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The FEC Record is produced  
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## Advisory Opinions

### **AO 2012-15 American Physical Therapy Association May Use Payroll Deduction**

Corporations owned by members of the American Physical Therapy Association (APTA) may provide payroll deduction to enable member-employees to contribute to the association's political action committee, but APTA must pay the corporations in advance for their services.

By paying corporations ahead of time for all costs incurred to administer payroll deductions, APTA's planned fundraising model would not violate the prohibitions on making or accepting corporate contributions, nor would it violate the ban on corporate facilitation of contributions.

### **Background**

APTA is a membership organization that represents physical therapists, physical therapy assistants and students who anticipate entering these fields. 11 CFR 114.1(e)(1). APTA also qualifies as a trade association, which is one kind of membership organization. 114.8 (a). It is the connected organization for the APTA Physical Therapy Political Action Committee (PT-PAC), the association's separate segregated fund (SSF).

Under the Federal Election Campaign Act (the Act) and Commission regulations, membership organizations (including trade associations) may pay their SSFs' administrative and solicitation costs, and may solicit voluntary contributions to their SSFs from their individual members. 11 CFR 114.5(b), 114.7(a). Trade associations may also, with prior approval, solicit voluntary contributions to their SSFs from the executives and stockholders of their member corporations. 11 CFR 114.8.

APTA has no corporate members, but some of its individual members practice through corporations that they wholly or partly own. Some of those corporations employ other individuals who are also APTA members. APTA asks whether these member-owned corporations could provide payroll deduction as a means for member-employees to contribute to PT-PAC. The association or PT-PAC would pay in advance all of the corporations' costs to administer the payroll deductions.

## **Analysis**

The Act and Commission regulations prohibit corporations from making contributions in connection with a federal election. See 2 U.S.C. §441b(a); 11 CFR 114.2(b)(1). In addition, Commission regulations prohibit corporations from facilitating the making of contributions to candidates or political committees, other than to the SSFs of the corporations themselves. See 11 CFR 114.2(f)(1).

Neither APTA nor the member-owned corporations would violate these prohibitions by implementing the payroll deduction system as described. As a membership organization, APTA may use any method to facilitate the making of voluntary individual contributions to its SSF. 11 CFR 114.7(f). Given that fact, if APTA or PT-PAC pays the corporations in advance for all of the administrative costs associated with the payroll deductions, no corporate resources will be used for fundraising, and no prohibited corporate facilitation or corporate contribution will occur.

Additionally, in compliance with 2 U.S.C. §441b(b)(6), APTA has indicated that participating corporations will provide payroll deduction at cost to any labor organization that represents their employees and requests the service. See also [AO 1990-25 \(Community Psychiatric\)](#).

Date Issued: May 24, 2012; 10 pages.

*(Posted 6/8/12: By: Alex Knott)*

## **Resources:**

[Advisory Opinion 2012-15](#) [PDF; 2 pages]

[Commission Discussion of AOR 2012-15](#) 

## **AO 2012-17 Political Committees May Accept Contributions Made Via Text Message**

A vendor may provide political committees the option to accept individual contributions via text message because its business practices are consistent with the recordkeeping, reporting and other requirements of the Federal Election Campaign Act (the Act).

### **Background**

Red Blue T and ArmourMedia, Inc. are political and media consulting firms that advise political committees, including candidate committees; m-Qube is a "corporate aggregator of business-to-consumer messaging and merchant billing for public wireless service providers." m-Qube proposes to enter into agreements with political committees, under which it would provide its services in order to process political contributions made to those political committees via text messaging.

m-Qube proposes two scenarios for making contributions via text message. The first scenario would involve a wireless user texting a pre-determined message to a political committee using a common short code consisting of a five- or six-digit number. m-Qube, as the connection aggregator, would respond via text message and require the user to confirm his or her intent to make contributions and eligibility to do so under the Act.

The second scenario would require a wireless user to enter his or her mobile phone number on a political committee's website in lieu of a credit card number. Before submitting the phone number, the user would be required to certify his or her eligibility to make a contribution under the Act. After the user certifies the information, m-Qube would transmit a text message to the user's mobile phone that includes a personal identification number (PIN). The user would then enter the PIN on the political committee's website to confirm the transaction.

Both methods of making contributions would require a wireless user to confirm that they intend to engage in the transaction and to certify that they are eligible to make a contribution under the Act. Once a user has completed this "opt-in" process, a charge is placed on the account of the user's wireless mobile phone number. Since common short codes are country-specific, only users that obtain service through U.S.-based wireless service providers will be able to use a short code to complete the opt-in process.

m-Qube proposes to enter into service orders with political committees under similar terms as it would offer to non-political customers in the ordinary course of business. In addition, several special terms would be added to political committee customers' service orders, which include that the committee be registered and "in good standing" with the Commission; that no mobile phone may be billed more than \$50 per month for contributions to any one political committee customer; each political committee customer must obtain certifications from wireless users that the users are eligible to make contributions under the Act; and that each political committee customer must use m-Qube's "factoring" service, whereby m-Qube calculates the net amount of funds that will eventually be collected from service providers and transmits a portion of that amount to political committees on a weekly basis.

