Record

August 2007 Federal Election Commission Volume 33

PARTY GUIDE SUPPLEMENT

Table of Contents

Using this Supplement

The purpose of this supplement is to offer a summary of the most recent developments in the Commission's administration of federal campaign finance law relating to party committees. The following is a compilation of articles from the FEC's monthly newsletter covering changes in legislation, regulation and advisory opinions that affect the activities of party committees. It should be used in conjunction with the FEC's August 2004 *Campaign Guide for Political Party Committees*, which provides more comprehensive information on compliance for party committees.

Advisory Opinions

AO 2004-12
Regional Party Organization Established by State Party Committees

Democrats for the West (DFW), a regional party committee established by the Democratic State party committees of Arizona, New Mexico, Nevada, Colorado, Utah, Wyoming, Idaho, Montana and Alaska (the Participating State Committees), is a state party committee that is affiliated with each of the Participating State Committees.

Background

The Participating State Committees created DFW in order to conduct research, issue and tactical polling, training and periodic conferences among and between the Participating State Committees.[1] DFW may maintain a full-time staff and will incur administrative expenses such as rent, office supplies, computers, etc.

DFW will not disseminate any public communication that expressly advocates the election or defeat of any federal candidate or "promotes or supports or attacks or opposes" any federal candidate. DFW also will not:

- Undertake any other direct electoral activity, including voter registration, voter identification or get-out-the-vote activity;
- Direct, solicit or make any contribution to, or expenditure on behalf of, any federal candidate; or
- Make any transfers or contributions to any federal political committee or party committee other than the Participating State Committees.

Additionally, DFW will not pay for the republication of any campaign materials prepared by a federal candidate or pay for any public communication that refers to a federal candidate within 120 days of an election.

Legal Analysis

State committee status. A "state committee" is defined as the "organization that by virtue of the bylaws of a political party or the operation of state law is part of the official party structure and is responsible for the day-to-day operation of the political party at the state level, including an entity that is directly or indirectly established, financed, maintained, or controlled by that organization, as determined by the Commission." 11 CFR 100.14(a); see also 2 U.S.C. §431(15).

[1] *DFW was established, and will be maintained and controlled, solely by the Participating State Committees. No officer, agent or employee acting on behalf of any other organization, including any other state or national party committee, was involved in the establishment of, or will maintain or control, the organization.*

In this case, the Participating State Committees established DFW, and will provide the initial financing for DFW through transfers to DFW's federal account. Further, the Participating State Committees will maintain and control DFW. Accordingly, DFW is a state committee because it is "an entity that is directly or indirectly established, financed, maintained, or controlled by" the Participating State Committees.

As a state committee, the limit on contributions from persons other than multicandidate committees to DFW's federal account is $10,000 per calendar year. 2 U.S.C. §§441a(a)(1)(D) and 441a(f). For multicandidate committees, the limit on contributions to DFW's federal account is $5,000. 2 U.S.C. §§441a(a)(2)(C) and 441a(f).

Transfers. The Participating State Committees, as well as any other national or state Democratic party committees, may make unlimited transfers to DFW because these committees are party committees of the same political party. 2 U.S.C. §441a(a)(4); 11 CFR 102.6(a)(ii) and 110.3(c)(1). As discussed below, unlimited transfers of federal funds between DFW and the Participating State Committees are also permissible because DFW and the Participating State Committees are "affiliated committees." 11 CFR 102.6(a)(i).

Affiliation. Under the Federal Election Campaign Act (the Act), political committees "established or financed or maintained or controlled" by the same persons or group of persons are treated as a single political committee for the purposes of the contributions they make or receive. 2 U.S.C. §441a(a)(5); see 11 CFR 100.5(g), 102.2(b)(1), and 110.3. Because DFW was established by, and will be financed, maintained and controlled by, the Participating State Committees, DFW is affiliated with each one of the nine Participating State Committees.

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)

Robert D. Lenhard, Chairman
David M. Mason, Vice Chair
Hans A. von Spakovsky, Commissioner
Steven T. Walther, Commissioner
Ellen L. Weintraub, Commissioner

Patrina M. Clark, Staff Director
Thomasenia P. Duncan, General Counsel

Published by the Information Division
Greg J. Scott, Assistant Staff Director
Myles G. Martin, Editor

http://www.fec.gov

Attribution of contributions. Contributions to DFW from persons other than the Participating State Committees will be proportionately attributable to each of the nine Participating State Committees. In other words, one-ninth of any contribution DFW receives will be attributable to each of the nine Participating State Committees. Thus, for example, a $9,000 contribution by an individual to DFW would be attributed to *each* of the nine Participating State Committees as a $1,000 contribution, and the same contributor would then be permitted to contribute up to an additional $9,000 of federal funds to one or more of the nine Participating State Committees in that calendar year, provided that the contribution does not cause the individual to exceed his or her biennial contribution limit. 2 U.S.C. §441a(a)(3)(B).

Alternatively, DFW may follow the Commission's joint fundraising rules in order to handle contributions that would cause an excessive contribution to one or more of the Participating State Committees. To do so, the Participating State Committees would need to approve a written fundraising agreement in advance, provide an appropriate fundraising notice, distribute the joint fundraising proceeds and properly report the contributions. See 11 CFR 102.17.

Nonfederal funds. DFW may maintain nonfederal accounts and may raise funds for such accounts that are not subject to the limits, prohibitions and reporting requirements of the Act. See 2 U.S.C. §§441b and 441a(a). See also 11 CFR 106.7.

Guests and featured speakers at DFW events. DFW may invite national party officers and employees and federal candidates and officeholders (as well as the agents of any of these) to appear as guests or featured speakers at DFW events. However, the rules applicable in particular circumstances vary. Federal candidates and officeholders may attend, speak at or be featured guests at a DFW fundraising event without restriction or regulation because DFW is a state party committee. 11 CFR 300.64(b). Federal candidates and officeholders are not required to issue any disclaimers during their appearances at such events.[2]

Payment of DFW's expenses. DFW intends to establish separate federal and nonfederal accounts and to allocate the costs of certain federal/nonfederal expenses between these accounts. 11 CFR 102.5 and 106.7(b). When a party committee chooses to allocate its administrative costs,[3] then it must allocate such disbursements according to fixed allocation percentages described in the Commission's regulations. 11 CFR 106.7(d)(2). A Senate candidate will appear on the ballot in six of the states represented by the Participating State Committees during *each* election year. Thus, according to these fixed allocation percentages, DFW must allocate at least 36 percent of its administrative expenses to DFW's federal account in Presidential election years, and at least 21 percent of its administrative expenses to DFW's federal account in non-Presidential election years. 11 CFR 106.7(d)(2)(i)-(ii).

Salaries and wages, however, may not be allocated. Instead, a party committee must use funds that comply with state law to pay salaries and wages for employees who spend 25 percent or less of their compensated time in a given month on federal election activities or on activities on activities in connection with a federal election. Salaries and wages (including fringe benefits) paid for employees who spend more than 25 percent of their compensated time in a given month on federal election activities or on activities in connection with a federal election must come from a federal account. Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. 11 CFR 106.7(d)(1); see also AO 2003-11.

DFW may pay employees who spend more than 25 percent of their compensated work hours in a given month in connection with federal elections using federal funds raised through events where both federal and nonfederal funds are raised when the costs of such events have been properly allocated using the "funds received" method.

Use of polling and research data. DFW may provide its polling and research information to state and local party committees of the Democratic Party at less than the usual and normal fee, or at no charge. 11 CFR 110.3(c)(1). However, if polling and research information is paid for with nonfederal funds, then the information can only be provided to national party committees if the recipients pay DFW the usual and normal fee.

Date Issued: June 14, 2004; Length: 7 pages.

—Amy Kort

---

[2] *See* Explanation and Justification to Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money: Final Rules*, 67 Fed. Reg. 49,065, 49,108 (July 29, 2002).*

[3] *Items that may be allocated under section 106.7(d)(2) include administrative costs such as rent, utilities, office equipment and office supplies, except that any such expenses that are directly attributable to a clearly identified federal candidate must be paid only from the federal account. 11 CFR 106.7(c)(2).*

AO 2004-20 Connecticut Party Convention Still Considered an "Election"

Despite a change in Connecticut state law, party conventions in Connecticut continue to be separate elections under the Federal Election Campaign Act (the "Act"). As a result, Democratic House candidate Diane Farrell, who did not participate in Connecticut's August 10, 2004, primary, may not accept undesignated primary contributions after May 10, 2004, the date of her Democratic district convention. Likewise, her principal campaign committee, Farrell for Congress (the "Committee"), was not required to file a pre-primary report in connection with the August 10, 2004 primary.

Background

Diane Farrell is the Democratic candidate for the U.S. House of Representatives from Connecticut's 4th Congressional District. The Democratic Party in Connecticut held its convention for the U.S. House on May 10, 2004. The primary elections for all offices in Connecticut were held on August 10, 2004. Since the Democratic Party endorsed Ms. Farrell as its candidate for the 4th Congressional District, and no other member of the Democratic Party met the requirements to challenge her endorsement, Ms. Farrell is the Democratic Party's nominee and her name did not appear on the primary election ballot.

Until January 1, 2004, Connecticut law provided that if a candidate received his or her party's endorsement at the party's convention, and if no other candidate received at least 15 percent of the endorsement vote at the convention, then no primary would be held for that office and the party-endorsed candidate would be deemed lawfully chosen as the party's nominee. In 2003, Connecticut enacted a new law, effective January 1, 2004, that provides for an additional route for a candidate's name to be placed on the primary ballot. The new law permits any registered member of the party, even if that member has not received 15 percent of the endorsement vote at the party convention, access to the primary ballot if they file a petition with signatures of at least two percent of the party members in the state or district (whichever applies) within 14 days after the end of the convention.

Analysis

Definition of "election." The Act and Commission regulations define an "election" to include "a general, special, primary, or runoff election" and "a convention or caucus of a political party which has the authority to nominate a candidate." 2 U.S.C. §§431(1)(A) and (B); 11 CFR 100.2. The question of whether a particular event meets the definition of "election" is determined by an analysis of state law.

In Advisory Opinion 1976-58, analyzing Connecticut's old law, the Commission determined that party conventions were elections for purposes of the Act. This was because it was "possible under Connecticut law for the convention's 'party-endorsed candidate' to be 'deemed … chosen as the nominee'" if no other candidate received the required percentage of the delegates' votes or filed a "candidacy" for nomination. The Commission noted that in such a case, the endorsement at the convention was "tantamount to a nomination of the candidate," and thus, the party convention had the "authority to nominate" candidates. Therefore, candidates could be involved in two elections during the primary process—the convention and the primary (if necessary)—and could then be entitled to two separate contribution limits.

The new Connecticut law does not materially change this situation for purposes of the Act. The only difference between Connecticut's old and new laws is that there are now two ways (i.e., receiving at least 15 percent of the endorsement vote or filing a petition), rather than one, to challenge the party convention's endorsement. However, under the new law, as under the old law, if no party member challenges the party's endorsement, the party-endorsed candidate will be deemed chosen as the party's nominee solely by virtue of the party's endorsement and without being required to take any additional steps to secure the nomination. Therefore, Connecticut party conventions still have the authority to nominate candidates and thus continue to be elections under the Act. In this instance, no Democratic primary took place for the 4th Congressional District, and, therefore, the only election Ms. Farrell was involved in during this primary process was the May 10 Democratic district convention.

Treatment of undesignated contributions received after the party convention. Commission regulations provide that contributions not designated in writing by the contributor for a particular election are presumed to be made for the next election after the contribution is made. 11 CFR 110.1(b)(2)(ii). Furthermore, "[c]ontributions designated in writing for a particular election, but make after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election." 11 CFR 110.1(b)(3)(i).

Because the Commission has determined that the May 10 Democratic district convention was the only election Ms. Farrell was involved in during the primary season, the Committee must treat undesignated contributions made after May 10, 2004, as contributions to the general election. 11 CFR 110.1(b)(2)(ii). However, the Committee may use contributions raised after May 10 to the extent necessary to retire

net debts outstanding. 11 CFR 110.1(B)(3)(i).

Reporting. Under Commission regulations, a Congressional candidate's principal campaign committee must file a pre-election report "no later than 12 days before any primary or general election in which the candidate seeks election." 11 CFR 104.5(a)(2)(i)(A). Because the May 10 convention was an election and no primary was held for the 4th Congressional District on August 10, the Committee fulfilled its pre-election reporting requirement by filing its pre-convention report. The Committee did not need to file a pre-primary report in connection with the August 10, 2004, primary election.

Date Issued: July 20, 2004; Length: 7 pages.

—Elizabeth Kurland

AO 2004-22
Transfers to State Party

U.S. Representative Doug Bereuter, a retiring member of Congress, may make unlimited transfers of campaign funds to the Nebraska State Republican Party (the Party). The Party, in turn, may use these funds to renovate its office building. Under the Federal Election Campaign Act (the Act), transfers to a state party committee are a permitted use of contributions received by a principal campaign committee. 2 U.S.C. §439a.

Background

Representative Bereuter resigned from the U.S. House of Representatives and will not run for re-election. His principal campaign committee, Bereuter for Congress, recently transferred $5,000 from its campaign account to the Party to defray the costs of remodeling the Party's office building. Bereuter for Congress intends to transfer another $10,000 to $15,000 to fund further remodeling.

