

# Record

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Federal Election Commission

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## New Litigation

### Citizens United v. FEC

On December 13, 2007, Citizens United, a nonprofit membership corporation, filed a complaint in the U.S. District Court for the District of Columbia challenging the constitutionality of the statutory provisions governing disclaimers on, and disclosure and funding of, certain "electioneering communications" (ECs). On January 15, 2008, the District Court denied Citizens United's motion for a preliminary injunction, in which Citizens United requested that the court prevent the FEC from enforcing its electioneering communications provisions.

### Background

An EC is a broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is publicly distributed within 30 days of a primary election or within 60 days of a general election. 2 U.S.C. §434(f)(3)(A)(i) and 11 CFR 100.29(a). Corporations and labor organizations are generally prohibited from using their general treasury funds to finance ECs. 2 U.S.C. §441b(b)(2) and 11 CFR 114.2(b)(2)(iii).

The Commission recently modified its regulations governing the

*(continued on page 2)*

## Compliance

### MUR 5888: Failure to File Timely Under Millionaires' Amendment

John Reeves Raese, a Senate candidate from West Virginia in 2006, and his campaign committee, Raese for Senate Committee, have agreed to pay a \$74,500 civil penalty for failing to file timely and accurate disclosure reports required for candidates who spend significant personal funds in their campaigns under the provisions of the "Millionaires' Amendment."

Under the Federal Election Campaign Act (the Act) and FEC regulations, a 2006 Senate candidate in West Virginia who spent personal funds in excess of \$414,720 was required to file certain notifications within 24 hours with the Commission, the Secretary of the Senate and each candidate in the same election. Thereafter, the candidate and committee were required to file an additional report each time the candidate spent more than \$10,000 in additional personal funds. The Act requires that candidates ensure that their principal campaign committees file all reports required by these provisions in a timely manner.

Between January 31, 2006, and April 11, 2006, Mr. Raese expended \$355,000 in personal funds for his campaign. On April 19, 2006, Mr.

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## Compliance

(continued from page 1)

Raese made a \$70,000 loan to the Committee, increasing his total personal expenditures to \$425,000. Having exceeded the \$414,720 threshold, the Committee and candidate were required to file FEC Form 10 within 24 hours with the Commission and with Mr. Raese's opponents. On April 27, 2006, Mr. Raese made an additional \$100,000 loan to the Committee and failed to file a Form 10 within 24 hours. On May 3, 2006, Mr. Raese made an \$80,000 loan to the Committee and filed his first FEC Form 10 disclosing the April 19, April 27 and May 3 loans. The notification was thirteen days late with respect to the April 19 loan and five days late with respect to the April 27 loan.

In the conciliation agreement, Mr. Raese and Raese for Senate admit to the violations discussed above and agree to pay a \$74,500 civil penalty within 30 days and to cease and desist from committing any such future violations.

—Amy Kort

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## New Litigation

(continued from page 1)

funding of ECs by corporations and labor organizations in response to the Supreme Court's decision in *FEC v. Wisconsin Right to Life, Inc.* (*WRTL II*). In that case the Supreme Court held that because the ads in question were not the "functional equivalent of express advocacy," the prohibition on corporate or labor organization funding of ECs was unconstitutional as applied to *WRTL*'s ads. The Court further held that a communication is the "functional equivalent of express advocacy" only if it "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."

The FEC revised its rules to provide a general exemption from the prohibition on corporate and labor organization funding of ECs unless the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified federal candidate. The revised regulations do not exempt any ECs from the reporting and disclaimer requirements.

### Complaint

Citizens United is a nonprofit membership organization registered with the IRS under 26 U.S.C. §501(c)(4). One of Citizens United's activities is the production and distribution of political films. Citizens United has produced a film entitled "Hillary: The Movie" about Senator Hillary Clinton. Citizens United intends to broadcast television ads promoting "Hillary: The Movie" and wishes to make the film available in theaters, through DVD sales and via home viewing through cable video-on-demand systems.

Citizens United asserts that, since the ads are not subject to the EC corporate funding restriction, it is unconstitutional to require disclosure of the donors who paid for the advertisements or disclaimers on the advertisements. Citizens United also

claims that the film itself is constitutionally exempt from the corporate funding restriction under *WRTL II*.