Under the proposed activity, m-Qube plans to transmit these “factored” payments to participating political committees on a weekly basis. m-Qube will not provide contributor names and addresses to political committee customers, but will provide the ten-digit phone number associated with each contribution. In addition, m-Qube will provide the amount and date of the contribution, and will confirm that the contributor opted to have the contribution charged to their wireless bill and that the contributor affirmatively answered the questions indicating their eligibility to contribute. m-Qube may also keep a running tally of the \$50 cap placed on contributions made via text message each month from the same mobile number and will provide political committees with “real-time secure access to the m-Qube gateway where the tally of contributions will be maintained...”

Additionally, consistent with m-Qube’s current practice for non-political customers, it does not propose to establish a segregated account for either the factored payments that it makes to political committees or the payments that it receives from service providers and forwards on to political committees as trailing payments. Instead, payments to political committees would be made directly from its general corporate treasury funds. However, the payments will be linked to short codes associated with particular political committees, which would ensure that contributions are segregated from corporate treasury funds.

The requestors (Red Blue T, AmourMedia and m-Qube) ask if the proposed scenario is consistent with the Act’s forwarding, recordkeeping and reporting requirements. They also asked if the proposed commercial transactions are permissible in the ordinary course of business and satisfy the segregation requirements that the Commission has placed on commercial vendors that process political contributions.

## **Analysis**

*Recordkeeping and Reporting.* The Act and Commission regulations require that treasurer of a political committee maintain the name and address of any person who makes a contribution in excess of \$50, along with the date and amount received. 2 U.S.C. §432(c)(1)-(3). Treasurers must also examine all contributions for evidence of illegality and ensure that those contributions, when aggregated with others received from the same contributor, do not exceed the Act’s contribution limits. 11 CFR 103.3(b).

The Commission concluded that m-Qube’s proposed factoring arrangement is similar to credit card contribution processing. Contributions would be received at the time that a wireless user “opts-in.” The Commission further determined that its concerns as to screening for prohibited foreign national contributions are satisfied by the proposal since m-Qube will only allow users that obtain service through U.S.-based providers to use a short code to complete the opt-in.

*Commercial Transactions.* The Act and Commission regulations prohibit corporations from making a contribution in connection with a federal election. 2 U.S.C. §441b(a) and 11 CFR 114.2(b)(1). The definition of 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 all in-kind contributions, including the provision of goods or services without charge or at a charge that is less than the usual and normal charge. 11 CFR 100.52(d)(1).

After wireless users complete their opt-in pledge to make a contribution to committee, but prior to the receipt of any contribution, m-Qube will transmit funds from its corporate treasury to the political committee. m-Qube proposes that it will recoup its funds once subscribers have paid their bill and the wireless service providers have transmitted those payments, net of any fees, to m-Qube. m-Qube's proposal is not exclusive to political committee customers; it offers the same service on the same terms to non-political customers, except that "factoring" is mandatory for political committee customers, but not for non-political customers.

Under m-Qube's proposal, it will calculate and transmit a "conservative factor" to political committees and will reevaluate the potential risks of making the factored payments on a weekly basis. m-Qube may terminate or suspend factored payments at any time and may require customers to provide a security deposit to guard against overpayments; additionally, m-Qube may require any overpayments to be reimbursed by the customer.

The Commission determined that m-Qube's factoring proposal is a permissible extension of credit by m-Qube in the ordinary course of business. Under the Act and Commission regulations, an incorporated commercial vendor may extend credit to a political committee in the ordinary course of business under substantially similar terms to those that the vendor offers to non-political customers. 11 CFR 116.3(b) and (c). The Commission has previously approved similar arrangements in earlier advisory opinions. See, for example, [AO 1990-14 \(AT&T\)](#) and [AO 1979-36 \(Fauntroy\)](#).

*Forwarding Requirements.* The Act sets time frames on when a person who receives a contribution on behalf of a political committee must forward that contribution to the committee's treasurer. 2 U.S.C. §432(b) and 11 CFR 102.8. However, in this instance the Commission concluded that the forwarding requirements of the Act are not triggered by the factored payments because the factored payments are not contributions that m-Qube has received and forwarded; the payments are considered extensions of credit by m-Qube. The subsequent trailing payments, too, are a part of the same transaction. Thus, the payments do not implicate the forwarding requirements of the Act.

