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Table of Contents

Commission

- 1 Message from the Chairman
- 2 New Chairman Elected

Regulations

- 1 Final Rules and Explanation for Electioneering Communications

4 Federal Register

Court Cases

- 4 FEC v. Morgan
- 5 Hearn v. FEC

Reports

- 5 Reports Due in 2008
- 13 Illinois 14th District Special Election Reporting

15 Advisory Opinions

Public Funding

- 22 Dodd and Biden Certified for Matching Funds

Outreach

- 23 Orlando Regional Conference for House and Senate Campaigns, Political Party Committees and Corporate/Labor/Trade PACs
- 23 FEC Conference Schedule for 2008

23 Index

Commission

Message from the Chairman

The Federal Election Commission begins 2008 under unusual circumstances. The recess appointments of three FEC Commissioners expired at the end of 2007 without Senate confirmation. Another Commissioner departed the FEC during the year and no replacement has been nominated. As a result, as of January 2008 the FEC has only two sitting Commissioners and four vacancies.

Under the Federal Election Campaign Act, the affirmative votes of four Commissioners are necessary in order for the FEC to take certain actions related to advisory opinions, forms, regulations, enforcement matters, litigation, and to certify public funds to Presidential candidates.

It is important to note that campaign finance laws and reporting and disclosure requirements remain in effect. The Commission will continue to receive and process complaints during this time. We will also continue to receive, review and publish disclosure reports. Indeed, the agency is striving to improve the transparency of campaign finance activity for the 2008 elections through such innovations as the Presidential Campaign Finance Map, which became available on

(continued on page 2)

Regulations

Final Rules and Explanation for Electioneering Communications

On December 14, 2007, the Commission voted to modify its regulations governing the funding of “electioneering communications” (ECs) by corporations and labor organizations and to apply the EC reporting and disclaimer requirements to ECs made by corporations and labor organizations. The new rule is in response to the Supreme Court’s decision in *FEC v. Wisconsin Right to Life, Inc.* (WRTL II). The revised rules allow corporations and labor organizations to distribute ECs, provided that they are not the “functional equivalent of express advocacy,” and took effect December 26, 2007.

Background

The Bipartisan Campaign Reform Act of 2002 (BCRA) amended the Federal Election Campaign Act (the Act) to add a new type of political communication called “electioneering communications.” The BCRA defined an EC as a broadcast, cable or satellite communication that refers to a clearly identified federal candidate, is publicly distributed within 30 days of a primary election or within 60 days of a general elec-

(continued on page 2)

Commission

(continued from page 1)

the FEC web site (www.fec.gov) last year, and the recently launched House and Senate Map. At the same time, FEC staff remain available to provide committees informal advice and educational outreach through the agency's toll-free hotline (800 424-9530), and we are continuing with our plans to hold FEC conferences and roundtables this Spring.

We will continue to work to develop new and better ways to communicate with all of our stakeholders and look forward to a full and productive year.

—David M. Mason
FEC Chairman

New Chairman Elected

On December 14, 2007, the Commission elected David M. Mason as its Chairman for 2008.

Chairman Mason was appointed to the Commission on March 4, 1998, by President William Clinton and confirmed by the U.S. Senate

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on July 30, 1998. He was nominated for a second term by President George W. Bush on December 19, 2005.

Prior to his nomination, Chairman Mason served as a Senior Fellow in Congressional Studies at the Heritage Foundation. He joined Heritage in 1990 as Director of Executive Branch Liaison. In 1995 he became Vice President, Government Relations, and in 1997 he was designated Senior Fellow with a focus on research, writing and commentary on Congress and national politics.

Before joining the Heritage Foundation, Chairman Mason served as Deputy Assistant Secretary of Defense, where he managed the Pentagon's relations with the U.S. House of Representatives. One of his major accomplishments was guiding the base closing legislation to a successful conclusion.

Chairman Mason served on Capitol Hill as a Legislative Assistant to Senator John Warner, Legislative Director to Representative Tom Bliley and Staff Director to then-House Republican Whip Trent Lott. He worked in numerous Congressional, Senatorial, Gubernatorial and Presidential campaigns, and was himself the Republican nominee for the Virginia House of Delegates in the 48th District in 1982.

Chairman Mason attended Lynchburg College in Virginia and graduated *cum laude* from Claremont McKenna College in California.

—Meredith Metzler

Regulations

(continued from page 1)

tion and is targeted to the relevant electorate. 2 U.S.C. §434(f)(3)(A) (i) and 11 CFR 100.29(a). Corporations and labor organizations are 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). Those making ECs are subject to several reporting and disclosure requirements. 2 U.S.C. §§434(f)(1)-(2) and 441d(a).

In WRTL II, the Supreme Court reviewed an “as-applied challenge” to the EC funding prohibitions¹ where Wisconsin Right to Life, Inc., a nonprofit corporation, sought to use its own general treasury funds, which included donations it had received from other corporations, to pay for broadcast ads during the EC period that referred to both U.S. Senators from Wisconsin, one of whom was a clearly identified candidate for federal office in that election. The plaintiff argued that these communications were genuine issue ads run as part of a grassroots lobbying campaign on the issue of Senate filibusters of judicial nominations.

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 the plaintiff'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 Court determined that the content of WRTL's advertisements was “consistent with that of a genuine issue ad” and the communications lacked “indicia of express advocacy,” because they did not mention an election, candidacy, political party or challenger, and the communications did not take a position on a candidate's character, qualifications or fitness for office.

In response to the Supreme Court's decision, the Commission

¹ In *McConnell v. FEC*, the Supreme Court held that BCRA's prohibition on corporate or labor organization funding of ECs was not facially overbroad. However, in *FEC v. Wisconsin Right to Life I* (WRTL I), the Court held that *McConnell* did not preclude further “as applied” challenges to the corporate and labor organization funding prohibitions.

published a Notice of Proposed Rulemaking (NPRM) on August 31, 2007, proposing changes to the EC regulations and held public hearings on the NPRM on October 17-18, 2007.

Final Rule

New section 11 CFR 114.15 provides 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 new rules create an exemption that allows the use of corporate and labor organization funds to finance ECs, but does not exempt such communications from the overall EC definition or the EC reporting and disclaimer requirements. Accordingly, corporations and labor organizations that finance ECs are required to file EC disclosure reports once they spend more than \$10,000 in a calendar year on such communications. 11 CFR 104.20. ECs must also carry a disclaimer notice. 11 CFR 110.11.

Safe Harbor. The revised rules provide a safe harbor provision intended to give guidance regarding which ECs would qualify for the general exemption. Satisfying the safe harbor provision demonstrates that an EC is susceptible of a reasonable interpretation other than as an appeal to vote for or against a federal candidate, and thus is not the functional equivalent of express advocacy. If a communication satisfies the safe harbor provision, it may be paid for with corporate or labor organization funds. It is important to note, however, that this provision is merely a safe harbor, and an EC that does not qualify for the safe harbor still may come within the general exemption.

The safe harbor provision has three prongs. An EC qualifies for the safe harbor if it 1) does not mention “any election, candidacy, political party, opposing candidate,

or voting by the general public”; 2) does not take a position on the candidate’s character, qualifications or fitness for office; and 3) either focuses on a legislative, executive or judicial matter or issue, or proposes a commercial transaction. 11 CFR 114.15(b)(1)-(3).

The third prong of the final rule’s safe harbor will be satisfied by certain lobbying communications or commercial advertisements. An EC meets this prong if it “focuses on a legislative, executive or judicial matter or issue” and either “urges a candidate to take a particular position or action with respect to the matter or issue” or “urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue.” 11 CFR 114.15(b)(3)(i)(A)-(B). Additionally, the last part of the safe harbor’s third prong applies to an EC that proposes a commercial transaction such as the purchase of a book, video or other product or service, or such as attendance (for a fee) at a film exhibition or other event. 11 CFR 114.15(b)(3)(ii). This prong of the safe harbor can be satisfied regardless of whether the product or service is provided by a business owned or operated by, or employing, the candidate referred to in the EC. Both ECs advertising a federal candidate’s appearance to promote a business or other commercial product or service, and ECs in which the federal candidate is referred to as the subject of a book, video or movie, will be eligible for the safe harbor.

Rules of Interpretation. Corporations and labor organizations may still finance certain ECs that do not qualify for the safe harbor. If an EC does not qualify for the safe harbor, the Commission will consider two factors. The first is whether the communication includes any indicia of express advocacy, meaning that it mentions any election, candidacy, political party, opposing candidate or voting by the general public or

takes a position on the candidate’s character, qualifications or fitness for office. The second is whether the communication has content that would support a determination that it has an interpretation other than as an appeal to vote for or against a clearly identified federal candidate. A communication would meet this factor if it:

- Focused on a public policy issue and either urged a candidate to take a position on the issue or urged the public to contact the candidate about the issue;
- Proposed a commercial transaction, such as purchase of a book, video or other product or service, or such as attendance (for a fee) at a film exhibition or other event; or
- Included a call to action or other appeal that, interpreted in conjunction with the rest of the communication, urged an action other than voting for or against or contributing to a clearly identified federal candidate or political party. 11 CFR 114.15(c)(1)-(2).

