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Federal Election Commission
999 E Street, NW
Washington, DC 20463

Commissioners:
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Cynthia L. Bauerly
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Steven T. Walther

Staff Director:
Alec Palmer

General Counsel:
Anthony Herman

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Toll free 800-424-9530
Local 202-694-1100
E-mail info@fec.gov

Greg Scott, Director
Alex Knott, Sr. Writer/Editor
Myles Martin, Editor

Advisory Opinions

AO 2012-07 Feinstein May Recoup Only Some Contributions

Senator Dianne Feinstein's re-election committee (the Committee) may receive replacement contributions for some – but not all – of its funds that its former treasurer Kinde Durkee recently pled guilty to embezzling.

The Committee may accept replacements only from persons whose original attempted contributions were never cashed or deposited into any account. Such attempted contributions would not count against the contributor's per-election limits to the Committee. Contributions that were deposited in one of the Committee's accounts, cashed, or otherwise used by the Committee count against the per-election limits and must be aggregated with other contributions from the same contributor.

Background

The Committee alleges that it lost millions of dollars in an embezzlement scheme carried out by Ms. Durkee, who was treasurer for the Committee until her arrest in September 2011. Federal documents state that Ms. Durkee commingled the funds of various political committees and organizations and made repeated unauthorized transfers between accounts on which she had signing authority.

The Committee states Ms. Durkee developed a practice of receiving funds into the Committee's accounts before transferring them to her own accounts. The Committee also states that some of its funds may have been deposited into non-Committee accounts and some may never have been deposited into any account.

The Committee asked the Commission whether it can accept replacement contributions from contributors whose funds were embezzled or mishandled by Ms. Durkee without the contributions counting against contribution limits set forth in the Federal Election Campaign Act (the Act).

Analysis

Under the Act and Commission regulations, a person may contribute up to $2,500 per election to a federal candidate running in the 2012 election cycle. 2 USC § § 441a(a)(1)(a), 441a(c). The campaign's treasurer must ensure the legality of all contributions and deposit them within 10 days of receipt. 11 CFR 103.3(a) and (b).

To the extent that Ms. Durkee failed to cash or deposit a contribution into any account, the Committee may accept a replacement contribution from the contributor. Since the initial funds were never received by the Committee, they would not count against the Act's contribution limits. This approach is consistent with Commission precedents involving lost contribution checks. *See* AO 1999-23 (Arkansas Bankers PAC) (committee never received contribution check mailed to it); AO 1992-42 (Lewis) (committee received ten contribution checks, which it attempted to deposit by mailing to its bank, the deposit never arrived at the bank, and the checks were never negotiated).

The Committee may not seek to replace contributions that the Committee, through its treasurer Ms. Durkee, received and deposited in one of the Committee's accounts, cashed, or otherwise used. Both the original contribution and any additional contributions would count against the contributor's per-election limit to the Committee.

The Commission has never applied the same reasoning to contributions that were actually deposited in the intended recipient committee's account as it has to circumstances where a committee lost a contribution check. *See* AO 1992-42 (Lewis) (distinguishing contributions that have been deposited into a bank account and subsequently embezzled from those that have not yet been deposited); AO 1993-05 (Fields) (same). To do so would be beyond the Commission's statutory and regulatory authority. *See* 2 USC § 441a(f); 11 CFR 102.8 (a). Accordingly, any additional contribution that the Committee accepts from a donor whose contribution was deposited in one of the Committee's accounts and accepted by the Committee must be aggregated with the contributor's earlier contribution.

The Commission could not approve a response by the required four affirmative votes as to whether the Committee could accept replacement contributions for funds deposited into an account other than one of the Committee's accounts.

Date Issued: May 15, 2012; 7 pages.

(Posted 5/22/12: By: Alex Knott)

Resources:

Advisory Opinion 2012-07 [PDF; 7 pages]

Commission Discussion of AOR 2012-07

Alternative Disposition of Advisory Opinion Request 2012-08

On May 10, 2012, the Commission considered, but could not approve by the required four affirmative votes, an advisory opinion request from Repledge. Thus, the Commission concluded its consideration of the request without issuing an advisory opinion.

(Posted 5/17/12: By: Myles Martin)

Resources:

Advisory Opinion Request 2012-08 [PDF; 2 pages]

Commission Discussion of AOR 2012-08

AO 2012-09 Partnership May Establish Conversion Program to Turn Loyalty Points Into Political Contributions

A limited liability company may establish an online program in which participants in corporate-sponsored loyalty programs would convert loyalty "points" or rewards into monetary equivalents and contribute them to candidates, their authorized committees and other political committees.

Background

Points for Politics is a for-profit limited liability company that has chosen to be taxed as a partnership for Federal income tax purposes. It has created and wishes to implement a proprietary technology and business system that would enable individuals who participate in corporate-sponsored loyalty programs to convert rewards earned from their participation in the form of "points" into dollar equivalents. Individuals could then contribute these converted points to candidates, their authorized committees and other political committees. Points for Politics is not a loyalty program; its proposed program would only allow individuals to convert loyalty "points" into monetary equivalents to make contributions to political committees.

Points for Politics has patented a process, using an online web portal, that can convert customers' points into political contributions to candidates and political committees. To convert loyalty points into political contributions, an individual would access the Points for Politics portal, either through the loyalty sponsor's or the political committee's website, and instruct the loyalty sponsor to redeem his or her loyalty points. The individual would identify the intended recipient of the contribution and the amount of the contribution. He or she would be prompted to confirm his or her eligibility to contribute, including attesting to his or her status as either a U.S. citizen or a permanent resident of the U.S., and that the points used to make the contribution are owned by the individual.

The portal will then tell the individual how many loyalty points are required to make the desired contribution, based upon the loyalty sponsor's conversion rate of points to dollars. Once the individual reaffirms the dollar amount, the portal redeems the points from the sponsor and converts the points into dollars. The loyalty sponsor will then transfer the funds to a Points for Politics segregated account reserved for political contributions. Within ten days, Points for Politics will transmit the funds, minus a ten percent processing fee, and records, including information on the contributor's name, address, employer, occupation, the gross amount of the contribution and the fundraising cost reflected in the processing fee, to the political committee.

