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Court Cases

FEC v. Friends of Lane Evans, et. al.

On June 27, 2005, the U.S. District Court for the Central District of Illinois signed a consent judgment reflecting an agreement in this case between the Commission and Friends of Lane Evans, the 17th District Victory Fund and the Rock Island Democratic Central Committee. Under the consent agreement, the defendants neither admit nor deny violating the Federal Election Campaign Act (the Act), but agree to pay civil penalties. Friends of Lane Evans will pay a \$185,000 civil penalty for violations by the Evans campaign and the 17th District Victory Fund, while the Rock Island Democratic Central Committee has agreed to a \$30,000 civil penalty for its role in the violations.¹

Court Decision

The consent judgment signed by the court decrees that the defendants committed violations of the Act as presented in the Commission's January 30, 2004, court complaint.

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¹ This court case originated as MUR 5031. Additional information on this MUR is available through the Enforcement Query System on the FEC's web site at <http://www.fec.gov>.

Regulations

Candidate Solicitation at State Party Fundraisers

On June 23, 2005, the Commission approved a revised Explanation and Justification for its rule at 11 CFR 300.64, regarding appearances by federal candidates and officeholders at state, district and local party fundraisers. The rule, which was not amended, contains an exemption permitting federal candidates and officeholders to speak at such events "without restriction or regulation."

Background

Under the Federal Election Campaign Act (the Act), federal candidates, officeholders and their agents may not solicit, receive, direct, transfer or spend nonfederal funds in connection with federal or nonfederal elections except under limited circumstances. See 2 U.S.C. §441i(e). However, the Act permits them to speak or be featured guests at state, district and local party fundraisers ("state party fundraisers"), where nonfederal funds may be raised. See 2 U.S.C. §441i(e)(3).

The Commission's regulation at 11 CFR 300.64 permits federal candidates and officeholders to speak without restriction or regulation at these fundraisers. In *Shays v. FEC*

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Regulations

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the court found that, although this exemption was a permissible interpretation of the statute, the Explanation and Justification for the rule did not satisfy the “reasoned analysis” requirement of the Administrative Procedure Act (APA). The court remanded the regulation to the Commission for further action consistent with its opinion.

Accordingly, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking comments both on proposed changes to the Explanation and Justification for the existing rule and on a proposal to amend the regulation to prohibit federal candidates and officeholders from soliciting or directing nonfederal funds when attending or speaking at state party fundraisers. The Commission held a public hearing on May 17 to receive testimony concerning this NPRM. See the [June 2005 Record](#),

page 6, and the [April 2005 Record](#), page 4.

Revised E&J

After considering public comments and testimony, the Commission decided to retain the current exemption in 11 CFR 300.64 permitting federal candidates and officeholders to attend, speak or be featured guests at state party fundraisers without restriction or regulation. The Commission determined that the existing rule provides the “more natural” interpretation of the statute, is more consistent with legislative intent and provides federal candidates and officeholders with clear notice regarding permissible speech at state party fundraisers. The revised Explanation and Justification explains how the existing rule effectuates the careful balance Congress struck between the need to avoid the appearance of corruption created when large amounts of soft money are solicited and the need to preserve the legitimate and appropriate role that federal officeholders and candidates play in raising funds for their political parties—especially at the grass-roots level.

The revised Explanation and Justification was published in the [June 30, 2005, Federal Register](#) (70 FR 37649) and is available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml and from the FEC faxline, 202/501-3413.

—Amy Kort

Internet Hearing

On June 28 and 29, 2005, the Commission hosted a public hearing concerning its Notice of Proposed Rulemaking (NPRM) that would encompass some paid Internet ads within the definition of “public communication.” The NPRM also republishes and invites comments on the current definition of “generic campaign activity,” which would incorporate the new definition of “public communication.” The pro-

posed changes are in response to the U.S. District Court for the District of Columbia’s recent decision in *Shays v. FEC*, which held that the current definitions of “public communication” and “generic campaign activity” impermissibly exclude all Internet communications. For more information on the NPRM, see the May 2005 issue of the [Record](#), page 1.

Twenty witnesses, including bloggers, students, economists, campaign finance attorneys and representatives from non-profit political organizations, offered opinions as to how the proposed rules could affect Internet activity. Most stressed the uniquely democratic nature of the Internet and cautioned the Commission against adopting regulations that might restrict the ability of average citizens to use the medium for political participation.