The Commission will consider these two factors to determine whether, on balance, the communication has a reasonable interpretation other than as an appeal to vote for or against a federal candidate. If there is any doubt about whether the communication qualifies for the general exemption, the Commission will permit the communication. 11 CFR 114.15(c)(3).

Information Permissibly Considered. In making its determination the Commission will only consider the communication itself and basic background information necessary to put the communication into context. For example, the Commission may consider whether a named individual is a candidate and whether the communication describes a public policy issue. 11 CFR 114.15(d).

Examples. The Commission will provide a list of examples of permissible and impermissible com-

(continued on page 4)

Regulations

(continued from page 3)

munications on its web site at www.fec.gov. 11 CFR 114.15(e).

Reporting Requirements. The new final rule states that corporations and labor organizations that finance permissible ECs aggregating in excess of \$10,000 in a calendar year must file reports with the Commission. The Act and current Commission regulations require any person that has made ECs aggregating in excess of \$10,000 in a calendar year to file a disclosure statement. 2 U.S.C. §434(f)(1) and 11 CFR 104.20(b). Generally, these statements must disclose the identities of the persons making the EC, the cost of the EC, the clearly identified candidate appearing in the EC and the election in which he or she is a candidate and the disclosure date. 11 CFR 104.2(c)(1)-(6).

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 and from the FEC Faxline, 202/501-3413.

Notice 2007-22

Filing Dates for the Virginia Special Election in the 1st Congressional District (72 FR 62648, November 6, 2007)

Notice 2007-24

Filing Dates for the Louisiana Special Election in the 1st Congressional District (72 FR 66173, November 27, 2007)

Notice 2007-25

Filing Dates for the Illinois Special Election in the 14th Congressional District (72 FR 71410, December 17, 2007)

Notice 2007-26

Electioneering Communications; Final Rule (72 FR 72899, December 26, 2007)

Persons making ECs must also disclose the names and addresses of each person who donated an amount aggregating \$1,000 or more during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. 11 CFR 104.20(c)(8).

The Act and current Commission regulations permit persons making ECs to establish and maintain a segregated bank account for the purpose of funding ECs in order to limit the reporting of donors' identities to only the donors to that segregated account. 2 U.S.C. §434(f)(2)(E) and 11 CFR 104.20(c)(7). If a person does not create a segregated bank account and funds ECs from its general account, that person must disclose all donors of \$1,000 or more to the entity during the current and preceding calendar years. 11 CFR 104.20(c)(8).

The Commission revised the EC reporting rules to require corporations and labor organizations making ECs under the new rule to disclose only the identities of those persons who made a donation aggregating \$1,000 or more specifically for the purpose of furthering ECs made by that corporation or labor organization. 11 CFR 104.20(c)(9). All of the other reporting requirements that apply to persons making ECs also apply to corporations and labor organizations making ECs under the new regulations.

The Commission also revised the rules regarding segregated bank accounts. Individuals, unincorporated associations and qualified nonprofit corporations may continue to use a segregated bank account containing only funds from individuals to fund ECs that are outside the new exemption in 114.15. 11 CFR 104.20(c)(7)(i) and 114.14(d)(2)(ii). Any person, other than corporations and labor organizations, may also establish a segregated bank account containing donations from corporations or labor organizations to fund ECs and fall within the new exemption

in 114.15. 11 CFR 104.20(c)(7)(ii) and 114.14(d)(2)(i). Corporations and labor organizations funding ECs under the new exemption are not permitted to use a segregated bank account, but are instead governed by the new reporting rules in 104.20(c)(9).

The full text of the Final Rule and Explanation and Justification is available in the *Federal Register* (72 FR 72899) and is also posted on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml#ec07.

—Myles Martin

Court Cases

FEC v. Morgan

On December 5, 2007, the Commission filed suit in the U.S. District Court for the District of Columbia against Jamie Jacob Morgan for failure to comply with the terms of a conciliation agreement Mr. Morgan entered into with the Commission on April 20, 2007.

Background

Jamie Morgan was a Republican candidate for Congress in 2002 and the *de facto* treasurer of his campaign committee, Morgan for Congress (the Committee). On April 20, 2007, Mr. Morgan entered into a conciliation agreement with the Commission for knowing and willful violations of the Federal Election Campaign Act (the Act). See the [June 2007 Record](#), page 1. In the conciliation agreement, Mr. Morgan admitted to filing several disclosure reports with the Commission containing inflated and fictitious receipts, disbursements and other inaccuracies. He reported over \$100,000 of fictitious receipts, as well as \$190,000 of fictitious disbursements from his campaign. He also intentionally concealed \$62,000 of contributions from his father. Mr. Morgan admitted to additional knowing and willful violations of

the Act and Commission regulations, including violating reporting requirements (2 U.S.C. §434(b)), accepting excessive contributions (2 U.S.C. §441a(f)), accepting contributions in the name of another (2 U.S.C. §441f), commingling campaign funds with personal funds (2 U.S.C. §432(b)(3)) and falsely terminating the Committee (11 CFR 102.3).

Complaint

The Commission asserts in the complaint that Mr. Morgan has not paid any portion of the \$60,000 civil penalty agreed to in the conciliation agreement. Under the terms of the agreement, Mr. Morgan was to pay the penalty in three installments of \$20,000, due 30, 60 and 90 days following the April 20, 2007, effective date of the agreement.

Relief

The Commission requests that the court:

- Declare that Mr. Morgan violated the conditions of the conciliation agreement;
- Order Mr. Morgan to pay the \$60,000 civil penalty;
- Enjoin Mr. Morgan from violating the provisions of the agreement in the future;
- Require Mr. Morgan to pay interest on the civil penalty until he has fully paid; and
- Award any other relief that the court finds appropriate.

U.S. District Court for the District of Columbia, 1:07-cv-02196.
—Meredith Metzler

Hearn v. FEC

On October 5, 2007, Gloria Hearn filed a complaint in the U.S. District Court for the Western District of Louisiana challenging two administrative fines the Commission levied against her campaign committee and its treasurer for failure to file disclosure reports.

Background and Complaint

Gloria Hearn was a candidate for the U.S. House of Representatives in the 2006 election. In her complaint, Ms. Hearn alleges that her campaign committee filed paper copies of the reports on time, then re-filed the reports electronically after the Commission informed the committee that it should have filed electronically. According to the complaint, the Commission imposed fines of \$5,000 and \$3,500 for the two violations.

Electronic Filing

Commission regulations require House campaign committees, among others, to file all reports and statements electronically if their total contributions or total expenditures exceed, or are expected to exceed, \$50,000 in a calendar year. 2 U.S.C. §434(a)(11)(A)(i); 11 CFR 104.18(a)(1)(ii). Reports filed on paper do not satisfy the filing obligations for these committees. 11 CFR 104.18(a)(2).

Relief

The plaintiff asks the court to waive the administrative fines imposed by the Commission.

U.S. District Court for the Western District of Louisiana, 1:07-cv-01674.
—Meredith Metzler

Reports

Reports Due in 2008

This article on filing requirements for 2008 is supplemented by the reporting tables on the following pages.

Notification of Filing Deadlines

In addition to publishing this article and its accompanying charts, the Commission notifies committees of filing deadlines on its web site, via its automated Faxline and through reporting reminders called prior notices. Since January 1, 2007, prior notices have been sent exclusively by electronic mail and are no longer sent to committees using U.S. mail.

See [December 2006 Record](#), page 1. For that reason, it is important that every committee update its Statement of Organization (FEC Form 1) to disclose a current e-mail address. To amend Form 1, electronic filers must submit Form 1 filled out in its entirety. Paper filers should include only the committee's name, address, identification number and the updated or changed portions of the form.

Treasurer's Responsibilities

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

Please note that filing deadlines are not extended in cases where the filing date falls on a weekend or federal holiday. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received by the Commission (or the Secretary of the Senate) by the close of business on the last business day before the deadline.

Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations that receive contributions or make expenditures, including independent expenditures,¹ in excess of \$50,000

(continued on page 6)

¹ The regulation covers individuals and organizations required to file reports of contributions and/or expenditures with the Commission, including any person making an independent expenditure. Disbursements for "electioneering communications" do not count toward the \$50,000 threshold for mandatory electronic filing. 11 CFR 100.29(c)(3) and 104.18(a).

Reports

(continued from page 5)

in a calendar year—or have reason to expect to do so—and that file with the Commission must file all reports and statements with the FEC 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.