### Relief

Citizens United asks the court to declare the EC disclosure and disclaimer requirements unconstitutional as applied to Citizens United's ads and all electioneering communications now permitted by *WRTL II*. Additionally, the plaintiff requests that the corporate and union EC funding restriction be declared unconstitutional both on its face and as applied to plaintiff's movie. Citizens United seeks preliminary and permanent injunctions preventing the Commission from enforcing each of these provisions. The plaintiffs also request costs and attorneys fees and any other appropriate relief.

### Preliminary Injunction Decision

The district court denied Citizens United's motion for a preliminary injunction. In order for a court to grant the plaintiff a preliminary injunction, the plaintiff must show 1) that it is likely that the plaintiff will have success when the case is decided on the merits; 2) that the plaintiff will suffer irreparable injury if the injunction is not granted; 3) that an injunction would not substantially injure other parties; and 4) that the injunction would benefit the public interest.

With regard to its claims about the movie itself, the court found that Citizens United had little chance of success on the merits because the movie is susceptible of no reasonable interpretation other than as an appeal to vote against Senator Clinton. Thus, the court held that the movie is the functional equivalent of express advocacy and not entitled to exemption from the ban on corporate funding of electioneering communications.

Regarding the proposed ads, Citizens United argued that the EC disclosure and disclaimer requirements were unconstitutional because the Supreme Court in *WRTL*

so narrowed the constitutionally permissible scope of “electioneering communication” that only communications that are not “susceptible of [a] reasonable interpretation other than as an appeal to vote for or against a specific candidate” can be regulated by Congress. The district court, however, held that the Supreme Court in *McConnell v. FEC* had found the disclosure requirements constitutional as to all electioneering communications, and *WRTL* did not disturb this holding because the “only issue in [*WRTL*] was whether speech that did not constitute the functional equivalent of express advocacy could be banned during the relevant pre-election period.” Thus, the district court held that Citizens United had not established the probability that it will prevail on the merits of its arguments against the electioneering communication disclosure and disclaimer provisions.

Given that Citizens United did not show that it was likely to win its arguments on the merits, the district court did not find that the harms Citizens United claimed it would suffer under the disclaimer and disclosure requirements warranted preliminary relief. The court also found that enjoining the enforcement of the electioneering communication provisions at issue would not serve the public interest “in view of the Supreme Court’s determination that the provisions assist the public in making informed decisions, limit the coercive effect of corporate speech, and assist the FEC in enforcing contribution limits.” The court denied Citizens United’s request for a preliminary injunction with regard to the reporting and disclaimer provisions.

U.S. District Court for the District of Columbia, 1:07CV2240.

—Meredith Metzler

## Public Funding

### Commission Certifies Primary Matching Fund Payments

On December 20, 2007, the Commission certified \$19,287,504.65 in federal matching funds to seven Presidential candidates for the 2008 election.<sup>1</sup> At this time, however, the Presidential Public Funding program lacks sufficient funds to make the payments.

Under the Presidential Primary Matching Payment Account Act, the federal government will match up to \$250 of an individual’s total contributions to an eligible Presidential primary candidate. A candidate must establish eligibility to receive matching payments by raising in excess of \$5,000 in each of at least 20 states (i.e. over \$100,000). Although an individual may contribute up to \$2,300 to a primary candidate, only a maximum of \$250 per individual applies toward the \$5,000 threshold in each state. Candidates who receive matching payments must agree to limit their spending and submit to an audit by the Commission. 26 U.S.C.

<sup>1</sup> Please note that other candidates have declined to participate in the Matching Fund program.

§§9033(a) and (b); 11 CFR 9033.1 and 9033.3.

Candidates may submit requests for matching funds once each month. The Commission will certify an amount to be paid by the U.S. Treasury the following month. Only contributions from individuals in amounts \$250 or less are matchable. The chart below lists the amount certified to each candidate.

The U.S. Treasury Department was permitted to pay the FEC-certified amounts beginning in January 2008; however, Treasury Department regulations require that funds for the convention and general election grants be set aside before any matching fund payments are made. Information provided by the Treasury showed the balance in the fund as of December 31, 2007, was \$166,339,165.55, and no funds are available for disbursement for matching funds. In June 2007, the Commission certified \$16,356,000 each to the Democratic and Republican parties for their conventions. The Commission estimates that each general election nominee will be eligible for a grant of approximately \$85 million. Based on historical patterns, the FEC estimates that sufficient funds may not be available for matching fund disbursement until March 2008, following early 2008 deposits from tax returns.