Analysis

Points for Politics asked the Commission to consider the permissibility of its proposed plan to convert corporate-sponsored loyalty rewards into monetary equivalents for contributions to candidates, their authorized committees and other political committees. The company also asked whether the implementation of the proposed program would constitute a contribution by Points for Politics to the recipient political committees. The Commission determined that Points for Politics may implement its program as described without making a contribution to any candidate, authorized committee or other political committee.

The Commission determined that the Points for Politics proposal is similar to the proposal offered in AO 2007-04 (Altatl), wherein Altatl Inc. provides contribution processing and transmittal services for committees. Points for Politics proposes to convert loyalty points to make contributions; the program itself will not generate or create a loyalty program or other affinity-type arrangement. Thus, Points for Politics will be acting in a similar capacity as Altatl, Inc. by offering contribution processing and transmittal services.

Points for Politics' proposal could be seen as providing services both to contributors and to political committees under its analysis in previous advisory opinions. The Commission assumed for the purpose of analysis that the services are being provided to political committees and considered Points for Politics' status as a commercial vendor. Although Points for Politics is a limited liability company that opts for tax treatment as a partnership, and thus is eligible to make contributions as a partnership, the services it provides as a commercial vendor do not constitute a contribution. 11 CFR 110.1(g)(2).

To determine Points for Politics status as a commercial vendor, the Commission reviewed the three commercial vendor criteria: first, the service rendered is in the ordinary course of business at the usual and normal charge; second, the vendor forwards contributions to candidates and political committees through segregated accounts; and third, the vendor employs adequate screening procedures to ensure that it is not forwarding illegal contributions. *See, e.g.,* Advisory Opinion 2007-04 (Atlatl); 2004-19 (Dollar Vote).

Points for Politics satisfies all three criteria. First, Points for Politics charges a processing fee--ten percent--in the ordinary course of business that includes compensation for the cost of the technology and service that converts reward points into dollar equivalents. Further, Points for Politics represents that its fee is within the normal range of similar financial transactions that involve processing contributions to political committees. Second, Points for Politics places the funds that the loyalty sponsor transmits to it in a segregated account, separate from partnership funds, created for the purpose of holding contributions before transmittal to recipient committees. Third, Points for Politics represents that it will subject contributions to screening on its portal to ensure both that they are not excessive and that they are not from prohibited sources.

Thus, the Commission concluded that Points for Politics may implement its online web portal program to convert participants' loyalty points into monetary equivalents to make contributions to candidates, their authorized committees and other political committees.

Date Issued: April 27, 2012; Length: 8 pages.

(Posted 5/4/12; By Stephanie Caccomo)

Resources:

Advisory Opinion 2012-09 [PDF; 5 pages]

Commission Discussion of AO 2012-10 

AO 2012-10 FECA Preempts New Hampshire Disclaimer Statute

A New Hampshire statute requiring disclaimers on certain campaign-related telephone surveys is preempted by the Federal Election Campaign Act (the Act) and Commission regulations in cases where the surveys refer only to federal candidates and are paid for by federal candidates or other federal political committees. The Commission was unable to approve a response by the required four affirmative votes as to whether the New Hampshire statute is preempted with respect to telephone surveys made on behalf of nonprofit organizations other than federal political committees.

Background

Greenberg Quinlan Rosner Research, Inc. (Greenberg Quinlan) is a Washington, D.C., corporation that provides political research and strategic consulting services, including surveys conducted on a national, state and local basis. Greenberg Quinlan plans to use live operators to conduct telephone surveys of New Hampshire voters, asking respondents questions about their views on various issues, their impressions of political parties and national political figures, their likelihood to vote for particular federal candidates, etc. These telephone surveys will refer only to federal candidates and will not refer to any state or local candidates. The surveys will not expressly advocate the election or defeat of a clearly identified federal candidate. The proposed surveys will be paid for by federal candidates and nonprofit organizations.

Greenberg Quinlan believes that its proposed activities may be subject to New Hampshire's disclaimer law, which requires that, "Any person who engages in push-polling… shall inform any person contacted that the telephone call is being made on behalf of, in support of, or in opposition to a particular candidate for public office, identify that candidate by name, and provide a telephone number from where the push polling is conducted." N.H. Rev. Stat. sec. 664:16-a(I). The New Hampshire law defines "push polling" to include asking questions related to opposing candidates for public office which convey information about the candidates' character, status or political stance or record. N.H. Rev. Stat. sec. 664:2 (XVII).

Greenberg Quinlan asked the Commission to determine whether the Act and Commission regulations preempt New Hampshire's disclaimer statute as it applies to Greenberg Quinlan's proposed surveys referring only to federal candidates and not to any state or local candidates, when the proposed polls are paid for by: 1) federal candidates, their authorized committees or other federal political committees; and 2) nonprofit organizations that are not federal political committees.

Analysis

The Act and Commission regulations "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. § 453; 11 CFR 108.7(a). The legislative history of the Act makes clear that Congress intended "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974). Under the Act and Commission regulations, expenditures by federal candidates and other federal committees is an area to be regulated only by federal law. Both the Act and Commission regulations regulate this area, including expenditures for polling. See, e.g., 2 U.S.C. § § 431(9), 439a, 441a(j); 11 CFR 100.111, 106.4, pt. 113.

The Commission determined that the New Hampshire statute in question is preempted to the extent that it attempts to regulate Greenberg Quinlan's telephone surveys paid for by federal candidates, their authorized campaign committees and other federal political committees. If the New Hampshire statute were applied to federal candidates and federal political committees who wish to pay for such telephone surveys, it would impose an additional disclaimer requirement on those expenditures. Under the Act's preemption clause, only federal law may require disclosure regarding expenditures by federal candidates and federal political committees. 2 U.S.C. § 453; 11 CFR 108.7(b)(2).

Date Issued: April 27, 2012; Length: 5 pages.

(Posted 5/3/12; By Isaac Baker)

Resources:

Advisory Opinion 2012-10 [PDF; 5 pages]

Commission Discussion of AO 2012-10

AO 2012-11 Two of Nonprofit's Ads Expressly Advocate

Two of 11 advertisements proposed by the nonprofit Free Speech expressly advocate the election or defeat of a federal candidate. Another four of the group's proposed ads are not express advocacy under the same standards. The Commission also agreed that two of the group's four proposed donation requests would not be solicitations.

However, the Commission could not approve a response by the required four affirmative votes determining if Free Speech's five remaining proposed advertisements expressly advocate and whether its two other donation requests constitute solicitations under campaign finance law. Nor could it approve a response determining whether Free Speech would have to register and report as a political committee.