Senate committees and other committees that file with the Secretary of the Senate² are not subject to the mandatory electronic filing rules.

The Commission's electronic filing software, FECFile, is free and can be downloaded from the FEC's web site. As of January 2, 2008, new FECFile Version 6.1.1.0 will be available for download from the FEC web site at <http://www.fec.gov/electfil/updatelist.html>. See *December 2007 Record*, page 13. All reports

filed after January 2, 2008, must be filed in Format Version 6.1 (the new version). Reports filed in previous formats will not be accepted.

Filers may also use commercial or privately developed software as long as the software meets the Commission's format specifications, which are available on the Commission's web site. Committees using commercial software should contact their vendors for more information about the Commission's latest software release.

² See "Where to File" on page 12.

Guide to 2008 Reporting

Note: All committees must also file a 2007 Year-End Report, due January 31, 2008.

Type of Filer	Required Reports				
	Quarterly	Monthly	Pre-Primary ¹	Pre-General	Post- General
House and Senate Campaigns	X		X	X	X
			Required Only if Candidate Runs in Election		
Presidential Campaigns Anticipating Activity of at Least \$100,000		X		X	X
			Required Only if Candidate Runs in Election		
Presidential Campaigns With Activity Less than \$100,000 ²	X		X	X	X
			Required Only if Candidate Runs in Election		
PACs and Party Committees Filing Monthly		X		X	X
			Filed in Lieu of November and December Monthly Reports		
PACs and Party Committees Filing Quarterly ³	X		X	X	X
			Required Only if Committee Makes Contributions or Expenditures in Connection with Election During the Reporting Period ⁴		Required Regardless of Activity

¹ This category includes pre-convention and pre-runoff reports.

² Presidential committees able to change their reporting schedule and that wish to do so must notify the Commission in writing. Electronic filers must file this request electronically.

³ PACs and party committees that filed on a semiannual basis in 2007 file on a quarterly basis in 2008. To avoid the need to file pre-primary and pre-runoff reports, these committees may change to monthly filing if they first notify the Commission in writing. Committees may change filing frequency only once a year. 11 CFR 104.5(c). National party committees and state and local party committees with reportable receipts or disbursements for federal election activity must file on a monthly schedule. 11 CFR 300.36(c)(1).

⁴ A reporting period begins with the close of books for the last report filed and ends with the closing date for the applicable report.

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 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. A committee sending its reports by registered mail should keep its proof of mailing.

Overnight Mail. Reports filed by Express or Priority Mail with delivery confirmation will be considered timely if they are deposited with the USPS on or before the mailing deadline. Reports filed by an overnight delivery with an on-line tracking system and scheduled for next day delivery will be timely if they are deposited with the service on or before the mailing deadline. A committee sending its reports by either of these methods should keep its proof of mailing or other means of transmittal of its reports.

Please note that a Certificate of Mailing from the USPS is not sufficient to prove that a report is timely filed using Registered, Certified or Overnight Mail.

Other Means of Filing. Reports sent by other means—including first class mail and courier—must be received by the FEC (or the Secretary of the Senate for Senate committees and political committees supporting only Senate candidates) before the Commission's (or the Secretary of the Senate's) close of business on the filing deadline. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

Paper forms are available at the FEC's web site (<http://www.fec.gov/info/forms.shtml>) and from the FEC Faxline, the agency's automated fax system (202/501-3413). The 2008 Reporting Schedule is also available on the FEC's web site (http://www.fec.gov/info/report_dates.shtml),

(continued on page 8)

2007 Year-End Report

Note: All committees file this report.

Report	Period Covered	Filing Deadline ¹
Year-End ²	Closing date of last report through 12/31/07	January 31, 2008

2008 Monthly Reports

Note: All national party committees and any state, district or local party committee that engages in federal election activity (FEA) must file monthly reports.

Report	Period Covered	Filing Deadline ¹
February	1/1 - 1/31	2/20
March	2/1 - 2/29	3/20
April	3/1 - 3/31	4/20*
May	4/1 - 4/30	5/20
June	5/1 - 5/31	6/20
July	6/1 - 6/30	7/20*
August	7/1 - 7/31	8/20
September	8/1 - 8/31	9/20*
October	9/1 - 9/30	10/20
Pre-General ³	10/1 - 10/15	10/23
Post-General	10/16 - 11/24	12/4
Year-End	11/25 - 12/31	1/31/2009*

2008 Quarterly Reports⁴

Report	Close of Books	Filing Deadline ¹
April Quarterly	3/31	4/15
July Quarterly	6/30	7/15
October Quarterly	9/30	10/15
Year-End	12/31	1/31/2009*

Election Reports for November 4 General Election

Report	Close of Books	Filing Deadline ¹
Pre-General ³	10/15	10/23
Post-General	11/24	12/4

* Note that this filing deadline falls on a weekend. Filing deadlines are not extended for weekends or federal holidays.

¹ Reports sent by registered or certified mail, by Express or Priority Mail with delivery confirmation or by overnight delivery service with an online tracking system must be postmarked, or deposited with the mailing service, by the filing deadline. Reports sent by other means—including first class mail and courier—must be received by the filing deadline. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

² Authorized committees of candidates in the 2008 general election file Form 3Z-1.

³ If sent by registered, certified or overnight mail, the pre-general must be postmarked by October 20.

⁴ Principal campaign committees must also file a pre-primary report if the candidate is running in a primary, and all quarterly filers must file pre-primary reports before any primary in which they make a contribution or expenditure on behalf of a candidate in that primary. Primary reporting deadlines are listed on pages 9-12.

Reports

(continued from page 7)

and from Faxline. For more information on reporting, call the FEC at 800/424-9530 or 202/694-1100.

Year-End Reports Covering 2007 Activity

All committees must file a 2007 year-end report due January 31, 2008. The coverage and reporting dates are found on page 7.

Reports Covering 2008 Activity

To find out which reports your committee must file in 2008, check the Guide to 2008 Reporting on page 6. Then check the tables on pages 7 and 9-12 for reporting dates. Please note that committees active in special elections in 2008 may have to file additional special election reports, as explained on page 13. These reporting dates are also available on the Commission's web site at http://www.fec.gov/info/report_dates.shtml.

Authorized Committees of Candidates

House and Senate Candidates. All campaigns that have a reporting obligation must file quarterly reports in 2008. Generally, an individual becomes a candidate for federal office, thus triggering registration and reporting obligations, when his or her campaign exceeds \$5,000 in either contributions received or expenditures made. If the campaign has not exceeded the \$5,000 threshold, it is not required to file reports. See 11 CFR 100.3(a)(1). See also 11 CFR 100.3(a)(2) and (3). The authorized committees of House and Senate candidates must also file pre-primary election and pre-general election reports before any election in which the candidate runs in 2008. These committees also must file a post-general election report if the candidate runs in the general election. 11 CFR 104.5(a)(2).

Principal campaign committees of candidates who ran in past elections or are running in future elections

must also file quarterly reports in 2008. Committees that wish to terminate must file a termination request with the Commission or the Secretary of the Senate, as appropriate, and must continue filing reports until notified in writing that their termination request has been accepted by the Commission.

Principal campaign committees of candidates running in 2008 should have filed FEC Form 3Z-1 as part of their July 2007 Quarterly report and must file another as part of their Year-End report, due January 31, 2008. 11 CFR 104.19. The information provided on Form 3Z-1 allows opposing candidates to compute their "gross receipts advantage," which is used to determine whether a candidate is entitled to increased contribution and coordinated party expenditure limits under the "Millionaires' Amendment." 2 U.S.C. §§441a(i) and 441a-1. Form 3Z-1 is included in the Form 3 package.

Presidential Candidates. Presidential committees active in the 2008 race that have received contributions or made expenditures aggregating \$100,000 or that anticipate this level of activity file on a monthly basis in 2008. 11 CFR 104.5(b)(1)(i) and (iii). If the candidate runs in the general election, the campaign must file pre- and post-election reports in lieu of the November and December monthly reports. 11 CFR 104.5(b)(1)(i)(C).

Presidential committees active in the 2008 race with financial activity under \$100,000 must file on a quarterly basis in 2008. They must also file pre-primary reports for the primaries in which they appear on the ballot and pre- and post-general election reports if they are candidates in the general election. 11 CFR 104.5(b)(1)(ii).

Presidential committees that are not active in 2008 but are retiring debts from previous campaigns may file on either a monthly or a quarterly schedule in 2008.

Presidential committees able to change their reporting schedule and that wish to do so are required to notify the Commission in writing. 11 CFR 104.5(b)(2). Electronic filers must file this request electronically. After filing this notice of change in filing frequency with the Commission and receiving an approval notice from the Commission, all future reports must follow the new filing schedule.