*Segregated Accounts.* In several previous advisory opinions, the Commission has required vendors to maintain separate accounts for political contributions that are to be transmitted to candidates. This is primarily to prevent commingling of corporate funds and campaign funds. See, for example, [AO 2010-23 \(CTIA- The Wireless Association\)](#) and [AO 1999-22 \(Aristotle Publishing\)](#).

However, the Commission concluded that m-Qube's proposal ensures that corporate funds will not be transmitted to political committees. Since the factored payments are extensions of credit in the ordinary course of business by m-Qube rather than contributions that m-Qube has received and forwarded, the factored payments do not trigger the requirement that vendors maintain separate accounts for political contributions that are to be transmitted to candidates.

Additionally, the payments that m-Qube will receive from the service providers and forward to political committees will be linked to a common short code that is unique to each committee. This will ensure that political contributions are properly accounted for and that m-Qube's treasury funds will not be transmitted to any political committee.

Date Issued: June 11, 2012; Length: 12 pages.

*(Posted 6/20/12: By: Myles Martin)*

**Resources:**

[Advisory Opinion 2012-17](#) [PDF; 12 pages]

[Commission Discussion of AOR 2012-17](#) 

**AO 2012-18 Committee's Costs Deemed to be Contributions**

Payments from the National Right to Life Committee, Inc. ("NRLC") for the establishment, administration or solicitation costs of its independent expenditure-only political committee are contributions under campaign finance law and must be disclosed.

**Background**

The NRLC is an incorporated non-profit social welfare 501(c)(4) organization that maintains a separate segregated fund, National Right to Life PAC, and recently established an independent expenditure-only political committee called the Victory Fund.

The NRLC plans to finance the Victory Fund's establishment, administration and solicitation costs, and has asked the Commission whether these payments would be considered contributions under the Federal Election Campaign Act (the Act) and require disclosure.

**Analysis**

Under the Act and Commission regulations, a corporation's payments for the costs of establishing, administering or soliciting contributions to its SSF are exempt from the definition of contribution or expenditure and are generally not subject to reporting requirements. 11 CFR 114.5(b).

A corporation's payment for the costs of establishing, administering or soliciting contributions to an independent expenditure-only political committee are not exempt from the definition of contribution or expenditure because such a committee is not an SSF. See [AO 2010-09 \(Club for Growth\)](#). Therefore, NRLC's payments of the Victory Fund's establishment, administration and solicitation costs are not exempt from the definition of "contribution" or "expenditure" and any such payments by NRLC must be reported as contributions to the Victory Fund.

Date Issued: June 7, 2012; 3 pages.

*(Posted 6/14/12: By: Alex Knott)*

**Resources:**

[Advisory Opinion 2012-18](#) [PDF; 2 pages]

[Commission Discussion of AOR 2012-18](#) 

## **AO 2012-19 Electioneering Communication Query Hinges on Clearly Identified Candidate**

The Commission determined that two of the eight television advertisements proposed by the American Future Fund (AFF) meet the definition of electioneering communication and one does not, but could not reach a four-vote majority with respect to the five remaining ads.

The Commission's decision hinged on whether each ad contained a reference to a clearly identified federal candidate, as AFF acknowledged that its proposed ads otherwise met the definition of electioneering communication.

### **Background**

The Act and Commission regulations define an "electioneering communication" as any broadcast, cable, or satellite communication that (1) refers to a clearly identified federal candidate; (2) is publicly distributed within 30 days before a primary election or a convention or caucus of a political party or 60 days before a general election; and (3) is targeted to the relevant electorate. 2 U.S.C. §434(f)(3)(A)(i); 11 CFR 100.29(a).

AFF plans to produce and distribute a series of eight broadcast television advertisements concerning various political issues within 30 days of upcoming primary elections and within 60 days of the November general election. The ads will air on both local television stations and national cable outlets. While AFF acknowledged that its proposed ads meet the last two parts of the definition of an electioneering communication, it asked the Commission whether the scripts for the proposed advertisements contained references to a "clearly identified federal candidate."

### **Analysis**

Under Commission regulations, a *clearly identified candidate* is one whose "name, nickname, photograph, or drawing appears, or whose identity is otherwise apparent through an unambiguous reference such as 'the President,' 'your Congressman,' or 'the incumbent,' or through an unambiguous reference to his or her status as a candidate such as 'the Democratic presidential nominee' or 'the Republican candidate for Senate in the State of Georgia.'" 11 CFR 100.29(b)(2).

#### *Advertisements Including Reference to a Clearly Identified Candidate*

AFF's Proposed Advertisement 7 refers to the Patient Protection and Affordable Care Act (the Affordable Care Act) as "Obamacare," with four textual references and two audio, voice-over references. These six proposed references in Advertisement 7 to "Obamacare" are references to President Barack Obama, a clearly identified candidate for federal office. 11 CFR 100.29(b)(2).