Background

Free Speech is an unincorporated nonprofit association that consists of three individual members. Its stated purpose is to promote and protect "free speech, limited government, and constitutional accountability." The Wyoming-based group is registered as a "political organization" under 26 U.S.C. §527 of the Internal Revenue Code and plans to finance advertisements from individual donations, although it would not accept donations from individuals who are foreign nationals or Federal contractors.

Free Speech stated it will not contribute to federal candidates, political parties or political committees, and will not coordinate expenditures for its $10,000 in planned ads. These expenditures consist of a combined $1,000 on Internet and newspaper ads that will run during April and May respectively and another $9,000 on local TV and radio ads that will run starting in April and ending a few days before Election Day.

The group asked the Commission whether its planned advertisements would be considered express advocacy under the Federal Election Campaign Act (the Act). It also questioned whether four of its proposed donation requests would be considered solicitations under the Act. Finally, the nonprofit asked whether it is required to register and report as a political committee to the Commission.

Analysis

Under FEC regulations, a communication expressly advocates the election or defeat of a clearly identified Federal candidate if it uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," or uses campaign slogans or individual words that, "in context, have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)." 11 CFR 100.22(a). Under Commission regulations, a communication also constitutes express advocacy if "[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s)." 11 CFR 100.22(b).

The Commission concluded that Free Speech's two "Financial Reform" advertisements are express advocacy because they identify a candidate with a position on an issue and instruct viewers to vote against those who take that position on the issue. 11 CFR 100.22(a). This conclusion is supported by the Supreme Court's decision in *FEC v. Massachusetts Citizens For Life*, 479 U.S. 238 (1986). By contrast, the Commission determined that Free Speech's two "Health Care Crisis" advertisements, the "Gun Control" Facebook advertisement, and the "Ethics" advertisement are not express advocacy because none of the four ads make federal electoral references.

The Commission also concluded that two of Free Speech's proposed donation requests – entitled "Strategic Speech" and "Checking Boxes" – are not solicitations under the Act. The Act defines the term "contribution" to include "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); see also 11 CFR 100.52(a). The Act requires "any person" who "solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising" to include a specified disclaimer in the solicitation. 2 U.S.C. §441d(a); see also 11 CFR 110.11(a)(3). Requests for funds that "clearly indicate that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office" are solicitations under the Act. *FEC v. Survival Education Fund*, 65 F.3d 285, 295 (2d Cir. 1995) (analyzing communications for purposes of 2 U.S.C. §441d(a)).

Although the "Strategic Speech" donation request identifies a Senator as supporting a particular issue, references his re-election and says he has not "gotten the message" that he should retire, it lacks language "clearly indicating that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office." *Survival Education Fund*, 65 F.3d at 295. Accordingly, this donation request is not a solicitation under the Act. *Survival Education Fund*, 65 F.3d at 294-95.

The "Checking Boxes" donation request clearly indicates how the funds requested will be spent: "making the message of Free Speech heard" by "inform[ing] real American leadership." Although the request clearly identifies President Obama and refers to the November ballot, it lacks language "clearly indicating that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office." *Survival Education Fund*, 65 F.3d at 294-95. Accordingly, this donation request is not a solicitation under the Act.

The Commission could not approve a response by the required four affirmative votes determining whether Free Speech is required to register and report to the agency as a political committee. See 2 U.S.C. §437c(c); 11 CFR 112.4(a).

Date Issued: May 8, 2012; Length: 11 pages.

(Posted 5/11/12; By Alex Knott)

Resources:

Advisory Opinion 2012-11 [PDF; 11 pages]

Commission Discussion of AO 2012-11

AO 2012-12 Corporation May Solicit Affiliated Individual Franchisees For Contributions to SSF

Dunkin' Brands, Inc. may solicit contributions to its separate segregated fund (SSF) from the executive and administrative personnel of both its corporate and non-corporate franchisees/licensees. Dunkin Brands, Inc. controls the business policies and practices of its franchisees to such an extent that those franchisees are considered affiliated with Dunkin' Brands and therefore the executive and administrative personnel may be solicited for contributions to Dunkin' Brands' SSF.

Background

Dunkin' Brands, Inc. is a franchisor of two restaurant chains: Dunkin' Donuts and Baskin-Robbins. Nearly all of Dunkin' Brands restaurants are franchised units that are owned and operated by individual franchisees/licensees. Dunkin' Brands enters into contractual agreements with franchisees that require the franchisees to follow systems devised by Dunkin' Donuts and Baskin-Robbins in the operation of their restaurants.

Dunkin' Brands operates Dunkin' PAC, a separate segregated fund, that currently solicits and accepts contributions from only the executive and administrative personnel of Dunkin' Brands. However, Dunkin' PAC would like to solicit and accept contributions from its non-corporate franchisees/licensees, as well as from the executive and administrative personnel of its corporate franchisees/licensees.

Analysis

The Federal Election Campaign Act (the Act) prohibits corporations from making contributions in connection with federal elections. 2 U.S.C. §441b(a). However, the Act grants corporations the ability to establish, administer and solicit contributions to an SSF. 2 U.S.C. §441b(b)(2)(C) and 11 CFR 114.1(a)(2)(iii). A corporation and its SSF may solicit contributions from a "restricted class" of persons. Generally, a corporation's restricted class consists of its executive and administrative personnel, stockholders and the families of both groups. 11 CFR 114.5(g)(1) and 114.1(j). An SSF may also solicit contributions from the executive and administrative personnel of the corporation's "subsidiaries, branches, divisions and affiliates and their families." 11 CFR 114.5(g)(1).

Commission regulations list several factors that are used to determine whether an organization is affiliated with a corporation. 11 CFR 114.5(g)(2). These include whether an organization has authority to direct or participate in the governance of another organization and whether an organization has the authority to control the officers or other decisionmaking employees of another organization. 11 CFR 100.5(g)(4)(ii)(B) and (C).

The Commission has previously issued several Advisory Opinions that address the affiliation of franchisees or licensees to the franchisor/licensor corporation. In those opinions, the Commission has found that the corporation and its franchisees/licensee are affiliated to the extent that the corporation exercises control over business practices, policies and procedures of the franchisees/licensees and that the franchisee/licensee has contractual obligations to the corporation who is the franchisor or licensor. See, e.g., AO 1992-07 (H&R Block), 1988-46 (Collins Foods) and 1979-38 (Hardee's).

