

Record

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Federal Election Commission

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Outreach Plans

The Commission will soon announce its outreach schedule for the first half of 2011. If you would like to be among the first to know, visit our educational outreach web page at <http://www.fec.gov/info/outreach.shtml> and sign up for our e-mail list.

Court Cases

Bluman v. FEC

On October 19, 2010, two foreign nationals filed suit in the U.S. District Court for the District of Columbia challenging the constitutionality of 2 U.S.C. §441e and its implementing regulations at 11 CFR 110.20, which prohibit contributions and expenditures by foreign nationals. The Plaintiffs ask the court to declare §441e and 11 CFR 110.20 unconstitutional as applied to foreign nationals lawfully residing and working in the United States, and to enjoin the Commission from enforcing the statute or the regulations against such persons.

Background

Benjamin Bluman and Dr. Asenath Steiman (Plaintiffs) are both foreign nationals who lawfully live and work in the United States. Both Plaintiffs wish to express their political views by making contributions to candidates for office in the United States, including federal candidates. Current federal law and Commission regulations prohibit foreign nationals (other than those who have been admitted to the United States for permanent residence) from “directly or indirectly” making “a contribution or donation of money or other thing of value...in connection with a

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Advisory Opinions

AO 2010-22

Connecticut Working Families Party Qualifies as State Party Committee

The Connecticut Working Families Party (CT WFP)¹ satisfies the requirements for state party committee status under the Federal Election Campaign Act (the Act), even though it is not affiliated with a national political party.

Background

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). See also 11 CFR 100.14(a).

When an organization is not affiliated with a national political party, it must meet three requirements to achieve state party committee status under Commission regulations.

First, the organization must itself qualify as a “political party.” The

(continued on page 2)

¹ CT WFP is registered with the FEC as the Connecticut Working Families Federal PAC d/b/a Take Back Congress CT.

Court Cases

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federal, state or local election;” making “a contribution or donation to a committee of a political party;” or making an “expenditure,” “independent expenditure,” or “disbursement from an electioneering communication” in connection with any federal, state or local election in the United States. 11 CFR 110.20.

A knowing and willful violation of the foreign national ban is punishable by a civil penalty not exceeding the greater of \$10,000 or 200 percent of any contribution or expenditure involved in the violation. It is also punishable criminally by up to

five years’ imprisonment. 2 U.S.C. §§437g(a)(5) and (d).

The Plaintiffs claim that the foreign national ban violates the First Amendment and that since the Plaintiffs lawfully reside and work in the United States, they are fully protected by the First Amendment. Plaintiffs also claim that the forms of expression that are criminalized by the foreign national prohibition are core political speech entitled to the strongest protection under the First Amendment.

Request for Relief

The Plaintiffs request that the court declare 2 U.S.C. §441e and 11 CFR 110.20 unconstitutional as applied to foreign nationals who lawfully live and work in the United States, enjoin the FEC from enforcing those provisions against the Plaintiffs or other similarly situated foreign nationals, grant costs and attorneys’ fees and award any other relief that the court deems just and proper.

U.S. District Court for the District of Columbia: 1:10-cv-01766-RMU.

—Myles Martin

Advisory Opinions

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Act and Commission regulations define a “political party” as an “association, committee, or organization that nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of the association, committee or organization.” 2 U.S.C. §431(16); 11 CFR 100.15.

Second, the organization must possess an official party structure. 2 U.S.C. §431(15); 11 CFR 100.14(a).

Third, the organization must be responsible for the day-to-day operations of a political party at the state level. See 2 U.S.C. §431(15); 11 CFR 100.14(a). See also AOs 2008-12 and 2007-23.

Analysis

The Committee meets the three requirements and thus qualifies as a state committee of a political party within the meaning of the Act and Commission regulations.

First, CT WFP qualifies as a “political party” because two of its candidates qualify as federal candidates and appeared on the November 2010 Connecticut general election ballot as candidates of CT WFP.¹

Second, CT WFP’s Rules establish an official party structure and CT WFP has qualified for status as a “minor political party” under Connecticut law.