(continued on page 4)

### Matching Funds for 2008 Presidential Candidates: December Certification

Candidate	Certification Amount
Joseph Biden (D)	\$857,188.89
Christopher Dodd (D)	\$1,447,568.09
John Edwards (D)	\$8,825,424.82
Duncan Hunter (R)	\$100,000
Dennis Kucinich (D)	\$100,000
John McCain (R)	\$5,812,197.35
Thomas Tancredo (R)	\$2,145,125.50

## Public Funding

(continued from page 3)

The Presidential public funding program is financed through the \$3 checkoff 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.

—Meredith Metzler

## Kucinich and Hunter Certified for Matching Funds

The Commission has certified that 2008 Presidential candidates Dennis J. Kucinich and Duncan Hunter are eligible to receive Presidential primary matching funds. 26 U.S.C. §§9033(a) and (b); 11 CFR 9033.1 and 9033.3.

Under the Presidential Primary Matching Payment Account Act, the federal government will match up to \$250 of an individual's total contributions to an eligible Presidential primary candidate. To become eligible for matching funds, a candidate must raise a threshold amount of \$100,000 by collecting \$5,000 in 20 different states in amounts no greater than \$250 from an individual. Although an individual may contribute up to \$2,300 to a primary candidate, only a maximum of \$250 per individual applies toward the \$5,000 threshold in each state. Candidates who receive matching payments must also agree to limit their spending and submit to an audit by the Commission.

—Diana Veiga

## Administrative Fines

### Administrative Fine Update

The FEC has recently fined 185 political committees a total of \$234,405 in civil penalties for filing late campaign finance reports or failing to file at all. Since the Administrative Fine Program's inception in 2000, the FEC has closed 1,596 cases and collected \$2,148,633 in civil penalties.

Civil money penalties for late reports are determined by the number of days the report was late, the amount of financial activity involved and any prior penalties for violations under the administrative fines regulations. Penalties for nonfiled reports—and for reports filed so late as to be considered nonfiled—are also determined by the financial activity for the reporting period and any prior violations. Election sensitive reports, which include reports filed prior to an election (i.e. 12-day Pre-Election, October Quarterly and October Monthly reports), receive higher penalties. Penalties for 48-Hour Notices that are filed late or not at all are determined by the amount of the contribution(s) not timely reported and any prior violations.

The committee and the treasurer are assessed civil money penalties when the Commission makes its final determination. Unpaid civil penalties are referred to the Department of the Treasury for collection.

The committees fined as well as the fine amounts are listed in the December 5, 2007, press release, available on the Commission's web site at <http://www.fec.gov/press/press2007/20071205adminfines.shtml>. Closed Administrative Fine case files are available through the FEC Press Office and Public Records Office at 800/424-9530.

—Meredith Metzler

## Commission

### Commission Publishes Notice of New and Revised Systems of Records

The Commission requests comment on new and revised systems of records maintained by the FEC. The Privacy Act of 1974, as amended, regulates the collection, maintenance, use and dissemination of information about individuals by the Commission. 5 U.S.C. §552a. The Privacy Act requires periodic review of the Commission's systems of records. Following this review, the Commission published a notice in the *Federal Register* (73 FR 336) detailing proposed new systems and modifications to current systems. This notice is available on the Commission's web site at [http://www.fec.gov/law/privacy\\_act\\_notices.shtml](http://www.fec.gov/law/privacy_act_notices.shtml).

The Privacy Act generally prohibits the disclosure of an individual's "record," if contained in a "system of records," to a third party without the individual's consent. 5 U.S.C. §552a(b). There are exceptions to the rule, including disclosure pursuant to the Freedom of Information Act, disclosure to a Congressional committee on a matter within its jurisdiction and disclosure pursuant to a "routine use" published in a "system of records notice" in the *Federal Register*. Among other things, the current notice includes publication of these "routine uses." In most cases, individuals may access their own information and request amendment if they believe the records are inaccurate.