Analysis

The Act lists four permissible uses for campaign funds and provides that campaign funds must not be converted to the personal use of any individual. 2 U.S.C. §§439a and 439a(b). One permissible use of funds is for unlimited transfers to a state party committee. 2 U.S.C. §439a(a)(4); 11 CFR 113.2(c). These provisions of the Act do not limit the ways that the state party committee can use the funds, nor do they restrict the amount that may be transferred in any specific period of time.[1]

Thus, Bereuter for Congress may transfer $10,000 to $15,000 in campaign funds to the Party for the purpose of remodeling its party headquarters. Any or all of the funds may be transferred before August 31, 2004.

Date Issued: July 23, 2004; Length: 2 pages.

—Amy Kort

AO 2004-25
Senator May Donate Personal Funds to Voter Registration Organizations

U.S. Senator and Democratic Senatorial Campaign Committee (DSCC) Chairman Jon Corzine may donate his personal funds to organizations engaging in voter registration activity, as defined at 11 CFR 100.24(a)(2),[1] without triggering the Federal Election Campaign Act's (the Act) provisions regulating the raising and spending of funds by officers of national party committees and federal candidates or officeholders.[2] Senator Corzine will make the donations solely at his own discretion, without authority from, or on behalf of, the DSCC. He will not donate to organizations that he has directly or indirectly established, financed, maintained or controlled, and he will not exercise any control of how his funds are used by any organization to which he donates.

Status as National Party Committee Officer

The Act bars officers and agents of a national party committee from raising or spending any nonfederal funds (i.e., funds not subject to the limitations, prohibitions and reporting requirements of the Act). 2 U.S.C. §441i(a); 11 CFR 300.2(k) and 300.10. It also restricts national party committees, their officers and agents from raising and spending funds for nonprofit organizations under 26 U.S.C. §501(c) that make expenditures and disbursements in connection with an election for federal office (as well as restricting them from raising and spending funds for certain political organizations under 26 U.S.C. §527). 2 U.S.C. §441i(d); 11 CFR 300.11 and 300.50. The plain language of the Act and the Commission's regulations, however, specifically applies

[1] *A transfer pursuant to 2 U.S.C. §439a(a)(4) and 11 CFR 113.2(c) is not subject to the contribution limitation in 2 U.S.C. §441a(a)(1)(D) or 11 CFR 110.1(c)(5). Such a transfer is also consistent with the regulations addressing office buildings of state or local party committees in 11 CFR 300.35.*

[1] *As defined at 11 CFR 100.24(a)(2), "voter registration activity" means contacting registered voters by phone, in person or by other individualized means to assist them in registering to vote. This activity includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms and helping them to fill out these forms.*

[2] *These rules generally provide that a national party committee and a federal candidate/officeholder may only solicit, receive, direct, transfer or spend funds in connection with an election for federal office—including funds for "federal election activity"—if those funds are federal funds that are subject to the limits, prohibitions and reporting requirements of the Act. See 2 U.S.C. §§441i(a) and (e)(1)(A). See also 11 CFR 100.24.*

these restrictions to national party committee officers and agents only when such individuals are acting on behalf of the national party committee. See 2 U.S.C. §§441i(a) and (d); 11 CFR 300.10(c)(1), 300.11(b)(1) and 300.50(b)(1).[3]

Based on the request's representation that Senator Corzine's donation of personal funds[4] will be made solely at his own discretion, without express or implied authority from, or on behalf of, the DSCC, the Commission concluded that Senator Corzine would not be acting on behalf of the DSCC, and thus would not be restricted by the aforementioned provisions from donating unlimited personal funds to organizations that engage in voter registration activity, as defined in the federal election activity (FEA) provisions of Commission regulations. See 11 CFR 100.24(a)(2). If any of those organizations, however, qualifies as a political committee, his donations to it would be considered contributions subject to the same dollar limitations as any other individual (i.e., $5,000 per calendar year).

Status as Federal Candidate or Officeholder

The Act and Commission regulations similarly restrict federal candidates and officeholders in their ability to raise and spend funds in connection with an election for federal office. Specifically, the law and regulations stipulate that no federal candidate or officeholder shall solicit, receive, direct, transfer, spend or disburse funds in connection with an election for federal office, including funds for any FEA,[5] unless the funds consist of federal funds that are subject to the limitations, prohibitions and reporting requirements of the Act. 2 U.S.C. §441i(e)(1)(A); 11 CFR 300.61.

Unlike the restrictions regarding national party committees, the Act and regulations do not explicitly limit application of the restrictions to when such an individual is acting in his or her official capacity. The language of section 441i, however, is not clear as to whether the restrictions on the use of funds extend to the personal funds of federal candidates or officeholders, and there is no legislative history suggesting that Congress intended them to extend in such a way. Moreover, the underlying anti-corruption purposes of the section 441i restrictions, and their accompanying regulations, are not furthered by restricting such individuals from spending their personal funds solely at their own discretion, as opposed to funds that are solicited or received from others at the behest of the federal candidate or officeholder.

Because the funds Senator Corzine plans to donate would not be solicited or received from others, he would not incur an obligation toward any other person that would raise concerns regarding corruption or the appearance thereof. Thus, Senator Corzine may donate his personal funds in amounts exceeding the Act's limits to organizations that engage in FEA, irrespective of his status as a federal candidate or officeholder. In reaching this conclusion, the Commission assumes that Senator Corzine's donations to each organization will not be in amounts that are so large or comprise such a substantial percentage of the organization's receipts that the organization would be considered to be "financed" by Senator Corzine. See 2 U.S.C. §441i(e)(1); 11 CFR 300.61. Again, however, if any of those organizations qualifies as a political committee, his donations to it would be considered contributions subject to the same dollar limitations as any other individual (i.e., $5,000 per calendar year).

Date Issued: August 20, 2004; Length: 5 pages.

—Dorothy Yeager

AO 2004-28
Disclosure of Donations to State Party Committee Nonfederal Office Building Fund

The Iowa Ethics and Campaign Disclosure Board (the Board) may require Iowa state party committees to disclose donors to the committees' nonfederal office building funds. The Federal Election Campaign Act (the Act) and Commission regulations now specifically allow a state to require the disclosure of donors to such funds. 2 U.S.C. §453 and 11 CFR 300.35.

Background

The Board administers the campaign finance laws in Iowa with regard to state and local elections. Both the Iowa Democratic and Republican parties have nonfederal office building funds. In AO 1998-8, the Commission concluded that the Act and Commission regulations preempted the Iowa state law that had sought to prohibit corporate donations to state party committee nonfederal office building funds. However, the Commission did not directly address the issue of whether federal law would also prohibit Iowa from requiring disclosure of building fund donations. In its request for AO 1998-8, the Iowa Democratic Party acknowledged the state's ability to regulate such disclosure under AO's 1997-14 and 1991-5.

[3] *In* McConnell v. Federal Election Commission*, 540 U.S. __, 124 S.Ct. 619 at 658, 668, 679 (2003), the Supreme Court acknowledged that these provisions do not apply to officers acting in "their individual capacities."*

[4] *See 2 U.S.C. §431(26) and 11 CFR 300.33 for a definition of the term, "personal funds."*

[5] *Under the Act, the term "federal election activity" includes "voter registration activity" that occurs during the period beginning 120 days before the date of a regularly scheduled federal election and ending on the date of the election. 2 U.S.C. §431(20); See 11 CFR 100.24(a)(2) and(b)(1).*

Analysis

In the Bipartisan Campaign Reform Act of 2002, Congress amended the Act to provide that a state party may, subject to state law, use exclusively nonfederal funds for the purchase or construction of its office building. 2 U.S.C. §453. Consistent with this amendment to the Act, Commission regulations provide that if a state party committee uses nonfederal funds to purchase or construct its office building, then the sources, uses and disclosure of those funds are subject to state law (so long as funds are not donated by foreign nationals). 11 CFR 300.35(a) and (b)(1). Thus, Iowa may require its state party committees to disclose donors to nonfederal office building funds. (In its AO request, the Board stated that it did not wish to prohibit corporate donations to state party nonfederal office building funds.)

Date Issued: September 9, 2004; Length: 3 pages.

—Amy Kort

AO 2004-34
State Party Status

The Libertarian Party of Virginia (the Party) satisfies the requirements for state committee status.

The Federal Election Campaign Act (the Act) defines a state committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. §431(15). In order to achieve state committee status under Commission regulations, an organization must meet three requirements. 11 CFR 100.14 and 100.15. It must:

- Be a political party that gained ballot access for at least one federal candidate who has qualified as a candidate under the Act;[1]
- Have bylaws or a similar document that "delineates activities commensurate with the day-to-day operation" of a party at a state level; and
- Be part of the official party structure.

The Libertarian Party of Virginia meets all three requirements. It satisfies the first requirement—ballot access for at least one federal candidate. Harry Browne appeared as the Party's candidate on the Virginia ballot in 2000, and he met the requirements for becoming a federal candidate under 2 U.S.C. §431(2).[2]

The Party satisfies the second requirement because its bylaws delineate activity commensurate with the day-to-day functions of a political party on the state level and are consistent with the state party rules of other political organizations that the Commission has found to satisfy this requirement for state committee status. *See* AOs 2003-27, 2002-10, 2002-6 and 2002-3. It is also an affiliate of the national Libertarian Party, which qualified for national committee status in 1975. *See* AO 1975-129.

Finally, as the Libertarian Party's state party organization in Virginia, the Party is part of the official party structure and, thus, meets the third requirement as well. *See* AOs 2004-9, 2003-27, 2002-6, 1997-7 and 1996-27. *See also* AOs 2002-10, 2002-6 and 2002-3.

Date Issued: October 21, 2004; Length: 4 pages.

—Amy Kort

[1] *Gaining ballot access for a federal candidate is an essential element for qualifying as a political party. See 11 CFR 100.15.*

AO 2004-40
Status of State Party as State Committee of Political Party

The Libertarian Party of Maryland (the Party) satisfies the requirements for state committee status.

The Federal Election Campaign Act (the Act) defines a state committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. §431(15). In order to achieve state committee status under Commission regulations, an organization must meet three requirements. 11 CFR 100.14 and 100.15. It must:

- Be a political party that gained ballot access for at least one federal candidate who has qualified as a candidate under the Act;[1]
- Have bylaws or a similar document that "delineates activities commensurate with the day-to-day operation" of a party at a state level; and
- Be part of the official party structure.

The Libertarian Party of Maryland meets all three requirements. It satisfies the first requirement—ballot access for at least one federal candidate. Harry Browne appeared as the Party's Presidential candidate on the Maryland ballot in 1996 and 2000, and he met the requirements

[1] *Gaining ballot access for a federal candidate is an essential element for qualifying as a political party. See 11 CFR 100.15.*

for becoming a federal candidate under 2 U.S.C.§431(2).[2]

The Party satisfies the second requirement because its bylaws delineate activity commensurate with the day-to-day functions of a political party on the state level and are consistent with the state party rules of other political organizations that the Commission has found to satisfy this requirement for state committee status. It is also an affiliate of the Libertarian National Party, which qualified for national committee status in 1975. See AO 1975-129.

Finally, as the Libertarian Party's state party organization in Maryland, the Party is part of the official party structure and, thus, meets the third requirement as well. See AOs 2004-34, 2004-9, 2003-27 and 2002-10.

Date Issued: December 2, 2004; Length: 4 pages.

—Amy Kort

AO 2005-15 Termination and Reorganization of State Party Committee

The Republican State Executive Committee of West Virginia may terminate and create a new state party committee incorporated as a non-profit corporation solely to limit liability. The Committee may terminate only after it has settled its outstanding debt or assigned its debt to the new incorporated state party committee.

[2] *An individual becomes a candidate for the purposes of the Act once he or she receives contributions aggregating in excess of $5,000 or makes expenditures in excess of $5,000. 2 U.S.C. §431(2) and 11 CFR 100.3. The Commission has granted state committee status to a state affiliate of a qualified national party committee where its only federal candidates, as defined under the Act, were the Presidential and Vice Presidential candidates of the national party. AOs 2004-9, 2002-3 and 1999-26.*

Background

The Republican State Executive Committee of West Virginia ("the Committee") is a state party committee registered with the Federal Election Commission. The Committee plans to terminate and re-establish itself as a non-profit corporation that would not be subject to the prohibition on contributions and expenditures in connection with federal elections. 2 U.S.C. §441b and 11 CFR §114. In connection with the plan, the Committee asked the Commission whether it may:

- Create a new state party committee incorporated for liability purposes (the "incorporated committee"); and
- Terminate as a committee and transfer funds in its account to the new incorporated state party committee.

Incorporating for Liability

Federal law and regulations allow a political committee to incorporate for liability purposes only without being subject to the prohibition on corporate contributions and expenditures. 11 CFR 100.5 and 114.12(a). Accordingly, the Commission determined that the Committee may create a new state party committee incorporated for liability purposes only without being subject to the corporate prohibition.