Under the agreements between Dunkin' Brands and its franchisees, Dunkin' Brands allows franchisees to use relevant trademarks, service marks, logos, emblems and other proprietary marks only in a manner specified by Dunkin' Brands. Additionally, Dunkin' Brands maintains the rights to establish standards for their franchisees/licensees including physical characteristics of restaurants, products that are sold, and other features such as a franchise's layout, design, furnishings and equipment.

Due to the extent of Dunkin' Brands' control of the operation of its franchisees/licensees, the Commission concluded that Dunkin' Brands' franchisees/licensees are affiliated under the Act and Commission regulations. Accordingly, both the executive and administrative personnel of corporate franchisees/licensees, and non-corporate franchisees/licensees may be solicited for voluntary contributions to Dunkin' PAC.

Date Issued: April 27, 2012; Length: 4 pages.

(Posted 5/2/12; By: Myles Martin)

Resources:

Advisory Opinion 2012-12 [PDF; 4 pages]

Commission Discussion of AO 2012-12

AO 2012-13 Hospital Association May Contribute to Independent Expenditure-Only Committees

An association of physician-owned hospitals and persons affiliated with it may make contributions to independent expenditure-only committees because they are not considered to be federal contractors.

Background

Physician Hospitals of America ("Physician Hospitals") is an association of physician-owned hospitals that operates in Texas. Physician Hospitals does not have contracts with the federal government, nor does it receive any payments from the federal government under any federal program. The member hospitals that comprise the association are owned by various entities including partnerships, professional associations, trusts and individuals.

The hospitals provide service to patients through several federal programs including Medicare and Medicaid, TRICARE and CHAMPUS. [fn1] The hospitals are then directly reimbursed by the federal government for patients' claims for services rendered, pursuant to the specific federal program. In light of their involvement with these federal programs, Physician Hospitals asks whether it may make contributions to independent expenditure-only political committees.

Analysis

The Federal Election Campaign Act (the Act), as amended, prohibits any person who enters into any contract with the United States, or any agency or department thereof, from making contributions to any political party, political committee or candidate. 2 U.S.C. §441c(a)(1). However, this prohibition does not apply when a person contracts with an entity other than the United States or a department or agency of the United States, even if the entity is funded in whole or in part from funds appropriated by Congress. 11 CFR 115.1(d).

The Commission's Explanation and Justification for 11 CFR 115.1(d) states that the regulation excludes from the definition of "federal contractor" service providers who receive payments from Medicare or Medicaid. Additionally, in past advisory opinions, the Commission has stated that service providers under Medicare and Medicaid do not qualify as federal contractors. The Commission also concluded that since programs like TRICARE and CHAMPUS are "programmatically similar" to Medicare and Medicaid, service providers under those programs are likewise not considered federal contractors under Commission regulations.

As a result, Physician Hospitals, its member hospitals and the physician owners of the hospitals are not prohibited by the Act or Commission regulations from making contributions to independent expenditure-only political committees.

FOOTNOTE:

1. TRICARE is a health care program serving active duty service members and is the successor program to CHAMPUS, the Civilian Health and Medical Program of the Uniformed Services.

Date Issued: April 27, 2012; Length: 4 pages.

(Posted 5/2/12; By: Myles Martin)

Resources:

Advisory Opinion 2012-13 [PDF; 4 pages]

Commission Discussion of AO 2012-06

AO 2012-14 Individual May Not Exceed Biennial Limit

As an individual donor, Shaun McCutcheon is prohibited from making aggregated contributions to federal candidates in excess of $46,200 during the 2011-2012 election cycle. The Federal Election Campaign Act (the Act) limits the amount an individual can donate during a two-year period to an aggregate of $117,000 to all federal candidates, PACs and parties. Under the Act's biennial limit, an individual's aggregate contributions may not exceed $46,200 to all federal candidates and $70,800 to all PACs and parties.

Background

Mr. McCutcheon has currently made contributions totaling $7,500 to federal candidates and their principal campaign committees so far during the 2011-2012 election cycle. Mr. McCutcheon wishes to make another contribution of $2,500 to an unnamed federal candidate and 25 other contributions of $1,776 to federal candidates during the remainder of the 2011-2012 election cycle. In all, McCutcheon wished to donate a total $54,400 to federal candidates during the 2011-2012 election cycle.

Analysis

In *Buckley v. Valeo*, 424 U.S. 1,38 (1976), the Supreme Court upheld the Act's then-limit on aggregate contributions by individuals of $25,000 per calendar year as a "quite modest restraint upon protected political activity [that] serves to prevent evasion" of the limit on contributions to candidates. The overall limit on contributions to candidates, political party committees and other political committees passed constitutional muster, the Court found, because it was "no more than a corollary of the basic individual contribution limitation."

In the Bipartisan Campaign Reform Act of 2002 (BCRA), Congress increased the overall individual contribution limitation to $95,000, an increase designed to reflect increases in the price index since the limit had passed in 1974. Congress divided the overall limit between a limitation on contributions to candidates at $37,500, and a limit on contributions to other committees at $57,500. Id. (codified at 2 U.S.C. §441a(a)(3)). Congress then indexed each of these limits to reflect increases in inflation, and the current overall limit on contributions to candidates, as indexed to reflect increases in the price index, is $46,200. Thus, Mr. McCutcheon is limited to contributions to candidates and candidate committees aggregating no more than $46,200 during the 2011-2012 election cycle. Consequently, if he makes contributions totaling in the aggregate $54,400, Mr. McCutcheon will be in violation of 2 U.S.C. §441a(a)(3).

Mr. McCutcheon asked the Commission to find these congressionally imposed limits of 2 U.S.C. §441 a(a)(3)(A) to be unconstitutional. However, the Commission lacks the power to make such a finding. See *Johnson v. Robison*, 415 U.S. 361,368 (1974) (adjudication of constitutionality is generally outside an administrative agency's authority); *Robertson v. FEC*, 45 F.3d 486,489 (D.C. Cir. 1995) (noting in the context of the Commission's administrative enforcement process that "[i]t was hardly open to the Commission, an administrative agency, to entertain a claim that the statute which created it was in some respect unconstitutional"). Since no court has invalidated the limitation in section 441a(a)(3)(A) on constitutional grounds, the Commission is required to give it full force.

Thus, Mr. McCutcheon may not make contributions to federal candidates during the 2011-2012 election cycle in excess of the $46,200 aggregate limit.