Comments on the Commission's proposed new systems of records and modifications to current systems must be received by February 1, 2008. The new systems of records and revisions will be effective February 11, 2008, unless the Commission receives comments

that would result in a contrary determination. Comments should be addressed to Lawrence L. Calvert, Co-Chief Privacy Officer. Comments may be sent via e-mail to [Privacy@fec.gov](mailto:Privacy@fec.gov). Written comments should be sent to 999 E St. N.W., Washington, DC 20463.

—Meredith Metzler

## Reporting

### Indiana Special Election Reporting: 7th District

Indiana will hold a Special Election to fill the U.S. House seat in Indiana's 7<sup>th</sup> Congressional District formerly held by the late Representative Julia Carson. The Special General Election will be held on March 11, 2008.

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

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

#### Filing Electronically

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

## Indiana 7th District Special Election Reporting

### Committees Involved in the Special General Must File:

	Close of Books <sup>1</sup>	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-General	February 20	February 25	February 28
Post-General	March 31	April 10	April 10
April Quarterly		—waived—	
July Quarterly	June 30	July 15	July 15

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

#### Timely Filing for Paper Filers

##### *Registered and Certified Mail.*

Reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by 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.

*Overnight Mail.* Reports filed via overnight mail<sup>1</sup> 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.

*Other Means of Filing.* Reports sent by other means including first class mail and courier—must be received by the FEC before the Commission's close of business on the filing deadline. 2 U.S.C. §434(a)

<sup>1</sup> "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.

(5) and 11 CFR 104.5(e). Forms are available for downloading and printing at the FEC's web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency's automated fax system (202/501-3413).

#### 48-Hour Contribution Notices

Note that 48-hour notices are required of the participating candidate's principal campaign committee if it receives any contribution of \$1,000 or more per source between February 21 and March 8, 2008.

#### 24- and 48-Hour Reports of Independent Expenditures

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate at or above \$1,000 per source with respect to the Special General Election between February 21 and March 9, 2008. This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more with respect to an election at other times during a calendar year.

#### Electioneering Communications

The 60-day electioneering communications period for the Special General Election runs from January 11 to March 11, 2008.

—Elizabeth Kurland

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## Louisiana 1st and 6th Districts Special Election Reporting

### Committees Involved in the Special Primary Must File:

	Close of Books <sup>1</sup>	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-Primary	February 17	February 22	February 25
April Quarterly	March 31	April 15	April 15

### If Only Two Elections are Held, Committees Involved in Both the Special Primary (03/08/08) and the Special General (04/05/08)<sup>2</sup> Must File:

	Close of Books <sup>1</sup>	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-Primary	February 17	February 22	February 25
Pre-General	March 16	March 21	March 24
April Quarterly	March 31	April 15	April 15
Post-General	April 25	May 5	May 5
July Quarterly	June 30	July 15	July 15

### If Three Elections Are Held, Committees Involved in Only the Special Primary (03/08/08) and Special Runoff (04/05/08) Must File:

	Close of Books <sup>1</sup>	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-Primary	February 17	February 22	February 25
Pre-Runoff	March 16	March 21	March 24
April Quarterly	March 31	April 15	April 15

### Committees Involved in the Special Primary (03/08/08), Special Runoff (04/05/08) and Special General (05/03/08) Must File:

	Close of Books <sup>1</sup>	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-Primary	February 17	February 22	February 25
Pre-Runoff	March 16	March 21	March 24
April Quarterly		—waived—	
Pre-General	April 13	April 18	April 21
Post-General	May 23	June 2	June 2
July Quarterly	June 30	July 15	July 15

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

<sup>2</sup> If a Special Primary Runoff Election is necessary, it will be held April 5, 2008, and the Special General Election will be held on May 3, 2008.

## Reporting

(continued from page 5)

### Louisiana Special Election Reporting: 1<sup>st</sup> and 6<sup>th</sup> Districts

Louisiana will hold Special Elections on the same days to fill vacancies in the Louisiana U.S. House seats in the 1<sup>st</sup> and 6<sup>th</sup> Congressional districts vacated by Representatives Bobby Jindal and Richard H. Baker, respectively. The Special General Elections will be held on May 3, 2008. The Special Primary Elections will be March 8 and the Special Primary Runoff Elections, if needed, will be April 5. In the event that a Special Runoff Election is not necessary, the Special General Election will be held on April 5, 2008, instead of May 3, 2008.