Transfer of Funds and Termination

Federal law and regulations permit unlimited transfers of funds between party committees of the same political party. 11 CFR 110.3(c)(1). Because the Committee and the newly established incorporated committee would be considered to be affiliated party committees, the Committee may transfer any remaining funds to the new incorporated committee before terminating.

Prior to making such a transfer, the Committee must satisfy the requirements for termination. The Committee must file a termination report on FEC Form 3X. In accordance with FEC regulations, a committee may not terminate if it has outstanding debts or obligations. Because the Committee currently has outstanding debts, it cannot terminate at this time. AO 1994-35. Instead, the Committee may assign all of its debts to the new incorporated committee, then terminate. In this case, the new incorporated committee would report the transferred debts on Schedule D of its next FEC report. The Commission noted that the Committee is not required to terminate in order to incorporate for liability purposes.

The Commission expressed no opinion regarding the application of the Internal Revenue Code or West Virginia law to the Committee's proposal, as those topics are not within the Commission's jurisdiction.

Date Issued: October 20, 2005; Length: 5 pages.

— Gary Mullen

Advisory Opinion 2006-8: Corporation Collecting and Forwarding Contributions from Individuals to Political Committees

A for-profit corporation may collect and forward contributions from individual clients to political committees and candidates. Also, the corporation may provide information about candidates and solicitations from political committees and candidates to its clients at their request.

Background

Mr. Matthew Brooks intends to form a for-profit corporation that would provide individual "subscribers" interested in making political contributions with information about candidates and committees that fit the subscriber's political giving profile. The corporation plans to accept funds from subscribers who will, at a later date, direct those funds as contributions to candidates and political committees or as donations to other non-profit organizations. Subscribers will pay a fee to the

corporation, which will be deposited into the corporation's treasury. The money allocated by the subscriber for future contributions will be kept in a separate merchant account until the subscriber designates a recipient of the funds or asks for the funds to be returned. When the subscriber indicates a certain candidate or committee as a recipient, the corporation will forward the designated amount within 10 days. In addition, the corporation will screen subscribers and their contributions to ensure that all the monies forwarded to candidates and political committees are within the limits and prohibitions of federal law. Other than refusing to forward contributions that do not comply with federal law, the corporation will not place any limits on how a subscriber disburses his or her funds. Furthermore, the corporation will not advocate on behalf of any causes, nor will it engage in any federal election activity.

The corporation will be funded entirely from subscriber service fees. The recipient committees and organizations will not pay a fee to the corporation, nor will they have any contractual relationship with the corporation.

The corporation also intends to provide commentary and analyses regarding various officeholders, candidates, organizations and events to its subscribers. This information may include biographical sketches, voting records, ratings of a candidate by different organizations, reelection percentages, campaign contribution position, party loyalty and any relevant media articles.

The corporation will forward information and solicitations from candidates, committees and organizations relevant to the subscriber's stated interests and preferences. The corporation will not author any of the information or analyses forwarded to its subscribers.

Analysis

The Commission determined that the corporation may collect and forward contributions for its subscribers to political committees, candidates and other organizations. In doing so, the corporation would be providing a service for its subscribers analogous to corporations that provide delivery services, bill paying services, or check writing services. The subscribers would compensate the corporation as an incidental cost in making contributions.

The corporation may also forward information and analyses regarding candidates and committees to its subscribers at their request for an additional fee. This service is a part of the corporation's overall business plan to assist subscribers in the making of contributions. In order to prevent a contribution by the corporation to any political committee or candidate, it must use a separate merchant account for funds that will be dispersed as contributions. See 2 U.S.C. §441b; 11 CFR 114.2(b). The merchant account must be entirely segregated from the corporation's general treasury to ensure that the funds are not commingled.

The corporation may forward contribution suggestions from political committees to its subscribers so long as the cost is paid for entirely by the subscribers' fees. The corporation will not exercise any discretion in determining which contribution suggestions to forward, but will only match the contribution suggestions to the subscriber's stated interests and pattern of giving.

The corporation may recruit individuals to serve on its Board of Directors who may also be officers of political committees. If these individuals are acting on behalf of a candidate or committee while participating on the corporation's Board, the corporation might be considered affiliated with a federal candidate, officeholder or party committee and thus be subject to the applicable limitations and prohibitions. 2 U.S.C. §§ 441i(a) and (b), and 441i(e)(1)(A) and (B); see AOs 2005-2 and 2003-10.

Date: May 5, 2006

Length: 6 pages

—Gary Mullen

Advisory Opinion 2006-11: Allocation of Payment for Mass Mailings

At least half the cost of a mass mailing that expressly advocates the election of one clearly identified federal candidate as well as the election of other generically referenced candidates must be attributed to the clearly identified federal candidate.[1] If the space devoted to the clearly identified federal candidate exceeds the space devoted to the generically referenced candidates, then the costs attributed to the clearly identified federal candidate must exceed 50 percent and reflect at least the relative proportion of the space devoted to that candidate.

Background

The Washington Democratic State Central Committee proposes to prepare and distribute one or more mass mailings that will expressly advocate the election of one clearly identified federal candidate as well as the election of other generically referenced party candidates. The mailings will not contain any solicitations. In accordance with the rules for this type of FEA, only federal funds will be used to pay for each mailing. The party would like to split the costs equally with the federal candidates campaign.

Under the Federal Election Campaign Act (the Act), a mass mailing is a form of public communication. A state party committee that makes a public communication that promotes, supports, attacks or opposes a clearly identified federal candidate is engaging in federal election activity (FEA). This type of FEA must

[1] *On example of such message would be: "Vote for John Doe and our great Democratic team."*

be paid for only with federal funds. 11 CFR 100.24(b)(3), 300.32(a)(2) and (b)(2). These regulations apply even if the communication refers to nonfederal candidates or does not expressly advocate the federal candidate's election or defeat. See also 11 CFR 300.61

Neither the Act nor FEC regulations directly address the attribution of funds spent for this particular type of communication. The rules that apply to communications benefiting more than one federal candidate require attribution based on "the benefit reasonably expected to be derived." To determine benefit, the rules compare the relative amount of space devoted to each candidate in relation to the total space devoted to all the candidates. 11 CFR 106.1(a). Other rules governing party committee phone banks that reference a clearly identified federal candidate and other party candidates generically, and that do not solicit funds, require that a flat 50 percent of the costs be attributed to the federal candidate and that the other 50 percent be attributed to the party committee, regardless of the amount of time devoted to each. 11 CFR 106.8. However, the Commission's Explanation and Justification stated that the scope of 11 CFR 106.8 is specifically limited to phone banks.

Analysis

While neither of these regulations applies directly to the party's proposed mailings, some of the concepts in these regulations are applicable. The Commission concluded that "the benefit reasonably expected to be derived" by the clearly identified federal candidate from the mass mailing is sufficient to require that at least half the cost of the mailings must be attributed to him, even if the space attributable to him is less than that attributable to the generically referenced party candidates.

If the space devoted to the clearly identified federal candidate exceeds the space devoted to the generically referenced party candidates, then the benefit reasonably expected to be derived is measured by determining the amount of space devoted to the clearly identified candidate as compared to the amount of space devoted to the generically referenced party candidates. Since no part of the cost of the mailing may remain unattributed to either the clearly identified federal candidate or the generically referenced party candidates, the percentage of the cost attributed to the federal candidate is equal to the amount of space devoted to the federal candidate as compared to the total space devoted to both that candidate and the generically referenced party candidates. 11 CFR 106.1(a).

The state party committee would not make a contribution or coordinated expenditure as long as the candidate's principle campaign committee pays its proportionate share of the cost of the mass mailing. The cost of a mass mailing that is attributable to the clearly identified candidate can be either:

- An in-kind contribution, subject to the limitations set forth in 11 CFR 110.2;
- A coordinated expenditure, subject to the limitations, restrictions and requirements of 11 CFR 109.32 and 109.33; or
- Reimbursed by the federal candidate or the candidate's authorized committee.

Date: April 25, 2006
Length: 5 pages
—*Carlin E. Bunch*

Advisory Opinion 2006-19: Local Party Communications Not FEA

A local party committee's mass mailing and pre-recorded, electronically dialed telephone calls to the party's registered voters do not constitute get-out-the-vote activity (GOTV) or federal election activity (FEA), because they promote only nonfederal candidates, will not be made in close proximity to the date of the election, are insufficiently targeted and are not individualized. As a result, the party may pay for the communications entirely with nonfederal funds.

Background

The Los Angeles County Democratic Party Central Committee (LACDP) proposes to make pre-recorded, electronically dialed telephone calls and send direct mail to voters in the City of Long Beach urging them to vote for local candidates. These communications indicate the date of the election. The election for local candidates occurs on same day as a federal primary election in the state, but the party's communications will not mention any federal candidates.

The Act and Commission regulations identify certain activities conducted by state, district and local parties as FEA, regardless of whether the party is registered with the FEC. These activities must be paid for with either federal funds or a combination of federal and Levin funds. 2 U.S.C. 431(20) and 441i(b)(1).[1] One type of FEA is voter identification, GOTV and generic campaign activity conducted in connection with an election in which a candidate for federal office appears

[1] *Federal funds are subject to the amount limitations, source prohibitions and reporting requirements of the Act. Levin funds are raised by state, district and local party committees pursuant to the restrictions in 11 CFR 300.31 and disbursed subject to the restrictions in 11 CFR 300.32.*

on the ballot. GOTV activity is defined as contacting registered voters by telephone, in person or by other individualized means to assist them in engaging in the act of voting. 11 CFR 100.24(a)(3). GOTV includes, but is not limited to:

- Providing individual voters information such as the date of the election, the times when polling places are open and the location of particular polling places; and
- Offering to transport or actually transporting voters to the polls.

Analysis

LACPD's proposed communications promote the election of only nonfederal candidates. Additionally, the party would distribute the communications four or more days prior to the election, so they are less effective in motivating recipients to go to the polls. This is more likely to be "mere encouragement" to vote and regulating them is unnecessary and could adversely affect grassroots political activities.

Moreover, LACDP would not target the communications at any specific subset of Democratic voters. The direct mail piece is merely a form letter and the pre-recorded telephone calls are the functional equivalent. Additionally, while the communications do mention the election date, they do not include additional information such as the hours and location of the individual voter's polling place. Given these facts, the communications do not provide individualized assistance to voters, and thus fall outside the definitions of GOTV and FEA. As a result, the communications may be paid for entirely with nonfederal funds.

Concurring Opinion

Commissioner Hans A. von Spakovsky issued a concurring opinion on June 5, 2006.

Date: June 5, 2006

Length: 6 pages

—Carlin E. Bunch

Advisory Opinion 2006-20: "Unity 08" Political Committee Status

Unity 08, a Section 527 political organization whose self-avowed purpose is electing federal candidates, must register as a political committee once it receives more than $1,000 in contributions or makes more than $1,000 in expenditures. As such, Unity 08 will be subject to the limitations, prohibitions and reporting requirements of the Federal Election Campaign Act (the Act) and may incorporate for liability purposes.

Background

Unity 08 is a political organization organized under Section 527 of the Internal Revenue Code that describes itself as a "nascent political party." Unity 08 seeks to nominate and support a "Unity Ticket" for president and vice-president of the United States in the 2008 presidential election. Unity 08 has stated that they may either choose to support one of the two major party tickets, or may nominate one candidate from each party to form the Unity Ticket. Alternatively, they may select nominees through an "online nominating convention" sometime in the summer of 2008.

Unity 08 plans to fund its activities through sales of t-shirts and other items and through direct Internet solicitations. Unity 08 states that no funds collected will be used to support or oppose any federal candidates, but will instead be used to fund Unity 08's organization building efforts. They also state that they will seek to qualify for the ballot in a number of states, and that they do not intend to support or oppose candidates for any other office than for the presidency and vice-presidency.

Analysis

Under the Act and Commission regulations, political committees are subject to certain registration and reporting requirements, as well as limitations and prohibitions on contributions received and made, and on expenditures made. The Act defines a political committee as "any committee, club, association, or other group of persons" which receives contributions or makes expenditures aggregating in excess of $1,000 in a calendar year. 11 CFR 100.5(a).

The Act defines "expenditure" as a "purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for federal office." 2 U.S.C. 431a(9)(A)(i). The Commission has previously determined that expenses incurred in gathering signatures to qualify for a ballot for federal office are expenditures. Although Unity 08 plans to qualify for ballot access for itself as an organization, but not yet for any named candidates, the Commission found that Unity 08 is, in effect, using its name as a placeholder for its candidates' names on the ballot. Thus, in promoting itself through petition drives to obtain ballot access, the Commission concluded that Unity 08 is promoting its presidential and vice-presidential candidates and any expenses incurred by Unity 08 for this purpose constitute expenditures.

Additionally, because Unity 08 has publicly stated that its main goal is the nomination and election of a presidential and vice-presidential candidate in 2008, the Commission concluded that Unity 08 satisfies the "major purpose" requirement of *Buckley v. Valeo*, and must register as a political committee once it receives contributions or makes expenditures in excess of $1,000.

The Commission also determined that, as a political committee, Unity 08 may incorporate for liability purposes only, without violating the Act's prohibition on corporate contributions or expenditures. 11 CFR 114.12.

