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Commission

Message from the Chairman

This will be a busy year for the Agency, and January was no exception.

The focus of much of our time and attention, on the part of the Commissioners, was, in addition to time devoted to executive sessions on enforcement matters, preparing for and attending our two-day public hearing on January 14 and 15. The hearing was held for the purpose of obtaining from the public its suggestions on improving the transparency, fairness and efficiency of our policies, practices and procedures relating to our enforcement and interpretation of the law and our regulations. This exercise was the most sweeping inquiry into our responsibilities in those areas since the inception of the Agency. The Agency received several very thoughtful, knowledgeable, and in my view persuasive, written and oral comments. During our public hearing we heard two days of testimony from 15 persons, including some of the most highly recognized and regarded experts in the field of campaign finance law, most of whom offered their time and testimony voluntarily for the good of the Agency and the public. Many comments and suggestions were ones that have

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Public Hearing

Comment Period Extended to February 18 on Commission Practices and Procedures

The FEC has reopened the comment period for a Notice of public hearing on the policies and procedures of the Commission until February 18, 2009. The Notice of public hearing addresses FEC policies and procedures including, but not limited to, policy statements, advisory opinions and public information, as well as various elements of the compliance and enforcement processes such as audits, matters under review, report analysis, administrative fines and alternative dispute resolution. The Commission also seeks comment from the public on the procedures contained in the Federal Election Campaign Act (the Act), as well as the Commission's implementing regulations.

The Commission is currently reviewing, and seeks further public comment on, its policies, practices and procedures. The Commission will use the comments received to determine whether its policies, practices or procedures should be adjusted, and whether rulemaking in this area is advisable. The Com-

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Public Hearing

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mission has made no decisions in this area, and may choose to take no action.

Background

The Commission published a Notice of public hearing. See 73 FR 74494 (Dec. 8, 2008) (“Notice”). The Notice explored possible modifications to the Agency’s policies, practices and procedures in the areas of enforcement, alternative dispute resolution, administrative fines, reports analysis, audits, advisory opinions and policy statements. The Notice also sought general comment on the procedures contained in the

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the Act, as well as the Commission’s implementing regulations. The comment period for the Notice ended on January 5, 2009, and a hearing was held on January 14-15, 2009. Written comments in response to the Notice and hearing documents can be found at <http://www.fec.gov/law/policy/enforcement/publichearing011409.shtml>. Given the complexity and importance of the issues raised by the Notice, the Commission has decided to reopen the comment period to seek additional information that may assist the Commission in its decisionmaking.

Comments

All comments must be in writing, must be addressed to Stephen Gura, Deputy Associate General Counsel, or Mark Shonkwiler, Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail to ensure timely receipt and consideration. E-mail comments must be sent to agencypro2008@fec.gov. If e-mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219-3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its web site after the comment period ends.

To view the *Federal Register* Notice, go to http://www.fec.gov/law/policy/enforcement/2009/notice_2009-02.pdf.

—Myles Martin

Court Cases

Cao v. FEC

On December 4, 2008, Louisiana Congressional candidate Anh “Joseph” Cao, the Republican National Committee (RNC) and the Republican Party of Louisiana (LA-GOP, formerly “RPL”) (collectively the Plaintiffs) filed an amended complaint in the U.S. District Court for the Eastern District of Louisiana challenging the constitutionality of the Party Expenditure Provision limits at 2 U.S.C. §441a(d)(2)-(3) as applied to their planned coordinated party expenditures. The Plaintiffs allege that the Party Expenditure Provision of the Federal Election Campaign Act (the Act) and the \$5,000 contribution limit at 2 U.S.C. §441a(a)(2)(A) are unconstitutional as applied to party coordinated expenditures that are not “unambiguously campaign related” (*Buckley v. Valeo*, 424 U.S. 1, 81 (1976)) or “functionally identical to contributions” (*FEC v. Colo. Fed. Campaign Comm.*, 533 U.S. 431, 468 n.2). In addition, the Plaintiffs argue that the application of multiple coordinated expenditure limits for the same office is unconstitutional because it is ineffectual in preventing corruption and that the base amounts are too low. The Plaintiffs also challenge the constitutionality of the \$5,000 contribution limit on the grounds that the same limits apply to parties as to political action committees, and that the limit is too low and not indexed for inflation. The original complaint was filed by the Plaintiffs on November 13, 2008.