State, District and Local Party Committees

State, district and local party committees that engage in reportable "federal election activity" must file on a monthly schedule. 11 CFR 300.36(c)(1). Committees that do not engage in reportable "federal election activity" may file on a quarterly basis in 2008. 11 CFR 104.5(c)(1)(i).

National Party Committees

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

Political Action Committees

PACs (separate segregated funds and nonconnected committees) that filed on a semiannual basis during 2007 must file on a quarterly basis in 2008. Monthly filers continue on the monthly schedule. PACs may change their filing schedule, but must first notify the Commission in writing. Electronic filers must file this request electronically. A committee may change its filing frequency only once a year, and after giving notice of change in filing frequency to the Commission and receiving an approval notice, all future reports must follow the new filing frequency. 11 CFR 104.5(c).

Pre- and Post-Election Reports

Please note that in 2008, party committees and PACs that file monthly reports file a pre-general election report and a post-general election report in lieu of the reports

(continued on page 12)

**Pre-Election Reporting Dates:
2008 Primary and Runoff Elections**

State	Election Date	Close of Books+	Mailing Deadline++	Filing Deadline++	48-Hour Notices **(candidates only)
*Alabama	6/3	5/14	5/19	5/22	5/15 - 5/31
Runoff	7/15	6/25	6/30	7/3	6/26 - 7/12
*Alaska	8/26	8/6	8/11	8/14	8/7 - 8/23
American Samoa	11/4	10/15	10/20	10/23	10/16 - 11/1
Arizona	9/2	8/13	8/18	8/21	8/14 - 8/30
*Arkansas	5/20	4/30	5/5	5/8	5/1 - 5/17
Runoff	6/10	5/21	5/26 ¹	5/29	5/22 - 6/7
California	6/3	5/14	5/19	5/22	5/15 - 5/31
*Colorado	8/12	7/23	7/28	7/31	7/24 - 8/9
Connecticut	8/12	7/23	7/28	7/31	7/24 - 8/9
*Delaware	9/9	8/20	8/25	8/28	8/21 - 9/6
District of Columbia	9/9	8/20	8/25	8/28	8/21 - 9/6
Florida	8/26	8/6	8/11	8/14	8/7 - 8/23
*Georgia	7/15	6/25	6/30	7/3	6/26 - 7/12
Primary Runoff	8/5	7/16	7/21	7/24 ²	7/17 - 8/2
Guam	9/6	8/17	8/22	8/25	8/18 - 9/3
Hawaii	9/20	8/31	9/5	9/8	9/1 - 9/17
*Idaho	5/27	5/7	5/12	5/15	5/8 - 5/24

+ This date indicates the end of the 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 through the close of books for the first report due, including activity that occurred before the committee registered.

++ Reports sent by registered or certified mail must be postmarked by the mailing deadline. Committees should keep the mailing receipt with its postmark as proof of filing. If using overnight mail, the delivery service must receive the report by the mailing deadline. "Overnight mail" means an overnight service with an on-line tracking system and scheduled for next business day delivery. Reports filed by any other means must be received by the Commission (or Secretary of the Senate for Senate committees) by the filing deadline.

* States holding 2008 Senate elections.

** Filed by candidate committees only. 48-Hour Notices are required if the campaign committee receives any contribution (including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee) of \$1,000 or more per source, during the applicable period.

¹ Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be post-marked before that date.

² The July Quarterly Report is waived for committees filing the Kansas, Michigan, Missouri and Oklahoma Pre-Primary Reports and the Georgia Pre-Runoff Report. See 11 CFR 104.5(a)(1)(iii) and (c)(1)(i)(C).

**Pre-Election Reporting Dates:
2008 Primary and Runoff Elections**

State	Election Date	Close of Books+	Mailing Deadline++	Filing Deadline++	48-Hour Notices **(candidates only)
*Illinois	2/5	1/16	1/21 ¹	1/24 ³	1/17 - 2/2
Indiana	5/6	4/16	4/21	4/24 ⁴	4/17 - 5/3
*Iowa	6/3	5/14	5/19	5/22	5/15 - 5/31
*Kansas	8/5	7/16	7/21	7/24 ²	7/17 - 8/2
*Kentucky	5/20	4/30	5/5	5/8	5/1 - 5/17
*Louisiana	9/6	8/17	8/22	8/25	8/18 - 9/3
Runoff	10/4	9/14	9/19	9/22	9/15 - 10/1
*Maine	6/10	5/21	5/26 ¹	5/29	5/22 - 6/7
Maryland	2/12	1/23	1/28	1/31 ³	1/24 - 2/9
*Massachusetts	9/16	8/27	9/1 ¹	9/4	8/28 - 9/13
*Michigan	8/5	7/16	7/21	7/24 ²	7/17 - 8/2
*Minnesota	9/9	8/20	8/25	8/28	8/21 - 9/6
*Mississippi	3/11	2/20	2/25	2/28	2/21 - 3/8
Runoff	4/1	3/12	3/17	3/20	3/13 - 3/29
Missouri	8/5	7/16	7/21	7/24 ²	7/17 - 8/2
*Montana	6/3	5/14	5/19	5/22	5/15 - 5/31
*Nebraska	5/13	4/23	4/28	5/1	4/24 - 5/10
Nevada	8/12	7/23	7/28	7/31	7/24 - 8/9
*New Hampshire	9/9	8/20	8/25	8/28	8/21 - 9/6
*New Jersey	6/3	5/14	5/19	5/22	5/15 - 5/31

+ This date indicates the end of the 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 through the close of books for the first report due, including activity that occurred before the committee registered.

++ Reports sent by registered or certified mail must be postmarked by the mailing deadline. Committees should keep the mailing receipt with its postmark as proof of filing. If using overnight mail, the delivery service must receive the report by the mailing deadline. "Overnight mail" means an overnight service with an on-line tracking system and scheduled for next business day delivery. Reports filed by any other means must be received by the Commission (or Secretary of the Senate for Senate committees) by the filing deadline.

* States holding 2008 Senate elections.

** Filed by candidate committees only. 48-Hour Notices are required if the campaign committee receives any contribution (including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee) of \$1,000 or more per source, during the applicable period.

¹ Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be post-marked before that date.

² The July Quarterly Report is waived for committees filing the Kansas, Michigan, Missouri and Oklahoma Pre-Primary Reports and the Georgia Pre-Runoff Report. See 11 CFR 104.5(a)(1)(iii) and (c)(1)(i)(C).

³ The 2007 Year-End Report is waived for committees filing the Illinois and Maryland Pre-Primary Reports. See 11 CFR 104.5(a)(1)(iii) and (c)(1)(i)(C).

⁴ The April Quarterly Report is waived for committees filing the Indiana, North Carolina and Pennsylvania Pre-Primary Reports. See 104.5(a)(1)(iii) and (c)(1)(i)(C).

**Pre-Election Reporting Dates:
2008 Primary and Runoff Elections**

State	Election Date	Close of Books+	Mailing Deadline++	Filing Deadline++	48-Hour Notices **(candidates only)
*New Mexico	6/3	5/14	5/19	5/22	5/15 - 5/31
New York	9/9	8/20	8/25	8/28	8/21 - 9/6
*North Carolina	5/6	4/16	4/21	4/24 ⁴	4/17 - 5/3
Runoff	6/24	6/4	6/9	6/12	6/5 - 6/21
North Dakota	6/10	5/21	5/26 ¹	5/29	5/22 - 6/7
Ohio	3/4	2/13	2/18 ¹	2/21	2/14 - 3/1
*Oklahoma	7/29	7/9	7/14	7/17 ²	7/10 - 7/26
Runoff	8/26	8/6	8/11	8/14	8/7 - 8/23
*Oregon	5/20	4/30	5/5	5/8	5/1 - 5/17
Pennsylvania	4/22	4/2	4/7	4/10 ⁴	4/3 - 4/19
Puerto Rico	3/9	2/18	2/23 ¹	2/26	2/19 - 3/6
*Rhode Island	9/9	8/20	8/25	8/28	8/21 - 9/6
*South Carolina	6/10	5/21	5/26 ¹	5/29	5/22 - 6/7
Runoff	6/24	6/4	6/12 ⁶	6/12	6/5 - 6/21
*South Dakota	6/3	5/14	5/19	5/22	5/15 - 5/31
Runoff	6/17	5/28	6/5 ⁶	6/5	5/29 - 6/14
*Tennessee	8/7	7/18	7/23	7/26 ⁵	7/19 - 8/4

+ This date indicates the end of the 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 through the close of books for the first report due, including activity that occurred before the committee registered.

++ Reports sent by registered or certified mail must be postmarked by the mailing deadline. Committees should keep the mailing receipt with its postmark as proof of filing. If using overnight mail, the delivery service must receive the report by the mailing deadline. "Overnight mail" means an overnight service with an on-line tracking system and scheduled for next business day delivery. Reports filed by any other means must be received by the Commission (or Secretary of the Senate for Senate committees) by the filing deadline.