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

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

### Filing Electronically

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

### Timely Filing for Paper Filers

#### *Registered and Certified Mail.*

Reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by 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.

*Overnight Mail.* Reports filed via overnight mail<sup>1</sup> 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.

*Other Means of Filing.* Reports sent by other means—including first class mail and courier—must be received by the FEC before the Commission's close of business on the filing deadline. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e). Forms are available for downloading and printing at the FEC's web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency's automated fax system (202/501-3413).

### 48-Hour Contribution Notices

Note that 48-hour notices are required of the participating candidate's principal campaign committee if it receives any contribution of \$1,000 or more per source less than 20 days—but more than 48 hours—before any election in which the candidate is running.

*If two elections are held:* 48-hour notices are required for contributions received between February 18 and March 5 for the Special Primary and

between March 17 and April 2 for the Special General.

*If three elections are held:* 48-hour notices are required for contributions received between February 18 and March 5 for the Special Primary, between March 17 and April 2 for the Special Primary Runoff and between April 14 and April 30 for the Special General.

### 24- and 48-Hour Reports of Independent Expenditures

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate at or above \$1,000 per source during the last 20 days—up to 24-hours—before an election.

*If two elections are held:* 24-hour reports of independent expenditures are required between February 18 and March 6 for the Special Primary and between March 17 and April 3 with respect to the Special General.

*If three elections are held:* 24-hour reports of independent expenditures are required between February 18 and March 6 for the Special Primary, March 17 and April 3 for the Special Primary Runoff and between April 14 and May 1 for the Special General.

This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more with respect to an election at other times during a calendar year.

### Electioneering Communications

*If two elections are held:* The 30-day electioneering communications period in connection with the Special Primary runs from February 7 through March 8, 2008, and the 60-day electioneering communications period in connection with the Special General Election runs from February 5 through April 5, 2008.

*If three elections are held:* the 30-day electioneering communications period in connection with the Special Primary runs from February 7 to March 8, 2008, the 30-day electioneering communications period for the Special Runoff runs from March

6 through April 5 and the 60-day electioneering communications period for the Special General runs from March 4 through May 3, 2008.

—Elizabeth Kurland

## Advisory Opinions

### AO 2007-25 Treatment of Limited Liability Partnership

The Commission released for public comment, but did not approve, two alternative draft advisory opinions concerning whether a law firm organized as a limited liability partnership and taxed as a corporation by the IRS is a corporation or is a partnership for the purposes of administering and financially supporting a separate segregated fund. Approval of an advisory opinion requires the affirmative vote of four members of the Commission.

—Amy Kort

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## Federal Register

Federal Register notices are available from the FEC's Public Records Office, on the web site at [www.fec.gov/law/law\\_rulemakings.shtml](http://www.fec.gov/law/law_rulemakings.shtml) and from the FEC Faxline, 202/501-3413.

### Notice 2007-28

Privacy Act of 1975; Systems of Records (73 FR 335, January 2, 2008)

### Notice 2007-29

Filing Dates for the Mississippi Senate Special Election (73 FR 1344, January 8, 2008)

### Notice 2008-2

Filing Dates for the Indiana Special Election in the 7th Congressional District (73 FR 3724, January 22, 2008)

<sup>1</sup> "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.

## Advisory Opinions

(continued from page 7)

### AO 2007-27

#### Nonconnected Committee Solicitations for SSF Contributions

ActBlue, a registered nonconnected committee, may not independently solicit contributions from the general public on behalf of separate segregated funds (SSFs). However, ActBlue may work directly with SSFs to solicit the restricted class of those SSFs' connected organizations for contributions designated for the SSFs.

#### Background

ActBlue is a nonconnected political committee registered with the Commission that primarily serves as a conduit for contributions earmarked for Democratic candidates and political party committees. ActBlue wishes to expand its fundraising activities by providing contributors the choice to contribute to political committees (including SSFs) that support political principles similar to those promoted by Democratic candidates and party committees.

ActBlue proposes two different fundraising programs to solicit and receive contributions designated for a number of different SSFs. Under Program 1, ActBlue would solicit the general public for contributions designated for SSFs via its web site (including its blog and fundraising pages) and through e-mail to its own list. ActBlue would not have any contact with the SSFs or their connected organizations regarding the solicitations, and ActBlue would not be paid for its fundraising. Solicitations would inform potential contributors of applicable contribution limitations.