Likewise, proposed Advertisement 8 compares 2006 Massachusetts state healthcare legislation with the Affordable Care Act and includes five references to current presidential candidate and former Governor Mitt Romney by referring to the two pieces of legislation respectively as "Romneycare" and "the national healthcare law," and concluding by characterizing "National healthcare" as "Romneycare's evil twin." The "Romneycare" references clearly identify Mr. Romney.

The fact that Advertisements 7 and 8 mention the candidates' names in the context of discussing legislation does not exempt the ads from the requirements for electioneering communications. Under Commission regulations, the name of a candidate, even in the context of a bill or law, is nonetheless a reference to that candidate. Thus, Advertisements 7 and 8 both fit the definition of an electioneering communication because they each include multiple references to a clearly identified federal candidate, and also fit the timing and audience requirements in the definition. See 11 CFR 100.29(a).

#### *Advertisement Not Including a Reference to a Clearly Identified Candidate*

Proposed Advertisement 4 discusses "a proposed requirement forcing `religious institutions to pay for abortion-causing drugs." It concludes with an announcer instructing viewers to "call Secretary Sebelius" and "tell her it's wrong ... to trample the most basic American right." Although the advertisement mentions the Secretary for the Department of Health and Human Services, she is not a candidate for federal office, nor does the advertisement contain any audio or visual reference to any candidate for federal office. Without a reference to a clearly identified candidate, Advertisement 4 does not fit the definition of an electioneering communication. 11 CFR 100.29(a) and (b)(2).

With respect to proposed Advertisements 1, 2, 3, 5 and 6—some which include the recorded voice of President Obama, references to the White House and the administration—the Commission could not approve a response by the required four affirmative votes.

Date Issued: June 13, 2012; Length: 5 pages.

*(Posted 6/21/12: By: Dorothy Yeager)*

#### **Resources:**

[Advisory Opinion 2012-19](#) [PDF; 12 pages]

[Commission Discussion of AOR 2012-19](#) 

### **Alternative Disposition of Advisory Opinion Request 2012-20**

On May 30, 2012, the Commission considered, but could not approve by the required four affirmative votes, an advisory opinion request from Markwayne Mullin. Thus, the Commission concluded its consideration of the request without issuing an advisory opinion.

*(Posted 6/1/12: By: Myles Martin)*

#### **Resources:**

[Advisory Opinion Request 2012-20](#) [PDF; 2 pages]

[Commission Discussion of AOR 2012-08](#) 



# Litigation

## ***FEC v. Craig for U.S. Senate***

On June 11, 2012, the Federal Election Commission filed suit in the U.S. District Court for the District of Columbia against former U.S. Senator Larry Craig and his authorized campaign committee, Craig for U.S. Senate, claiming that they converted more than \$200,000 in contributions to Mr. Craig's personal use. The suit names Craig for U.S. Senate ("Craig Committee"), Kaye O'Riordan (in her official capacity as treasurer for Craig for U.S. Senate) and Larry Craig as defendants.

### **Complaint**

The complaint alleges that during 2007 and 2008 Mr. Craig used campaign funds to pay legal expenses he incurred in connection with his June 2007 arrest at Minneapolis-St. Paul International Airport, his guilty plea to a misdemeanor charge of disorderly conduct, and subsequent efforts to withdraw that guilty plea. From July 9, 2007, through October 5, 2008, the Craig Committee disbursed more than \$480,000 for legal fees and other expenses. This sum includes more than \$200,000 paid to two firms for expenses related to Mr. Craig's efforts to withdraw his guilty plea.

The suit claims that these legal expenses were not incurred in connection with Mr. Craig's campaign for federal office or with his ordinary and necessary duties as a Senator, and that the payment of these expenses with campaign funds amounts to impermissible personal use. The FEC seeks a declaration that this conversion of funds to personal use violates the Federal Election Campaign Act (the Act), a permanent injunction against future similar violations, an order that Mr. Craig repay the funds to Craig for U.S. Senate and a civil penalty against each of the defendants.

### **Background**

The Act prohibits conversion of campaign funds to personal use. A contribution or donation "shall be considered to be converted to personal use if the 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).

Under FEC regulations, whether payments for legal expenses constitute personal use is determined on a case-by-case basis. Expenses that a candidate can reasonably demonstrate resulted from the campaign or officeholder duties are not considered personal use, but legal fees will not be treated as being related to the campaign or officeholder duties simply because the underlying proceedings may have some impact on the campaign or officeholder's status. Illustrating this distinction, the Commission has stated that legal expenses stemming from divorce or charges of drunk driving will be treated as personal, rather than related to the campaign or the officeholder's duties. [Final Rule and Explanation and Justification, Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867-68 \(Feb. 9, 1995\)](#).