Background

Under the Act, a national party committee and state party committees may make expenditures in connection with the general election campaigns of federal candidates that are coordinated with these candidates. 11 CFR 109.30. Coordinated party expenditures do not count

against the contribution limits, but are subject to a separate set of limits. 11 CFR 109.32.

The Act provides a formula for calculating coordinated party expenditure limits. For House candidates, the coordinated party expenditure limit is \$10,000 increased by the Cost of Living Adjustment (COLA) or, in states with only one representative, the same as the Senate limit. For Senate candidates, the coordinated party expenditure limit is the greater of the number of the state voting age population multiplied by two cents and increased by the COLA, or \$20,000 increased by the COLA. For Presidential candidates, the coordinated party expenditure limit is the number of the national voting age population multiplied by two cents and increased by the COLA. 11 CFR 109.32.

Court Case

The RNC and LA-GOP allege that they have spent or committed to spend their coordinated party expenditure limits for Mr. Cao. They state that they wish to continue to coordinate with federal candidates to engage in:

- Issue advocacy (including ads that mention candidates);
- Grassroots and direct lobbying on pending executive or legislative matters;
- Grassroots lobbying or other public communications concerning state ballot initiatives;
- Public communications involving support or opposition to state candidates, support or opposition to political parties or support or opposition to candidates generally of a political party; and
- Voter registration, voter identification, get-out-the-vote and generic campaign activity that (as to each category) is “non-targeted.”

RNC and LA-GOP also allege that they intended to engage in direct and grassroots lobbying responding to the legislative issues that will arise in Congress by lobbying incumbent

U.S. Representative William Jefferson on those issues. The RNC and RPL allege that they wished to reference Representative Jefferson within 90 days of the general election on December 6, 2008, in which Representative Jefferson and Mr. Cao were both federal candidates. Moreover, the RNC and RPL allege that they would have liked to have the material involvement of, and substantial discussion with, Mr. Cao concerning the intended communications. The RNC and RPL claim that because they had already met their contribution and coordinated party expenditure limits, and they had already worked with and had substantial discussions with Mr. Cao concerning his plans and needs, they would have run the risk of an investigation by the FEC and being considered in violation of the Act.

In the amended complaint, the Plaintiffs challenge the constitutionality of the Party Expenditure Provision and the \$5,000 party contribution limit. With regard to the coordinated party expenditure limits, they allege that the phrase “in connection with the general election campaign of a candidate,” when used to limit party expenditures under 2 U.S.C. §441a(d)(2)-(3), is “unconstitutionally vague and overbroad, and beyond Congressional authority to regulate federal elections, unless it is limited to activity that is unambiguously campaign related.” The Plaintiffs assert that the only party activities that are “unambiguously campaign related” are:

- Express advocacy communications;
- “Targeted” federal election activity (voter registration, voter identification, get-out-the-vote and generic campaign activity that is “targeted to elect the federal candidate involved”);
- Paying a candidate’s bills; and
- Distributing a candidate’s campaign literature.

The Plaintiffs argue that the Party Expenditure Provision “is vague, overbroad, and beyond the authority of Congress to regulate elections, all in violation of the First and Fifth amendments.”

In addition, the Plaintiffs argue that it is unconstitutional to treat an express advocacy communication as a coordinated party expenditure if it constitutes the party’s “own speech,” as opposed to paying the candidate’s bills. Plaintiffs argue that restrictions on the party’s own speech are expenditure restrictions, rather than contribution restrictions, and expenditure restrictions have been found unconstitutional. Plaintiffs assert that, to the extent that the Provision is applied to restrict a party’s “own speech,” it is subject to strict scrutiny and is in violation of the First Amendment.

The Plaintiffs further challenge the expenditure limits of the Party Expenditure Provision as they apply to House and Senate candidates on two main points: the use of multiple limits for the same office and the level of the base amount. They argue that in allowing multiple expenditure limits, the government acknowledges that candidates are not subject to corruption at lesser amounts, thus rendering the lower limits unconstitutional because they are not supported by an anti-corruption interest. They also argue that the rates are too low “to allow parties to fulfill their historic and important role in our democratic republic,” thus violating the First Amendment guarantees of free speech and association.