Several witnesses felt that the application of the media exemption¹ to certain Internet content would be the best way to protect online speech, while others believed that monetary thresholds and the exemption for individual volunteer activity would sufficiently shield grassroots political speech from regulation. Some witnesses worried that a broad application of the media exemption would open a new loophole in the law that could be exploited by corporations and labor unions online. Still others urged the Commission to seek more specific comments and undertake separate rulemakings to address outstanding issues.

Media Exemption

In his testimony, Reid Cox, representing the Center for Indi-

¹ Under the Act, a news story, commentary or editorial distributed through the facilities of a broadcasting station, newspaper, magazine or other periodical publication is not considered an “expenditure” unless the facilities are owned or controlled by a political party, political committee or candidate. 2 U.S.C. §431(9)(B)(1).

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vidual Freedom, argued for a broad application of the media exemption to all Internet commentary to “counteract the chilling effect” he believed the new regulations would have on political speech. In making a similar argument, Mike Krempan-sky of Redstate.org added that blogs often provide information faster and more comprehensively than main-stream media because they are “free from the constraints of bureaucratic hierarchies and concerns of column inches,” and thus deserve equal treatment under the law. Markos Moulit-sas from DailyKos.com echoed these sentiments, but cautioned the Commission against identifying specific technologies (such as blog-ging) in its regulations lest future Internet applications fall outside of their scope.

By contrast, some panelists strongly opposed extending the media exemption to online activi-ties. Rather than trying to determine which Internet sites are entitled to the exemption, Karl Sandstrom, representing OMB Watch, urged the Commission to value all Inter-net communications at \$0. Carol Darr, from the Institute for Politics, Democracy and the Internet, warned that if the media exemption is broadened to encompass all activi-ties on the Internet, there is nothing to stop corporations and unions from spending large amounts of money to influence elections through a blog or Internet site, which is the very activi-ty that the sponsors of the Biparti-san Campaign Reform Act (BCRA) meant to halt.

Volunteer Exemption

In his testimony and written com-ments, Don Simon of Democracy 21 supported the proposed volunteer exceptions in the NPRM as drafted. He also suggested that the Commis-sion petition Congress to establish a \$25,000 statutory threshold for an individual’s purchase of com-puter equipment to engage in online political activity. Similarly, Michael Bassik of the Online Coalition

argued that the regulations should distinguish between inexpensive ads paid for by individuals and more costly ads paid for by a corporation. He also asked the Commission to clarify when online communications require a disclaimer. John Morris of the Center for Democracy and Tech-nology supported the exemption for individual volunteer activities, but would like the regulations to articu-late a specific exemption for indi-vidual’s online speech. Lawrence Noble of the Center for Responsive Politics favored a combination of high monetary thresholds for online activity and an individual volunteer exemption that would exempt most blogging activities; individuals or groups whose activities fall outside of those provisions may petition the Commission for application of the media exemption on a case-by-case basis.

Further Regulation Unnecessary

Several witnesses suggested that the Commission adopt a “wait and see approach” rather than promul-gate new, complicated regulations at this time. Mark Elias of John Kerry for President Inc. and Kerry-Ed-wards 2004, Inc. asserted that online fraudulent solicitations, not politi-cal bloggers, are the most pressing problem faced by political commit-tees. Therefore, Mr. Elias recom-mended that the Commission wait to craft new regulations until specific problems on the Internet are reported instead of anticipating problems which may or may not come to light. Similarly, Matt Stoller of BOPnews.com contended that the Internet is less susceptible than the offline world to the corrosive effects of money in politics because it is ideas and credibility, rather than money, which garner attention online. Mr. Stoller believes that the use of Web space has brought little corruption, so further regulations by the Com-mission are unnecessary and may hamper the development of the political Internet.

Additional Commission Action

Some witnesses encouraged the Commission to take other action. Instead of producing a slew of regulations that attempt to clarify the definition of “public communica-tion,” election-law attorney Robert Bauer suggested that the Commis-sion put the public at ease by issuing concurrently a “statement of policy” that explains what the regulated community can expect from the Commission’s future actions. Law-rence Gold of the AFL-CIO pointed out that corporate facilities regula-tions already address the use of corporate or labor union facilities for volunteer activities so the addition of Internet usage to regulatory amend-ments is unnecessary. However, Mr. Gold suggested that the Commission ask for another round of comments that specifically address how ac-tivities over the Internet should be quantified and valued. Similarly, Trevor Potter of the Campaign Legal Center believes that the Commis-sion’s actions should be limited only to amending the definition of public communication, per the court’s order, and issues such as the application of the media exemption and party committee activities on the Internet should be addressed in a separate rulemaking.

