pre-primary reports for primary elections held on September 12, 2006:

- Jeff Latas for Congress, Arizona;
- Susan Friedman for Congress, Arizona;
- Campaign to Elect Mike Protack, Delaware;
- Maloney for Congress, New York;

### Back Issues of the Record Available on the Internet

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* list *Record* articles for each year by topic, type of Commission action and, in the case of advisory opinions, the names of individuals requesting Commission action.

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

- Zanzi for Congress, New York;
- Green for Change, New York;
- Raleigh for Congress, New York; and
- Tyberg for Congress, Wisconsin.

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

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

—Meredith Metzler

## Advisory Opinions

### Advisory Opinion 2006-21: Millionaires' Rules Apply Separately to Primary and General Elections

A candidate's expenditures from personal funds made before the primary election will not trigger the Millionaires' Amendment for a general election opponent. However, any personal funds donated before the primary that the campaign retains for use in the general election will count towards the general election personal funds expenditure threshold.

#### Background

Under the so-called Millionaires' Amendment, a candidate whose opponent's personal campaign

spending exceeds certain threshold amounts may qualify for increased limits on individual contributions and, during the general election, increased coordinated party expenditures, as well.

For Senate candidates, the personal spending thresholds that trigger the Millionaires' provisions vary by state, based on the voting age population. (The threshold amounts for each state are listed on the FEC's web site at <http://www.fec.gov/pages/bcra/rulemakings/millionairesenate.shtml>.) These thresholds apply separately to the primary and general elections.

Senator Maria Cantwell is a Democratic candidate for reelection to the U.S. Senate from Washington state. She and her principal campaign committee, Cantwell 2006, believe that Michael McGavick, a Republican candidate for the Senate seat, will spend personal funds in excess of the applicable threshold amount for "communications attacking Senator Cantwell" prior to the state's September 19 primary. If the two candidates win their respective primaries, they will face each other in the general election on November 7, 2006.

#### Analysis

Under the Millionaires' provisions, all personal expenditures Mr. McGavick makes prior to the primary election will be considered expenditures in connection with the primary election, not the general election. Since Senator Cantwell is not running against Mr. McGavick in the Republican primary, his expenditures will not trigger the Millionaires' provisions for her campaign in that election. However, if Senator Cantwell faces Mr. McGavick in the general election, any personal funds he contributed to his campaign committee during the primary that are available for use in the general election will count towards the personal spending threshold for the general election. (Naturally, the same would



hold true for personal contributions Senator Cantwell may have made to her own campaign.)

Campaigns must use a reasonable accounting method to determine how much of the candidate's personal funds were transferred from the primary election campaign to the general election campaign. See AO 2006-06. One example of a "reasonable accounting method" is that the campaign's cash-on-hand consists of the funds most recently received. See 11 CFR 110.3(c)(4).

Date Issued: August 29, 2006

Length: 7 pages

—Meredith Metzler

### **Advisory Opinion 2006-22: Free Legal Services Result in Contribution**

An incorporated law firm may not give free legal services to a federal candidate's principal campaign committee when the firm is paying its personnel to provide such services. In order to avoid receiving a prohibited corporate contribution, the committee must pay the usual and normal charge for those services in a timely manner.

#### **Background**

David G. Wallace was a candidate for the U.S. House of Representatives in the 22<sup>nd</sup> congressional district of Texas. On March 7, 2006, Representative Tom DeLay won the Republican primary for that seat. On April 3, 2006, Representative DeLay announced his intention to retire from the House and move to Virginia. In June 2006, after receiving a letter from Representative DeLay asserting his ineligibility to remain on the ballot, the Texas Republican Party declared his ineligibility. When a nominee is no longer eligible for the ballot, Texas law allows the congressional district's Republican Party executive committee to select a replacement candidate for the general election ballot.

