



FEDERAL ELECTION COMMISSION
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AGENDA ITEM

For Meeting of: 8-19-04

MEMORANDUM

TO: The Commission

FROM: Scott E. Thomas
Commissioner *SET*

Michael E. Toner
Commissioner *MT*

SUBJECT: Alternative proposal for final rules regarding "political committee" status and allocation

SUBMITTED LATE

Attached are proposed final rules that we offer for consideration on August 19 along with the proposal of the Office of General Counsel. This version is the same as the proposal we submitted for the May 13 meeting, except that it has been modified to incorporate the corrections we noted in an e-mail sent to our colleagues on May 12.

1 **List of Subjects**

2 11 CFR Part 100

3 Elections.

4 11 CFR Part 104

5 Campaign funds, Political committees and parties, Reporting and recordkeeping
6 requirements.

7 11 CFR Part 106

8 Campaign funds, Reporting and recordkeeping requirements.

9 For the reasons set out in the preamble, Subchapter A of Chapter I of Title 11 of
10 the Code of Federal Regulations is amended as follows:

11 **Part 100 – SCOPE AND DEFINITIONS (2 U.S.C. 431)**

12 1. The authority citation for part 100 would continue to read as follows:

13 **Authority:** 2 U.S.C. 431, 434 and 438(a)(8).

14 2. Section 100.5 would be amended by revising the introductory paragraph and
15 paragraph (a) and adding paragraph (h) to read as follows:

16 **§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).**

17 Political Committee means any group meeting the conditions set forth in
18 paragraph (a), (b), (c), (d) or (e) of this section.

19 (a) (1) Except as provided in paragraphs (b), (c), and (d) of this
20 section, political committee means any committee, club, association, or
21 other group of persons:

- 1 (i) That receives contributions aggregating in excess of
2 \$1,000 or that makes expenditures aggregating in
3 excess of \$1,000 during a calendar year; and
4 (ii) For which the nomination or election of one or
5 more Federal or non-Federal candidates is the major
6 purpose.
- 7 (2) For purposes of paragraph (a)(1)(ii) of this section, a committee,
8 club, association or group of persons that is organized under
9 Section 527 of the Internal Revenue Code, 26 U.S.C. 527, has the
10 nomination or election of one or more Federal or non-Federal
11 candidates as its major purpose, unless it is a type of organization
12 described as follows:
- 13 (i) The campaign organization of an individual seeking nomination,
14 election, appointment or selection to a non-Federal office;
- 15 (ii) A committee, club, association or group of persons
16 that is organized or operates solely for the purpose of
17 influencing the nomination or election of candidates
18 to one or more non-Federal offices;
- 19 (iii) A committee, club, association or group of persons
20 whose nomination or election activities relate solely
21 to elections where no candidate for Federal office
22 appears on the ballot;

- 1 (iv) A committee, club, association or group of persons
- 2 that is organized or operates solely for the purpose of
- 3 influencing state ballot initiatives or referenda; or
- 4 (v) A committee, club, association or group of persons
- 5 that is organized or operates solely for the purpose of
- 6 influencing the nomination or appointment of
- 7 individuals to one or more non-elected offices, or
- 8 the nomination, election, or selection of individuals
- 9 to leadership positions within a political party.
- 10 (3) For any committee, club, association or group of persons not described
- 11 in paragraph (a)(2) of this section, paragraph (a)(1)(i) of this section shall
- 12 be satisfied if the organization receives contributions aggregating in
- 13 excess of \$1,000 or makes expenditures aggregating in excess of \$1,000 in
- 14 a calendar year under applicable law.
- 15 (4) For any committee, club association or group of persons not described in
- 16 paragraph (a)(2) of this section, paragraph (a)(1)(ii) of this section shall be
- 17 satisfied if the nomination or election of one or more Federal or
- 18 non-Federal candidates is the major purpose of the organization under
- 19 applicable law.
- 20 (h) A committee, club, association or group of persons that qualifies as a political
- 21 committee and that finances political activity in connection with both Federal and non-
- 22 Federal elections shall organize its accounts according to 11 CFR 102.5(a).
- 23 * * * * *

1 3. Section 100.115 would be added as follows:

2 **Sec. 100.115 Certain Federal Election Activities**

3 Except as provided at 11 CFR 100.155 and 100.133, a payment, distribution, loan,
4 advance, or deposit of money or anything of value made by, or on behalf of, any political
5 committee or organization described in 11 CFR 100.5(a)(2) for federal election activities
6 as defined at 11 CFR 100.24(a), (b)(1), (b)(2)(i), and (b)(2)(iii), is an expenditure.