On November 10, 2008, the FEC received an administrative complaint alleging that Mr. Craig had violated the Act in spending more than \$213,000 in campaign funds for legal fees incurred in connection with his arrest and conviction. In May of 2009, the FEC voted to find "reason to believe" that Craig for U.S. Senate, Kaye O'Riordan (in her capacity as treasurer of the committee) and Mr. Craig violated the personal use ban. After an investigation, the FEC notified the defendants on April 8, 2011, that the General Counsel was prepared to recommend that the Commission find probable cause to believe that the defendants violated the Act. On February 7, 2012, the Commission made that finding and notified the defendants in a February 22, 2012 letter. The FEC was unable to secure acceptable conciliation agreements with the defendants, and on May 3, 2012, the Commission authorized the filing of this lawsuit.

The full text of the complaint may be found here: [http://www.fec.gov/law/litigation/craig\\_complaint.pdf](http://www.fec.gov/law/litigation/craig_complaint.pdf).

U.S. District Court for the District of Columbia: Case 1:12-cv-00958.

*(Posted 6/14/12; By: Isaac Baker)*

#### **Resources:**

[FEC v. Craig for U.S. Senate Ongoing Litigation Page](#)

#### ***The Real Truth About Abortion (f/k/a Real Truth About Obama, Inc.) v. FEC and U.S. Department of Justice***

On June 12, 2012, the United States Court of Appeals for the Fourth Circuit upheld Federal Election Commission legal definitions and policies regarding the disclosure of certain information by the nonprofit The Real Truth About Abortion (RTAA) – formerly known as The Real Truth About Obama, Inc.

RTAA asserted the Commission's definition of "express advocacy" and approach to determining whether a group is a "political committee" under the Federal Election Campaign Act (Act) were vague, overbroad, and violated the First and Fifth Amendments to the Constitution. However, the court's three-judge panel stated the Commission's definition of express advocacy is consistent with relevant Supreme Court decisions, and the Commission's political committee determinations represent "a sensible approach" that "does not unlawfully deter protected speech."

#### **Background**

RTAA, a nonprofit "527" corporation, challenged the constitutionality of several regulations that it believed would require the group to register as a political committee and disclose its fundraising and spending practices for political advertisements.

RTAA argued that the Commission was overly broad and vague in its definition of "expressly advocating" in 11 CFR 100.22(b) as well as its approach to determining whether an organization qualifies as a "political committee" under the Act ("political committee status"). See 2 U.S.C. §431(4).

It also challenged the application of these regulations and the methodology as they apply to two RTAA radio ads mentioning then-Senator Barack Obama. During the 2008 presidential campaign, RTAA planned to disburse over \$1,000 to air the two ads, which might have brought RTAA within the statutory definition of "political committee."

#### **Fourth Circuit Court of Appeals Decision**

*Express Advocacy.* The court held that the Commission's definition of "express advocacy" is consistent with the [Supreme Court's opinion in \*FEC v. Wisconsin Right to Life, Inc.\*](#) In that opinion, the Justices held that a communication susceptible of no reasonable interpretation other than as an appeal to vote for or against a candidate is the "functional equivalent of express advocacy."

The Appeals Court determined that the Commission's regulation, which requires that "reasonable minds [cannot] differ" about an advertisement's message, was similar to the standard from *Wisconsin Right to Life*.

The court determined that the constitutionality of 11 CFR 100.22(b) was not called into question by the [decision in \*Citizens United v. FEC\*](#). It further noted that the Commission's regulation "does not restrain speech; it only implicates the requirement for disclosing specified information."

*Political Committee Status.* The Act defines a "political committee" as any "committee, club, association, or other group of persons" that makes more than \$1,000 in political expenditures or receives more than \$1,000 in contributions during a calendar year. 2 U.S.C. § 431(4)(a). In *Buckley v. Valeo*, the Supreme Court limited the application of this definition to groups whose "major purpose" is the nomination or election of candidates.

Following *Buckley*, the Commission adopted a method of determining a group's "major purpose" on a case-by-case basis, by examining, for example, a group's political activities, such as spending on a particular electoral or issue-advocacy campaign, and the group's public statements and documents.

The court ruled that the Commission's methodology was "a sensible approach to determining whether an organization qualifies for PAC status." The decision also states that the Commission's approach is constitutional because its "multi-factor, major-purpose test is consistent with Supreme Court precedent and does not unlawfully deter protected speech."

"We conclude that the Commission had good and legal reasons for taking the approach it did," the court's opinion states. "The determination of whether the election or defeat of federal candidates for office is the major purpose of an organization, and not simply a major purpose, is inherently a comparative task, and in most instances it will require weighing the importance of some of a group's activities against others."

U.S. District Court for Appeals for the Fourth Circuit: 11-1760.