In late April, in anticipation of Representative DeLay's ineligibility, Mr. Wallace filed a Statement of Candidacy and Wallace for Congress (the Wallace Committee), his principal campaign committee, filed a Statement of Organization with the Commission. On June 8, 2006, the Texas Democratic Party filed a lawsuit in state court, contesting the declaration of Mr. DeLay's ineligibility on constitutional grounds. The case was removed to federal court and the U.S. District Court for the Western District of Texas ruled that Mr. DeLay's declaration of ineligibility was invalid. The Court prohibited the Republican Party of Texas from certifying to the Texas Secretary of State any candidate other than Representative DeLay for the November 7 general election ballot.

On July 11, 2006, the Wallace Committee entered into a legal representation agreement with Jenkins & Gilchrist (the Firm) for the purpose of submitting an *amicus* brief to the Fifth Circuit Court of Appeals supporting reversal of the District Court's decision. The agreement provided that, unless the Commission issued an advisory opinion to the contrary, the Firm would provide its services free of charge to the Wallace Committee. The Firm employees who prepared the brief were compensated as usual by the Firm. The brief was filed on July 21, 2006. At that time, the Firm requested an advisory opinion regarding whether the Firm's preparation, free of charge, of the *amicus* brief on behalf of the Wallace Committee was permissible under the Federal Election Campaign Act (the Act).

On August 3, 2006, the Court of Appeals affirmed the District Court's decision. On August 9, Mr. Wallace announced that he would run as a write-in candidate. On August 21, Mr. Wallace announced that he no longer intended to pursue a write-in candidacy for House seat.

### **Analysis**

Although no district selection process was scheduled, Mr. Wallace was a Federal candidate at the time the Firm provided the services to the Wallace Committee. See 11

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## **Federal Register**

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

### **Notice 2006-12**

Filing Dates for the Ohio Special Election in the 18th Congressional District (71 FR 50918, August 28, 2006)

### **Notice 2006-13**

Filing Dates for the Texas Special Elections (71 FR 50919, August 28, 2006)

### **Notice 2006-14**

Filing Dates for the Ohio Special Election in the 3rd District (71 FR 51827, August 31, 2006)

### **Notice 2006-15**

Exception for Certain "Grassroots Lobbying" Communications From the Definition of "Electioneering Communication" (71 FR 52295, September 5, 2006)

### **Notice 2006-16**

Filing Dates for the Texas Special Election in the 22nd Congressional District (71 FR 53452, September 11, 2006)

### **Notice 2006-17**

Increase in Limitation on Authorized Committees Supporting Other Authorized Committees (71 FR 54899, September 20, 2006)

## Advisory Opinions

(continued from page 7)

CFR 100.3. The Wallace Committee's July Quarterly report showed that his campaign had raised \$200,000 and spent \$45,000, including \$20,000 for a radio buy, before the Wallace Committee entered into the agreement with the Firm. Moreover, the Wallace Committee's website made clear that Mr. Wallace considered himself a candidate for election to the House in 2006. The Wallace Committee served as Mr. Wallace's principal campaign committee and thus fit within the definition of a "political committee." See 11 CFR 100.5(d).

The Act prohibits corporate contributions or expenditures in federal elections. The Act's definition of "contribution" includes "payment by any person of compensation for the personal services of another

person which are rendered to a political committee without charge *for any purpose.*" See 2 U.S.C. 431(8)(A)(ii) (emphasis added); see also 2 U.S.C. 441b(b)(2). Commission regulations at 11 CFR 100.54, with certain exceptions not applicable in this situation, also define "contribution" in essentially the same way as 2 U.S.C. 431(8)(A)(ii).<sup>1</sup> Accordingly, the Firm's payment of compensation to employees for legal services provided free of charge to the Wallace Committee would be an impermissible corporate contribution unless the Wallace Committee paid the usual and normal charge for such services in a timely manner.<sup>2</sup>

Date Issued: September 18, 2006

Length: 5 pages

—Myles Martin

### Advisory Opinion 2006-25: Millionaires' Rules Apply Separately to Primary and General Elections

A candidate's expenditures from personal funds made before the primary election will not trigger the Millionaires' Amendment for a general election opponent.