Date Issued: April 27, 2012; Length: 3 pages.

(Posted 5/9/12; By Alex Knott)

Resources:

Advisory Opinion 2012-14 [PDF; 3 pages]

Commission Discussion of AO 2012-14

AO 2012-16 Federal Contractor May Provide Legal Compliance to Senate Campaign

A law firm partnership that is also a federal contractor may provide *pro bono* legal services to a federal campaign committee pertaining to compliance with the Federal Election Campaign Act (the Act) and Commission regulations without making a contribution. The firm's partners, associates and other employees may also individually volunteer their time to the campaign, in accordance with a proposed letter of agreement between the campaign and the firm.

Background

Angus King for U.S. Senate Campaign (the Committee) is the authorized campaign committee of Angus King, a Senate candidate from Maine. Pierce Atwood LLP (the firm) is a limited liability partnership that has a contract to provide legal services to the Millennium Challenge Corporation, a special purpose "federal corporation." The firm is paid for these legal services by funds appropriated from Congress, and it intends to bid on and perform legal services with other federal agencies. The firm and the Committee have drafted a letter of agreement that lays out terms for the firm's proposed provision of *pro bono* legal services to the Committee and the provision of volunteer time and payment of expenses by firm partners, associates and other volunteers.

The letter states the firm would provide *pro bono* legal services only for the purpose of ensuring the Committee's compliance with the Act and Commission regulations, consistent with the provisions of 2 U.S.C. §431(8)(B)(viii)(II) and 2 U.S.C. §431(9)(B)(vii)(II). The firm would track the time spent on these legal services and provide the Committee with a monthly record of the time and value of the services based on the firm's normal and usual rates, which the Committee would use to report the value of those services. The letter of agreement provides that the firm will charge the Committee the normal and usual rates for any services not involving compliance with the Act or Commission regulations.

The letter of agreement also details how the firm's partners, associates and other employees, individually and independently, may volunteer their time to the Committee. The letter of agreement provides that partners and employees must meet their anticipated work hours or targeted productivity levels within a reasonable period of time, notwithstanding any volunteer time for the Committee; otherwise, they must report volunteered time as earned vacation or leave time. While undertaking this work, volunteers may make limited use of some of the firm's facilities and resources. The individual volunteer would reimburse the firm for any increased operating costs and report the reimbursed amounts as in-kind contributions from the individual to the Committee.

The Committee and firm ask the Commission whether Pierce Atwood LLP, as a government contractor, can provide such *pro bono* services and allow its partners and employees to volunteer their personal time under the Act.

Analysis

The Act and Commission regulations define "contribution" to include the "payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose." The provision of services at less than the usual and normal charge is also a contribution. 11 CFR 100.52(d). However, the Act and Commission regulations contain a specific exemption for the provision of certain legal services solely to ensure compliance with the Act. This exemption states that the provision of legal services to a candidate committee or any other political committee for the sole purpose of ensuring compliance with the Act is not a contribution as long as the person paying for those services is the regular employer of the employee providing the services. *See* 11 CFR 100.86; AO 2006-22 (Wallace).

Federal contractors, such as the firm, are generally prohibited from making contributions to federal candidates. However, the prohibition on federal contractor contributions is limited by the definition of "contribution," and providing legal services to a candidate committee for the sole purpose of ensuring compliance with the Act is not a contribution as long as the person paying for those services is the regular employer of the employee providing the services. For purposes of this exception to the definition of "contribution," a partnership is deemed the regular employer of a partner. 11 CFR 100.86. Partnerships generally may pay their partners, associates and other employees to provide authorized committees *pro bono* legal services pertaining to compliance with the Act, without these payments being deemed contributions. *See* *Wagner v. FEC*, 11-1841 (JEB), 2012 WL 1255145 at *9 (D.D.C. Apr. 16, 2012) (concluding the prohibition on contributions by Federal contractors in 2 U.S.C. §441c does not prohibit Federal contractors from volunteering for campaigns). Therefore, the Firm may pay its partners, associates and other regular employees to provide the Committee *pro bono* legal services pertaining to compliance with the Act. However, the amounts paid by the firm for the services of its employees, including partners, must be reported to the Committee in accordance with 11 CFR 104.3(h).

Pierce Atwood LLP's partners, associates and other employees may also volunteer their personal time in the form of legal or other services to the Committee in accordance with the letter of agreement without the firm inadvertently providing the Committee a prohibited in-kind contribution. The Act and Commission regulations specifically exempt certain uncompensated volunteer activities by individuals from constituting "contributions." The definition of contribution "does not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 2 U.S.C. §431(8)(B)(i); 11 CFR 100.74.

The letter of agreement includes provisions regarding a firm partner or employee who, because of his or her volunteer activity providing services on behalf of the Committee, does not anticipate meeting his or her arranged work hours or targeted productivity levels. Such firm personnel must report volunteered time as earned vacation or leave time and notify a managing partner so the volunteers' employment arrangement and compensation can be modified in accordance with the firm's usual and normal treatment of reduced productivity. The individual volunteer's time and services will therefore not be "compensated" by the firm and will not constitute a contribution from the firm to the Committee. *See* AO 2006-13 (Spivak).

Under the letter of agreement, an individual volunteer would not have to reimburse the firm for occasional, isolated or incidental use of the firm's facilities if the use does not result in any increase in the firm's operating or overhead costs. As proposed, individual firm volunteers who make more than occasional, isolated or incidental use of the firm's resources, or whose use increases the firm's overhead costs, would reimburse the firm according to the usual and normal fees for such use and report the reimbursed amounts as in-kind contributions from the individual to the Committee. The proposal tracks Commission regulations governing the use of corporate facilities for individual volunteer activity by the corporation's employees and stockholders, which require a volunteer employee to reimburse the corporation for "occasional, isolated, or incidental use only to the extent that the corporation or labor organization incurs expenses above its normal operating costs as a result of such [volunteer] activity," and for any use of the facilities exceeding occasional, isolated or incidental use. *See* 11 CFR 114.9.

Date Issued: May 10, 2012; 6 pages.