Date Issued: October 10, 2006
Length: 6 pages.
—Myles Martin

Advisory Opinion 2006-30: Contributions Earmarked for Potential Candidates

ActBlue, a nonconnected political committee, may solicit and accept earmarked contributions on behalf of potential candidates for the Democratic Party's nomination for president in 2008, even though the individuals have not formally declared their candidacy with the Commission. If those individuals do not become candidates by a certain date, ActBlue may forward the contributions to the Democratic National Committee (DNC) instead, provided that the contributor is clearly informed of this possibility. In either case, ActBlue must report all earmarked contributions on its reports to the Commission and must provide all necessary information to the recipient potential candidate or party committee.

Background

ActBlue proposes to solicit and forward earmarked contributions to prospective candidates for the Democratic Party nomination for president in 2008. If the individual does not register a campaign committee with the Commission by a certain date, ActBlue instead proposes to forward any contributions earmarked to that individual to the DNC.

ActBlue would provide the recipient campaign committee (or party committee) with all information required by Commission regulations and would also report the earmarked contributions to the Commission on its next regularly-scheduled report. ActBlue's solicitations would inform potential contributors that any contributions received would be subject to the limitations and prohibitions of the Act, and that contributions earmarked for individuals who do not become candidates would be forwarded to the DNC.

Analysis

The Act and Commission regulations allow for earmarking and forwarding of contributions to candidates through a conduit. A conduit is described as "any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee." 11 CFR 110.6(b)(2). Typically, a conduit must forward earmarked contributions to the designated candidate within ten days of receipt. 11 CFR 102.8.

In Advisory Opinion 2003-23 (WE LEAD), the Commission concluded that a committee could solicit, collect and hold contributions earmarked for the "presumptive" Democratic presidential nominee until the DNC could certify that he or she had enough delegates to win the nomination. At that point, the committee would have ten days to forward the contributions to the candidate. In this case, the Commission similarly concludes that ActBlue's ten-day forwarding requirement does not begin until the intended recipient registers a presidential campaign committee with the Commission.

Contributions earmarked for a candidate through a conduit or intermediary are contributions from the original contributor to the designated candidate, unless the conduit exercises "direction or control" over the contributor's choice of candidate. In that case, the contribution would count against the limit of both the original contributor and the limits of the conduit or intermediary. 11 CFR 110.6(d).

While ActBlue plans to list on its web site and accept contributions earmarked only for individuals that ActBlue considers to be "serious" prospective candidates, that alone would not constitute "direction or control," because the potential contributor is free to choose whether or not to make a contribution to a given individual. Accordingly, ActBlue's contribution limits would not be affected by the earmarked contributions; only the contributor's limit would be affected.

ActBlue must forward the contributions to the candidate along with a transmittal report containing the contributor's name, mailing address, the amount of the contribution, the date the contribution was received by ActBlue, the name of the designated recipient, the date the contribution was forwarded, and whether the earmarked contribution was forwarded in cash, by contributor's check, or by ActBlue's check. 11 CFR 110.6(c)(iv). For each earmarked contribution in excess of $200, ActBlue would also have to provide the contributor's occupation and the name of the contributor's employer.

If a prospective candidate does not register a presidential campaign committee with the Commission before 11:59 EDT on the seventh day before the first day of the 2008 Democratic National Convention or otherwise chooses not to accept the earmarked contributions, ActBlue may forward those contributions instead to the DNC, provided that ActBlue clearly states in its solicitations how it will distribute earmarked contributions under such circumstances.

Any transmittal report forwarded to the DNC would include the same information as above, but ActBlue would have to provide contributor information to the DNC only for contributions in excess of $50. 11 CFR 102.8(b)(2). See also AO 2003-23.

Date Issued: November 9, 2006
Length: 7 pages.
—Myles Martin

Advisory Opinion 2006-36: Green Senatorial Committee Gains National Party Status

The Green Senatorial Campaign Committee (GSCC) qualifies as a national party committee, specifically as the national senatorial campaign committee of the Green Party of the United States.

Background

The Green National Committee (GNC) created the GSCC on June 18, 2006, to promote Green Party senatorial candidates and party building activities. In July 2006, the GNC named seven individuals to comprise the GSCC. The GSCC met by teleconference and began conducting business shortly thereafter. The GSCC filed a Statement of Organization with the Commission on September 8, 2006. The GSCC opened a bank account and deposited over $1,000 in contributions. The GSCC has an official web site to support its candidates and publicize the GSCC's policy priorities and has offices in Minneapolis, Minnesota.

In the 2006 elections, the Green Party's state affiliates placed 11 individuals on the ballot for U.S. Senate in 11 states. At least seven of these individuals qualified as candidates under the Federal Election Campaign Act (the Act) and Commission regulations. *See* 2 U.S.C. 431(2) and 11 CFR 100.2(a). Two more individuals running for U.S. Senate received the sole endorsement of their state Green Party affiliates but appeared on the ballot as Independents, not Green Party candidates. Additionally, the Green party placed seven candidates for Senate on the ballot between 1998 and 2004 in five states.

The GSCC raised funds and made contributions to the 2006 Green Party candidates for Senate, in part, to support party building activities including ballot access, get-out-the-vote activity, voter registration and voter identification.

Members of the GSCC also participated in party building activities in three States where Green candidates were running for the Senate. Also several of the Green Party candidates conducted voter registration drives in their respective States to "register [new voters] as 'Green,'" and all 11 Green Party candidates engaged in voter identification and get-out-the-vote activities.

Analysis

The GSCC's request marks the first time that the Commission has been asked to recognize the national senatorial campaign committee of a political party as a national party committee.[1]

To determine whether a political committee is the national senatorial committee of a political party, the Commission employed the analysis that it used previously to determine whether a political committee was *the* national committee of a political party, but taking into account the GSCC's sole focus on electing U.S. Senate candidates.

First the Commission must determine whether the party itself qualifies as a "political party" under the Act and regulations. Secondly, the Commission must determine whether the committee has demonstrated that it has engaged in sufficient activity on a national level to be considered a national party committee. While activity includes supporting ongoing party building activities and establishing national offices, the most important component is the degree to which a party committee's successful ballot access efforts extend beyond the presidential and vice presidential level. The Commission has recognized the national party committee status of only those committees whose activities were broadly focused – such as on multiple races or offices in more than one State or geographical area. Finally, individuals running for federal office on a party's ticket must qualify as candidates under the Act and Commission regulations. *See* AO 1996-35 (Greens/Green Party USA). *See also* 2 U.S.C. 431(3) and 11 CFR 100.3(a).

For the initial portion of the analysis, the Commission previously recognized the Green Party as a national political party in Advisory Opinion 2001-13. Regarding the second part of the analysis, the GSCC and its Senate candidates participated in party building activities, including voter identification and registration and get-out-the-vote activities in several states. It also established a national office, held meetings, and maintains a web site promoting the Green Party and its candidates. As for ballot access, in the 2006 election eleven Green Party candidates (at least seven of whom qualified as candidates under the Act and Commission regulations) were on the ballot in different geographic parts of the country out of a total of 33 U.S. Senate races. The Commission concluded that the GSCC had demonstrated the requisite ability to gain ballot access in a number of states in different geographic areas.

Therefore, considering all the facts

[1] *Both the Democratic Senatorial Campaign Committee and the National Republican Senatorial Committee predate the Act and the Commission.*

together, the Commission concludes that the GSCC qualifies as a national committee of a political party and as the national senatorial campaign committee of the Green Party.

Contribution Limits

Under the Act, the national party committee and the senatorial campaign committee of a national party committee share one limit for contributions to candidates for the U.S. Senate. 2 U.S.C. 441a(h).[2] Therefore, the GSCC shares with the GNC the current $39,900 contribution limit to Senate candidates. 11 CFR 110.2(e)(1).

Once the GSCC qualifies as a multicandidate committee,[3] the GSCC will have a limit of $5,000 per election to federal candidates other than Senate candidates and $5,000 per calendar year to other political committees. 11 CFR 110.2(b)(1) and (d).

The GSCC may receive $15,000 per calendar year from multicandidate committees and $28,500 from all other contributors, including individuals. 11 CFR 110.1(c)(1) and 110.2(c)(1). Contributions to the GSCC do not count against limits on contributions to the GNC. *See* 11 CFR 110.3(b)(2)(ii).

National and state political party committees may make coordinated party expenditures on behalf of general election candidates. *See* 2 U.S.C. 441a(d) and 11 CFR 109.30.[4] Coordinated party expenditures are in addition to contributions that party committees may give to their candidates. The national and state committees may assign some or all of their respective coordinated party expenditure limit to other party committees, such as local party committees or the national senatorial campaign committee. *See* 11 CFR 109.33. Thus the GSCC may make coordinated party expenditures if the GNC or a state committee of the Green Party assigns in writing the authority to make coordinated expenditures to the GSCC.

As a national party committee, the GSCC will be required to file monthly reports with the Commission and comply with all other reporting requirements of 2 U.S.C. 434 and 11 CFR Part 104. *See* 2 U.S.C. 434(e)(1), 11 CFR 104.5(c)(4) and 105.2.

Date: February 8, 2007

Length: 10 pages

—Meredith Metzler

[2] *Both the Republican and Democratic senatorial committees (NRSC and DSCC, respectively) were named as national senatorial committees in 2 U.S.C. 441a(h). The Commission interpreted the Act's reference to the NRSC and the DSCC as merely historical and saw no Congressional intent to prohibit other bona fide national parties from establishing and maintaining senatorial campaign committees.*

[3] *A multicandidate committee is a political committee with more than 50 contributors which has been registered with the FEC for at least six months and, with the exception of state party committees, has made contributions to five or more candidates for federal office. 11 CFR 100.5(e)(3).*

[4] *See FEC v. DSCC, 454 U.S. 27 (1981) (senatorial campaign committees do not have the authority to make coordinated party expenditures under 2 U.S.C. 441a(d) unless they act as agents for the national or state party committee.)*

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.

Advisory Opinion 2007-2: State Party Status for Arizona Libertarians

The Arizona Libertarian Party, Inc. (the Arizona Party), satisfies the requirements for state committee status.

Background

The Federal Election Campaign Act (the Act) defines a state committee as "the organization which, by virtue of the bylaws of a political party, is part of the official party structure and is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. 431(15).

In order for a committee to achieve state party committee status under FEC regulations, the Commission must first determine whether the party itself qualifies as a "political party" under the Act and Commission regulations. See AOs 2004-40 and 2004-34. Secondly, the committee must satisfy the remaining requirements of state party committee status: (1) be part of the official party structure and (2) be responsible for the day-to-day operations of the political party at the state level. 2 U.S.C. 431(15) and 11 CFR 100.14. To determine day-to-day responsibility for operations, the Commission considers both the bylaws of the committee and whether the committee has successfully placed a federal candidate on the ballot. See AOs 2004-40 and 2004-34. Gaining ballot access for a federal candidate is an essential element of qualifying as a political party. See 11 CFR 100.15.

Analysis

The Arizona Party meets all of the requirements for state political committee status. The Commission previously determined that the Libertarian Party qualifies as a political party and that the Libertarian National Committee qualifies as a national party committee. See AOs 2002-14 and 1975-129. The Arizona Party demonstrated that it is part of the official party structure by submitting a letter from the Libertarian National Committee designating it as the national committee's "sole affiliate" in the state of Arizona.

Regarding the day-to-day operational responsibilities, the Arizona Party's constitution and bylaws demonstrate activity equivalent to that of other committees that have qualified for state party committee status. See AOs 2004-40 and 2004-34. Finally, the Arizona Party successfully placed two federal House candidates on the ballot in 2006. Both candidates raised or spent in excess of $5,000 during their 2006 campaigns, thus satisfying the Act's definition of "candidate" at 2 U.S.C. 431(2).

Date Issued: March 9, 2007
Length: 4 pages
—Meredith Metzler

Visit the FEC's Redesigned Web Site

FEC staff recently completed a significant upgrade of the Commission's web site, www.fec.gov. The redesigned site offers a wealth of information in a simple, clearly-organized format. Features include cascading menus that improve navigation and interactive pages that allow users to tailor content to their specific needs.

Noteworthy among the new features is a search engine. This tool allows visitors to immediately access all pages on the site that contain a desired word or phrase. Another new feature, the Commission Calendar, helps users keep track of reporting deadlines, upcoming conferences and workshops, Commission meetings, comment deadlines and more.

The site also offers a robust new enforcement section that includes the Enforcement Query System, information on closed MURs, the Alternative Dispute Resolution and Administrative Fine programs and—for the first time—access to final audit reports issued by the Commission.

The Commission encourages the regulated community and the public to make use of this dynamic and interactive site by visiting www.fec.gov.

Contribution Limits

Limits for 2007-2008

Under the Bipartisan Campaign Reform Act of 2002 (BCRA), certain contribution limits are indexed for inflation every two years, based on the change in the cost of living since 2001, which is the base year for adjusting these limits.[1] The inflation-adjusted limits are:

- The limits on contributions made by persons to candidates and national party committees (2 U.S.C. §441a(a)(1)(A) and (B));
- The biennial aggregate contribution limits for individuals (2 U.S.C. §441a(a)(3)); and
- The limit on contributions made by certain political party committees (2 U.S.C. §441a(h)).