<sup>1</sup> *The Act exempts from the definition of "contribution" legal and accounting services provided at no charge solely for purposes of compliance with the Act. 2 U.S.C. 431(8)(B)(viii)(II). Additionally, uncompensated individual volunteer activity is also exempted from the definition of "contribution." 2 U.S.C. 431(8)(B)(i). The services provided to the Wallace Committee did not fall within either exemption.*

<sup>2</sup> *The Commission distinguished its decision in AO 2006-22 from an earlier decision in AO 1980-4 (Carter/Mondale Presidential Committee), because AO 1980-4 applied a previous version of the applicable regulation that did not cover compensated services rendered without charge to a political committee "for any purpose."*

## Background

Under the so-called Millionaires' Amendment, a candidate whose opponent's personal campaign spending exceeds certain threshold amounts may qualify for increased limits on individual contributions and, during the general election, increased coordinated party expenditures as well.

For Senate candidates, the personal spending thresholds that trigger the Millionaires' provisions vary by state, based on the voting age population. (The threshold amounts for each state are listed on the FEC's web site at <http://www.fec.gov/pages/bcra/rulemakings/millionairesenate.shtml>.) These thresholds apply separately to the primary and general elections.

Senator John Kyl is a Republican candidate for reelection to the U.S. Senate from Arizona. Senator Kyl's potential Democratic opponent in the general election, Jim Pederson, has disclosed personal contributions of \$4.5 million to his own campaign. The Kyl for U.S. Senate campaign committee claims that more than \$3.7 million of that sum has been spent. Mr. Pederson is unopposed in the Democratic primary. Senator Kyl and his committee estimate that at least \$1.5 million of the spending occurred before the September 12, 2006, primary on research about Senator Kyl and advertising criticizing Senator Kyl. If both candidates receive their parties' nominations, they will face each other in the general election on November 7, 2006.

## Analysis

Under the Millionaires' provisions, all personal expenditures Mr. Pederson makes prior to the primary election will be considered expenditures in connection with the primary election, not the general election. See AOs 2006-6 and 2006-21. Since Senator Kyl is not running against Mr. Pederson in the Democratic primary, Mr. Pederson's expenditures will not trigger the

## FEC Accepts Credit Cards

The Federal Election Commission now accepts American Express, Diners Club and Discover Cards in addition to Via 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.



Millionaires' provisions for Senator Kyl's campaign in that election, regardless of whether Mr. Pederson is unopposed in the primary or is spending funds to criticize the Senator.

However, if Senator Kyl faces Mr. Pederson in the general election, any personal funds contributed by the candidates to their campaign committees during the primary that are available for use in the general election will count towards the personal spending thresholds for the general election. Each campaign must use a reasonable accounting method to determine the amount of transferred funds. *See* 11 CFR 110.3(c)(4); AO 2006-6 and AO 2006-21.

Date: August 31, 2006

Length: 6 pages

—*Meredith Metzler*

### **AO 2006-26: Application of Contribution Limits to Court-Ordered Elections**

A candidate who was previously nominated in a primary in the 23<sup>rd</sup> congressional district in Texas but who, because of a court order, will now participate in a newly scheduled open special general election has separate contribution limits for the (1) March 7 primary; (2) a regular general election campaign that ended August 4 (the date of the court decision); and (3) the November 7 court-ordered special general election.<sup>1</sup>

#### **Background**

On August 4, 2006, the United States District Court for the Eastern District of Texas, on remand

<sup>1</sup> *An advisory opinion may be relied upon by any committee or other person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the advisory opinion is rendered.* 11 CFR 112.5(a)(2).

from the Supreme Court, ordered new boundaries for congressional districts in Texas, including the 23<sup>rd</sup> district.<sup>2</sup> The Court also ordered that special general elections be held on November 7, 2006, in those districts in conjunction with the already scheduled general election for other Federal and nonfederal offices in Texas. The special general elections will be open to all who qualify for the ballot in accordance with the court-ordered filing deadlines, and will not be limited to the primary winners from earlier in 2006. If no candidate receives a majority of votes in any of the five districts, then a runoff election will be held in that district on a date to be determined later.