(Posted 6/20/12; By: Alex Knott)

**Resources:**

[The Real Truth About Abortion \(f/k/a Real Truth About Obama, Inc.\) v. FEC and U.S. Department of Justice Ongoing Litigation Page](#)

## Public Funding

### **Commission Declares Gary Johnson Eligible to Receive Federal Matching Funds**

On May 31, 2012, the Commission declared Gary Earl Johnson eligible to receive federal matching funds. Johnson sought and won the Libertarian nomination for president for 2012.

To become eligible for matching funds, candidates must raise a threshold amount of \$100,000 by collecting \$5,000 in 20 different states in amounts no greater than \$250 from any individual. Other requirements to be declared eligible include agreeing to an overall spending limit, abiding by spending limits in each state, using public funds only for legitimate campaign-related expenses, keeping financial records and permitting an extensive campaign audit.

Based on documents filed by Gary Johnson 2012, Inc. on April 27, 2012, contributions from the following states were verified for threshold purposes: Arizona, California, Colorado, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Virginia and Washington. All of the materials included with this submission may be viewed [here](#). Based on Johnson's initial threshold submission, the Commission requested on May 25 that the United States Treasury make an initial payment of \$100,000 to Johnson's campaign.

Once declared eligible, campaigns may submit additional contributions for matching funds on the first business day of every month. The maximum amount a primary candidate could receive is currently estimated to be about \$22.8 million.

The presidential public funding program is financed through the \$3 check-off that appears on individual income tax returns. The program has three elements: grants to parties to help fund their nominating conventions, grants available to nominees to pay for the general election campaign and matching payments to participating candidates during the primary campaign.

*(Posted 6/1/12; By: Myles Martin)*

**Resources:**

[FEC Press Release](#)

[Press Office Backgrounder on Presidential Election Campaign Fund](#)

[Brochure: Public Funding of Presidential Elections](#)

[Brochure: The \\$3 Tax Checkoff](#)

# Compliance

## **Commission Cites Committees for Failure to File 12-Day Pre-Primary Report**

The Commission cited 11 campaign committees on June 1, 2012, for failing to file the 12-Day Pre-Primary Election Report required by the Federal Election Campaign Act (the Act) for the California, Iowa, Montana, New Jersey, New Mexico and South Dakota primary elections held on June 5, 2012.

As of June 1, 2012, the required disclosure report had not been received from:

- Castle for New Jersey
- Imus for Congress
- Committee to Elect Andy Caffrey to Congress
- Courtney for Congress 2012
- Orly Taitz for US Senate 2012
- Gary Smith for Congress
- David Levitt for US Senate 2012 Committee
- Committee to Elect Bill Jensen to Congress
- Friends of Usha Shah for Congress Dist 47 Election
- Anna Nevenic for Congress
- Al Ramirez for US Senate

The report was due on May 24, 2012, and should have included financial activity for the period April 1, 2012, through May 16, 2012. If sent by certified or registered mail, the report should have been postmarked by May 21, 2012.

Some individuals and their committees have no obligation to file reports under federal campaign finance law, even though their names may appear on state ballots. If an individual raises or spends \$5,000 or less, he or she is not considered a "candidate" subject to reporting under the Act.

The Commission notified committees involved in the California, Iowa, Montana, New Jersey, New Mexico and South Dakota primary elections of their potential filing requirements on April 30, 2012. Those committees that did not file on the due date were sent notification on May 25, 2012 that their reports had not been received and that their names would be published if they did not respond within four business days.

Other political committees that support Senate and House candidates in elections, but are not authorized units of a candidate's campaign, are also required to file quarterly reports, unless they report monthly. Those committee names are not published by the FEC.

Further Commission action against non-filers and late filers is decided on a case-by-case basis. Federal law gives the FEC broad authority to initiate enforcement actions, and the FEC has implemented an Administrative Fine program with provisions for assessing monetary penalties.

*(Posted 6/1/2012; By: Myles Martin)*

**Resources:**

[FEC Non-Filer Press Release](#)

[FEC Compliance Map](#)

### **Commission Cites Committee for Failure to File Maine Pre-Primary Report**

On June 8, 2012, the Commission cited a campaign committee today for failing to file the 12-Day Pre-Primary Election Report required by the Federal Election Campaign Act (the Act), for the Maine primary election held on June 12, 2012.

As of June 7, 2012, the required disclosure report had not been received from:

- Pollard for Senate

The report was due on May 31, 2012, and should have included financial activity for the period April 1, 2012, through May 23, 2012. If sent by certified or registered mail, the report should have been postmarked by May 28, 2012.

Some individuals and their committees have no obligation to file reports under federal campaign finance law, even though their names may appear on state ballots. If an individual raises or spends \$5,000 or less, he or she is not considered a "candidate" subject to reporting under the Act.

The Commission notified committees involved in the Maine primary election of their potential filing requirements on May 7, 2012. Those committees that did not file on the due date were sent notification on June 1, 2012 that their reports had not been received and that their names would be published if they did not respond within four business days.