* States holding 2008 Senate elections.

** Filed by candidate committees only. 48-Hour Notices are required if the campaign committee receives any contribution (including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee) of \$1,000 or more per source, during the applicable period.

¹ Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be post-marked before that date.

² The July Quarterly Report is waived for committees filing the Kansas, Michigan, Missouri and Oklahoma Pre-Primary Reports and the Georgia Pre-Runoff Report. See 11 CFR 104.5(a)(1)(iii) and (c)(1)(i)(C).

⁴ The April Quarterly Report is waived for committees filing the Indiana, North Carolina and Pennsylvania Pre-Primary Reports. See 104.5(a)(1)(iii) and (c)(1)(i)(C).

⁵ Notice that this deadline falls on a weekend or federal holiday. Filing deadlines are not extended for weekends or holidays. Reports filed on paper or 3.5" diskette must be received by the appropriate filing office(s) before the filing deadline.

⁶ The mailing deadline is the same as the filing deadline because the computed mailing deadline would fall one day before the primary/general is held.

**Pre-Election Reporting Dates:
2008 Primary and Runoff Elections**

State	Election Date	Close of Books+	Mailing Deadline++	Filing Deadline++	48-Hour Notices **(candidates only)
*Texas	3/4	2/13	2/18 ¹	2/21	2/14 - 3/1
Runoff	4/8	3/19	3/24	3/27	3/20 - 4/5
Utah	6/24	6/4	6/9	6/12	6/5 - 6/21
Vermont	9/9	8/20	8/25	8/28	8/21 - 9/6
Virgin Islands	9/13	8/24	8/29	9/1 ⁵	8/25 - 9/10
*Virginia	6/10	5/21	5/26 ¹	5/29	5/22 - 6/7
Washington	8/19	7/30	8/4	8/7	7/31 - 8/16
*West Virginia	5/13	4/23	4/28	5/1	4/24 - 5/10
*Wisconsin	9/9	8/20	8/25	8/28	8/21 - 9/6
*Wyoming	8/19	7/30	8/4	8/7	7/31 - 8/16

+ This date indicates the end of the 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 through the close of books for the first report due, including activity that occurred before the committee registered.

++ Reports sent by registered or certified mail must be postmarked by the mailing deadline. Committees should keep the mailing receipt with its postmark as proof of filing. If using overnight mail, the delivery service must receive the report by the mailing deadline. "Overnight mail" means an overnight service with an on-line tracking system and scheduled for next business day delivery. Reports filed by any other means must be received by the Commission (or Secretary of the Senate for Senate committees) by the filing deadline.

* States holding 2008 Senate elections.

** Filed by candidate committees only. 48-Hour Notices are required if the campaign committee receives any contribution (including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee) of \$1,000 or more per source, during the applicable period.

¹ Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be postmarked before that date.

⁵ Notice that this deadline falls on a weekend or federal holiday. Filing deadlines are not extended for weekends or holidays. Reports filed on paper or 3.5" diskette must be received by the appropriate filing office(s) before the filing deadline.

Reports

(continued from page 8)

otherwise due in November and December. Party committees and PACs that file quarterly reports also file:

- A pre-primary election report and a pre-general election report before any election in which the committee makes a contribution to or an expenditure on behalf of a candidate in that election, if not previously disclosed; and
- A post-general election report.

Where to File

Committee treasurers must file FEC reports with the appropriate federal office, as discussed below.

State filing requirements also apply to reports filed by the principal campaign committees of candidates seeking office in Guam and Puerto Rico and to reports filed by PACs and party committees that support these candidates. 2 U.S.C. §439(a)(2)(B).

House Candidate Committees. Principal campaign committees of

House candidates file with the FEC. 11 CFR 105.1.

Senate Candidate Committees. Principal campaign committees of Senate candidates file with the Secretary of the Senate. 11 CFR 105.2.

Presidential Committees. Principal campaign committees of Presidential candidates file with the FEC. 11 CFR 105.3.

Candidate Committees with More Than One Authorized Committee. If a campaign includes more than one authorized committee, the principal

campaign committee files, with its own report, a consolidated report of receipts and disbursements (FEC Form 3Z) showing its own activity as well as the activity of all other authorized committees of the candidate. 11 CFR 104.3(f).

PACs and Party Committees.

Generally, PACs and party committees file with the FEC. However, committees that support only Senate candidates file with the Secretary of the Senate, as do the national Senatorial campaign committees. 11 CFR 105.2 and 11 CFR 105.4.

Late Filing

The Federal Election Campaign Act does not permit the Commission to grant extensions of filing deadlines under any circumstances. Filing late reports may result in enforcement action by the Commission. The Commission pursues compliance actions against late filers and nonfilers under the Administrative Fine program and on a case-by-case basis. For more information on the Administrative Fine program, visit the FEC web site at <http://www.fec.gov/af/af.shtml>.

Independent Expenditures

Political committees and other entities that make independent expenditures at any time during the calendar year—up to and including the 20th day before an election—are required to disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. This reporting requirement is in addition to the requirement to file 24-hour reports of independent expenditures, each time disbursements for independent expenditures aggregate or exceed \$1,000 during the last 20 days—up to 24 hours—before an election. 2 U.S.C. §§434(b), (d) and (g).

Political committees must use FEC Form 3X, Schedule E, to file 48- and 24-hour reports. Persons and other entities that are not political committees must use FEC Form 5.

Political committees must report independent expenditures that do not trigger the 48- or 24-hour reporting thresholds on their regularly scheduled disclosure reports. These reports are not required when a party committee or PAC makes a contribution directly to a candidate.

Persons and other entities that are not political committees must disclose independent expenditures in a quarterly report filed on FEC Form 5 once the expenditures exceed \$250 in a calendar year in connection with an election. 11 CFR 104.4(b) (1) and 109.10(b). Form 5 filers are not required to file quarterly reports for periods in which they have not made any independent expenditures. However, they must file quarterly reports for periods in which they made expenditures aggregating over \$250 in a calendar year for a given election, regardless of whether or not they have already reported that activity in a 48- or 24-hour report.

For a chart of 2008 48- and 24-hour reporting periods for independent expenditures, consult the FEC web site at http://www.fec.gov/info/charts_ie_dates_prez.shtml.

All individuals, persons and committees, including Senate committees, must file their 24- and 48-hour reports and quarterly reports of independent expenditures with the Commission. 11 CFR 104.4, 109.10, 105.1 and 105.2.

Committees Active in Special Elections

Committees authorized by candidates running in any 2008 special election must file pre- and post-election reports in addition to regularly scheduled reports. 11 CFR 104.5(h). They are also required to comply with the 48-hour notice requirement for any contribution of \$1,000 or more per source (including loans) received shortly before an election. See 11 CFR 104.5(f).

PACs and party committees supporting candidates running in special elections may also have to file pre-

and post-election reports unless they file on a monthly basis. 11 CFR 104.5(c)(3) and 104.5(h). All PACs are subject to 48- and 24-hour reporting of independent expenditures made before an election. See 11 CFR 104.4(b) and (c) and 104.5(g).

When timing permits, the *Record* will alert committees to special election reporting dates.

Electioneering Communications

Additionally, individuals and other persons who make disbursements for “electioneering communications” that aggregate in excess of \$10,000 must file disclosure statements with the Commission within 24 hours of distribution of the communications to the public.³ See 11 CFR 100.29. Charts detailing the electioneering communication periods for Presidential primary elections and caucuses and Congressional primary and runoff elections are available on the FEC web site at http://www.fec.gov/info/charts_ec_dates_prez.shtml.

—Meredith Metzler

Illinois Special Election Reporting: 14th District

Illinois will hold a Special Election to fill U.S. House seat in Illinois’ 14th Congressional District formerly held by Representative Dennis Hastert. The Special Primary will be held on February 5, 2008, and the Special General will be held March 8, 2008.

Principal Campaign Committees

Candidate committees involved in this election must follow the reporting schedule on page 14. Generally, principal campaign committees of U.S. House candidates running in the November 2008 election must file FEC Form 3Z-1 as part of their 2007 Year-End Reports. See 11 CFR

(continued on page 14)

³ See page 1 for information about recent changes to the electioneering communications regulations.

Reports

(continued from page 13)

104.19. However, because the Year-End Report is waived for committees of candidates running in the Special Primary Election, these principal campaign committees must instead file FEC Form 3Z-1 as part of their Pre-Primary Election Reports, due on January 24, 2008.

PACs and Party (Unauthorized) Committees

Because disclosing financial activity from two different calendar years would conflict with the calendar-year aggregation requirements for unauthorized committees, PACs and party committees filing the Pre-Primary report must file this report on two separate forms. One

form should cover only 2007 activity and should be labeled as the “Year-End Report.” The other form should cover only 2008 activity and should be labeled as the “Pre-Primary Report.” Both forms must be filed by January 24, 2008.