(Posted 5/18/12: By: Isaac Baker)

Resources:

Advisory Opinion 2012-16 [PDF; 6 pages]

Commission Discussion of AOR 2012-16

Litigation

Van Hollen v. FEC

On April 27, 2012, the U.S. District Court for the District of Columbia issued an order denying the intervenors' motions for a stay pending appeal in *Van Hollen v. FEC*. This follows the Court's grant of the plaintiff's motion for summary judgment in which the Court found that the FEC had no statutory authority to limit certain disclosure obligations under the Bipartisan Campaign Reform Act (BCRA).

The lawsuit challenges 11 CFR § 104.20(c)(9), which requires corporations and labor organizations making electioneering communications to disclose donations of $1,000 or more that were "made for the purpose of furthering electioneering communications." The lawsuit claims that the regulation is contrary to the disclosure regime of BCRA, which requires every person who makes electioneering communications to disclose "all contributors." See 2 U.S.C. § 434(f)(1).

In denying the intervenors' motions for a stay pending appeal, the Court determined that the intervenors did not demonstrate a substantial likelihood of success on the merits in the case, and that they failed to show that they will be irreparably harmed absent a stay. The Court pointed out that the Supreme Court expressly upheld BCRA's electioneering communication disclosure requirements in *Citizens United v. FEC*, stating that the disclosure requirements "provide the electorate with information about the sources of election-related spending, and help citizens make informed choices in the political marketplace." The Court also noted a public interest in denying the motions since "the public has a strong interest in the full disclosure mandated by the BCRA." The intervenors have also sought a stay pending appeal from the U.S. Court of Appeals for the D.C. Circuit. Those motions are pending.

The full text of the Court's Memorandum Opinion and Order may be found here: http://www.fec.gov/law/litigation/van_hollen_dc_denial_of_stay.pdf.

On April 26, the Commission filed a Notice informing the Court that it will not appeal the summary judgment order. Statements were issued by Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen, and by Vice Chair Ellen L. Weintraub and Commissioner Cynthia L. Bauerly.

U.S. District Court for the District of Columbia: Case 1:11-cv-00766-ABJ.

(Posted 5/4/12; By: Zainab Smith)

Resources:

Van Hollen v. FEC Ongoing Litigation Page

Conway for Senate v. FEC

On May 10, 2012, Conway for Senate filed a complaint in the U.S. District Court for the Western District of Kentucky challenging a civil penalty of $4,950 assessed by the Federal Election Commission. The complaint by Conway for Senate, the principal campaign committee for Jack Conway's 2010 campaign in Kentucky, asks the Court to modify or set aside the FEC's determination that Conway for Senate violated the Federal Election Campaign Act (the Act) and set aside the FEC's assessment of a civil penalty.

The case stems from a determination by the Commission that Conway for Senate violated the Act by not timely filing the 2010 Year End Report of receipts and disbursements. The complaint states that a receptionist for Conway for Senate's treasurer placed the report into a FedEx envelope on January 25, 2011, and sent it overnight to the Senate Office of Public Records. The complaint states the FedEx package was delivered to congressional offices on January 26, 2011. The plaintiff claims that the report in question was timely filed and included all the information required by the FEC. The Commission wrote the treasurer on February 17, 2011, indicating that the 2010 Year End Report had not been filed. On April 1, 2011, the Commission found reason to believe that Conway for Senate violated the Act's reporting requirements by not filing the 2010 Year End Report and assessed a civil penalty of $4,950. On April 10, 2012, the Commission sent a certified letter to Mr. R. Wayne Stratton in his official capacity as the Conway for Senate treasurer indicating that it had made its determination that a violation had occurred and assessed a civil penalty of $4,950.

The plaintiff claims the FEC, in making its determination, failed to adequately take into account the statements and sworn affidavits submitted that indicate the 2010 Year End Report was included in the January 25, 2011, FedEx package sent to the Senate Office of Public Records. The complaint alleges that Conway for Senate has shown "substantial compliance with the law" and does not believe that the imposition of a monetary penalty is justified.

(Posted 5/25/12; By: Isaac Baker)

Resources:

Conway for Senate v. FEC Ongoing Litigation Page

Commission

Commission Releases Documents on Enforcement and Compliance Practices

On May 23, 2012, the Commission made public a collection of internal documents concerning the agency's enforcement and compliance practices. Disclosure of the documents follows oversight hearings on November 3, 2011, before the Subcommittee on Elections of the House of Representatives Committee on House Administration.

"The Commission is committed to increasing the transparency of agency procedures," said Commission Chair Caroline C. Hunter. "Releasing these documents advances this important agency goal."

If you have comments, questions or seek further information about the Enforcement Division documents, please contact Stephen Gura, Deputy Associate General Counsel-Enforcement, at ogcenforcement@fec.gov. For comments, questions or further information about the RAD procedures, please contact Debbie Chacona, Assistant Staff Director, RAD, at rad@fec.gov, and for comments, questions or further information about the Audit Division documents, please contact Thomas Hintermister, Assistant Staff Director, Audit Division, at audit@fec.gov.

Additionally, on September 12, 2012, the Commission will conduct a public hearing on several key issues related to its enforcement process, including issues relating to the documents mentioned above that have been released to the public. Any general questions and comments related to the documents can be sent to Documents_Feedback@fec.gov.

The following resources continue to be available to the public: the Guidebook for Complainants and Respondents on the FEC Enforcement Process, the Reports Analysis Division's Frequently Asked Questions, and The FEC Audit Process: What to Expect.

The Office of General Counsel is currently preparing a revised Enforcement Manual, which is scheduled to be completed and made available to the public early next year.

(Posted 5/23/2012; By: Myles Martin)

Resources:

FEC Press Release

Commission Approves Rulemaking Priorities for 2012

On May 24, 2012, the Commission approved and made public its rulemaking priorities for the remainder of 2012. Regulations to implement recent court decisions top the list.

- **Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations** – The Commission issued a notice of proposed rulemaking (NPRM) in December 2011 seeking comments on proposed changes to its rules regarding corporate and labor organization funding of expenditures, independent expenditures, and electioneering communications. These, and other proposed changes, are in response to a Petition for Rulemaking filed by the James Madison Center for Free Speech urging the Commission to amend its regulations in response to the Supreme Court's decision in *Citizens United v. FEC*. See 76 Fed. Reg. 80803 (Dec. 27, 2011).
- **Political Committees That Engage in Independent Spending** – Several cases, including two cases decided by the United States Court of Appeals for the District of Columbia Circuit -*SpeechNow.org v. FEC* and *EMILY's List v. FEC* affect portions of the Commission's regulations regarding contributions to, and disbursements by, certain committees not authorized by candidates. The proposed rulemaking would provide guidance to these committees on how to establish and maintain a separate account for their independent spending, how to allocate their administrative and fundraising expenses, and how to report their receipts and disbursements.