Other political committees that support Senate and House candidates in elections, but are not authorized units of a candidate's campaign, are also required to file quarterly reports, unless they report monthly. Those committee names are not published by the FEC.

Further Commission action against non-filers and late filers is decided on a case-by-case basis. Federal law gives the FEC broad authority to initiate enforcement actions, and the FEC has implemented an Administrative Fine program with provisions for assessing monetary penalties.

*(Posted 6/8/2012; By: Myles Martin)*

**Resources:**

[FEC Non-Filer Press Release](#)

## **Commission Cites Committee for Failure to File New York Pre-Primary Report**

The Commission cited a campaign committee for failing to file the 12-Day Pre-Primary Election Report required by the Federal Election Campaign Act (the Act) for the New York primary election held on June 26, 2012.

As of June 21, 2012, the required disclosure report had not been received from:

- **Wilson 2012**

The report was due on June 14, 2012, and should have included financial activity for the period April 1, 2012, through June 6, 2012. If sent by certified or registered mail, the report should have been postmarked by June 11, 2012.

Some individuals and their committees have no obligation to file reports under federal campaign finance law, even though their names may appear on state ballots. If an individual raises or spends \$5,000 or less, he or she is not considered a "candidate" subject to reporting under the Act.

The Commission notified committees involved in the New York primary election of their potential filing requirements on May 21, 2012. Those committees that did not file on the due date were sent notification on June 15, 2012 that their reports had not been received and that their names would be published if they did not respond within four business days.

Other political committees that support Senate and House candidates in elections, but are not authorized units of a candidate's campaign, are also required to file quarterly reports, unless they report monthly. Those committee names are not published by the FEC.

Further Commission action against non-filers and late filers is decided on a case-by-case basis. Federal law gives the FEC broad authority to initiate enforcement actions, and the FEC has implemented an Administrative Fine program with provisions for assessing monetary penalties.

*(Posted 6/22/2012; By: Myles Martin)*

### **Resources:**

[FEC Non-Filer Press Release](#)

[FEC Compliance Map](#)

# Reporting

## July Reporting Reminder

The following reports are due in July:

- All principal campaign committees of House and Senate candidates must file a quarterly report by July 15, 2012. The report covers financial activity from April 1 (or the day after the closing date of the last report) through June 30;
- Principal campaign committees of Presidential candidates must file a report by July 15, if they are quarterly filers (the report covers financial activity from April 1 through June 30), or by July 20, if they are monthly filers (the report covers activity for the month of June); and
- National party committees, political action committees (PACs) following a monthly filing schedule and state, district and local party committees that engage in reportable “federal election activity” must file a monthly report by July 20. This report covers activity for the month of June. 11 CFR 104.5.

Since the July 15 deadline falls on a weekend in 2012, quarterly filers using methods other than electronic filing or Registered, Certified or Overnight Mail must ensure that their reports are received by the Commission’s (or the Secretary of the Senate’s) close of business on the last business day before the deadline.

## Notification of Filing Deadlines

In addition to publishing this article, the Commission notifies committees of filing deadlines on its website, via its automated Faxline and through reporting reminders called prior notices. Prior notices are distributed exclusively by electronic mail. For that reason, it is important that every committee update its Statement of Organization (FEC Form 1) to disclose a current e-mail address. To amend Form 1, electronic filers must submit Form 1 filled out in its entirety. Paper filers should include only the committee’s name, address, FEC identification number and the updated or changed portions of the form.

## Treasurer’s Responsibilities

The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Federal Election Campaign Act (the Act) and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline.

## Filing Electronically

Under the Commission’s mandatory electronic filing regulations, individuals and organizations that receive contributions or make expenditures, including independent expenditures, in excess of \$50,000 in a calendar year—or have reason to expect to do so—must file all reports and statements with the FEC electronically. [\[fn1\]](#) Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the applicable filing deadline. 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. 11 CFR 104.18(e).

Senate committees and other committees that file with the Secretary of the Senate are not subject to the mandatory electronic filing rules, but may file an unofficial copy of their reports with the Commission in order to speed disclosure in addition to filing a hard copy with the Secretary of the Senate. The Commission's electronic filing software, FECFile, is free and can be downloaded from the FEC's web site. FECFile Version 8.0.1.8 is [available for download from the FEC's website](#). Filers may also use commercial or privately developed software as long as the software meets the Commission's format specifications, which are available on the Commission's web site. Committees using commercial software should contact their vendors for more information about the Commission's latest software release.

### **Timely Filing for Paper Filers**

*Registered and Certified Mail.* Reports sent by registered or certified mail must be post-marked on or before the mailing deadline to be considered timely filed. A committee sending its reports by certified or registered 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. See 2 U.S.C. §434(a)(5) and 11 CFR 104.5 (e).