Finally, the Rules of CT WFP identify the role of the Committee and its responsibilities for the day-to-day functions and operations at the state level. The Committee’s responsibility for the operations at the state level is commensurate with the responsibility of other state party committees that the Commission has previously recognized.

Date Issues: October 26, 2010;

Length: 5 pages.

—Katherine Wurzbach

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¹ Note that both aforementioned federal candidates also appeared on the 2010 ballot as candidates of the Democratic Party. The Commission has concluded, in previous advisory opinions, that a candidate’s association with more than one political party is irrelevant when reviewing a party’s qualification for state committee status. See AO 2007-23 at n.6.

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Advisory Opinions

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AO 2010-26

Campaign Funds May be Used for Moving-Related Storage Costs

A retiring Member of Congress may use campaign funds to pay for temporary storage costs associated with his move from Washington, D.C., back to his home state. These expenses arise from the ordinary and necessary duties of a federal officeholder, and can therefore be paid with campaign funds.

Background

Representative Brian Baird plans to retire from Congress when the current term ends, and return to his home state.

To prepare for the move, the Baird family has placed nearly half of the items from its Washington, D.C. residence into a storage facility. These items will remain in storage from mid-August to mid-December 2010. Baird for Congress, the Congressman's principal campaign committee, seeks to pay the storage costs with campaign funds.

The Baird family is paying the full, normal rate for the storage and neither Representative Baird nor his family members have any personal, commercial or political relationship with the storage company.

Analysis

The Federal Election Campaign Act (the Act) prohibits personal use of campaign funds. The Act and Commission regulations define "personal use" as the use of funds "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), 11 CFR 113.1(g).

The Act and Commission regulations provide a non-exhaustive list of items that are considered *per se* personal use. 11 CFR 113.1(g) (1)(i)(A)-(J). For items not on that list, such as the storage expenses incurred by Representative Baird and his family, the Commission determines on a case-by-case basis whether the expense is considered "personal use."

In previous advisory opinions, the Commission has addressed whether Members of Congress can use campaign funds to move themselves, their family members and their household and office furnishings between Washington, D.C. and their home states. AOs 1980-138, 1987-11, and 1996-14. In each case, these expenses were considered to be in connection with the duties of a federal officeholder, meaning the personal use ban did not apply.

In keeping with these precedents, the Commission found the costs of temporarily storing the Baird family's household items to be part of the moving process, and thus ordinary and necessary expenses in connection with Representative Baird's duties as a holder of federal office. As a result, Baird for Congress may use campaign funds to pay the storage expenses.

The Committee must report the payments as "other disbursements."

Date Issued: November 18, 2010;

Length: 4 pages.

—Isaac J. Baker

AO 2010-27

Transfers Between Authorized Committees

The principal campaign committee for a Presidential ticket may transfer general election funds to retire debts from the Vice-Presidential nominee's Presidential primary campaign.

Background

Former Senator Joseph Biden was a candidate in 2008 for the Democratic nomination for President. His principal campaign committee, Biden for President ("BFP"), received public financing for his campaign for the Presidential nomination. On January 3, 2008, former Senator Biden ended his campaign for the Presidential nomination.

On August 27, 2008, the Democratic Party nominated former Senator Barack Obama for President and former Senator Biden for Vice President for the upcoming general election. In September 2008, the Obama for America ("OFA") campaign committee amended its Statement of Organization to list the former Senators as the candidates on whose behalf it would operate. OFA did not elect to receive public financing for the 2008 Presidential primary or general elections.

Following the 2008 Presidential election, the Commission conducted a mandatory audit of BFP pursuant to the rules at 2 U.S.C. §9038(a) and 11 CFR 9038.1. The Commission approved findings requiring BFP to make \$133,105 in payments to the U.S. Treasury within 30 days of issuance of the Final Audit Report ("FAR") and to make a payment to the U.S. Treasury for \$85,900 in stale-dated checks, which has not yet occurred. The Commission has not yet issued the Final Audit Report. BFP does not have enough cash on hand to pay its outstanding debts and obligations, including the expected payments to the U.S. Treasury.