Please see the chart for the contribution amount limits applicable for 2007-2008.

The inflation adjustments to these limits are made only in odd-numbered years, and—except for the biennial limit—the limits are in effect for the two-year election cycle beginning on the day after the general election and ending on the date of the next general election. The biennial limit covers the two-calendar-year period beginning on January 1 of the odd-numbered year and ending on December 31 of the even-numbered year.

Please note, however, that these limits do not apply to contributions raised to retire debts from past elections. Contributions may not exceed the contribution limits in effect on the date of the election for which those debts were incurred. 11 CFR 110.1(b)(3)(iii).

The BCRA also introduced a rounding provision for all of the amounts that are increased by the indexing for inflation.[2] Under this provision, if the inflation-adjusted amount is not a multiple of $100, then the amount is rounded to the nearest $100.

—Meredith Metzler

[1] *The applicable cost of living adjustment amount is 13.9 percent.*

[2] *This provision also affects the indexing of coordinated party expenditure limits and Presidential expenditure limits. 2 U.S.C. §§441a(b) and 441a(d).*

Contribution Limits for 2007-08

Donors	Recipients				Special Limits
	Candidate Committee	PAC[1]	State, District and Local Party Committee[2]	National Party Committee[3]	
Individual	$2,300* per election[4]	$5,000 per year	$10,000 per year combined limit	$28,500* per year	Biennial limit of $108,200* ($42,700 to all candidates and $65,500[5] to all PACs and parties)
State, District and Local Party Committee	$5,000 per election combined limit	$5,000 per year combined limit	Unlimited transfers to other party committees		
National Party Committee	$5,000 per election	$5,000 per year	Unlimited transfers to other party committees		$39,900* to Senate candidate per campaign[6]
PAC Multicandidate[7]	$5,000 per election	$5,000 per year	$5,000 per year combined limit	$15,000 per year	
PAC Not Multicandidate	$2,300* per election[8]	$5,000 per year	$10,000 per year combined limit	$28,500* per year	

* These limits are indexed for inflation in odd-numbered years.

[1] These limits apply both to separate segregated funds (SSFs) and political action committees (PACs). Affiliated committees share the same set of limits on contributions made and received.

[2] A state party committee shares its limits with local and district party committees in that state unless a local or district committee's independence can be demonstrated. These limits apply to multicandidate committees only.

[3] A party's national committee, Senate campaign committee and House campaign committee are each considered national party committees, and each have separate limits, except with respect to Senate candidates — see Special Limits column.

[4] Each of the following is considered a separate election with a separate limit: primary election, caucus or convention with the authority to nominate, general election, runoff election and special election.

[5] No more than $42,700 of this amount may be contributed to state and local parties and PACs.

[6] This limit is shared by the national committee and the Senate campaign committee.

[7] A multicandidate committee is a political committee that has been registered for at least six months, has received contributions from more than 50 contributors and — with the exception of a state party committee — has made contributions to at least five federal candidates.

[8] A federal candidate's authorized committee(s) may contribute no more than $2,000 per election to another federal candidate's authorized committee(s). 2 U.S.C. §432(e)(3)(B) and 11CFR 102.12(c)(2).

Party Activities

2007 Coordinated Party Expenditure Limits

The 2007 coordinated party expenditure limits are now available. The limits are:

- $81,800 for House nominees in states that have only one U.S. House Representative;
- $40,900 for House nominees in states that have more than one U.S. House Representative; and
- A range from $81,800 to $2,201,900 for Senate nominees, depending on each state's voting age population.

Party committees may make these special expenditures on behalf of their nominees in any 2007 general elections that may be held. National party committees have a separate limit for each nominee[1]. Each state party committee has a separate limit for each House and Senate nominee in its state. Local party committees do not have their own separate limit. One party committee may authorize another party committee to make an expenditure against its limit. Local committees may only make coordinated party expenditures with advance authorization from another committee.

Coordinated party expenditure limits are separate from the contribution limits; they also differ from contributions in that the party committee must spend the funds on behalf of the candidate rather than give the money directly to the campaign. Although these expenditures may be made in consultation with

Coordinated Party Expenditure Limits for 2007 Special Election Senate Nominees

State	Voting Age Population (in thousands)	Expenditure Limit
Alabama	3,485	$285,000
Alaska*	489	$81,800
Arizona	4,538	$371,100
Arkansas	2,120	$173,400
California	26,925	$2,201,900
Colorado	3,584	$293,100
Connecticut	2,687	$219,700
Delaware*	650	$81,800
Florida	14,068	$1,150,500
Georgia	6,909	$565,000
Hawaii	987	$81,800
Idaho	1,072	$87,700
Illinois	9,617	$786,500
Indiana	4,736	$387,300
Iowa	2,272	$185,800
Kansas	2,068	$169,100
Kentucky	3,207	$262,300
Louisiana	3,198	$261,500
Maine	1,041	$85,100
Maryland	4,255	$348,000
Massachusetts	4,988	$407,900
Michigan	7,617	$622,900
Minnesota	3,910	$319,800
Mississippi	2,151	$175,900
Missouri	4,426	$362,000
Montana*	727	$81,800
Nebraska	1,323	$108,200
Nevada	1,861	$152,200
New Hampshire	1,017	$83,200
New Jersey	6,635	$542,600
New Mexico	1,446	$118,300
New York	14,792	$1,209,700
North Carolina	6,701	$548,000
North Dakota*	491	$81,800
Ohio	8,708	$712,100
Oklahoma	2,685	$219,600
Oregon	2,844	$232,600
Pennsylvania	9,636	$788,000
Rhode Island	830	$81,800
South Carolina	3,282	$268,400
South Dakota*	587	$81,800
Tennessee	4,596	$375,900
Texas	17,014	$1,391,400
Utah	1,759	$143,900
Vermont*	491	$81,800
Virginia	5,836	$477,300
Washington	4,870	$398,300
West Virginia	1,429	$116,900
Wisconsin	4,244	$347,100
Wyoming*	393	$81,800

the candidate, only the party committee making the expenditure—not the candidate committee—must report them. (Coordinated party expenditures are reported on FEC Form 3X, line 25, and are always itemized on Schedule F, regardless of amount.)

The accompanying tables on pages 16 and 17 include:

- Information on which party committees have the authority to make coordinated party expenditures;
- The formula used to calculate the coordinated party expenditure limits; and
- A listing of the state-by-state coordinated party expenditure limits.

—Meredith Metzler

Authority to Make Coordinated Party Expenditures on Behalf of House and Senate Nominees

National Party Committee	May make expenditures on behalf of House and Senate nominees. May authorize[1] other party committees to make expenditures against its own spending limits. National Congressional and Senatorial campaign committees do not have separate limits.
State Party Committee	May make expenditures on behalf of House and Senate nominees seeking election in the committee's state. May authorize[1] other party committees to make expenditures against its own spending limits.
Local Party Committee	May be authorized[1] by national or state party committee to make expenditures against its limits.

Calculating 2007 Coordinated Party Expenditure Limits

	Amount	Formula
Senate Nominee	See table on page 9	The greater of: $20,000 x COLA or 2¢ x state VAP[2] x COLA[3]
House Nominee in States with Only One Representative	$81,800	$20,000 x COLA
House Nominee in Other States	$40,900	$10,000 x COLA
Nominee for Delegate or Resident Commissioner[4]	$40,900	$10,000 x COLA

[1]The authorizing committee must provide prior authorization specifying the amount the committee may spend.

[2]VAP means voting age population.

[3]COLA means cost-of-living adjustment. The applicable COLA is 4.089.

[4]American Samoa, the District of Columbia, Guam and the Virgin Islands elect Delegates; Puerto Rico elects a Resident Commissioner.

Regulations

Revised E&J for Agent

On January 23, 2006, the Commission approved a revised Explanation and Justification (E&J) for the definitions of agent used in its regulations on coordinated and independent expenditures and its regulations regarding nonfederal funds. The revisions respond to the district court decision in *Shays v. FEC*.

Background

In its September 18, 2004 decision in *Shays*, the U.S. District Court for the District of Columbia held that the Commission had not adequately explained its decision to include in its definitions of agent those with "actual authority," but not "persons acting only with apparent authority." Having concluded that the Commission's inadequate explanation violated the reasoned analysis requirement of the Administrative Procedure Act (APA), the court remanded the definitions to the agency for further action consistent with its opinion.

In response, the Commission approved a Notice of Proposed Rulemaking (NPRM) on January 27, 2005 requesting comments on several alternatives, including possible changes to the definitions of agent used in its regulations. On May 1, 2005, the Commission held a public hearing to receive testimony on the proposed rules. For more information on the public hearing, see the July 2005 *Record*, page 6.

Revised E&J

After considering public comments and testimony, the Commission decided to retain the current definitions of agent in 11 CFR 109.3 and 300.2(b), but to explain more fully its decision to exclude "apparent authority." In short, the Commission believes that the current definitions, which include "actual authority," either express or implied, best reflect the intent and purposes of the statute.

Furthermore, after examining its pre- and post-BCRA enforcement record, the Commission has determined that excluding "apparent authority" from the definitions of agent has not allowed circumvention of the Act nor led to actual or apparent corruption. The current definitions cover individuals engaged in a broad range of activities specifically related to BCRA-regulated conduct, rather than only to expenditures. This has dramatically increased the number of individuals and type of conduct subject to the Act, especially when compared to the Commission's pre-BCRA definition of agent.

Similarly, the Commission believes including "apparent authority" in the definitions of agent is not necessary in order to implement BCRA or the Act. "Actual authority," either express or implied, is a broad concept that covers the wide range of activities prohibited by the statute. This not only provides committees with appropriate incentives for compliance, but also protects core political activity that could otherwise be restricted or subject to Commission investigation under an apparent authority standard. The revised E&J also provides analysis of several specific hypothetical situations raised by commenters to illustrate how "actual authority" sufficiently addresses behavior.

Finally, the E&J concludes that liability premised on "actual authority" is best suited for the political context. Although "apparent authority" is applicable in commercial contexts, BCRA does not affect individuals who have been defrauded or have suffered economic loss due to their detrimental reliance on unauthorized representations.

Applying "apparent authority" concepts developed to remedy fraud and economic loss to the electoral arena could restrict permissible electoral activity where there is no corruption or the appearance thereof.

The revised Explanation and Justification was published in the January 31, 2006, Federal Register (71 FR 4975) and is available on the FEC web site at http://www.fec.gov/pdf/nprm/definition_agent/notice_2006-1.pdf.

—Amy Pike

Final Rules on Party Committees' Coordinated and Independent Expenditures

On October 28, 2004, the Commission approved final rules that remove restrictions placed on political party committees' ability to make both independent expenditures and coordinated party expenditures with respect to the same candidate in connection with a general election. The final rules also delete regulations prohibiting a political party committee that makes coordinated expenditures with respect to a candidate from transferring funds to, assigning coordinated expenditures authority to or receiving a transfer from a political party that has made or intends to make an independent expenditure with respect to that candidate.

The rules restricting party committee independent and coordinated expenditures were promulgated in January 2003 in order to implement section 213 of the Bipartisan Campaign Reform Act of 2002 (BCRA). However, in *McConnell v. FEC*, the Supreme Court found that section of the BCRA to be unconstitutional. Therefore, the Commission has removed the rules that implemented section 213.

The final rules and their Explanation and Justification were published in the November 3, 2004, *Federal Register* (69 FR 63919), and they are available on the FEC web site at *http://www.fec.gov/law/law_rulemakings.shtml.* These rules will take effect on December 3, 2004.

—Amy Kort

Final Rules on Contributions by Minors

On January 27, 2005, the Commission approved final rules regarding contributions and donations by minors to candidates and political committees. The rules, which will take effect on March 7, 2005, conform to the Supreme Court's decision in *McConnell v. FEC*. In that decision, the Court found unconstitutional a provision of the Bipartisan Campaign Reform Act (BCRA) that barred minors from making contributions to candidates or from making contributions or donations to political party committees.

The practical effect of the amended regulations is to return the rules to their pre-BCRA state. The final regulations provide that an individual under 18 years old may make contributions to candidates and party committees if:

- The decision to contribute is made knowingly and voluntarily by the minor;
- The funds, goods or services contributed are owned or controlled by the minor, such as income earned by the minor, proceeds from a trust for which he or she is a beneficiary, or funds withdrawn by the minor from a financial account opened and maintained in his or her name; and
- The contribution is not made from the proceeds of a gift given for the purpose of making the contribution and is not in any other way controlled by another individual. 11 CFR 110.19.

Note that the Commission has made one substantive change from the pre-BCRA regulations by removing the requirement that a minor "exclusively" own or control the funds, goods or services contributed. The Supreme Court reaffirmed in *McConnell v. FEC* that minors have a constitutional right to contribute to federal candidates and party committees. Maintaining the exclusivity requirement would have risked effectively precluding some minors from contributing their personal funds simply because they maintained their financial accounts in a place where an adult co-signatory was required for such accounts.