Additional rulemaking projects under consideration include:

- Treatment of limited liability partnerships;
- Reporting of electioneering communications;
- Party coordinated communications;
- Electronic transactions;
- Internet communication disclaimers;
- MUR disclosure; and
- Mixed purpose travel expense allocation.

(Posted May 30, 2012; By: Alex Knott)

Resources:

2012 Rulemaking Priorities

Commission Discussion of Rulemaking Priorities (May 24, 2012)

Commission Approves Legislative Recommendations for 2012

On May 10, 2012, the Commission unanimously approved five legislative recommendations for 2012 to be submitted for consideration to Congress: (1) to require electronic filing for Senate candidates; (2) to make permanent the Administrative Fine program; (3) to revise the prohibitions on fraudulent misrepresentation of campaign authority; (4) to extend the personal use restrictions to all political committees; and (5) to delete the exclusion of the Commission from eligibility for the Senior Executive Service.

(Posted May 17, 2012; By: Myles Martin)

Resources:

2012 Legislative Recommendations

Commission Discussion of Legislative Recommendations (May 10, 2012)

Compliance

Commission Cites Committee for Failure to File Nebraska 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 Nebraska primary election held on May 15, 2012.

As of May 10, 2012, the required disclosure report had not been received from:

- Committee to Elect Steven Lustgarten

The report was due on May 3, 2012, and should have included financial activity for the period April 1, 2012, through April 25, 2012. If sent by certified or registered mail, the report should have been postmarked by April 30, 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 Nebraska primary election of their potential filing requirements on April 9, 2012. Those committees that did not file on the due date were sent notification on May 4, 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 5/15/2012; By: Myles Martin)

Resources:

FEC Non-Filer Press Release
FEC Compliance Map

Commission Cites Committee for Failure to File Arkansas Pre-Primary Report

On May 18, 2012, 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 Arkansas primary election held on May 22, 2012.

As of May 17, 2012, the required disclosure report had not been received from:

- DC Morrison for Congress Committee (AR-4).

The report was due on May 10, 2012, and should have included financial activity for the period April 1, 2012, through May 2, 2012. If sent by certified or registered mail, the report should have been postmarked by May 7, 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 Arkansas primary election of their potential filing requirements on April 16, 2012. Those committees that did not file on the due date were sent notification on May 11, 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 5/18/2012; By: Myles Martin)

Resources:

FEC Non-Filer Press Release
FEC Compliance Map

Commission Cites Committees for Failure to File Texas Pre-Primary Report

On May 25, 2012, the Commission cited eight campaign committees today for failing to file the 12-Day Pre-Primary Election Report required by the Federal Election Campaign Act (the Act), for the Texas primary election held on May 29, 2012.

As of May 24, 2012, the required disclosure report had not been received from:

- Wes Riddle for US Congress
- Troiani2012
- Elect Dr. McKellar U.S. Congress
- Kim Morrell for Congress
- Committee to Elect Addie Aainell Allen for US Senate
- Yoggerst for Congress
- Linda Dailey for Congress
- Quintanilla for US Congress 2012

The report was due on May 17, 2012, and should have included financial activity for the period April 1, 2012, through May 9, 2012. If sent by certified or registered mail, the report should have been postmarked by May 14, 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 Texas primary election of their potential filing requirements on April 23, 2012. Those committees that did not file on the due date were sent notification on May 18, 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 5/25/2012; By: Myles Martin)

Resources:

FEC Non-Filer Press Release
FEC Compliance Map

Statistics

FEC Summarizes 2011 Campaign Activity

Presidential and congressional candidates running in the current election cycle, political parties and political action committees (PACs) collected more than $1.9 billion and disbursed more than $1.3 billion in 2011, according to campaign finance reports filed with the Federal Election Commission from January 1 through December 31, 2011. Independent expenditure and electioneering communication filings submitted to the Commission in 2011 totaled $22 million.

Activity from Jan. 1 through Dec. 31, 2011
(figures in millions)

Filers	Receipts	Disbursements
2012 Presidential Candidates	$280.9	$179.4
2012 Congressional Candidates	$637.1	$299.7
Party Committees	$471.2	$384.0
PACs	$601.1	$499.4
Total	$1,990.3	$1,362.5

Communications Filings	Total
Independent Expenditures	$21.5
Electioneering Communications	$.5
Total	$22.0

*The party committee totals have been updated to include state, local and third parties.

Congressional Candidate Activity from Jan. 1 through Dec. 31
(figures in millions)

Year	Candidates	Receipts	Disburse-ments	Debts Owed	Cash on Hand
2011	1,218	$637.1	$299.7	$71.8	$516.4
2009	1,323	$587.0	$291.9	$69.4	$524.6
2007	992	$490.5	$231.8	$48.0	$438.0
2005	1,187	$466.9	$215.5	$42.2	$450.0
2003	1,242	$389.2	$186.6	$54.0	$373.9
2001	1,115	$292.9	$137.3	$45.7	$284.7

The 177 candidates running in the 33 2012 Senate races reported total receipts of $232.5 million, disbursements of $87.1 million, debts of $28.9 million and cash-on-hand totaling close to $187 million.

Campaign committees of the 1,041 House candidates reported total receipts of $404.6 million, disbursements of $212.7 million, debts of $42.9 million and a combined cash total of $329.4 million in 2011.

Data summary tables for reports submitted to the Commission through December 31, 2011 by 2012 congressional candidate committees can be found here.

III. Political Party Committees

National, state and local political party committees reported $471.2 million in federal funds receipts, $384 million in disbursements, debts of $24.1 million, and a combined cash-on-hand of $101.9 million as of the end of 2011. Other party committees* reported receipts of $1.7 million, disbursements of $1.6 million, debts of almost $50,000, and a combined cash-on-hand of over $323,000 as of the end of 2011.

The following table summarizes 2011 campaign finance activity of the Democratic National Committee (DNC), Democratic Senatorial Campaign Committee (DSCC), Democratic Congressional Campaign Committee (DCCC), Republican National Committee (RNC), National Republican Senatorial Campaign Committee (NRSC) and National Republican Congressional Committee (NRCC), as well as each party's state and local committees and other party committees.