Additional Information

The full text of the NPRM and public comments submitted to the commission are available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml#internet05.

—Amy Pike

Notice of Public Hearing

The Commission will hold a public hearing on August 4, 2005 at 10:00 a.m. for the following rule-makings: (1) State, district and local party committee payment of certain salaries; and (2) the definition of “Federal Election Activity.”

Court Cases

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According to that complaint, during the 1998 and 2000 elections, Congressman Lane Evans' campaign committee established a purportedly independent committee, the 17th District Victory Fund (the Victory Fund), that was in fact nothing more than an alter ego of the Congressman's campaign committee.

For the 1998 and 2000 elections, a candidate's principal campaign committee could accept up to \$1,000 per election from an individual, and the committees of a national party could accept up to \$20,000 per year in the aggregate from an individual. Any other political committee could accept \$5,000 per year from an individual. 2 U.S.C. §441a(a)(1). Additionally, under the Act an expenditure made by any person in "cooperation, consultation or concert with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents" is considered a contribution to the candidate. 2 U.S.C. §441a(a)(7)(B)(i). Corporations and unions are barred from making contributions or expenditures in connection with any federal election. 2 U.S.C. §441b(a).

During the period in question, the Victory Fund raised and spent more than \$500,000. Congressman Evans and his staff raised a majority of the money contributed to the Victory Fund, including more than \$200,000 in prohibited contributions from labor union treasury funds.

The Victory Fund then spent the majority of its funds on voter identification and get-out-the-vote activities promoting Congressman Evans. The Commission found that at least \$330,000 of these campaign-focused activities were so closely coordinated with the campaign that they represented contributions from the Victory Fund to Congressman Evans. The contributions exceeded the Act's limits and included funds from sources prohibited by the Act.

In addition, in 1998 the Rock Island Democratic Central Committee (the Rock Island Committee) spent approximately \$18,000 on a radio ad, two direct mail pieces and a newspaper ad that expressly advocated the Congressman's re-election and were coordinated with the Evans Committee. These coordinated expenditures exceeded the applicable \$1,000 contribution limit and the communications did not include the required disclaimer stating whether they were authorized by Congressman Evans or the Evans Committee. 2 U.S.C. §441d(a).

The Rock Island Committee failed to register as a political committee and did not report its financial activity, even though it received several hundred thousand dollars during the 1998 and 2000 cycles after becoming a political committee. See 2 U.S.C. §433. Also, while it did not establish separate federal and nonfederal accounts, it accepted contributions outside the Act's limits and prohibitions. See the [March 2004 Record](#), page 9.

In addition to the civil penalties assessed, the agreement requires the Victory Fund to pay the Commission all funds remaining in its accounts on the date that the parties executed the Stipulation for Entry of Consent Judgment. The court also enjoined the defendants from committing similar violations of the Act in the future.

U.S. District Court for the Central District of Illinois, 04-CV-4003.

—Amy Kort

John Hagelin, et. al. v. FEC

On June 10, 2005, the United States Court of Appeals for the District of Columbia found that the FEC's decision to dismiss an administrative complaint, which asserted that the Commission on Presidential Debates (CPD) was partisan and therefore could not lawfully sponsor Presidential debates, was supported by substantial evidence and thus not

contrary to law. The appeals court held that, given the highly deferential nature of judicial review of the Commission's decision to dismiss a complaint, the district court erred when it based its ruling against the FEC on the court's own evaluation of the CPD's explanation of its actions, rather than an examination of whether substantial evidence supported the FEC's conclusion that CPD's actions were not partisan. The Court of Appeals reversed the District Court for the District of Columbia's earlier judgment and remanded the case to the District Court with instructions to enter judgment for the FEC.

John Hagelin, Ralph Nader, Patrick Buchanan, Howard Phillips, Winona LaDuke, the Natural Law Party, the Green Party of the United States and the Constitution Party had asked the U.S. District Court for the District of Columbia to find that the Commission's dismissal of an administrative complaint dated June 17, 2003, was arbitrary, capricious and contrary to law. On August 12, 2004, the District Court had granted in part and denied in part the motion for summary judgment brought against the FEC. It also granted in part and denied in part the FEC's cross-motion for summary judgment. On October 6, 2004, the District Court granted the FEC's motion to stay its decision in the case, pending appeal. See also *Hagelin et. al. v. FEC* in the [August 2004 Record](#), page 9, the [October 2004 Record](#), page 3, and the [November 2004 Record](#), page 3.