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 mail¹ 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

Illinois 14th District Special Election Reporting

Committees Involved in Only the Special Primary Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Year-End		—waived—	
Pre-Primary	January 16	January 21 ²	January 24
April Quarterly	March 31	April 15	April 15

Committees Involved in Both the Special Primary and the Special General Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Year-End		—waived—	
Pre-Primary	January 16	January 21 ²	January 24
Pre-General	February 17	February 22	February 25
Post-General	March 31	April 7	April 7
April Quarterly		—waived—	
July Quarterly	June 30	July 15	July 15

Quarterly Filing Committees Involved in Only the Special General Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-General	February 17	February 22	February 25
Post-General	March 31	April 7	April 7
April Quarterly		—waived—	
July Quarterly	June 30	July 15	July 15

¹ 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.

² Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be postmarked before that date.

¹ “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.

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 between January 17 and February 2, 2008, for the Special Primary Election, and between February 18 and March 5, 2008, for the Special General Election.

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 Primary Election between January 17 and February 3, 2008, and the Special General Election between February 18 and March 6, 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 30-day electioneering communications period for the Special Primary Election runs from January 6 to February 5, 2008, and the 60-day electioneering communications period for the Special General Election is from January 8 to March 8, 2008.

—Elizabeth Kurland

Advisory Opinions

AO 2007-19 Renaissance Health Service Corporation

A non-profit 501(c)(4) corporation qualifies as a membership organization and individuals selected to be members of that organization qualify as "members" for purposes of the Federal Election Campaign Act (the Act). Accordingly, the organization may solicit those individuals for contributions to a separate segregated fund (SSF) established by the organization.

Background

Renaissance Health Service Corporation is a non-profit corporation that is exempt from taxation under section 501(c)(4) of the Internal Revenue Code. Renaissance primarily serves as a holding company for Delta Dental Plan of Michigan (DDPMI) and Delta Dental of Tennessee (DDTN) and other companies it directly or indirectly owns or controls. It also supports programs to promote dental science and access to dental care. Currently, Renaissance has 75 members, all of whom are individuals.

Renaissance is the sole corporate member of both DDPMI and DDTN and therefore "controls" them. Renaissance has entered into an "Affiliation Agreement" with both companies, whereby DDPMI would select no more than 68 of the 75 members of Renaissance and DDTN would select no fewer than seven members. The members serve three-year terms and may be re-appointed to further terms. Under the Bylaws of Renaissance, these 75 individuals elect the organization's board of directors at the annual membership meetings. The board of directors exercises Renaissance's corporate powers. The term of a director is three years, and directors may be re-

elected twice. Individuals who were not Renaissance members become members of Renaissance upon their election to the board.

The Bylaws permit a member to be removed during his or her membership appointment if the member refuses to comply with the conditions of the voting agreement, which requires members to vote so that no more than 17 of the 19 directors represent DDPMI and no fewer than two represent DDTN.¹

Legal Analysis

As an exception to the prohibition on corporate contributions and expenditures, the Act and Commission regulations provide that an incorporated membership organization, cooperative or corporation without capital stock, or an SSF established by such an entity, may solicit at any time voluntary contributions to that SSF from the entity's members and their families, as well as the entity's executive and administrative personnel and their families. 11 CFR 114.1(a)(2)(iii) and 114.7(a).

Application of Criteria for Membership Organization. Under the Act and Commission regulations, a "membership organization" is defined as a trade association, cooperative or corporation without capital stock that meets the criteria listed below. To be considered a membership organization, an entity must satisfy all six of the criteria. A membership organization:

- Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization;

(continued on page 16)

¹ A nominating committee composed of directors selects the potential directors to be voted on by the members, and, although two of the nominees must be acceptable to DDTN, a member may comply with the voting agreement by voting for individuals who are among the DDTN-appointed members of Renaissance for the board seats associated with DDTN.

Advisory Opinions

(continued from page 15)

- Expressly states the qualifications and requirements for membership in its articles, bylaws or constitution;
- Makes its articles, bylaws or constitution available to its members upon request;
- Expressly solicits persons to become members;
- Expressly acknowledges the acceptance of membership; and
- Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to federal office. 11 CFR 114.1(e)(1)(i)-(vi) and 100.134(e)(1)-(6).

As to the first criterion, the 75 members elect the board of directors and the directors are a subset of the Renaissance members. Thus it can be argued that at least some of the individual members are vested with the power and authority to operate or administer Renaissance through their board membership, or all 75 members of Renaissance are vested with such authority by their ability to elect members of the board. The fact that a member can be removed during his or her membership appointment for refusing to comply with the voting agreement, and that DDPMI and DDTN can decide not to re-appoint members to additional terms, indicates some limits on the discretion exercised by directors and other members. However, the directors exercise Renaissance's corporate powers, and even if DDPMI and DDTN do not want to re-select a director as a Renaissance director, the member can serve out his or her term. Hence, at least some of the members are vested with the power and authority to operate or administer Renaissance during their three-year terms as director.

Renaissance also meets each of the second through fifth criteria listed above. Renaissance's Articles of Incorporation and Bylaws are made available to any member upon request, Renaissance expressly invites individuals to be members upon their

selection by DDPMI or DDTN, and Renaissance expressly acknowledges the acceptance of membership.

Additionally, Renaissance was not organized for the purpose of influencing any nomination for election, or election, of any individual for federal office, and has not changed its purpose. The membership consists of retired employees of DDPMI, dentists participating in DDPMI and DDTN networks, subscribers to those plans, retired dentists and others. Thus, the membership is made up of a small group of individuals intended to represent constituencies of providers and users of dental services and has historically served Renaissance's purposes of promoting access to dental care and the advancement of dentistry, and not the purpose of influencing federal elections.

Application of Criteria for "Member." Commission regulations provide that the term "member" includes all persons who 1) currently satisfy the requirements for membership, 2) affirmatively accept the membership organization's invitation to become a member and 3) have a significant financial attachment to the organization, pay membership dues at least annually or have a significant organizational attachment to the membership organization which includes affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. 11 CFR 114.1(e)(2)(i)-(iii) and 100.134(f)(1)-(3).

The 75 individuals satisfy the requirements for membership as described by Renaissance's Bylaws, affirmatively accept Renaissance's invitation to be a member and affirm membership on an annual basis. With respect to the exercise of participatory rights, the members vote in the election of board members and have other voting powers that are not subject to the voting agreement. Despite the voting agreement and the selection powers exercised by DDPMI and DDTN, the 75 individuals have some limited discretion in the important

function of electing directors and greater discretion in voting on other specific matters. Thus the directors have sufficient direct participatory rights during their three-year member terms to meet Commission regulations' definition of member.

Date Issued: November 16, 2007

Length: 7 pages

—Myles Martin

AO 2007-22 Campaign Committee May Accept Volunteer Services from Foreign Nationals

Jim Hurysz for Congress may receive volunteer services and professional services from Canadian citizens and may use its campaign funds to pay for candidate travel to Canada in order to gather campaign-related information. The committee may not accept election materials donated by Canadian campaigns, but may purchase the materials at fair market value. Mr. Hurysz may also use his personal funds to pay for candidate travel to Canada and to obtain information from Canadian citizens.

Background

Jim Hurysz for Congress (the Committee), the principal campaign Committee of Jim Hurysz, an Independent Congressional candidate, intends to use information and expertise from Canadian citizens and campaigns that have run successful third-party campaigns for public office in Canada. The Committee plans to engage in the following interactions with Canadian citizens and campaigns:

- Accepting volunteer services from Canadian citizens;
- Using campaign funds for travel to observe and gather information about third-party campaigns in Canada;
- Using campaign funds to pay for the salaries of Canadian campaign staff; and
- Accepting election materials from Canadian third-party candidates.

Jim Hurysz also plans to use personal funds to travel to Canada to observe third-party campaign operations.

Legal Analysis

Volunteer Services from Foreign Nationals. The Federal Election Campaign Act (the Act) prohibits foreign nationals from making contributions of money or anything of value in connection with a federal, state or local election. 2 U.S.C. §441e(a)(1) (A). However, the law also provides that the term “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). The Committee intends to use the volunteer services of Canadian citizens for a variety of campaign activities, such as phone banking, literature drops and door-to-door canvassing. The performance of such campaign-related activities by Canadian citizens, without compensation, constitutes volunteer activity, and is exempt from the definition of “contribution.”

Using Campaign Funds to Obtain Information on Third-Party Campaigns in Canada and to Hire Foreign Nationals as Campaign Staff. The Act and Commission regulations prohibit candidates from converting campaign funds to personal use. Commission regulations subject travel expenses to a “case-by-case” analysis to determine whether they constitute “personal use.” 11 CFR 113.1(g)(1)(ii)(C). In this case, the Commission concluded that the use of campaign funds to travel to Canada and consult with Canadian citizens who have managed successful third-party campaigns would be an otherwise authorized expenditure in connection with the Hurysz campaign and would therefore be a permissible use of campaign funds.