Under Program 2, ActBlue would solicit only the restricted classes of the SSFs' connected organizations, and would work directly with the SSFs in making the solicitations. (A connected organization's restricted

class generally includes its executive and administrative personnel, stockholders and the families of both groups.) Solicitations made under Program 2 would be through a password-protected webpage of ActBlue's web site. Each SSF would choose the password for that password-protected page and distribute the password to members of its connected organization's restricted class only.

ActBlue would pay all costs associated with the solicitations in both Programs 1 and 2. Within ten days of receipt of a contribution designated for an SSF, ActBlue would forward each contribution to the intended SSF recipient along with a report containing all required information, which would include the contributor's name and the amount of the contribution.

#### Analysis

The Federal Election Campaign Act (the Act) and Commission regulations allow an SSF and its connected organization to solicit at any time contributions to the SSF from the connected organization's "restricted class," which includes the connected organization's executive and administrative personnel, its stockholders and the families of both groups. 11 CFR 114.1(c) and 114.5(g). Solicitations by an SSF or its connected organization beyond the restricted class are generally prohibited.<sup>1</sup> An entity acting on behalf of an SSF or its connected organization is bound by the same restrictions as the SSF.

Under Program 1, ActBlue would be acting on behalf of the recipient SSFs and their connected organizations when soliciting contributions designated for the SSFs. ActBlue would represent to the public that contributing to an SSF through ActBlue is the functional equivalent of

contributing directly to the SSF. An SSF that continually accepts earmarked contributions and contributor information from ActBlue would not be able to claim that it was unaware that ActBlue is soliciting contributions on its behalf. Thus ActBlue is not permitted to solicit contributions from beyond the restricted classes of the SSFs' connected organizations under Program 1.

ActBlue may, however, work directly with the recipient SSFs and their connected organizations under Program 2 to solicit contributions from members of the restricted class only. Any costs associated with soliciting the restricted class that are paid by ActBlue must be treated as in-kind contributions to the recipient SSFs. 11 CFR 100.52(a) and (d). Such costs include a portion of staff salaries and expenses for web site development and maintenance. If ActBlue receives a contribution designated for an SSF, ActBlue must forward the name, address and receipt date to the treasurer of the SSF no later than ten days after receipt if that contribution is in excess of \$50. If the contribution exceeds \$200, ActBlue must also forward information about the contributor's employer and occupation. 11 CFR 102.8(b)(2). Contributions of \$50 or less must be forwarded within 30 days. 11 CFR 102.8(b)(1).

Date Issued: December 17, 2007;  
Length: 7 pages.

—Myles Martin

### AO 2007-28 Federal Candidates/ Officeholders Fundraising for Ballot Measure Committees

Representatives Kevin McCarthy and Devin Nunes may, in addition to soliciting funds that are from federally permissible sources and do not exceed the contribution limits for individuals and political committees, solicit funds from individuals, sub-

<sup>1</sup> A connected organization or its SSF may, however, make two written solicitations per year to non-executive employees, subject to certain restrictions. 11 CFR 114.6.



ject to a \$20,000 per calendar year limit, for one or more independently run ballot measure committees in connection with the qualification and passage of a redistricting initiative.

### Background

U.S. Representatives McCarthy and Nunes are candidates for re-election in 2008. They will both appear on California's primary ballot and will, if they win their party's nomination, also appear on the November 4, 2008, general election ballot.

Representatives McCarthy and Nunes would like to support the qualification and adoption of a proposed ballot initiative. Specifically, they intend to raise funds for the People's Advocate Initiative Committee (PAIC), which is attempting to qualify, for either the primary or the general election ballot in California, a ballot initiative regarding the redistricting of California state and Congressional districts. PAIC is not registered as a political committee under the Act and is not directly or indirectly established, financed, maintained or controlled by either Representative. None of the funds raised by Representatives McCarthy and Nunes will be used for public communications that refer to them, and they will not participate in, or coordinate with PAIC regarding, other publications paid for by PAIC.