Texans for Henry Bonilla (the Bonilla Committee), the principal campaign committee of Representative Henry Bonilla, asked the Commission to address questions regarding the application of contribution limits in this re-districting situation. Congressman Bonilla is seeking re-election in the 23<sup>rd</sup> congressional district and ran unopposed in the primary held on March 7, 2006. As a result of the court order, Representative Bonilla was no longer his party's nominee, but he has qualified to be a candidate in the special general election in the 23<sup>rd</sup> district. The Bonilla Committee asked the Commission if limits on contributions to the Bonilla Committee for the newly scheduled November 7, 2006, special general are separate and distinct from the contribution limits that applied to the cancelled November 7 regular general election in the 23<sup>rd</sup> congressional district.

#### **Treatment of Contributions for the Special General Election**

Contributions made to the Bonilla Committee for the special general election are subject to separate and distinct limits from contributions

<sup>2</sup> *See League of United Latin American Citizens v. Perry, Civil No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006).*

### **Enforcement Query System Available on FEC Web Site**

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

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

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

## Advisory Opinions

(continued from page 9)

made for the cancelled regular general election. The district court decision did not void the holding of the March primary for the purposes of the Act's contribution limitations, but nullified the results of the March primary. After August 4, Representative Bonilla was placed in a new electoral situation created by the district court. He was no longer the party nominee but, instead, was a candidate in an election that could involve other candidates of the same party as well as other parties. The effect of the court's August 4 decision was to create a new special general election period beginning August 5, 2006, and running through November 7, 2006.

### FEC Web Site Offers Podcasts

In an effort to provide more information to the regulated community and the public, the Commission is making its open meetings and public hearings available as audio recordings through the FEC web site, as well as by podcasts. The audio files, and directions on how to subscribe to the podcasts are available under *Audio Recordings* through the *Commission Meetings* tab at <http://www.fec.gov>.

The audio files are divided into tracks corresponding to each portion of the agenda for ease of use. To listen to the open meeting without subscribing to the podcasts, click the icon next to each agenda item. Although the service is free, anyone interested in listening to podcasts must download the appropriate software listed on the web site. Podcast subscribers will automatically receive the files as soon as they become available—typically a day or two after the meeting.

Accordingly, one limit applies to contributions made before August 5, 2006, for the regular general election and a separate, special general election limit applies to contributions made after August 4. Thus, any lawful contributions made before August 5 with respect to the regular general election will not count toward the separate limit that will apply to contributions made after August 4 for the November 7 special general election.

### Treatment of Campaign Debt

A candidate's authorized committees may determine their net debts outstanding for the November 7, 2006, special general election and accept contributions after the date of the election that are designated by the contributor for the special general election as long as the contributions do not exceed the committee's net debts outstanding from that election.<sup>3</sup> A candidate's authorized committees may not, however, determine net debts outstanding as of August 4 and collect any contributions after that date that are designated for the regular general election.

### Aggregation and Designation of Contributions

A contribution received by the Bonilla Committee for the March primary does not have to be aggregated with any contribution received for the regular general election or the special general election, but remains subject to the Act's contribution limits. Additionally, any unused contributions lawfully made to the Bonilla Committee for the March primary or lawfully made for the regular general election as of August 4, 2006, do not have to be redesignated by contributors for the special general election.

Representative Bonilla's situation was considered to be materially

indistinguishable from situations in Advisory Opinions 1996-36 and 1996-37, which addressed requests from previously nominated candidates after a Federal court ordered redistricting and special elections in Texas congressional districts. The responses in AO 2006-26 are based on those opinions.

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—Michelle Ryan

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### AOR 2006-28

Whether a local party committee is affiliated with the state and city party committees (59<sup>th</sup> Republican Ward Executive Committee, September 5, 2006)

### AOR 2006-29

Permissibility of a promotional tourist infomercial featuring a Federal candidate (Congresswoman Mary Bono, September 6, 2006)

### AOR 2006-30

Conduit solicitation, collection and reporting of earmarked contributions for prospective candidates forwarded upon the candidate's registration with the FEC (ActBlue, September 7, 2006)

<sup>3</sup> See 11 CFR 110.1(b)(3) and 110.2(b)(3) for additional information.

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