Political Party Activity from Jan. 1 through Dec. 31, 2011
(figures in millions)

Party Committees	Receipts	Disbursements	Debts Owed	Cash on Hand
DNC	$108.3	$101.8	$6.6	$12.6
DSCC	$42.0	$30.6	$0.0	$12.2
DCCC	$61.5	$50.6	$0.0	$11.6
State and Local Democratic Party Committees (federal funds)	$50.0	$42.0	$1.9	$7.6
Total**	$247.6	$210.9	$8.4	$44.0
RNC	$88.1	$68.8	$13.0	$20.0
NRSC	$41.4	$30.1	$0.0	$11.5
NRCC	$54.5	$41.8	$0.0	$15.2
State and Local Republican Party Committees (federal funds)	$37.8	$30.8	$2.6	$10.9
Total**	$221.9	$171.5	$15.6	$57.6
Total Other Party*	$1.7	$1.6	$0.1	$0.3
Total Party Contributions	$471.2	$384.0	$24.1	$101.9

*Other party committees include the Libertarian National Committee, Libertarian National Congressional Committee, Green Party of the United States, Green Senatorial Campaign Committee, Constitution Party National Committee, and the Reform Party of the United States of America.

**The totals for receipts and disbursements have been adjusted to account for transfers between party committees.

Individuals, for whom contributions to national parties are limited to $30,800 this election cycle, are the largest source of federal funds for party committees. Democratic party committees reported receiving $161 million from individuals, while Republican party committees received $174 million from individuals. PACs and other political committees contributed $17 million to Democratic party committees and $26.4 million to Republican party committees in 2011.

Democratic and Republican House campaign committees transferred more than $9.6 million and more than $8.7 million, respectively, from their campaign accounts to their national congressional party committees in 2011. Democratic and Republican U.S. Senate campaign committees transferred $974,500 and $30,800, respectively, from their campaign accounts to their national senatorial party committees in 2011.

Data summary tables for reports submitted to the Commission through December 31, 2011 by political party committees can be found here.

IV. Political Action Committees (PACs)

Based on reports filed with the Commission in 2011, 5,152 federal PACs reported total receipts of more than $601.1 million, disbursements of $499.4 million, debts of $6.1 million, and a combined cash-on-hand of $441.7 million.

The following table summarizes campaign finance activity of PACs based on PAC type in 2011. This table includes both nonconnected committees and separate segregated funds (SSFs), which have connected organizations such as corporations or labor organizations that establish, administer or raise money on their behalf.

PAC Activity from Jan. 1 through Dec. 31, 2011
(figures in millions)

PAC Type	PACs	Receipts	Disbursements	Debts Owed	Cash on Hand
Corporate	1,764	$170.4	$146.2	$0.2	$136.8
Labor	294	$133.1	$93.0	$0.6	$123.2
Noncon-nected*	1,947	$164.6	$153.6	$4.7	$72.5
Trade	714	$65.6	$55.1	$0.2	$58.9
Membership	281	$55.5	$41.4	$0.1	$42.2
Cooperative	42	$3.5	$3.1	$0.0	$3.4
Corpora-tions with-out Stock	110	$8.3	$6.9	$0.4	$4.7
Total	5,152	$601.1	$499.4	$6.1	$441.7

*Nonconnected committees include Leadership PACs and Independent Expenditure-Only Committees. Independent Expenditure-Only Committees are committees that may receive unlimited contributions from individuals, corporations, and labor unions for the purpose of financing independent expenditures and other independent political activity.

Contributions by PACs to federal candidates seeking office in 2011 and 2012 totaled $170.8 million as of December 31, 2011. PAC contributions to Senate, House and presi-

dential candidates totaled $33.6 million, $136.4 million and more than $822,000, respectively. Independent Expenditure-Only Committees are prohibited from making contributions to candidates.

Data summary tables for reports submitted to the Commission through December 31, 2011 by PACs can be found here.

V. Independent Expenditures

In 2011, all independent expenditure filings* reported to the Commission totaled approximately $21.5 million. Independent Expenditure-Only Committees accounted for $16 million of all independent expenditure filings received by the Commission, while other PACs reported $2.1 million. Independent expenditures made by party committees and persons other than political committees totaled $2.6 million and $776,000, respectively.

Independent expenditures reported to the Commission in connection with the 2012 presidential election totaled approximately $14.5 million as of December 31, 2011, with approximately $12.7 million reported by Independent Expenditure-Only Committees and $1.2 million reported by other PACs. Party committees and persons other than political committees reported making nearly $17,000 and $561,000, respectively, in independent expenditures in connection with the presidential election. Independent expenditures advocating the election of presidential candidates totaled more than $8.6 million, while almost $5.9 million was reported to advocate the defeat of presidential candidates.

Independent expenditures reported in connection with congressional races totaled nearly $7 million. Independent Expenditure-Only Committees and party committees, representing the two largest sources of these expenditures, reported $3.3 million and $2.6 million, respectively. Independent expenditures made by PACs other than Independent Expenditure-Only Committees totaled approximately $914,000. Persons other than political committees reported making $215,000 in independent expenditures in connection with congressional elections.

Independent Expenditure-Only Committees reported total receipts of $99.1 million, disbursements of $39.2 million, less than $1 million in debt, and a combined cash-on-hand of $63.7 million.

Data summary tables for independent expenditure filings submitted to the Commission through December 31, 2011 can be found here.

*Independent expenditures are subject to disclosure requirements once they reach or exceed $10,000 with respect to a given election at any time up to and including the 20th day before an election, and once they reach or exceed $1,000 with respect to a given election, and are made fewer than 20 days, but more than 24 hours, before an election. The totals listed include only the amounts that were reported to the Commission.

VI. Electioneering Communications

Electioneering communication filings totaling $505,845* were reported to the Commission in connection with activity in 2011. An electioneering communication is a broadcast, cable

or satellite communication that refers to a clearly identified federal candidate and is distributed 30 days prior to a primary election or 60 days prior to a general election. These communications do not expressly advocate the election or defeat of a federal candidate.

*These totals do not include electioneering communications that were amended or newly filed in the referenced year and that disclosed disbursements from different years. Only electioneering communication disbursements made in the referenced year, for communications in that year, are included in these totals.

The data summary table for electioneering communication filings submitted to the Commission through December 31, 2011 can be found here.

(Posted 5/3/12; By Myles Martin)

Resources:

FEC Press Release