### Analysis

Under the Federal Election Campaign Act (the Act) and Commission regulations, federal candidates and officeholders, or entities established, financed, maintained or controlled by them or acting on their behalf, may not raise funds in connection with a federal election, including funds for federal election activity, unless the funds are within the Act's limits, prohibitions and reporting requirements. 2 U.S.C. §441i(e)(1)(A) and 11 CFR 300.61. Federal candidates and officeholders may not raise or spend funds in connection with a nonfederal election unless those

funds are from federally permissible sources and do not exceed the contribution limits for individuals and political committees. 11 CFR 300.62. See 2 U.S.C. §§441a(a)(1), (2) and (3).

In this case the Commission concluded that Representatives McCarthy and Nunes may solicit up to \$20,000 during any calendar year from individuals on behalf of PAIC or other similar ballot initiative committees not directly or indirectly established, financed, maintained or controlled by, or acting on behalf of, either officeholder. The Commission was unable to agree on a single rationale for this decision.

### Concurring Opinions

Chairman Mason and Commissioner von Spakovsky issued a concurring opinion on December 18, 2007.

Commissioners Lenhard, Walther and Weintraub issued a concurring opinion on December 31, 2007.

Date Issued: December 20, 2007;  
Length: 3 pages.

—Amy Kort

## AO 2007-31 Earmarked Contributions Forwarded to a Presidential Candidate by a Nonconnected Committee's Checks Not Matchable

Contributions forwarded by a nonconnected committee to the authorized committee of a Presidential candidate in the form of the nonconnected committee's checks are not matchable under the Presidential Primary Matching Payment Account Act (Matching Payment Act) and Commission regulations.

### Background

John Edwards for President (the Committee) is the authorized committee of Senator John Edwards, who is seeking the Democratic nomination for President in 2008. Senator Edwards was declared

eligible to receive federal matching funds by the Commission on October 31, 2007.

ActBlue is a nonconnected political committee registered with the Commission. Among other things, ActBlue receives contributions made by credit card through their web site that are earmarked for federal candidates and forwards those contributions to the authorized committees of those candidates, as specified by the contributor. ActBlue served as Senator Edwards' primary online payment processor until the Committee set up processing for such contributions through its own web site and vendor. Thereafter, contributors could make contributions to Senator Edwards either through the Committee's web site or through ActBlue's web site.

A person making a contribution through ActBlue's web site to Senator Edwards does so by credit card and is required to provide his or her address, occupation and name of employer and confirm that he or she meets the eligibility requirements for Internet contributions. After a contributor makes a contribution on ActBlue's web site, the credit card is charged and the funds are deposited into ActBlue's account. ActBlue forwards these earmarked contributions to the Committee at least once a week via a check drawn on ActBlue's account.

### Analysis

The Matching Payment Act specifies that a matchable contribution consists of "a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address." The Matching Payment Act specifically excludes from the definition of a matchable contribution "funds received by a political committee which are transferred to that committee from another committee." 26 U.S.C. §9032(4)(C). Commission regulations further

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## Advisory Opinions

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define non-matchable contributions to include “contributions in the form of a check drawn on the account of a committee, corporation, union or government contractor even though the funds represent personal funds earmarked by a contributing individual to a Presidential candidate.” 11 CFR 9034.3(f).

Since ActBlue is a political committee and has forwarded individual earmarked contributions for Senator Edwards in the form of checks drawn on ActBlue’s account, those contributions do not qualify as matchable under the Matching Payment Act and Commission regulations.

Date Issued: December 17, 2007;  
Length: 4 pages.

—Myles Martin

### AO 2007-34 Federal Candidate’s Endorsement of Nonfederal Candidate

A federal candidate’s appearance on a billboard endorsing a nonfederal candidate is not a coordinated communication and may be paid for with nonfederal funds.

#### Background

Representative Jesse Jackson, Jr., represents the 2nd District of Illinois in the U.S. House of Representatives and is a candidate for re-election in 2008. The primary election for both federal and state offices will be held February 5, 2008. Representative Jackson proposes to appear on a billboard to endorse a nonfederal candidate for the position of State’s Attorney in Cook County, Illinois, in the primary. The billboard would feature Representative Jackson’s image and that of the state candidate and would be paid for by the state candidate’s campaign using funds that comply with Illinois law but not with the limits and prohibitions of

the Federal Election Campaign Act (the Act).