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Advisory Opinions

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BFP and OFA asked the Commission whether OFA may transfer \$138,000 to BFP pursuant to 11 CFR 110.3(c)(4), or in the alternative, may OFA pay BFP's debts. The requestors also asked whether the Commission would toll the running of BFP's 30-day deadline to make payments to the U.S. Treasury.

Analysis

The Commission concluded that OFA may transfer funds to BFP pursuant to 11 CFR 110.3(c)(4) to cover BFP's net debts, including its expected payments to the U.S. Treasury.

The Commission noted that the Federal Election Campaign Act ("the Act") does not limit the transfers of funds between principal campaign committees of a candidate seeking nomination or election to more than one federal office so long as: (1) such a transfer is not made when the candidate is actively seeking nomination or election to both such offices; (2) the contribution limits are not exceeded by such a transfer; and (3) the candidate has not elected to receive public financing. 2 U.S.C. §441a(a)(5)(C). Commission regulations provide two sets of rules for transfers between a federal candidate's authorized federal campaign committees.

The Commission determined that the rules at 110.3(c)(5) concerning dual-candidacy transfers do not apply since former Senator Biden's candidacies were not concurrent. He withdrew from the Presidential race on January 3, 2008 and his Vice Presidential candidacy did not begin until August 27, 2008. The Commission noted that former Senator Biden's principal campaign committee for his 2008 Senate candidacy is not at issue because he does not seek to transfer funds to or from Citizens for Biden.

The Commission found that the transfer rules at 110.3(c)(4), which

permit unlimited transfers between previous and current federal campaign committees or between two previous federal campaign committees, would apply. The Commission noted that both BFP and OFA would fulfill the definition of previous federal campaigns as they were organized to further former Senator Biden's campaigns for the 2008 Presidential nomination and Vice-Presidency, respectively. 11 CFR 110.3(c)(4)(i).

Since OFA was former Senator Biden's principal campaign committee for the 2008 Presidential general election, OFA must be able to demonstrate that the transferred funds consist only of general election funds. OFA must also be able to demonstrate that they do not include contributions made in violation of the Act. 11 CFR 110.3(c)(4).

Finally, the Commission noted that the transferred funds do not need to be aggregated with contributions to BFP from the same contributor and would not be aggregated for purposes of the contribution limits at 11 CFR 110.1, 110.2. However, under the rules at 110.3(c)(4)(iii), contributions that make up the transferred funds would still need to be aggregated with contributions from the same contributor for the next election unless the contributions were designated for another election, and the candidate has net debts outstanding for the election so designated.

Since OFA may transfer funds to BFP, the Commission found the requestors' question about OFA paying BFP's debts moot. The Commission also found the question on tolling the 30 day deadline moot as the FAR has not been issued.

Date issued: November 18, 2010;

Length: 6 pages.

—Stephanie Caccamo

AO 2010-28

State Party Refund to Federal Campaign Not a Contribution

A state party committee may refund all or a portion of funds transferred to it by a federal campaign committee without making a contribution subject to the limitations of the Act.

Background

Indiana Democratic Congressional Victory Committee (the State Committee) is registered with the Commission as a state committee of a political party. Hoosiers for Hill is the principal campaign committee of Representative Baron Hill, a candidate for the U.S. House of Representatives for the 9th Congressional District of Indiana.

On September 14, 2010, Hoosiers for Hill transferred \$34,600 to the State Committee's federal account to

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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 website (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.

Advisory Opinions

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be used for general party projects on behalf of its candidates in connection with the 2010 general election. Because the State Committee will not be engaging in the activities, Hoosiers for Hill requested a full refund of the transfer. The State Committee asks if it may refund all or a portion of the funds transferred to it by Hoosiers for Hill without making a contribution subject to the limitations of the Federal Election Campaign Act (the Act).

Analysis

A candidate's authorized committee may transfer an unlimited amount of campaign funds to a national, state or local party committee. See 2 U.S.C. §439a(a)(4) and 11 CFR 113.2(c). These provisions do not limit the purposes that any transferred funds may be put to, nor do they restrict the amount that may be transferred. Furthermore, such transfers are not subject to the contribution limitations of 2 U.S.C. §441a(a)(1)(D) or 11 CFR 110.1(c)(5).