7 4. Section 100.116 would be added to read as follows:

8 **§ 100.116 Certain public communications.**

9 Except as provided in 11 CFR 100.155, a payment, distribution, loan, advance, or
10 deposit of money or anything of value made by, or on behalf of, any political committee
11 or organization described in 11 CFR 100.5(a)(2) for a public communication, as defined
12 in 11 CFR 100.26, is an expenditure if the public communication:

- 13 (a) Promotes, supports, attacks, or opposes any clearly identified candidate for
14 Federal office; or
15 (b) Promotes, supports, attacks, or opposes any political party.

16 5. Section 100.133 would be amended to read as follows:

17 **§ 100.133 Non-partisan voter registration and get-out-the-vote activities.**

18 (a) Any cost incurred for activity designed to encourage individuals to register to vote
19 or to vote is not an expenditure if:

- 20 (1) No effort is or has been made to determine the party or candidate
21 preference of individuals before encouraging them to register to vote or to
22 vote; and

23 (2) No public communication is used that:

1 (i) Promotes, supports, attacks, or opposes any clearly identified
2 Federal or non-Federal candidate; or

3 (ii) Promotes, supports, attacks, or opposes any political party.

4 (b) Any corporation or labor organization that engages in the activity described in
5 paragraph (a) of this section shall do so in accordance with 11 CFR 114.4(c) and (d). See
6 also 11 CFR 114.3(c)(4).

7 6. Section 100.155 would be added to read as follows:

8 **§ 100.155 Allocated non-Federal amounts.**

9 Any non-Federal funds disbursed pursuant to 11 CFR 106.1, 106.6, 106.7, or
10 300.33 are not expenditures.

11 **PART 104 – REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)**

12 7. The authority citation for part 104 would continue to read as follows:

13 **Authority:** 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b),
14 439a and 441a.

15 8. Section 104.10 would be amended by revising the introductory language in
16 paragraph (b), the title in (b)(1), and paragraphs(b)(1)(i) and (b)(1)(ii) to read as follows:

17 **§ 104.10 Reporting by separate segregated funds and nonconnected committees of**
18 **expenses allocated among candidates and activities.**

19 * * * * *

20 (b) Expenses allocated among activities. A political committee that is a separate
21 segregated fund or a nonconnected committee and that has established separate Federal
22 and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those
23 accounts its administrative expenses and its costs for fundraising and voter drives

1 according to 11 CFR 106.6, and shall report those allocations according to paragraphs
2 (b)(1) through (5) of this section, as follows:

3 (1) Reporting of allocation of administrative expenses and costs of voter
4 drives.

5 (i) In the first report in a calendar year disclosing a disbursement for
6 administrative expenses or voter drives, as described in
7 11 CFR 106.6(b), the committee shall state the allocation ratio to
8 be applied to these categories of activity according to
9 11 CFR 106.6(c), (f), or (g), as applicable, and the manner in
10 which it was derived. The committee shall also state whether the
11 calculated ratio or the minimum Federal percentage required by
12 11 CFR 106.6(c)(1)(ii) will be used.

13 (ii) In each subsequent report in the calendar year itemizing an
14 allocated disbursement for administrative expenses or voter drives:

15 * * * * *

16 **PART 106 – ALLOCATIONS OF CANDIDATE AND COMMITTEE**
17 **ACTIVITIES**

18 9. The authority citation for part 106 would continue to read as follows:

19 **Authority:** 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

20 10. Section 106.6 would be amended by:

- 21 a. Removing the words “(c) and (d)” from paragraph (a) and adding in their
22 place the words “(c), (d), (f) and (g)”; and
23 b. Revising the introductory language in paragraph (c) and paragraphs

(b)(1)(iii), (b)(2)(iii), (c)(1), and (e)(2)(ii)(B) and adding paragraphs
(b)(1)(iv), (b)(1)(v), (b)(1)(vi), (b)(2)(iv), (b)(2)(v), (b)(2)(vi), (f) and (g)
to read as follows:

**§106.6 Allocation of expenses between federal and non-federal activities by
separate segregated funds and nonconnected committees.**

* * * * *

(b) * * *

(1) * * *

- (iii) Certain federal election activities as described at 11 CFR 100.115 or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without including a public communication that is described in paragraph (b)(1)(iv), (v), or (vi) of this section;
- (iv) Public communications that promote, support, attack, or oppose a political party, as described in 11 CFR 100.116(b), but do not promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates;
- (v) Public communications that promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates, and that promote, support, attack, or oppose a political party, as described in 11 CFR 100.116(b); and
- (vi) Public communications that promote, support, attack, or oppose one or more clearly identified Federal or non-Federal candidates,

1 but that do not promote, support, attack, or oppose a political party,
2 as described in 11 CFR 100.116(b).