The final rules and their Explanation and Justification were published in the February 3, 2005, *Federal Register* (69 FR 5565) and are available on the FEC web site at *http://www.fec.gov/law/law_rulemakings.shtml.*

—Amy Kort

Final Rules on Filing by Priority Mail, Express Mail and Overnight Delivery

On March 10, 2005, the Commission approved final rules regarding the timely filing of documents using Priority Mail, Express Mail and overnight delivery service. The rules implement amendments to the Federal Election Campaign Act (the Act) made as part of the Consolidated Appropriations Act, 2004. The statutory amendments permit filers to use these additional delivery options to satisfy the Commission's "timely filing" requirements for certain designations, reports and statements that are filed with either the FEC or the Secretary of the Senate. Prior to this amendment to the Act, filers could rely on a U.S. Postal Service postmark date only if the documents were sent by registered or certified mail. See 2 U.S.C. §§434(a)(2)(A)(i) and (4)(A)(ii) and (5).

Under the new rules, a designation, report or statement is generally considered to be filed on the date of the postmark[1] if it is sent by:

- Registered or certified mail;
- Priority or Express Mail with a delivery confirmation; or
- Overnight delivery service[2]—the document must be scheduled to be delivered the next business day after the date of deposit and must be recorded in the overnight delivery service's on-line tracking system.

Twelve-day pre-election reports filed by any of these means must be postmarked no later than the 15th day before any election. The new rules do not apply to 48-hour reports of contributions, 24- and 48-hour reports of expenditures and 24-hour reports of electioneering communications. See 11 CFR 104.5(f), (g) and (j).

Designations, reports and statements filed by any other means, including first-class mail and courier, must be received by the Commission or the Secretary of the Senate, as appropriate, by the close of business on the filing deadline.

The final rules were published in the March 18, 2005, *Federal Register* (70 FR 13089), and are available on the FEC web site at *http://www.fec.gov/law/law_rulemakings.shtml.* The new rules took effect on April 18, 2005.

—Amy Kort

[1] *The rules define "postmark" to mean a U.S. Postal Service Postmark or the verifiable date of deposit with an overnight mailing service.*

[2] *An "overnight delivery service" is a private delivery service of established reliability that offers an overnight (i.e. next day) delivery option.*

Final Rules on Party Committee Donations to Tax-Exempt Organizations and Political Organizations

On March 10, 2005, the Commission approved amendments to its rules governing the limits on national, state and local party committees' donations to certain tax-exempt organizations and political organizations. The amended rules conform to the U.S. Supreme Court decision in *McConnell v. FEC*. In that decision, the Court upheld the Bipartisan Campaign Reform Act's (BCRA) restrictions on party committees soliciting any funds for, or making or directing donations of nonfederal funds to:

- 501(c) organizations that are exempt from tax under 26 U.S.C. §501(a) (or have submitted an application to obtain this tax status) and make expenditures or disbursements in connection with an election for federal office, including expenditures or disbursements for "federal election activity"; and
- Political organizations described in 26 U.S.C. §527 that are not a political committee under the Federal Election Campaign Act (FECA), a state, district or local committee of a political party or the authorized campaign committee of a state or local candidate.

2 U.S.C. §441i(d).

However, the Court stated that this provision of the BCRA could be considered overbroad "if read to restrict donations from a party's federal account—*i.e.*, funds that have already been raised in compliance with FECA's source, amount and disclosure limitations." *McConnell*, 124 S.Ct. at 179.

National Party Committees

The Commission's amended rules at 11 CFR 300.11(a) and 300.50(a) prohibit national party committees from making or directing donations of *nonfederal* funds to tax-exempt organizations that actively participate in federal elections. However, national party committees may make or direct donations of *federal* funds to these tax-exempt organizations. The prohibition on soliciting funds for tax-exempt organizations that actively participate in federal elections remains in the revised regulation.

State, District and Local Party Committees

The Commission made similar changes to its rules at 11 CFR 300.37(a) and 300.51(a), which govern state, district and local party committee donations to tax-exempt organizations. The revised rules limit the prohibition to donations of *nonfederal* funds to tax-exempt groups that actively participate in federal elections. The prohibition on soliciting funds for these tax-exempt organizations remains in the revised regulation.

Levin Funds. The new regulations specifically list Levin funds as a type of nonfederal funds that may not be donated or directed to these tax-exempt groups. Levin funds are funds donated to state, district and local party committees, in accordance with state law, from corporations, labor organizations and other persons in amounts not to exceed $10,000 per calendar year. A party committee may not use Levin funds, or other nonfederal funds, to pay for certain communications or certain federal election activities. The Commission concluded that treating Levin funds as a type of nonfederal funds for the purpose of the prohibition on party committee donations was consistent with the Commission's previous treatment of Levin funds. Moreover, allowing state, district and local party committees to make or direct Levin fund donations to tax exempt organizations, which are not equally restricted in how they may pay for communications and federal election activity, risked the circumvention of the party committee soft money restrictions.

Additional Information

The final rules were published in the March 16, 2005, *Federal Register* (70 FR 12787) and are available on the FEC web site at *http://www.fec.gov/law/law_rulemakings.shtml.* The rules took effect on April 15, 2005.

—Amy Kort

Candidate Solicitation at State Party Fundraisers

On June 23, 2005, the Commission approved a revised Explanation and Justification for its rule at 11 CFR 300.64, regarding appearances by federal candidates and officeholders at state, district and local party fundraisers. The rule, which was not amended, contains an exemption permitting federal candidates and officeholders to speak at such events "without restriction or regulation."

Background

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). However, the Act permits them to speak or be featured guests at state, district and local party fundraisers ("state party fundraisers"), where nonfederal funds may be raised. See 2 U.S.C. §441i(e)(3).

The Commission's regulation at 11 CFR 300.64 permits federal candidates and officeholders to speak without restriction or regulation at these fundraisers. In *Shays v. FEC* the court found that, although this exemption was a permissible interpretation of the statute, the Explanation and Justification for the rule did not satisfy 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.

Accordingly, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking comments both on proposed changes to the Explanation and Justification for the existing rule and on a proposal to amend the regulation to prohibit federal candidates and officeholders from soliciting or directing nonfederal funds when attending or speaking at state party fundraisers. The Commission held a public hearing on May 17 to receive testimony concerning this NPRM. See the June 2005 *Record*, page 6, and the April 2005 *Record*, page 4.

Revised E&J

After considering public comments and testimony, the Commission decided to retain the current exemption in 11 CFR 300.64 permitting federal candidates and officeholders to attend, speak or be featured guests at state party fundraisers without restriction or regulation. The Commission determined that the existing rule provides the "more natural" interpretation of the statute, is more consistent with legislative intent and provides federal candidates and officeholders with clear notice regarding permissible speech at state party fundraisers. The revised Explanation and Justification explains how the existing rule effectuates the careful balance Congress struck between the need to avoid the appearance of corruption created when large amounts of soft money are solicited and the need to preserve the legitimate and appropriate role that federal officeholders and candidates play in raising funds for their political parties—especially at the grass-roots level.

The revised Explanation and Justification was published in the June 30, 2005, *Federal Register* (70 FR 37649) 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

FEA Final Rules

On February 9, 2006, the Commission approved final rules that revise the definitions of certain types of federal election activity (FEA). The revised rules, which take effect March 24, comply with the district court's decision in *Shays v. FEC*.

Background

As part of its decision in *Shays*, the district court invalidated portions of the regulatory definition of FEA that describe voter registration activity, get-out-the-vote (GOTV) activity and voter identification. The court found that the voter registration and GOTV definitions were improperly promulgated because the Commission's initial Notice of Proposed Rulemaking (NPRM) did not indicate that the definitions would be limited to activities that "assist" individuals in registering or voting.

The court also invalidated the portion of the GOTV definition that exempts communications by associations or similar groups of state or local candidate/officeholders that refer only to state or local candidates. With regard to the definition of voter identification, the court found the Commission's decision to exclude voter list acquisition and the activities of groups of state and local candidates/officeholders to be contrary to Congressional intent. For these reasons, the district court remanded the regulations to the Commission for further action consistent with its decision.

Final Rules

In response to the district court's decision, the Commission published an NPRM on May 4, 2005 that proposed possible modifications to the definitions of voter registration activity, GOTV activity and voter identification. In addition, the NPRM proposed several changes to the definition of "in connection with an election in which a candidate for federal office appears on the ballot." See page 1 of the June 2005 Record.

On August 4, 2005, the Commission held a public hearing to receive testimony on the proposed rules. See page 4 of the September 2005 *Record*. After considering the public comments and testimony, the Commission issued final rules that:

- Retain the current definitions of voter registration and GOTV activity, which exclude from these definitions mere encouragement to register and/or vote, and provide a more complete explanation of what the term voter registration activity encompasses;
- Amend the definition of voter identification to include acquiring information about potential voters, including, but not limited to, obtaining voter lists;
- Remove the exception to the definitions of GOTV activity and voter identification for associations or other similar groups of candidates for state and local office;
- Remove the reference to "within 72 hours of an election" from the definition of GOTV activity;
- Revise the definition of "in connection with an election in which a candidate for federal office appears on the ballot" to remove restrictions on the rules for special elections to odd-numbered years.

Interim Final Rule

The Commission also voted to promulgate an interim final rule modifying the definition of "in connection with an election in which a candidate for federal office appears on the ballot." This rule exempts activities and communications that are in connection with a nonfederal election held on a date separate from a date of any federal election and that refer *exclusively* to nonfederal candidates participating in the nonfederal election, ballot referenda or initiatives scheduled for the date of the nonfederal election, or the date, polling hours and locations of the nonfederal election.

The Commission approved the text of the new rule and directed the Office of General Counsel to draft an appropriate Explanation and Justification that will also seek public comment on the interim final rule. The final rules were promulgated in the *Federal Register* (71 FR 8926) on February 22, 2006 and are available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml#definition_fea. The Interim Final Rule will be published and available in the Federal Register after final Commission approval of the Explanation and Justification.

—Amy Pike

Final Rules on State, District and Local Party Committee Payment of Certain Salaries and Wages

On December 1, 2005, the Commission voted to amend its rules to permit state, district and local party committees to pay as administrative expenses the salaries, wages and fringe benefits of employees who spend 25 percent or less of their compensated time in a month on federal election activity (FEA) or activity in connection with a federal election ("covered employees"). The previous regulation that allowed party committees to use nonfederal funds for salaries and wages for covered employees was struck down by the courts in *Shays v. FEC*.

Background

On July 15, 2005, the U.S. Court of Appeals for the DC Circuit upheld the appealed portion of the U.S. District Court for the District of Columbia's September 18, 2004 decision. (See the September 2005 *Record*, page 1.) That decision invalidated several Commission regulations implementing provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA), including the regulations addressing payment of salaries and wages of covered employees. BCRA does not address what type of funds state party committees may use for covered employees and the district court held that the Commission's interpretation of the statute was not a permissible reading under step two of *Chevron* review.[1] The appeals court affirmed the district court's decision, but held that the regulations addressing the salaries and wages of state party employees failed to provide sufficient explanation under the Administrative Procedure Act.[2]

Final Rules

After considering public comments and testimony from a public hearing, the Commission issued final rules that:

- Require state party committees to either pay the salaries and wages of covered employees entirely from a federal account or allocate the salaries and wages between their federal and nonfederal accounts as administrative costs using the allocation ratios at 106.7(d)(2)(i) through (iv);
- Establish that salaries and wages paid to employees who spend *none* of their compensated time in a given month on FEA or activities in connection with a federal election may be paid entirely with nonfederal funds;
- Allow state party committees to use federal funds raised at a federal/nonfederal fundraiser to pay for FEA provided that the direct costs of the fundraiser are paid entirely with federal funds or are allocated according to the "funds received" method; and
- Make clear that a state party committee that raises *only* federal funds at a fundraising activity must pay the entire direct costs of the fundraising activity with federal funds.

The revised rules also supersede advisory opinion 2003-11 to the extent that it allowed party committees to pay fringe benefits using only nonfederal funds. The rules now require committees to pay fringe benefits as administrative expenses.

The final rule was published in the December 20, 2005, *Federal Register* (70 FR 75379) 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 Pike

Final Rules Defining "Solicit" and "Direct"

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

Background

On July 15, 2005, the U.S. Court of Appeals for the District of Columbia upheld the U.S. District Court for the District of Columbia's September 18, 2004 decision in Shays v. FEC. (See the September 2005 Record, page 1.) That decision invalidated several Commission regulations implementing provisions of the Bipartisan Campaign Reform

---

[1] *In* Chevron *review, the court asks first whether Congress has spoken directly to the precise issue at hand. If so, then the agency's interpretation of the statute must implement Congress's unambiguous intent. If, however, Congress has not spoken explicitly to the question at hand, the court must consider whether the agency's rules are based on a permissible reading of the statute.*

[2] *Under the Administrative Procedure Act, regulations that are promulgated without a reasoned analysis may be found "arbitrary and capricious" and may be set aside by a reviewing court. 5 USC §706(2)(A)*

Act of 2002 (BCRA), including the regulations that define "to solicit" and "to direct."

The Court of Appeals concluded that by limiting the definition of "to solicit" only to explicit, direct requests for money (thus permitting indirect requests for funds), the Commission's regulatory definition allows candidates and parties to circumvent BCRA's prohibitions and restrictions on nonfederal funds and thereby violates "Congress's intent to shut down the soft-money system." As to the term "direct," the Court of Appeals held that the Commission's definition of "direct" was invalid because it effectively defined "direct" as "ask" and thus, like the definition of "solicit" and contrary to Congress's intent, limited "direct" to explicit requests for funds.