United States Court of Appeals for the District of Columbia Circuit, No. 04-5312.

—Meredith Trimble

Advisory Opinions

AO 2005-6

Former Officeholder May Donate Campaign Funds to Charity

Former Representative Scott McInnis may donate campaign funds from Friends of Scott McInnis, Inc. (the Committee) to Friends of McInnis Canyons National Conservation Area (Friends of McInnis Canyons NCA), a not-for-profit charitable organization that will neither employ nor otherwise compensate the former Representative or his family.

Background

Friends of McInnis Canyons NCA is a not-for-profit organization that is incorporated in Colorado. The organization is in the process of applying for tax exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). The organization's mission is to support the McInnis Canyons National Conservation Area in Colorado, which is named after former Congressman Scott McInnis, by providing funds and volunteers to do such things as trail maintenance, habitat improvement and educational activities. None of the organization's funds will be used to influence any federal election, and neither former Representative McInnis nor any member of his family will receive any income from the organization.

Analysis

The Federal Election Campaign Act (the Act) provides that campaign funds may be donated to any charitable organization described in 26 U.S.C. 170(c),¹ but may not be "converted by any person to any per-

sonal use." 2 U.S.C. §§439a(a)(3) and (b)(1); 11 CFR 113.2(b) and 113.1(g)(2). The regulations explain that campaign donations to charitable organizations are not personal use unless the candidate (former or current) receives compensation from the organization before that organization has expended, for purposes unrelated to the candidate's personal benefit, the entire amount donated to it. 11 CFR 113.1(g)(2).²

Although Friends of McInnis Canyons NCA bears former Representative McInnis' name, it will not employ, compensate or financially benefit Mr. McInnis or any member of his family. As a result—assuming the IRS approves Friends of McInnis Canyons NCA's application for 510(c)(3) status—the Committee may permissibly donate campaign funds to the organization.

The Committee must report its donations as "Other Disbursements" on its FEC reports.

Date Issued: June 23, 2005;

Length: 5 pages.

—Meredith Trimble

Alternative Disposition of Advisory Opinion Request

On June 20, 2005, the requestor withdrew Advisory Opinion Request 2005-8, regarding the permissibility of a national bank's donations to a state candidate's legal defense fund.

² See *Advisory Opinions 1997-1 and 1996-40*, which consider the application of the Act and Commission regulations to situations similar to the circumstances presented in [2005-6](#).

Statistics

Congressional Candidates Spend Nearly \$1.16 Billion During 2003-2004

House and Senate candidates spent a total of \$1.157 billion seeking office during 2003-2004. The 2,219 candidates who participated in primary and general election campaigns for the U.S. Congress raised a total of \$1.206 billion dollars during those two years. These figures represent a 24 percent increase over the Congressional campaigns of 2002.

During 2003-2004, Senate candidates raised \$497.5 million and spent \$496.4 million, about 52 percent more than 2002 levels. House candidates also increased their financial activity during 2003-2004, raising \$708.5 million—10 percent above 2002 totals—while spending

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Montana Joins State Waiver Program

With the recent addition of Montana, all 50 states plus the territories of American Samoa and U.S. Virgin Islands are participants in the FEC State Filing Waiver Program.

Under this program, Presidential, U.S. Senate and U.S. House of Representatives campaign committees, PACs and party committees are exempt from filing paper copies of their federal campaign finance reports with the state election offices.

This exemption applies only to the filing of federal campaign finance disclosure reports required under the Federal Election Campaign Act. Paper copies of federal reports are still required to be filed with the appropriate offices in Guam and Puerto Rico.

For more information, call the Public Disclosure Division at 202/694-1120.

¹ Charities that qualify for tax exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) are described in section 170(c) of the IRC.

Statistics

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\$660.3 million, up seven percent from the previous election.

Contributions directly from individuals totaled \$720.8 million and, at 60 percent of total receipts, represent the largest source of funds for both House and Senate candidates. Contributions from political action committees (PACs) totaled \$289.1 million, or 24 percent of receipts. Candidates themselves provided \$133.3 million, which represented 11 percent of all fundraising. Contributions directly from individuals played a larger role in Senate campaigns (65 percent of receipts) than in House races (56 percent), while PACs represent a larger percentage of receipts for House candidates (32 percent vs. 13 percent in Senate races).