In addition, the Plaintiffs challenge the application to parties of the \$5,000 contribution limit in 2 U.S.C. §441a(a)(2)(A) for multicandidate political committees generally. The Plaintiffs assert that, as applied to coordinated or “in-kind” contributions, the limit is “unconstitutionally vague and overbroad, and beyond Congressional authority to regulate federal elections” to the extent that

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Court Cases

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it is not restricted to expenditures that are “unambiguously campaign related.” The Plaintiffs additionally challenge the \$5,000 contribution limit for both in-kind and direct contributions because the same limit applies to both parties and political action committees. The Plaintiffs argue that “PACs and political parties must be treated differently to allow political parties to fulfill their historic and important role in our democratic republic.” Finally, the Plaintiffs allege that the \$5,000 limit is unconstitutional on its face because it is too low and is not adjusted for inflation. They argue that when Congress enacted the limit, \$5,000 was considered sufficient to eliminate corruption. However, they allege that due to annual inflation, the value of the dollar amount is now lower than Congress originally intended.

Relief

The Plaintiffs ask the court for a Declaratory Judgment as to all challenged provisions and a permanent injunction enjoining the FEC from enforcing the challenged provision as applied to the Plaintiffs, their intended activities and all other entities similarly situated.

U.S. District Court for the Eastern District of Louisiana, CV 08-4887.

—Paola Pascual-Ferra

Regulations

Final Rules on Repeal of Millionaires’ Amendment

On December 18, 2008, the Commission approved final rules that remove regulations on increased contribution limits and coordinated party expenditure limits for Senate and House of Representative candidates facing self-financed opponents. The rules implemented provisions of the Bipartisan Campaign Reform

Act of 2002 (BCRA) known as the “Millionaires’ Amendment.” In *Davis v. Federal Election Commission* (*Davis*), the Supreme Court held that the Millionaires’ Amendment provisions relating to House of Representatives elections were unconstitutional. The Commission retained and revised certain other rules that were not affected by the *Davis* decision. The final rules were published in the December 30, 2008, *Federal Register* and took effect February 1, 2009.

Background

On June 26, 2008, the Supreme Court ruled in *Davis* that the Millionaires’ Amendment provisions of BCRA relating to House of Representatives elections unconstitutionally burden the First Amendment rights of self-financed candidates. Under those provisions, Senate and House candidates facing opponents who spent personal funds above certain threshold amounts were eligible for increased contribution and coordinated party expenditure limits.

On July 25, 2008, the Commission issued a public statement announcing that the *Davis* decision precluded the enforcement of the House provisions and effectively precluded the enforcement of the Senate provisions. The statement noted that, as of June 26, 2008, the increased contribution limits and reporting requirements of the Millionaires’ Amendment were no longer in effect, and political party committees were no longer permitted to make increased coordinated party expenditures under these provisions. See August 2008 *Record*, page 3. The Commission published a Notice of Proposed Rulemaking (NPRM) on October 20, 2008, seeking comment from the public on proposed rules implementing the *Davis* decision.

Removal of 11 CFR Part 400 — Increased Limits for Candidates Opposing Self-Financed Candidates

Part 400 of FEC regulations implemented the statutory provisions of the Millionaires’ Amendment. The Supreme Court’s decision in *Davis* invalidated the entire BCRA section 319 relating to House elections, including the increased limits in 319(a) and its companion disclosure requirements in 319(b). While the *Davis* decision struck down only the BCRA sections 319(a) and (b) governing House elections, the Commission concluded that the Supreme Court’s analysis in *Davis* also precludes enforcement of the parallel provisions applicable to Senate elections. Therefore, the Commission decided to delete the regulations found at 11 CFR Part 400 in their entirety.

Amendments to Other Provisions

The deletion of the rules at 11 CFR Part 400 affects several other Commission regulations, as noted below.

Definition of File, Filed or Filing. Section 100.19 specifies when a document is considered timely filed. The Commission deleted paragraph (g), which had described the candidate’s notification of expenditures of personal funds under 400.21 and 400.22.

Definition of Personal Funds. The Commission revised the definition of “personal funds” in 11 CFR 100.33 by deleting the cross-reference to section 400.2, which the Commission removed. The Commission retained the remaining language of section 100.33.