Although the Act and Commission regulations provide for the refund of a contribution, the Commission acknowledged that the regulations do not address the specific question presented here. See 2 U.S.C. §434(b)(4)(F), 2 U.S.C. §434(b)(5)(E), 11 CFR 103.3(b). Instead, the Commission cited two advisory opinions where it previously held that a refund could be made notwithstanding the fact that the amount of the refund would exceed the applicable contribution limits. In Advisory Opinion 2002-08, the Commission permitted a state exploratory committee to refund \$700,500 to the federal candidate's principal campaign committee. It concluded that the refund was permissible because the federal committee raised the funds within the limits and prohibitions of the Act, and the state committee kept the funds in a segregated account

and had not commingled the funds with nonfederal funds. In Advisory Opinion 1995-43, the Commission determined that a refund by a law firm of \$150,000 in legal fees that were paid by a federal candidate would not be a contribution to the candidate because the scope of the services to be provided by the law firm had been "materially altered" from those originally contemplated by the parties.

In this case, the Commission found that Hoosiers for Hill transferred the funds from its federal account to the State Committee's federal account, and determined that the transferred funds had not been commingled with nonfederal funds. The Commission also concluded that the transfer was made with the understanding that the State Committee would undertake certain activities that it did not, which materially altered the circumstances justifying the transfer. Finally, the Commission concluded that, since the transfer occurred just weeks before the committees requested an advisory opinion and well within the 30- and 60-day deadlines for refunding contributions under 11 CFR 103.3(b), the parties were seeking a refund rather than making a contribution subject to the Act.

If the State Committee decides to refund the transferred funds to Hoosiers for Hill, the Commission advised the State Committee and Hoosiers for Hill to maintain appropriate documentation of the transaction and to disclose the refund in their reports. Since the reporting forms do not have a method for reporting the specific refund here, the Commission advised the State Committee to report its refund to Hoosiers for Hill on Form 3X, Schedule B, Line 28c. Hoosiers for Hill should report the receipt of the refund on Form 3, Schedule A, Line

15. The committees should also include memo text in their reports explaining the circumstances of the refund.

Date Issued: October 27, 2010;

Length: 4 pages.

—Zainab Smith

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AOR 2010-29

Recognizing the Working Families Party of Oregon as the state committee of a political party (Working Families Party of Oregon, October 25, 2010)

AOR 2010-30

Sale of e-mail lists by 501(c)(4) organization to federal candidates, party committees and political committees (Citizens United, November 1, 2010)

Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* starting with January 1987 are available on the FEC website as PDF files. Visit the FEC website at <http://www.fec.gov/pages/record.shtml> to find monthly *Record* issues.

The website also provides copies of the *Annual Record Index* for each completed year of the *Record*, dating back to 1987. 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 website has a link that will take you to Adobe's website, where you can download the latest version of the software for free.

Outreach

FEC to Host Reporting and E-Filing Workshops for the 2010 Year-End Report

On January 12, 2011, the Commission will host roundtable workshops on reporting and electronic filing for the 2010 Year-End Report. The reporting sessions will address common filing problems and provide answers to questions committees may have as they prepare to file their financial reports. The electronic filing sessions will provide hands-on instruction for committees that use the Commission's FECFile software and will address questions filers may have concerning electronic filing. Attendance is limited to 50 people per reporting workshop and 16 people per electronic filing workshop; the registration fee is \$25 per workshop. The registration form is available on the FEC's web site at

<http://www.fec.gov/info/outreach.shtml#roundtables> and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, please call the Information Division at 800/424-9530, or locally at 202/694-1100.

—Kathy Carothers

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Year-End Reporting Workshops

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 FEC Headquarters

Reporting for PACs and Party Committees

9:30 a.m. - 11:00 a.m.

FECFile and E-Filing for Candidate Committees

9:30 a.m. - 11:00 a.m.

Reporting for Candidate Committees

1:00 p.m. - 2:30 p.m.

FECFile and E-Filing for PACs and Party Committees

1:00 p.m. - 2:30 p.m.

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