Additional Information

Additional information is available in a Press Release dated June 9, 2005, which is available on the FEC web site at <http://www.fec.gov/press/press2005/2005news.shtml>. The release provides:

- An overall summary of all Senate and House campaigns based on political party and candidate status (incumbent, challenger and open seat);
- An overall summary of Senate and House general election campaigns based on political party and candidate status;
- Comparable statistics for seven campaign cycles;
- Median activity for various types of House races and comparisons with prior elections;
- Contributions from individuals by size of contribution;
- Six-year financial summaries for 2004 Senate candidates;
- Financial summaries for all general election House candidates; and
- Top 50 rankings of candidates in various categories.

—Amy Kort

Outreach

FEC to Hold State Outreach Workshops in August

As part of the FEC's State Outreach Program, Public Affairs Specialists conduct informal meetings in different cities across the country to brief PACs, party committees and candidate committees on areas of the law specific to their needs. This summer, FEC staff will hold workshops in the following cities:

- Denver, CO, August 10-11; and
- Portland, OR, August 23-24.

Registration for these programs is free. Visit the FEC web site at www.fec.gov/info/outreach.shtml#state for additional information, including workshop schedules for each program. For additional information about this outreach program, or to register for one of the sessions, call the FEC's Information Division at 1-800/424-9530 (or locally, 202/694-1100) or send an email to Conferences@fec.gov with your contact information (name, organization, phone number, fax number and email address). Please identify the particular city in which you wish to attend a session.

—Amy Kort

Campaign Finance Law Training Conferences in San Diego and San Antonio

In September and October the Commission will hold conferences for House and Senate campaigns, political party committees and corporations, labor organizations, trade associations, membership organizations and their respective PACs. The conferences will consist of a series of workshops conducted by Commissioners and experienced FEC staff who will explain how the federal campaign finance law applies to each of these groups. Workshops will specifically address recent

changes to the campaign finance law and will focus on fundraising and reporting rules. A representative from the IRS will be available to answer election-related tax questions.

Conference in San Diego

The San Diego Conference will be held September 14-15 at the Hyatt Regency Islandia. The registration fee for this conference is \$350, which covers the cost of the conference, materials and meals. A \$10 late fee will be added to registrations received after August 17. For additional information on this conference, please visit the FEC web site at http://www.fec.gov/info/conference/materials/san_diego_conference_05.shtml.

The Hyatt Regency Islandia is located on Mission Bay, near Sea World, at 1441 Quivira Road, San Diego, CA, 92101. A room rate of \$169 per night, single or double, is available to conference participants who make reservations on or before August 17. After August 17, room rates are based on availability. To make hotel reservations, visit the hotel's online reservations web page

Federal Register

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

Notice 2005-15

Travel on Behalf of Candidates and Political Committees, Announcement of Effective Date (70 FR 33689, June 9, 2005)

Notice 2005-16

Inflation Adjustments for Civil Monetary Penalties, Final Rules (70 FR 34633, June 15, 2005)

at https://resweb.passkey.com/Resweb.do?mode=welcome_ei_new&eventID=19000, or call 619-224-1234. To receive the conference rate, you must indicate that you are attending the FEC conference.

Conference in San Antonio

The San Antonio Conference will be held October 25-26 at the Crowne Plaza Hotel San Antonio Riverwalk. The registration fee for this conference is \$350, which covers the costs of the conference, materials and meals. A \$10 late fee will be added to registrations received after September 30.

The Crowne Plaza Hotel is located at 111 Pecan Street East, San Antonio, TX, 78205, in San Antonio's famous Riverwalk area. A \$129 room rate, single or double, is available for conference participants who make reservations on or before September 30. To receive this special rate, you must mention that you are attending the FEC conference. After September 30, room rates are based on availability. Call 1-888-623-2800 to make reservations.

Registration Information

Complete registration information for FEC conferences is available on the FEC web site at <http://www.fec.gov/info/outreach.shtml#conferences>.

Please direct all questions about conference registration and fees to Sylvester Management Corporation at 1-800/246-7277. For questions about the conference program, call the FEC's Information Division at 1-800/424-9530 (or locally at 202/694-1100) or send an e-mail to Conferences@fec.gov.

Please note that the FEC suggests that you wait to make your hotel and air reservations until you have received confirmation of your conference registration.

—Amy Kort

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