Candidate Designations. The Commission deleted the sentence in paragraph (a) of 11 CFR 101.1 that required Senate and House of Representatives candidates to state, on their Statements of Candidacy on FEC Form 2 (or, if the candidates are not required to file electronically, on their letters containing the same information), the amount by which

the candidates intended to exceed the threshold amount as defined in 11 CFR 400.9. The *Davis* decision invalidated the statutory foundation for this requirement.

Statement of Organization. Section 102.2(a)(1)(viii) requires principal campaign committees of House and Senate candidates to provide an e-mail address and fax number on their Statement of Organization (FEC Form 1). This regulation was promulgated to aid with the expedited notifications required by the Millionaires' Amendment under Part 400. The Commission retained the requirement that these committees provide e-mail addresses because it facilitates the exchange of information between the Commission and committees for other purposes under the Act. However, the Commission deleted the requirement that committees provide their facsimile numbers because it does not routinely communicate with committees via facsimile machine.

Calculation of "Gross Receipts Advantage." Section 104.19 had required principal campaign committees of House and Senate candidates to report information necessary to calculate their "gross receipts advantage." This calculation was then used to determine the "opposition personal funds amount" under 400.10. With the Commission's deletion of Part 400, the reporting under section 104.19 is no longer required. Therefore, the Commission removed section 104.19.

Biennial Limit. The Commission deleted paragraph (b)(2) of section 110.5 because the statutory foundation for this provision was invalidated by the Supreme Court's decision in *Davis*. Paragraph (b)(2) stated the circumstances under which the biennial limits on contributions by individuals did not apply to contributions made under 11 CFR Part 400.

Retention of Certain Other Regulations

Repayment of candidates' personal loans. The BCRA added a new provision limiting to \$250,000 the amount of contributions collected after the date of the election that can be used to repay loans made by the candidate to the campaign. When promulgating regulations to enforce this statutory provision, the Commission added new sections 116.11 and 116.12 to the regulations rather than including them in Part 400 with the other Millionaires' Amendment provisions. Unlike other aspects of the Millionaires' Amendment, this statutory provision applies equally to all federal candidates, including Presidential candidates. The personal loan repayment provision was not challenged in *Davis*, nor did the Supreme Court's decision address the validity of this provision. Therefore, the Commission retained sections 116.11 and 116.12.

Net debts outstanding calculation. Section 110.1(b)(1)(i) states that candidates and their committees cannot accept contributions after the election unless the candidate still has net debts outstanding from that election and only up to the amount of that net debts calculation. This rule was in place before BCRA added the loan repayment restriction. However, to conform with the fundraising constraints put in place with the BCRA by section 116.11, the Commission added language to 110.1(b)(3)(ii) to exclude the amount of personal loans that exceed \$250,000 from the definition of net debts outstanding. For the same reasons stated above, the Commission retained paragraph (b)(3)(ii)(C).

Additional Information

The full text of the rules was published in the December 30, 2008, *Federal Register* and is available on the FEC web site at http://www.fec.gov/law/cfr/ej_compilation/2008/notice_2008-14.pdf.

—Isaac J. Baker

Advisory Opinions

AO 2008-17

PAC May Pay Expenses Incurred by Senator's Co-Author

Expenses incurred by a Senator's co-author while preparing a manuscript of a book the two are writing may be paid for with funds from the Senator's leadership PAC. The Senator's principal campaign committee, however, may not use its funds to reimburse the co-author for the expenses.

Background

For three years, Missouri Senator Christopher "Kit" Bond has worked on a book about terrorist threats from the Far East. In December of 2005, Senator Bond and his co-author signed an agreement concerning liability, delivery of the manuscript, confidentiality responsibilities, how the advance of royalties would be split and other matters. Also in December of 2005, the Senator and co-author signed a contract with a company to publish the book, for which they received an advance of \$60,000. The co-author received \$43,333 of the advance and Senator Bond received \$16,667. The Senator paid \$15,000 of his \$16,667 to the publishing agent who secured the original contract and paid the remaining amount to the co-author.