Final Rules

The Commission approved a Notice of Proposed Rulemaking (NPRM) on September 28, 2005 seeking comments on proposed revisions to its definitions of the terms "solicit" and "direct." On November 15, 2006, the Commission held a public hearing to receive testimony on the proposed revisions. (See December issue of The Record, page 7.) After considering the public comments and testimony, the Commission issued final rules.

Definition of "Solicit"

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

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

To "Direct"

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

As with the definition of "solicit," direction does not include merely providing information or guidance as to the applicability of a particular law or regulation.

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

—Amy Pike

Internet Final Rules

The Commission has approved regulations that narrowly expand the definition of "public communication" to include certain types of paid Internet content. This change complies with the district court's determination in *Shays v. FEC* that the Commission could not exclude all Internet communications from its "public communication" definition.

As detailed below and in the accompanying 800-line article, the revised rules also modify the Commission's disclaimer requirements, add an exception for uncompensated individual Internet activities, revise the "media exemption" to make clear that it covers qualified online publications and add new language regarding individuals' use of corporate and labor organization computers and other equipment for campaign-related Internet activities.

Background

The Bipartisan Campaign Reform Act of 2002 (BCRA) requires that state, district and local political party committees and state and local candidates use federal funds to pay for any "public communication" that promotes, attacks, supports or opposes (PASOs) a clearly identified federal candidate. Congress defined "public communication" as a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 2 U.S.C. §421(22). Based on that definition, the Commission expressly excluded all Internet communications from its regulatory definition of the term.

In its other BCRA rulemakings, the Commission incorporated the term "public communication" into provisions on generic campaign activity, coordinated communications and disclaimer requirement. By excluding Internet content from the definition of public communication, the Commission effectively exempted most Internet activity from those regulations. The term was also used in the definition of an "agent" of a state or local candidate and in certain allocation rules governing spending by SSFs and nonconnected committees. 11 CFR 300.2(b) and 106.6(f)

On October 21, 2005, the U.S. District Court for the District of Columbia in *Shays* rejected the Commission's decision to exclude

all Internet communications from the definition of "public communication." 337 F.Supp. 28 (D.D.C. 2004), aff'd, 414 F.3d 76 (D.C. Cir. 2005). The court concluded that some Internet communications do fall with in the scope of "any other form of general public political advertising" and, therefore, required the Commission to determine which Internet communications were encompassed by that term.

The Commission issued a Notice of Proposed Rulemaking (NPRM) on March 24, 2005, seeking comment on possible rule changes and held public hearings on June 28 and 29, 2005. For more information, see the May 2005 *Record*, page 1 and August 2005 *Record*, page 2.

Final Rules

Public Communication. While the new regulations continue to exempt most Internet communications, those placed on another person's web site for a fee are now considered "general public political advertising" and, therefore, qualify as "public communications." By contrast, unpaid Internet communications, including blogs, e-mail and a person's web site, are not.

Coordination. Content that a person places on one's own web site is not included in the definition of "public communication," even if it includes republished campaign material. Therefore, their republication of a candidate's campaign materials on their own web site, blog or e-mail does not constitute a "coordinated communication." However, when a person pays a fee to republish campaign materials on another person's web site, the republication would qualify as a "public communication."

Disclaimer Requirements. Under the new rules, political committees must include disclaimers on their web sites and their widely-distributed e-mail, i.e., more than 500 substantially similar messages, regardless of whether the e-mail messages are solicited or unsolicited. Others are not required to include a disclaimer on their own web site or e-mail messages. Persons other than political committees need only include disclaimers on paid Internet advertising that qualifies as a "public communication" and then only if the communication includes certain content such as a message expressly advocating the election or defeat of a clearly identified federal candidate. 11 CFR 110.11.

Uncompensated Individual Internet Activities. Online campaign activity by uncompensated individuals or groups of individuals is exempt from the definitions of contribution and expenditure. 11 CFR 100.94. This exemption applies whether the individual acts independently or in coordination with a candidate, authorized committee or political party committee. Exempt Internet activities include:

- Sending or forwarding election-related e-mail messages;
- Providing a hyperlink to a campaign or committee's web site;
- Engaging in campaign-related blogging;
- Creating, maintaining or hosting an election-related web site; and
- Paying a nominal fee for a web site or other forms of communication distributed over the Internet.

Media Exemption. In general, a media entity's costs for carrying *bona fide* news stories, commentary and editorials are not considered "contributions" or "expenditures," unless the media facility is owned or controlled by a federal candidate, political party or federally registered political committee. See 2 U.S.C. §431(9)(B)(i) and 11 CFR 100.73 and 100.132. The new regulations clarify that the exemption, commonly known as the "news story exemption" or the "media exemption," extends to media entities that cover or carry news stories, commentary and editorials on the Internet, including web sites or any other Internet or electronic publication. See also AOs 2005-16, 2004-7 and 2000-13.

The media exemption applies to the same extent to entities with only an online presence as those media outlets that maintain both an offline and an online presence. See the E&J for revised regulations. 11 CFR 100.73 and 100.32.

Corporate and Labor Internet Activities. Commission regulations have long permitted stockholders and employees of a corporation and members of a union to make occasional, isolated or incidental use of the organization's facilities for voluntary political activity. The new regulations clarify that employees may use their work computers at the workplace and elsewhere to engage in political Internet activity, as long as that use does not prevent them from completing their normal work or increase the overhead or operate expenses for the corporation or labor organization. The organization may not condition the availability of its space or computers on their being used for political activity or to support or oppose any candidate or political party. 11 CFR 114.9.[1]

State and Local Party Activities. If a party committee pays to produce content that would qualify as federal election activity (FEA)—e.g., a video that PASOs a federal candidate—and pays to post that content on another person's web site, then the entire costs of production and publication of the content must be paid for with federal funds. 11 CFR 100.24. The costs of placing content on the party committee's own web site, however, are not restricted to federal funds. See the E&J for revised 11 CFR 100.26.

The final rules were published in the April 12, 2006 *Federal Register* (71 FR 18589) and will go into effect on May 12, 2006. The final rules are available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml and from the FEC Faxline 202/501-3413.

—Carlin E. Bunch

E&J for Interim Final Rule on Definition of FEA

On February 9, 2006, the Commission approved an interim final rule regarding voter identification and get-out-the-vote (GOTV) activities limited to nonfederal elections. The Commission is seeking public comment on all aspects of the interim final rule and may amend the final rule as appropriate in response to comments received.

Background

Under the Bipartisan Campaign Reform Act of 2002 (BCRA), voter identification, GOTV activity and generic campaign activities conducted "in connection with an election in which a candidate for federal office appears on the ballot," constitute federal election activity (FEA), and are subject to certain funding limits and prohibitions.

In response to the district court decision in *Shays v. FEC,* the Commission published a Notice of Proposed Rulemaking (NPRM) that proposed several changes to the definition of FEA, including exceptions for activities conducted in proximity to nonfederal elections. After reviewing public comments and testimony given at an August 4, 2005, public hearing, the Commission approved Final Rules and Explanation and Justification (E&J) on the Definition of Federal Election Activity (2006 Final Rules). The Commission decided not to incorporate into those final rules any of the FEA nonfederal time period exceptions proposed in the NPRM but instead adopted a more narrowly focused interim final rule.

Interim Final Rule

Initially, the Commission included within its definition of FEA voter registration, GOTV and generic campaign activity conducted between the filing deadline for access to the primary election ballot and the date of the general election or, in states that do not conduct primaries, beginning January 1 of each even-numbered year. The regulation provided an exemption to this definition for an association of state or local candidates conducting activity in connection with a nonfederal election, but the Commission eliminated that exemption in order to comply with the district court decision in *Shays*. As a result, political campaign activity relating solely to nonfederal elections scheduled in 2006 will fall within the FEA time period. To avoid capturing activity that relates solely to nonfederal elections, the interim final rule distinguishes between voter identification and GOTV activities that are FEA and those activities that are not FEA, because they do not involve elections in which federal candidates are on the ballot.

For an activity to be covered by the interim final rule:

- The nonfederal election must be held on a date separate from any federal election and the communication or activity must be in connection with the nonfederal election; and
- The activity or communication must refer exclusively to:
  - Nonfederal candidates on the ballot;
  - Ballot initiatives or referenda; or
  - The date, time and polling locations of the nonfederal election.

Because generic campaign activity, by definition, promotes a political party and does not promote a federal or nonfederal candidate, such activity would not be covered by the interim final rule. The Commission seeks comment on whether this is an appropriate determination. The Commission is soliciting comments on all aspects of the interim final rule and may amend the interim rule as appropriate in response to comments received.

Comments

The E&J for the Interim Final Rule appeared in the *Federal Register* on March 22, 2006 and is available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml#definition_fea. All comments must be addressed to Ms. Mai T. Dinh, Assistant General Counsel, must be submitted in e-mail, fax, or paper copy form and must include the full name and postal address of the commenter. Commenters are strongly encouraged to submit comments by e-mail at either municipal.election@fec.gov or submitted through the Federal eRegulations Portal at www.regulations.gov. If e-mail comments include an attachment, the attachment must be in Adobe Acrobat or Microsoft Word format. Faxed comments must be sent to 202/219-3923, with paper copy follow-up. Paper copy comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E. Street, NW, Washington, DC 20463.

—Amy Pike

Coordinated Communications Final Rules

On June 8, 2006, the Commission published final rules and explanation and justification governing coordinated communications. (71 FR 33190) The rules, which take effect on July 10, comply with the Court of Appeals ruling in *Shays v. FEC* that the Commission had not adequately explained one aspect of the previous coordinated communications regulations. 11 CFR 109.21(c)(4).

Background

The *Shays* court found that the 120-day pre-election time frame used in the content prong of the three-prong coordinated communication test was not sufficiently justified, since there was "no support in the record for the specific content based standard the Commission… promulgated." In response, the Commission issued a Notice of Proposed Rulemaking (NPRM) on December 8, 2005, and held pub-

lic hearings on January 25 and 26, 2006. Neither the written comments nor the hearing testimony provided quantitative evidence concerning proposed time frames. As a result, the Commission licensed data from TNS Media Intelligence/CMAG regarding television advertising run by Presidential, Senate and House candidates during the 2004 cycle in effort to address the appeals court's concerns. The Commission issued a Supplemental Notice of Proposed Rulemaking on March 15, 2006, to allow the public to comment on the licensed data.

For more information, see the January 2006 Record, page 2 and the March 2006 Record, page 3.

Final Rules

Revised Time Frame. The Commission has retained the existing content prong at 11 CFR 109.21(c)(4), but has modified the 120-day pre-election time frame. The Commission has established separate time frames for political parties, congressional and presidential candidates, based on comments received in the rulemaking and the licensed data.

- For communications that refer to House and Senate candidates, the period begins 90 days before each candidate's election and runs through the date of that election. 109.21(c)(4)(i). This time frame applies separately to primary and general elections. In some states these periods will overlap, depending on the timing of the primary election.
- For communications that refer to Presidential candidates, the time frame for each state begins 120 days before the date of its presidential primary and runs through the general election. 109.21(c)(4)(ii).
- For communications coordinated with a political party committee that refer to political parties, do not reference a clearly identified federal candidate and are distributed in a jurisdiction where that party has a candidate on the ballot, the time frames are based on the election cycle:
  - o In a non-Presidential election cycle, the time frame begins 90 days before each election and ends on the date of that election (109.21(c)(4)(iii)(B));
  - o In a Presidential election cycle, the time frame for each state begins 120 days before the date of its primary and runs through the general election. 109.21(c)(4)(iii)(C).
- However, communications that refer only to a political party, but are coordinated with a candidate, are subject to the 90- or 120-day period applicable to that candidate, as long as they are distributed in that candidate's jurisdiction. 109.21(c)(4)(iii)(A).
- For communications that refer to political parties and reference a clearly identified federal candidate, the appropriate candidate time frame would apply when the communication is distributed in the candidate's jurisdiction:
  - o If the clearly identified federal candidate is a House or Senate candidate, the 90-day time frame applies;
  - o If the candidate is a Presidential candidate, the 120-day time frame applies. 109.21(c)(4)(iv)(A)-(B).
- For communications coordinated with a political party committee that refer to both a political party and a clearly identified federal candidate and are distributed outside the candidate's jurisdiction, the election-cycle rules for communications referring to political parties described above apply. 109.21(c)(4)(iv)(C).

The Commission has also clarified that a public communication satisfies the content standards at 109.21 (c)(4)(i) or (ii) with respect to a candidate only if it is publicly distributed or otherwise publicly disseminated during the relevant time periods before an election in which that candidate or another candidate seeking election to the same office is on the ballot.

"Directed to Voters." The Commission has removed the phrase "directed to voters in the jurisdiction" from former 109.21(c)(4)(iii). The revised rule states that a public communication must be "publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction" or if the public communication refers to a political party, but not to a clearly identified federal candidate, in a jurisdiction in which one or more candidates of a political party appear on the ballot. The Commission has decided not to specify a minimum number of persons that must be able to receive a communication for the fourth content standard to apply.