Also, the Committee’s employment of Canadian citizens constitutes a legitimate campaign expense and would not result in the conversion of funds to personal use.

Candidate’s Use of Personal Funds for Gathering Election-Related Information. Commission regulations provide that a candidate may make unlimited expenditures from personal funds on behalf of his or her own campaign for federal office. 11 CFR 110.10. Thus, Mr. Hurysz may expend his personal funds, without limit, to obtain information from Canadian third-party candidates, and travel to Canada to obtain such information and to observe third-party campaigns.

Accepting Election Materials from Canadian Campaigns. A Canadian campaign’s provision of campaign materials without charge to the Committee would constitute a prohibited contribution by a foreign national. The materials have some value, and providing them to the Committee for free would relieve the Committee of the burden of paying for such materials. 2 U.S.C. §441e(a)(1) (A). Thus, the Committee may not accept such materials without charge provided by Canadian third-party candidates. However, the Committee may purchase materials from a Canadian campaign because the purchase would constitute an authorized use of campaign funds. Mr. Hurysz may also use personal funds to purchase such materials.

Date Issued: November 29, 2007

Length: 10 pages

—Gary Mullen

AO 2007-23 State Party Committee Status for Independence Party of New York

The Independence Party of New York (IPNY) satisfies the requirements for state party committee status.

Background

The Federal Election Campaign Act (the Act) defines a “state committee” as “the organization which, by virtue of the bylaws of a political party, is responsible for

the day-to-day operation of such political party at the State level, as determined by the Commission.” 2 U.S.C. §431(15). See also 11 CFR 100.14(a).

In order for an organization to achieve state party committee status under FEC regulations, the Commission must first determine whether the organization qualifies as a “political party” under the Act and Commission regulations. See AO 2007-6. Commission regulations define a “political party” as an “association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization.” 11 CFR 100.15; 2 U.S.C. §431(16).

Secondly, the organization must, by virtue of its bylaws, be responsible for the day-to-day operations of the political party at the state level. See 2 U.S.C. §431(15). A state party organization need not be affiliated with a national political party to obtain state party committee status; in such cases, the Commission considers whether the party’s rules “set out a comprehensive organizational structure for the party” and “clearly identify the role of the party” in administering the operations of the party at a state level. See AO 2000-21 and 2000-14.

Analysis

IPNY meets all of the requirements for state party committee status. IPNY has successfully placed candidates for federal office on the ballot in New York. Thus, IPNY satisfies the definition of “political party.” Additionally, IPNY’s bylaws (called “Rules” by IPNY) establish a comprehensive organizational structure for the party from the state level down to the local level and clearly identify the role of the party organization. The Rules address the

(continued on page 18)

Advisory Opinions

(continued from page 17)

day-to-day operations of a political party on the state level and are similar to the bylaws examined in past advisory opinions in which the Commission has recognized state party committee status. Also, under New York Election Law, IPNY has achieved ballot access status in New York as the official “Independence Party of the State of New York.”

Date Issued: December 10, 2007

Length: 4 pages

—Meredith Metzler

AO 2007-24

Joint Campaign and Fundraising Activities

The campaign committees of Jim Burkee for Congress and Jeff Walz for Congress may jointly engage in fundraising and campaigning activities, provided that the committees use an appropriate payment method for each type of activity, and otherwise follow the limits, prohibitions and other requirements for the Federal Election Campaign Act (the Act), as described below.

Background

Jim Burkee and Jeff Walz are Republican and Democratic candidates. Jim Burkee is the Republican candidate for the 5th Congressional District of Wisconsin, and Jeff Walz is a prospective Democratic candidate for this seat. The candidates plan to campaign together frequently “in order to promote civility and honesty in campaigns.” The Burkee Committee and the Walz Committee intend to form a joint fundraising committee (the “Joint Committee”) to serve as a clearinghouse for contributions received as a result of joint fundraising activity. The contributions would be divided evenly between the two committees. Mr. Burkee and Mr. Walz plan to appear jointly at campaign events and in television, radio, e-mail, web site and

other ads in which each candidate will receive equal time and prominence. The costs for the joint activities will be split equally between the Burkee and Walz Committees. All fundraising and campaign activities conducted solely by, or on behalf of, one candidate will continue to be funded only by that candidate.

Legal Analysis

Campaigns Raising Funds Jointly. Commission regulations allow political committees, other than separate segregated funds, to engage in joint fundraising with other political committees. 11 CFR 102.17(a)(1)(i). Committees engaging in joint fundraising must either create a new committee or designate one of the participating committees as the joint fundraising representative, which will collect contributions, pay fundraising costs from proceeds and from funds advanced by participants and disburse net proceeds to each participant. 11 CFR 102.17(b)(1). Joint fundraising participants are required to:

- Establish a separate depository account for joint fundraising proceeds; and,
- Enter into a written agreement stating a formula for the allocation of proceeds.

In this case, Mr. Burkee and Mr. Walz’s proposal meets the regulatory requirements for joint fundraising efforts. The Burkee and Walz committees intend to create and register a new political committee to serve as their joint fundraising representative, and they have entered into a written agreement establishing a formula whereby each committee will receive 50 percent of the proceeds from joint fundraising.

The Burkee Committee and Walz Committee must establish a separate depository account to be used solely for the receipt and disbursement of joint fundraising proceeds. 11 CFR 102.17(c)(3). Also, the Joint Committee must provide joint fundraising

disclaimers on every solicitation for contributions.¹

Allocation of Joint Fundraising Expenses. Commission regulations require the joint fundraising representative to allocate proceeds according to the formula set forth in the written agreement. 11 CFR 102.17(c)(6). The joint fundraising representative must also calculate each participant’s share of expenses based on the percentage of total receipts each participant had been allocated. 11 CFR 102.17(c)(7)(i)(A). The expenses from a series of fundraising events or activities must be allocated on a per-event basis. Thus, each candidate’s share of the costs of fundraising events must be attributed according to the percentage of the funds received by each participating committee.

Joint Advertising Efforts and Administrative Costs. Commission regulations state that the costs for joint advertising and campaign events that do not involve the solicitation of contributions must be allocated according to the benefit reasonably expected to be derived by each participating candidate. 11 CFR 106.1(a)(1). In an ad, the attribution of “benefit” is determined by the proportion of space or time dedicated to each candidate. Accordingly, the Commission determined that if the campaign events and ads devote equal space and time to the two candidates, then the two committees must split the costs equally. Also, the proposed joint administrative costs, such as the costs of web

¹ In addition to the standard disclaimer required on all public communications under 11 CFR 110.11, a joint fundraising notice must include the names of all participating committees, the allocation formula for the proceeds, a statement clarifying that contributors may opt to designate their contributions for a particular participant and a statement informing contributors that the allocation formula may change if any contribution exceeds the legal limit. 11 CFR 102.17.

site development and office space and equipment, would be allocated to each campaign according to the benefit reasonably expected to be derived by each committee. 11 CFR 106.1(a).

Joint Personnel Expenses. The Burkee and Walz Committees plan to hire the same individual to serve as campaign director for both campaigns. For work done jointly on both campaigns, the director would be paid equally by each committee. Any work the director does exclusively for one committee would be paid entirely by the benefiting committee. Any other staff members working for both committees would be paid under the same guidelines in order to ensure that the payments accurately reflect the benefit reasonably expected to be derived by each committee. The Commission approved this proposal.

Payment Methods for Joint Campaign and Fundraising Activities. The Burkee and Walz Committees proposed several different methods for paying the costs of joint activities. One proposal was for one committee to advance funds to pay a joint expense in full, and to receive reimbursement from the other committee for its proportionate share of the expense.

Commission regulations allow the costs of joint fundraising expenses to be paid from funds advanced by participants; however, the amount advanced in excess of one participant committee's share of costs for the event may not exceed the amount that the other participant committee may legally contribute to it. 11 CFR 102.17(b)(3)(ii). In the case of a candidate committee contributing to another candidate committee, the amount is \$2,000. Therefore, while one committee paying in full for a joint event is not prohibited, any advance from one participating committee to the other cannot exceed \$2,000.

With respect to joint campaigning expenses, the rules regarding

advances apply differently. In past advisory opinions, the Commission has concluded that one committee's payment for a communication that expressly advocates for another candidate does not constitute a contribution if the other candidate committee reimburses its proportional share of the total cost within a commercially reasonable time period. AO 2004-37. In this case, the Burkee and Walz Committees may each pay the entire expense of a joint campaign event, as long as the committee initially covering the expenses is reimbursed within a commercially reasonable period of time after the advance was made.