The original agreement required repayment of the advance if the publisher declined to publish the book and the authors secured a second publisher. The original publisher *did* decline to publish the book and Senator Bond and his co-author found a second publisher, who also agreed to pay them an advance. That advance will be used to reimburse the original publisher's advance. Senator Bond will not receive any profits from the book.

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Advisory Opinions

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However, the requestor said no funds from the second advance will remain to fully compensate Senator Bond's co-author for the expenses, time and effort spent in preparing the manuscript for the second publisher. The requestor placed the fair market value of these services at \$25,000.

Senator Bond asked the Commission whether Missourians for Kit Bond, the Senator's principal campaign committee (the Committee), or KITPAC, a nonconnected multicandidate committee associated with Senator Bond, could pay the book's co-author \$25,000 for the expenses, time and effort spent in preparing the manuscript for the second publisher's approval.

Back Issues of the Record Available on the Internet

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

The web site also provides copies of the *Annual Record Index* for each completed year of the *Record*, dating back to 1996. The *Annual Record Index* list *Record* articles for each year by topic, type of Commission action and, in the case of advisory opinions, the names of individuals requesting Commission action.

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

Analysis

Missourians for Kit Bond may not reimburse the co-author for the \$25,000, but KITPAC may pay these expenses.

Under the Federal Election Campaign Act (the Act) and Commission regulations, candidates and their committees have wide discretion in making expenditures to influence the candidate's election. 2 U.S.C. §439(a) and 11 CFR 113.2. However, a candidate or candidate committee may not convert contributions to personal use. Personal use occurs when a "contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 2 U.S.C. §439a(b) (2). Using this "irrespective test," the Commission concluded that the Committee's proposed payment to the co-author would amount to personal use.

While third parties are limited in what they may pay for on behalf of federal candidates, the "irrespective test" contained in the third party payment provision at 11 CFR 113.1(g)(6) differs slightly from the "irrespective test" contained in the general personal use prohibition at 11 CFR 113.1(g). This provision asks whether the third party would pay the expense even if the candidate was not running for federal office. If the answer is yes, then the payment does not constitute a contribution.

The requestor stated that Senator Bond "seeks to publish the book purely to advance the ideas and philosophies important to his campaign and leadership PAC, and not to benefit himself personally." The requestor also stated that KITPAC's interest in the book would exist even in the absence of the Senator's reelection or his campaign.

Because the book promotes KITPAC's goals and the PAC would pay for the book and the co-author's ex-

penses irrespective of the Senator's campaign, the payment would not constitute a contribution under 11 CFR 113.1(g)(6). The Commission concluded that KITPAC may therefore make the proposed \$25,000 payment to the book's co-author.

Date Issued: December 22, 2008;
Length: 5 pages.

—Isaac J. Baker

AO 2008-18

Drug Discount Card Program Would Result in Prohibited Corporate Contributions

A proposed affinity program involving payments to political party committees for the provision of prescription drug discount cards to their supporters (or other interested persons) would result in prohibited corporate contributions being made to national political party committees or to the federal accounts of state or local party committees.

Background

Mid-Atlantic Benefits (MAB) is a limited liability company (LLC) that elects to be treated as a partnership, rather than a corporation, for income tax purposes. MAB takes part in a program that involves recruitment of entities such as banks, religious organizations, unions, charities and local government sponsors to create, promote and distribute prescription drug discount cards. MAB partners with Agelity, Inc., a Delaware-based corporation that maintains the program and has contractual relationships with pharmacy networks that honor the cards. MAB wished to make Agelity, Inc.'s prescription drug discount program available to Democratic and Republican political party committee sponsors. The party committee sponsors would, in turn, offer the program to supporters or other interested persons without charge.

Under the planned program, the party committee sponsor would agree to manufacture the cards and pay for their promotion and distribution. The party committee sponsor would develop its own promotion materials, which would be approved by Agelity, Inc. and MAB before the party committee sponsor could disseminate them. MAB and Agelity, Inc. would scrutinize the proposed materials to make sure they focused on promoting the drug cards themselves and that the materials did not solicit political contributions or otherwise promote the party committee sponsor.