3 (2) * * *

4 (iii) Certain federal election activities as described at 11 CFR 100.115
5 or any other activities that urge the general public to register, vote
6 or support candidates of a particular party or associated with a
7 particular issue, without including a public communication that is
8 described in paragraph (b)(2)(iv), (v), or (vi) of this section;

9 (iv) Public communications that promote, support, attack, or oppose a
10 political party, as described in 11 CFR 100.116(b), but do not
11 promote, support, attack, or oppose one or more clearly identified
12 Federal or non-Federal candidates;

13 (v) Public communications that promote, support, attack, or oppose
14 one or more clearly identified Federal or non-Federal candidates,
15 and that promote, support, attack, or oppose a political party, as
16 described in 11 CFR 100.116(b); and

17 (vi) Public communications that promote, support, attack, or oppose
18 one or more clearly identified Federal or non-Federal candidates,
19 but that do not promote, support, attack, or oppose a political party
20 as described in 11 CFR 100.116(b).

21 (c) Method for allocating administrative expenses, costs of voter drives, certain
22 federal election activities, and certain public communications. Nonconnected committees
23 and separate segregated funds shall allocate their administrative expenses, costs of voter

1 drives, costs of certain federal election activities, and costs of public communications that
2 promote, support, attack, or oppose a political party as described in paragraph (b)(1)(i)
3 through (iv) or (b)(2)(i) through (iv) of this section, according to the funds expended
4 method, described in paragraphs (c)(1) and (2) as follows:

- 5 (1) (i) Under this method, expenses shall be allocated based on the ratio
6 of Federal expenditures to total Federal and non-Federal
7 disbursements made by the committee during the two-year Federal
8 election cycle, subject to the minimum Federal percentage
9 described in paragraph (c)(1)(ii) of this section. This ratio shall be
10 estimated and reported at the beginning of each Federal election
11 cycle, based upon the committee's Federal and non-Federal
12 disbursements in a prior comparable Federal election cycle or upon
13 the committee's reasonable prediction of its disbursements for the
14 coming two years. In calculating its Federal expenditures, the
15 committee shall include only amounts contributed to or otherwise
16 spent on behalf of specific Federal candidates, including
17 independent expenditures and amounts spent on public
18 communications that promote, support, attack, or oppose clearly
19 identified Federal candidates. Calculation of total Federal and non-
20 Federal disbursements shall also be limited to disbursements for
21 specific candidates, and shall not include overhead or other
22 generic costs.

1 (ii) Minimum Federal percentage for administrative expenses,
 2 voter drives, and certain public communications. The
 3 minimum Federal percentage for any costs allocable under
 4 paragraph (c) of this section shall be 50 percent.

5 * * * * *

6 (e) * * *

7 (2) * * *

8 (ii) * * *

9 (B) Except as provided in paragraph (d)(2) of this section, such
 10 funds may not be transferred more than 10 days before or
 11 more than 60 days after the payments for which they are
 12 designated are made.

13 * * * * *

14 (f) Method for allocating public communications that promote, support, attack, or
 15 oppose one or more clearly identified Federal or non-Federal candidates, and promote,
 16 support, attack, or oppose a political party. Nonconnected committees and separate
 17 segregated funds shall allocate public communications described in paragraphs (b)(1)(v)
 18 or (b)(2)(v) of this section as follows:

19 (1) The public communication shall be attributed according to the proportion
 20 of space and time devoted to each candidate and political party as
 21 compared to the total space and time devoted to all candidates and
 22 political parties;

- 1 (2) The portion of the public communication that is attributed to the Federal
2 candidate(s) shall be allocated to the nonconnected committee's or
3 separate segregated fund's Federal account;
- 4 (3) The proportion of the public communication that is attributed to the
5 political party shall be allocated in accordance with paragraph (c) of this
6 section; and
- 7 (4) The portion of the public communication that is attributed to clearly
8 identified non-Federal candidate(s), if any, may be allocated to either the
9 Federal or non-Federal account.
- 10 (g) Method for allocating public communications that promote, support, attack, or
11 oppose one or more clearly identified Federal or non-Federal candidates, without
12 promoting, supporting, attacking, or opposing a political party. Nonconnected
13 committees and separate segregated funds shall allocate public communications
14 described in paragraphs (b)(1)(vi) and (b)(2)(vi) of this section under 11 CFR 106.1 as
15 expenditures or disbursements on behalf of the clearly identified candidates. A public
16 communication that solely promotes, supports, attacks, or opposes one or more clearly
17 identified Federal candidates is an expenditure that must be allocated 100% to the federal
18 account.