#### Analysis

The Act and Commission regulations define an in-kind contribution to include an expenditure made by any person “in cooperation, consultation, or concert, with, or at the request or suggestion of” a candidate, a candidate’s authorized committees or their agents. 2 U.S.C. §441a(a)(7)(B)(i). A payment for such a communication—called a “coordinated communication”—is an in-kind contribution to the candidate or candidate’s authorized committee with whom or which it is coordinated and is subject to the amount limitations and source prohibitions of the Act. 11 CFR 109.21(b). However, a public communication in which a federal candidate endorses another candidate for federal or nonfederal office is exempt from the definition of “coordinated communication” unless the communication promotes, supports, attacks or opposes the endorsing candidate or another candidate who seeks election to the same office as the endorsing candidate. 11 CFR 109.21(g)(1).

While the proposed billboard advertisement is a “public communication,” Representative Jackson appears on the billboard only to endorse a nonfederal candidate and the communication only identifies Representative Jackson without additional comment or statement. Previously, the Commission has determined that the mere identification of an individual who is a federal candidate is not in itself tantamount to promoting, supporting, attacking or opposing that candidate. AOs 2007-21, 2006-10 and 2003-25. Thus, in this case the billboard does not promote, support, attack or oppose Representative Jackson or any other federal candidate. Accordingly, the billboard is not a coordinated communication and would not result in an in-kind contribution to Representative Jackson or his authorized committee.

A nonfederal candidate may spend nonfederal funds for a public communication in connection with an election for state or local office that refers to a clearly identified federal candidate so long as the communication does not promote, support, attack or oppose any candidate for federal office. 2 U.S.C. §441i(f)(2), 11 CFR 300.72 and AO 2003-25. In this case, because the billboard does not promote, support, attack or oppose Representative Jackson or any other federal candidate, the billboard may be paid for with nonfederal funds.

Date Issued: December 17, 2007;  
Length: 4 pages.

—Amy Pike

## Outreach

### Washington DC Conference for Corporations and their PACs

The Commission will hold a conference in Washington, DC, on March 11-12, 2008, for corporations and their PACs. Commissioners and staff will conduct a variety of technical workshops on federal campaign finance law. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. For additional information, to view the conference agenda or to register for the conference, please visit the conference web site at <http://www.fec.gov/info/conferences/2008/corporate08.shtml>.

*Hotel Information.* The conference will be held at the Westin Washington, DC City Center Hotel, in downtown Washington, DC, near several Metro stations and the K Street corridor. A room rate of \$239 (single or double) is available to conference attendees who make reservations on or before February 15, 2008. To make hotel reservations, call 202-429-1700 or

1-800-996-3426 and identify yourself as attending the Federal Election Commission conference to reserve this group rate. The FEC recommends waiting to make hotel and air reservations until you have received confirmation of your conference registration from Sylvester Management Corporation.

**Registration Information.** The registration fee for this conference is \$475, which covers the cost of the conference, a reception, materials and meals. A \$25 late fee will be added to registrations received after February 15, 2008. Complete registration information is available online at <http://www.fec.gov/info/conferences/2008/corporate08.shtml>.

### **Orlando Regional Conference for House and Senate Campaigns, Political Party Committees and Corporate/Labor/Trade PACs**

Registration continues for the FEC's regional conference in Orlando, Florida, on February 12-13, 2008, at the Wyndham Orlando Resort. For additional information, to view the conference agenda or to register for the conference, please visit the conference web site at <http://www.fec.gov/info/conferences/2008/orlando08.shtml>.

### **FEC Conference Questions**

Please direct all questions about conference registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; e-mail: [tonis@sylvestermanagement.com](mailto:tonis@sylvestermanagement.com)). For questions about the conference program, or to receive e-mail notification of upcoming conferences and workshops in 2008, call the FEC's Information Division at 1-800/424-9530 (press 6) (locally at 202/694-1100), or send an e-mail to [Conferences@fec.gov](mailto:Conferences@fec.gov).

—Dorothy Yeager

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## **FEC Conference Schedule for 2008**

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February 12-13, 2008  
Orlando, FL

### **Conference for Corporations and their PACs**

March 11-12, 2008  
Washington, DC

### **Conference for Candidates and Party Committees**

April 2-3, 2008  
Washington, DC

### **Conference for Trade/Member/Labor PACs**

June 23-24, 2008  
Washington, DC

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