Cardholders would use the cards they received from the party committee sponsors to obtain discounts on drugs at participating pharmacies. The participating pharmacy networks would pay Agelity, Inc. a negotiated fee for each purchase of a single medication with the card. For each purchase, Agelity, Inc.

would pay a transaction fee of \$.70 to MAB, a fee that is derived from the fee that the pharmacy networks would pay to Agelity, Inc. MAB, in turn, would pay a transaction fee, out of what it received from Agelity, Inc., of \$.25 to the party committee sponsor. Thus, the payments to the party committee sponsor would flow from Agelity, Inc.'s revenues. MAB's profit would be the difference between the fee it receives and the fee it disburses, while the party committee sponsors would receive a \$.25 fee per transaction.

Analysis

The Federal Election Campaign Act (the Act) and Commission regulations prohibit corporations from making contributions in connection with a federal election. U.S.C. §441b(a) and 11 CFR 114.2(b)(1). A contribution includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. §431(8)(A)(i) and 11 CFR 100.52(a). "Anything of value" includes in-kind contributions, including the provision of goods or services without charge or at a charge that is less than the normal charge. 11 CFR 100.52(d)(1).

The Commission concluded that MAB's proposal would amount to prohibited corporate contributions from Agelity, Inc. to the federal account of the participating political party committee sponsor. The proposed program is impermissible because the transaction fees the political committees would receive are from Agelity, Inc.'s corporate funds, and not from individual funds. While MAB is not a corporation, all the funds it would provide to the party committee sponsors would consist of Agelity, Inc.'s general treasury funds. Therefore, the political party committees participating in the program would receive corporate contributions.

MAB's proposal is almost identical to a plan from Leading Edge

Communications, which the Commission found impermissible in AO 1992-40. In that case, the corporation planned to recruit political party committees to market and distribute long-distance telephone discount cards to party members. In exchange for these services, the corporation proposed to pay the parties a percentage of the revenue it collected from long-distance telephone charges. The plan, therefore, involved a corporation's use of a political committee's assets to generate income through an ongoing business venture.

In this situation, MAB and Agelity, Inc. furnish access to Agelity, Inc.'s discount card program by recruiting sponsors to perform marketing and distribution services on Agelity, Inc.'s behalf in exchange for a portion of the revenues Agelity, Inc. generates from the participating pharmacy networks. As was the case in AO 1992-40, in this proposal party committee sponsors would lend their resources in promoting and distributing the cards. That distribution would, in turn, generate revenue for Agelity, Inc., for MAB and the party committee sponsors. Thus, MAB and Agelity, Inc.'s program, by contracting with national committees of political parties, or with state or local committees of political parties using their federal accounts, would result in prohibited corporate contributions.

The Commission noted that nothing would preclude MAB and Agelity, Inc. from implementing their proposal with respect to the nonfederal accounts of state or local committees provided that the transaction fees received by state or local committees are placed into nonfederal accounts and that the party committees' participation in the program is permitted under state and local law.

Date Issued: January 16, 2009;
Length: 6 pages.

—Isaac J. Baker

Campaign Guides Available

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

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

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

AO 2008-19 **Campaign Committee** **Employee May Serve as** **Leadership PAC's Treasurer**

An employee of a candidate's principal campaign committee may also serve as the treasurer of a leadership PAC sponsored by the same candidate.

Background

Ms. O'Lene Stone is a paid staff member of Texans for Lamar Smith (the Committee), which is the principal campaign committee for Representative Lamar Smith. In her position as the Committee's office manager, she collects mail, supervises volunteers, occasionally acts as a contact person for fundraising firms and performs other day-to-day administrative tasks for the Committee. She is not involved in any fundraising or in preparing or filing any Commission reports for the Committee.

Ms. Stone is also the treasurer of the Longhorn Political Action Committee (Longhorn PAC), a leadership PAC sponsored by Representative Smith. In this position, she signs Longhorn PAC's FEC reports and has final approval of all disbursements. She does not prepare FEC reports for the PAC and does not sign checks or make deposits.

Ms. Stone maintains separation between her two roles. She performs all of her duties for Longhorn PAC on her own time, outside of her paid hours for the Committee. No Longhorn PAC resources or funds are used in the performance of Ms. Stone's Committee duties, and no Committee resources or funds are used in the performance of her Longhorn PAC duties.