*Overnight Mail.* Reports filed via overnight mail [\[fn2\]](#) 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. See 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 (or the Secretary of the Senate) before close of business on the filing deadline. See 11 CFR 100.19 and 104.5(e).

Paper forms are available for downloading at the [FEC's website](#) and from FEC Faxline, the agency's automated fax system (202/501-3413). The [2012 Reporting Schedule](#) is also available on the FEC's website, and from Faxline. For more information on reporting, call the FEC at 800/424-9530 or 202/694-1100.

### **State, District and Local Party Committees**

State, district and local party committees that engage in certain levels of "federal election activity" must file on a monthly schedule. See 11 CFR 300.36(b) and (c)(1). Committees that do not engage in reportable "federal election activity" may file on a quarterly basis. See 11 CFR 104.5(c)(1)(i).

### **National Party Committees**

National committees of political parties must file on a monthly schedule. 2 U.S.C. §434(a)(4)(B) and 11 CFR 104.5(c)(4).

## **Political Action Committees**

PACs (separate segregated funds and nonconnected committees) that filed on a semi-annual basis in 2011 file on a quarterly basis in 2012. Monthly filers continue on the monthly schedule. PACs may change their filing schedule, but must first notify the Commission in writing. Electronic filers must file this request electronically. A committee may change its filing frequency only once a year, after giving notice of change in filing frequency to the Commission. The committee will receive notification indicating the Commission's acknowledgment of the request. All future reports must follow the new filing frequency. 11 CFR 104.5(c).

## **Presidential Committees**

Committees of Presidential candidates must file monthly in 2012 if they have received or anticipate receiving contributions or making expenditures aggregating \$100,000 or more; otherwise, they should follow a quarterly schedule. 11 CFR 104.5(a) and (b). Committees of Presidential candidates wishing to change their filing frequency may do so once per calendar year by filing a request with the Commission, following the process described in the "Political Action Committees" section above.

## **Additional Information**

For more information on 2012 reporting dates:

- Call and request the reporting tables from the FEC at 800/424-9530 or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document586); or

Visit the FEC's [reporting website](#) at to view the reporting tables online.

## **FOOTNOTES:**

1 The regulation covers individuals and organizations required to file reports of contributions and/or expenditures with the Commission, including any person making an independent expenditure. Disbursements for "electioneering communications" do not count toward the \$50,000 threshold for mandatory electronic filing. 11 CFR 104.18(a).

2 "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. See also, generally, 11 CFR 100.19(b).

*(Posted 6/28/12; By: Myles Martin)*

## **Resources:**

[2012 Reporting Dates](#)  
[FEC Compliance Map](#)  
[FEC Electronic Filing](#)

## Outreach

### **FEC to Host Reporting and E-Filing Workshops for the 2012 July Quarterly and Monthly Reports**

On July 11, 2012, the Commission will host roundtable workshops on reporting and electronic filing to help committees prepare for the July Quarterly and Monthly Reports. New this year, the roundtable workshops will also be offered as a webinar for those who cannot attend in-person. 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.

*Webinar Information.* Roundtable workshops will be simulcast for online attendees, who will see and hear the workshop and will be able to ask questions via live chat. Additional instructions and technical information will be provided to those who register for the webinar.

*In-person Attendees.* Attendance is limited to 50 people per reporting workshop and 16 people per electronic filing workshop. The workshops will be held at the FEC's headquarters at 999 E Street, NW, Washington, DC. The building is within walking distance of several subway stations.

*Registration Information.* The registration fee is \$25 per workshop to attendee in-person or \$15 to participate online. A full refund will be made for all cancellations received before 5 p.m. EDT on Friday, July 6; no refund will be made for cancellations received after that time. Complete registration information is available on the FEC's website at <http://www.fec.gov/info/outreach.shtml#roundtables> and from Faxline, the FEC's automated fax system (202/501-3413, request document 590).

### **Registration Questions**

Please direct all questions about the roundtable/webinar registration and fees to Sylvester Management at 1-800/246-7277 or email [Rosalyn@sylvestermanagement.com](mailto:Rosalyn@sylvestermanagement.com). For other questions call the FEC's Information Division at 800/424-9530 (press 6), or send an email to [Conferences@fec.gov](mailto:Conferences@fec.gov)

**Roundtable/Webinar Schedule:**

**Reporting Workshops**

**July 11, 2012**

**FEC Headquarters**

- Reporting for PACs and Party Committees, 9:30 – 11:00 AM
- FECFile & E-Filing for Candidate Committees, 9:30 – 11:00 AM
- Reporting for Candidate Committees , 1:00 – 2:30 PM
- FECFile & E-Filing for PACs and Party Committees, 1:00 – 2:30 PM

*(Posted 6/1/12; By: Kathy Carothers)*

**Resources:**

[FEC Educational Outreach Opportunities](#)

[FEC Reporting Dates](#)

[FECFile Software](#)