Common Vendor and Former Employee Conduct Standard. BCRA requires that the Commission address "the use of a common vendor" and "persons who previously served as an employee of a candidate of a political party" in the context of coordination. The Commission has decided to revise the temporal limit in the common vendor and former employee conduct standards to encompass 120 days rather than the entire current election cycle. The 120-day period starts on the last day of the individual's employment with a candidate or political party committee or on the last day that a commercial vendor performed any of the services listed in 109.21(d)(4)(ii) for a candidate or political party committee.

Endorsements and Solicitations. The Commission has created a new safe harbor in 109.21 for endorsements by federal candidates of other federal and nonfederal candidates. The Commission has also created a safe harbor for solicitations by federal candidates for other federal and nonfederal candidates, political committees and certain tax-exempt 501(c) organizations as permitted by 11 CFR 300.65. Such endorsements or solicitations are not coor-

dinated communications unless the communication promotes, attacks, supports or opposes (PASOs) the endorsing or soliciting candidate or another candidate who seeks election to the same office as the endorsing or soliciting candidate. This safe harbor applies no matter when the endorsement or solicitation occurs.

This safe harbor was not extended to state ballot initiatives.

Publicly Available Information. The Commission has created a safe harbor for use of publicly available information in creating, producing or distributing a communication. Such use would not, in and of itself, satisfy any of the conduct standards in 109.21(d). This safe harbor would apply to four of the five conduct standards; only the "request or suggestion" conduct standard in 109.21(d)(1) is excluded from the safe harbor.

To qualify for this safe harbor, the person paying for the communication must demonstrate that the information used in creating, producing or distributing the communication was obtained from a publicly available source. A communication that does not fall within this safe harbor will not automatically be presumed to satisfy the conduct prong of the coordinated communication test.

Establishment and Use of a Firewall. The Commission has created a safe harbor from the conduct standards when a commercial vendor, former employee or political committee establishes and uses a firewall to prevent the sharing of information about the candidate or political party's plans, projects, activities or needs. To qualify for the safe harbor, the firewall must be described in a written policy that is distributed to all relevant employees, consultants and clients affected by the policy. It must also be designed and implemented to prohibit the flow of information between:

- Employees or consultants providing services for the person paying for the communication; and
- Those currently or previously providing services to the candidate, the authorized committee, the candidate's opponent, the opponent's authorized committee or a political party committee.

This provision does not dictate specific procedures required to prevent the flow of information, since a firewall is more effective if established and implemented by each entity based on its specific organization, clients and personnel. However, a good example of an acceptable firewall is described in MUR 5506 (EMILY's List), First General Counsel's Report at 6-7. Additionally, the Commission does not require firewalls and will not draw a negative inference from the lack of such a screening policy.

Payment Prong Amendment. The new regulations clarify that the payment prong is satisfied if the communication "is paid, in whole or in part, by a person other than that candidate, authorized committee, or political party committee."

Party Coordinated Communications (11 CFR 109.37). The Commission revised its regulations regarding party coordinated communication to ensure consistency with the revisions in the fourth content standard at 109.21(c)(4). These regulations apply to communications paid for by party committees and are similar to the standards for coordinated communications. The new regulations replace the old 120-day time frame with the new 90- and 120-day periods applicable to communications that refer to House and Senate candidates or Presidential candidates, respectively.

Revised 109.37 does not contain separate rules for communications that refer to political parties, because the content standard in 109.37(a) is not satisfied by communications that reference only political parties, unlike revised 109.21,

"Agent" Clarification. The Commission has added a sentence to 109.20(a) to explain that any reference in the coordinated communication rules to a candidate, a candidate's authorized committee or a political party committee, also refers to any their agents.

—Carlin E. Bunch

800 Line

Internet Communications and Activity

On March 27, 2006, the Commission approved new regulations governing certain types of Internet communications. The rules will take effect on May 12, 2006. The questions and answers that follow address not only those new regulations, but also past Commission precedents regarding use of the Internet in connection with federal elections. Copies of both the new regulations and the cited advisory opinions (AOs) are available via the FEC's web site at http://www.fec.gov.

Internet Activity Conducted by Individuals

Can I use my computer for political activity in connection with federal elections? How about a library computer, school computer or neighbor's computer?

Yes. An uncompensated individual or group of individuals may engage in Internet activities for the purpose of influencing a federal election without restriction. The activity would not result in a "contribution" or an "expenditure" under the Act, and would not trigger any registration or reporting requirements with the FEC. This exemption applies to individuals acting with or without the knowledge or consent of a campaign or a political party commit-

tee.[1] 11 CFR 100.94 and 100.155. Possible Internet activities include, but are not limited to, sending or forwarding electronic mail, providing a hyperlink to a web site, creating, maintaining or hosting a web site and paying a nominal fee for the use of a web site. 11 CFR 100.94(b). Please note that these exemptions apply regardless of whether the individual owns the computer in use.

What are the rules for sending personal e-mail regarding political topics or federal elections?

Basically, there are no rules for individuals. Individuals may send unlimited e-mail on any political topic without identifying who they are or whether their messages have been authorized by any party or campaign committee. 11 CFR 110.11(a).

the FEC. This exemption applies to individuals acting with or without the knowledge or consent of a campaign or a political party committee.[1] 11 CFR 100.94 and 100.155. Possible Internet activities include, but are not limited to, sending or forwarding electronic mail, providing a hyperlink to a web site, creating, maintaining or hosting a web site and paying a nominal fee for the use of a web site. 11 CFR 100.94(b). Please note that these exemptions apply regardless of whether the individual owns the computer in use.

What are the rules for sending personal e-mail regarding political topics or federal elections?

Basically, there are no rules for individuals. Individuals may send unlimited e-mail on any political topic without identifying who they are or whether their messages have been authorized by any party or campaign committee. 11 CFR 110.11(a).

[1] *Because the activity is exempt from the definitions of "contribution" and "expenditure," a group of individuals that spends more than $1,000 on such activity does not trigger political committee status under the Act and FEC regulations. See 11 CFR 100.5.*

May I post comments to a blog in connection with a federal election?

Yes. Uncompensated blogging, whether done by individuals or a group of individuals, incorporated or unincorporated, is exempt from regulation. See 11 CFR 100.94 and 100.155. This exception applies even in those cases where a nominal fee is paid. See also *How has the Commission applied the Act to online news media?* under Press Entities, on page 9.

Are the rules different if I pay to place an ad on someone else's web site?

Yes. Internet communications placed on another person's web site for a fee are considered "general public political advertising" and are thus "public communications" under the law. 11 CFR 100.26. As such, paying to place a communication on another person's web site may result in a contribution or expenditure under the Act. Other regulations regarding coordinated communications, 11 CFR 109.21 and 109.37, and disclaimer requirements, 11 CFR 110.11(a), would also apply.

May I use my work computer for online political activity?

Yes, this is permissible subject to your employer's rules for personal use of computers and Internet access and as long as you are not compensated for the activity. 11 CFR 100.94 and 114.9(a) and (b). See *May a corporation or union allow its employees or members to use their work computers for individual volunteer activity?* under Use by Corporations/Labor Organizations/ Trade Associations, below.

Internet Activity Conducted by Federal Political Committees

Is a disclaimer required on e-mail or our web site?

Yes. The Act and regulations require FEC-registered political committees to place disclaimers on their public web sites. Moreover, if a political committee sends more than 500 substantially similar e-mail, each message must include a disclaimer. 11 CFR 110.11(a). For specific disclaimer requirements, see 11 CFR 110.11(b) and the Commission's brochure "Special Notices on Political Ads and Solicitations," available online at http://www.fec.gov/pages/brochures/notices.shtml.

Do the new regulations affect online fundraising by our committee?

No. Over the years, the Commission has issued several advisory opinions concerning online fundraising by political committees. The AOs make it clear that political committees must adapt online fundraising to comply with the Act's recordkeeping and reporting provisions.

First, committees using the Internet for fundraising must make "best efforts" to obtain and report the identification of donors who contribute more than $200 during a calendar year. Committees must maintain electronic records and contributor data for three years after the date on which it reported the contributions. AOs 1999-22 and 1995-9.

Second, to avoid receiving prohibited contributions, web sites soliciting contributions in connection with a federal election must inform potential contributors of all of the Act's prohibitions, including the prohibitions on contributions from corporations, labor organizations, federal government contractors and foreign nationals,[2] and the restrictions at 11 CFR 110.19 on contributions from minors. AOs 1999-22, 1999-9 and 1995-9 contain detailed examples of Commission-approved language and mechanisms for screening contributors.

Third, in several AOs, the Commission has said that online contributions may be made via credit card or electronic checks. Such contributions are acceptable for publicly

[2] *See 2 U.S.C. §§441b, 441c and 441e.*

funded presidential campaigns and are matchable provided that the correct documentation is provided to the Commission. See 11 CFR 9034.2(c)(8) and AOs 1999-36, 1999-22, 1999-9 and 1995-9. The Commission has also permitted businesses to administer online fundraising for political committees, so long as they provide their services at the usual and normal charge and in their ordinary course of business. See below.

Finally, separate segregated funds established by corporations, labor organizations or trade associations should consult *Are there special rules concerning online fundraising for corporate/labor/trade association PACs?* under Internet Activity by Corporations/Labor Organizations/ Trade Associations, below.

Internet Activity Conducted by Corporations/Labor Organizations/Trade Associations

Our corporation normally provides commercial services online; may we do so for candidates and political committees?

Yes, this is permissible as long as the corporation charges the usual and normal fee for its services. Failure to do so could result in a prohibited contribution. For example, in AO 2004-6, an online service offering a web platform for arranging local gatherings was permitted to provide both its free and fee-based services to federal candidates and political committees as long as it did so on the same terms it offered to all similarly situated persons in the general public. In contrast, in AO 1996-2, the Commission concluded that a corporation could not provide online accounts—for which it normally charged a fee—to candidates free of charge.

May our corporation/labor union/trade association send out an e-mail to endorse a federal candidate or place an endorsement on its web site?

It depends. As has long been the case, a corporation, union or trade association may only direct express advocacy communications to its restricted class. So, if the organization addressed its e-mail endorsing a federal candidate only to individuals within its restricted class, it would be permissible. By contrast, the organization generally cannot place endorsements or solicitations for a candidate on its web site, unless access to those portions of the site is limited to members of the restricted class.[3] See AO 1997-16, 2 U.S.C. §441b(b)(2)(A) and 11 CFR 114.3.

Are there special rules concerning online fundraising for corporate/ labor/trade association PACs?

Yes. Since a corporate/labor/trade association PAC may only solicit contributions from its restricted class, access to online solicitations must be limited to members of that group, e.g., password protected.[4] 2 U.S.C. §441b(b)(4). Alternatively, a corporation/labor organization/trade association could maintain an e-mail listserv—i.e., mailing list—to send PAC solicitations to members of the organization's restricted class. AO 2000-07.

May a corporation or union allow its employees or members to use their work computers for individual volunteer activity?

Yes, a corporation or a labor organization may permit its employees, shareholders, officials and members to use its computer and Internet facilities for individual volunteer Internet activity, without making a prohibited contribution. This exemption is contingent on the individual completing the normal amount of work for which the employee is paid, or is expected to perform, that the activity would not increase the overhead or operating costs of the organization, and that the activity is not coerced. The organization may not condition the availability of the Internet or the computer on their being used for political activity or for support for or opposition to any particular candidate or political party. Revised 11 CFR 114.9(a)(2) and (b)(2).

Activity Conducted by Press Entities and Bloggers

How has the Commission applied the Act to online news media?

Under the Act and FEC regulations, a media entity's costs for carrying news stories, commentary and editorials are not considered "contributions" or "expenditures." See 2 U.S.C. §431(9)(B)(i) and 11 CFR 100.73 and 100.132. This exemption, commonly known as the "news story exemption" or the "media exemption" now extends to media entities that cover or carry news stories, commentary and editorials on the Internet, including web sites or any other Internet or electronic publication. See also AOs 2005-16, 2004-7 and 2000-13.

The media exemption applies to the same extent to entities with only an online presence as those media outlets that maintain both an offline and an online presence. See the E&J for revised regulations 11 CFR 100.73 and 100.32.

Are bloggers considered press entities?

Bloggers and others who communicate on the Internet are entitled to the press exemption in the same way as traditional media entities. However, the Commission has decided not to change its rules regarding the media exemption so as to specifically include *all*

[3] *If the organization routinely posts press releases on it web site, it may post a release announcing its endorsement of a federal candidate in the same manner. 11 CFR 114.4(c)(6).*

[4] *See 11 CFR 114.5(g), 114.7(a) and 114.8(c).*

blogging activity within the "media exemption." Many bloggers may also be entitled to the new Internet activities exemptions for individuals. 11 CFR 100.94 and 100.155. This includes incorporated blogs that are wholly-owned by an individual, are engaged primarily in Internet activities and derive a substantial portion of their income from their Internet activities. See the E&J for revised 11 CFR 100.73 and 100.32 and AO 2005-16. Whether covered by the media exemption or the individual activity exemption, blogging will generally not be subject to FEC regulation.

—Dorothy Yeager