Analysis

Neither the Federal Election Campaign Act nor any Commission regulation bars a person from serving as an employee of a principal campaign committee and as the treasurer of a leadership PAC sponsored

by that candidate simultaneously. Therefore, Ms. Stone may continue to serve as the treasurer of Longhorn PAC while she is employed by the Committee.

Date Issued: January 16, 2009;
Length: 3 pages.

—Isaac J. Baker

Advisory Opinion Requests

AOR 2009-01

Renewal of partial reporting exemption for Socialist Workers Party political committees (Socialist Workers Party, October 30, 2008)

Reports

Illinois Special Election Reporting: 5th District

Illinois will hold a Special Election to fill the U.S. House seat in Illinois's 5th Congressional District vacated by Representative Rahm Emanuel. The Special Primary will be held on March 3, 2009, and the Special General will be held April 7, 2009.

Candidate committees involved in this election must follow the reporting schedule on page 9. Please note that the reporting period for the Post-General report spans two election cycles. For this report only, authorized committees must use the Post-Election Detailed Summary Page rather than the normal Detailed Summary Page.

PACs and party committees that file on a semiannual schedule and participate in this election must also follow this schedule. PACs and party committees that file monthly should continue to file according to their regular filing schedule.

Filing Electronically

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the applicable filing dead-

line. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines.

Timely Filing for Paper Filers

Registered and Certified Mail. Reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by registered or certified mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by certified mail. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

Overnight Mail. Reports filed via overnight mail¹ will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Express or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

Other Means of Filing. Reports sent by other means—including first class mail and courier—must be received by the FEC before the Commission's close of business on the filing deadline. 11 CFR 100.19 and 104.5(e).

Forms are available for downloading and printing at the FEC's web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency's automated fax system (202/501-3413).

¹ "Overnight mail" includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service's on-line tracking system.

Illinois 5th District Special Election Reporting

Committees Involved in the Special Primary (03/03/09) Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-Primary	February 11	February 16 ²	February 19
April Quarterly	March 31	April 15	April 15

Committees Involved in Both the Special Primary (03/03/09) and the Special General (04/07/09) Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-Primary	February 11	February 16 ²	February 19
Pre-General	March 18	March 23	March 26
April Quarterly	March 31	April 15	April 15
Post-General	April 27	May 7	May 7
July Quarterly	June 30	July 15	July 15

¹This date indicates the end of a reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

²Notice that the registered/certified and overnight mailing deadline falls on a weekend or federal holiday. The report should be postmarked on or before that date.

48-Hour Contribution Notices

Note that 48-hour notices are required of the participating candidate's principal campaign committee if it receives any contribution of \$1,000 or more per source between February 12 and February 28, 2009, for the Special Primary Election, and between March 19 and April 4 for the Special General Election.

24- and 48-Hour Reports of Independent Expenditures

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate at or above \$1,000 between February 12 and March 1, 2009, for the Special Primary Election, and between March 19 and April 5 for the Special General Election. This requirement is in addition to that of filing 48-hour reports of independent

expenditures that aggregate \$10,000 or more during a calendar year.

Electioneering Communications

The 30-day electioneering communications period in connection with the Special Primary Election runs from February 1 through March 3, 2009. The 60-day electioneering communications period in connection with the Special General Election runs from February 6 through April 7, 2009.

—Elizabeth Kurland

Commission

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been made previously, which I think brought a sense of urgency on the part of the Commissioners to focus on them once again. Others were fresh and offered some very good suggestions.

Because the time period between the date that our Notice of the public hearing was published in the Federal Register and the date when written comments were due spanned the Holiday Season, we re-opened the period to receive written comments until February 18. Accordingly, we invite you all once again to comment further. You may find the Federal Register Notice, the written comments received to date, and the transcript of the oral hearing on the Commission website at <http://www.fec.gov/law/policy/enforcement/publichearing011409.shtml>.

Please give us your recommendations. Even if they arrive after February 18, they may still be received in time to be considered. Shortly after the deadline for comment, the Commission will meet to evaluate, discuss and act on the recommendations, and the results of our deliberations will be made public.

As part of a separate initiative, the Commission will be making a formal request of the public to provide suggestions on how we can improve our website. Our website is the main vehicle by which the public receives information about federal campaign finance. Since we are a disclosure agency, and transparency is the key to disclosure, our website is critical to our mission. During the 2008 calendar year we received over 5.2 million visits to our website, or approximately 14,200 per day. During the 24-month 2008 election cycle, the Commission received over 122,000 financial disclosure reports and statements, containing the equivalent of 10 million pages of financial data, disclosing approximately \$7

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Commission

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billion in spending related to federal elections. This massive amount of information was entered onto our website nearly flawlessly, and almost immediately, and much credit goes to our hard working, dedicated staff. There is no other country in the world that provides this kind of transparency in the area of campaign finance. Because our website is the backbone of our disclosure mechanism, we must constantly look to ways to improve its usefulness to the public. Consequently, we will be

seeking ways to make our website more user-friendly, more educational, more analytical, more accessible, and more interesting. Accordingly, you will soon see a request for your input and advice, and we hope you will take the time to provide it. I want to congratulate our staff members who have been so supportive of these efforts. Suggestions for improvement can sometimes be viewed as criticism, but in this case our staff has viewed the exercise as one that can and will improve the Agency by helping us to fulfill our mission. We count on you to give your ideas in that regard.

—Steven T. Walther
Chairman

FEC Conference Schedule for 2009

Conference for House and Senate Campaigns and State/Local Party Committees

March 3-4, 2009
Omni Shoreham
Washington, DC

Conference for Corporations and their PACs

April 2-3, 2009
Westin City Center
Washington, DC

Conference for Trade Associations, Membership Organizations, Labor Organizations and their PACs

May 21-22, 2009
Omni Shoreham
Washington, DC

Conference for Campaigns, Party Committees and Corporate/Labor/Trade PACs

September 15-16, 2009
Hyatt Regency
Chicago, IL

Conference for Campaigns, Party Committees and Corporate/Labor/Trade PACs

October 28-29, 2009
Sheraton at Fisherman's Wharf
San Francisco, CA

Outreach

Washington, DC, Conference for Corporations and Their PACs

The Commission will hold a conference in Washington, DC, on April 2-3, 2009, for corporations and their PACs. Commissioners and staff will conduct a variety of technical workshops on federal campaign finance law. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. To view the conference agenda or register for the conference, please visit the conference web site at <http://www.fec.gov/info/conferences/2009/corporate09.shtml>.

Hotel Information. The conference will be held at the Westin Washington, DC, City Center hotel, in downtown Washington, DC, near several Metro stations and the K Street corridor. A room rate of \$249 (single or double) is available to conference attendees who make reservations on or before February 27, 2009. To make hotel reservations, please call 202-429-1700 or 1-800-937-8461 and state that you

are attending the Federal Election Commission conference, in order to reserve this group rate. The FEC recommends waiting to make hotel and air reservations until you have received confirmation of your conference registration from Sylvester Management Corporation.

Registration Information. The registration fee for this conference is \$499, which covers the cost of the conference, materials and meals. A \$51 late fee will be added to registrations received after 5 p.m. EST, February 27, 2009. Complete registration information is available online at <http://www.fec.gov/info/conferences/2009/corporate09.shtml>.

Washington, DC, Conference for Campaigns and Political Party Committees (March 3-4)

REMINDER: Registration continues for the FEC's conference in Washington, DC, on March 3-4, 2009, at the Omni Shoreham hotel in northwest Washington, DC. To view

FEC Accepts Credit Cards

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

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

the conference agenda or register for the conference, please visit the conference web site at <http://www.fec.gov/info/conferences/2009/cand-party09.shtml>.

FEC Conference Questions

Please direct all questions about conference registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; e-mail: toni@sylvestermanagement.com). For questions about the conference program, or to receive e-mail notification of upcoming conferences and workshops in 2009, please call the FEC's Information Division at 1-800/424-1100 (press 6) (locally at 202/694-1100), or send an e-mail to Conferences@fec.gov.

—Kathy Carothers

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PACronyms, Other PAC Publications Available

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

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

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

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

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

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

- An alphabetical list of all registered PACs showing each PAC's identification number, address, treasurer and connected organization (\$13.25).
- A list of registered PACs arranged by state providing the same information as above (\$13.25).
- An alphabetical list of organizations sponsoring PACs showing the name of the PAC and its identification number (\$7.50).

The Disclosure Division can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St. NW.

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