Another proposed payment method for joint activities would be for the candidates or campaign staff to advance funds and then be reimbursed by both committees. According to Commission regulations, expenses for joint fundraising activity may be paid or advanced by the participating committees or by the joint fundraising representative. 11 CFR 102.17(b), 102.17(c)(6)-(7) and 102.17(c)(7)(iii). Individual candidates and campaign staff, however, may not pay a joint fundraising expense using their personal funds.

A campaign staffer may, however, advance personal funds to pay a campaign expense, pending reimbursement. Such advances are in-kind contributions to the benefiting committees until the committees reimburse the staffer, and are subject to contribution limitations. 11 CFR 100.52(a) and 116.5.

Also, a candidate may make unlimited contributions to his or her own campaign from personal funds. While Mr. Burkee and Mr. Walz may make unlimited contributions to their own campaigns, an advance made to the campaign of another candidate would normally constitute a contribution, subject to limits. The Commission concluded, however, that a candidate advance from personal funds for joint campaign expenses would not constitute a contribution so long as the candidate making

the advance is reimbursed by the other candidate's committee within a commercially reasonable period of time after the advance is made. AO 2007-37.

A third permissible payment method would involve having vendors invoice each campaign separately for 50 percent of the costs of services. Commission regulations require that each committee's share of the costs of joint fundraising events must be allocated according to the percentage of the funds received by that committee. For all other expenses, each committee must pay in proportion to the benefit reasonably expected to be derived. Billing each committee separately for 50 percent of costs is thus permissible, so long as the committees share equally in contributions from their joint fundraising activities and benefit equally from their joint campaigning activities.

Date Issued: December 6, 2007

Length: 14 pages

—Gary Mullen

AO 2007-26 Disposal of Excess State Campaign Funds by Federal Candidate

A federal candidate's previous state campaign committee may make donations to certain charitable organizations, refund donations to its donors under certain conditions and, so long as the donated funds are federally permissible, make donations to state party nonfederal accounts and nonfederal candidates.

Background

Aaron Schock currently serves as an Illinois state representative. Mr. Schock, first elected in 2004, began to campaign for reelection to the Illinois state legislature in 2008, but ended his state campaign and is now a Republican candidate for the U.S. House of Representatives. His state campaign committee, Citizens for Schock (the Committee), has

(continued on page 20)

Advisory Opinions

(continued from page 19)

paid all of its expenses and contains a surplus consisting of funds from his 2006 and 2008 state campaigns. The funds in the state account are permissible under Illinois law, which allows donations from corporations and unions and does not limit donations from individuals to state candidates. However, some of the funds are impermissible under the limits and prohibitions of federal law.

Mr. Schock asked whether he may donate the Committee's surplus funds to:

- Nonfederal accounts of state and local party committees;
- State and local candidates in Mr. Schock's district and other parts of Illinois;
- The Republican party candidate who will run in the 2008 election to replace Mr. Schock in the state legislature (the "successor Republican party candidate"); and
- Certain charitable organizations.

Additionally, Mr. Schock asked whether his committee could refund donations in the surplus made by individuals and nonfederal committees and whether his committee could retain funds indefinitely.

Analysis

Threshold Determination Regarding Reasonable Accounting Methods. The Committee proposes to make disbursements to various types of entities. As a preliminary matter, the Commission noted that the Committee must use one reasonable accounting method to identify the donations it received that compose the remaining funds it has on hand and to identify the donations in its remaining funds that are the federally permissible funds. See for example 11 CFR 110.3(c)(4). The Committee must use the same accounting method for all of its disbursements and must ensure that funds received by the committee and used for one disbursement (according to the ac-

counting method) are not used to fund another disbursement.

State and Local Candidates and Nonfederal Party Accounts. The Federal Election Campaign Act (the Act) prohibits federal officeholders and candidates, their agents and any entities directly established, controlled or maintained by federal candidates or officeholders from soliciting, receiving, spending or disbursing funds in connection with a nonfederal election unless those funds are within the Act's amount limits and source prohibitions. 2 U.S.C. §441i(e)(1)(B) and 11 CFR 300.62. Commission regulations additionally require such funds to be in compliance with state law. 11 CFR 300.62.

Since Mr. Schock is a federal candidate and the Committee is a nonfederal campaign organization that he directly established, financed, maintained or controlled, all disbursements made by the Committee in connection with a nonfederal election must be made from funds that the Committee has identified as "federally permissible" funds. (This means that any funds donated by the Committee must have been received from federally permissible sources in amounts that are within the applicable contribution limit to a federal candidate). Therefore, the Committee may donate only federally permissible funds to the nonfederal accounts of state and local party committees and to nonfederal candidates, as permitted by state law. 2 U.S.C. §441i(e)(1)(B). Because Illinois law permits unlimited donations from one state or local candidate committee to another, and from a state candidate committee to a state party committee, the Committee may donate any amount of federally permissible funds remaining in its account.

The restriction on a federal candidate's soliciting, receiving or spending nonfederal funds applies to federal candidates at any time and does not depend on whether a federal candidate appears on the ballot. Thus the rules on donations by the Com-

mittee to nonfederal candidates do not change based on whether the nonfederal candidates' elections occur on the same date as a federal election. See AO 2005-2.

"Successor Republican Party Candidate." For federal candidates who also seek state or local office, the Act provides a limited exception to the general prohibition on federal candidate's raising or spending of nonfederal funds. See 2 U.S.C. §441i(e)(2). The restrictions do not apply to a federal candidate or officeholder who is or was also a candidate for state or local office as long as the solicitation, receipt or spending of funds (1) is solely in connection with such election for state or local office, (2) refers only to the candidate, other candidates for the same nonfederal office or both and (3) is permissible under state law. 11 CFR 300.63.

The purpose of the limited exception is to provide an equitable basis for a federal candidate or officeholder to conduct his or her state or local campaign so that he or she is not financially disadvantaged when competing with a nonfederal opponent who may raise and spend funds without the same restrictions that section 441i(e) imposes on federal candidates and officeholders. The exception applies only to a federal candidate's own campaign for state or local office and does not apply to Mr. Schock's situation, where he is no longer a nonfederal candidate and where he is no longer raising or spending funds for his former nonfederal campaign. See AOs 2007-1, 2005-12 and 2005-5.

Thus, the Committee may not make donations of federally impermissible funds to the Republican candidate running to replace Mr. Schock in the state legislature. Any donations to a state candidate must follow the same rules as the above donations to other nonfederal candidates and party accounts and must be made from federally permissible funds. 2 U.S.C. § 441i(e)(1)(B).

Refunds of Donations. Although 2 U.S.C. 441i(e)(1)(B) and 11 CFR 300.62 require that funds spent by a nonfederal committee controlled by a federal candidate consist of federally permissible donations, the Committee, under the facts presented here, would be refunding donations to the donors that provided them. The Committee may refund donations of any amount to the donors to the extent permitted by state law. The funds identified to be refunded may not also form the basis to fund the above-described Committee donations to state and local candidates and nonfederal accounts of party committees.

Charitable Donations. The Committee may make donations to certain, nonpolitical 501(c)(3) organizations (such as the American Red Cross), if permissible under state law. The Act's restriction on federal candidates' spending of nonfederal funds does not apply to donations to 501(c)(3) charities that do not engage in election-related activity, including federal election activity. Thus the Committee may make these donations without limit, regardless of whether the funds are federally permissible. See 2 U.S.C. §441i(e)(1) and 11 CFR 300.61 and 300.62.

Indefinite Retention of Funds. If state law allows, the Committee may keep the funds in its account indefinitely, because the Act and Commission regulations do not prohibit the Committee from doing so.

Date Issued: December 6, 2007

Length: 7 pages

—Meredith Metzler

AO 2007-29 **Donation to a Candidate for Local Party Office is Not Personal Use**

A donation by a federal candidate to an individual seeking election to a political party position is a permissible use of campaign funds and does not constitute "personal use."

Background

Representative Jesse L. Jackson, Jr. represents the 2nd District of Illinois in the U.S. House of Representatives and is a candidate for re-election in 2008. Representative Jackson wishes to donate funds from his principle campaign committee to the campaign committee of his wife, Ms. Sandi Jackson. Ms. Jackson is seeking election to the political party position of Committeeman of the 7th Ward in the Cook County Democratic Party.

Analysis

The Act and Commission regulations identify six permissible uses of campaign funds. 2 U.S.C. §439a(a) and 11 CFR 113.2(e). While donations to "state and local candidates subject to the provisions of state law" is a permissible use, the Commission concludes that those seeking office in a political party organization are not "state or local candidates" within the meaning of 2 U.S.C. §439a(a)(5).

Nevertheless, the proposed donation to Ms. Jackson's campaign committee would be permissible because a federal candidate or officeholder may use campaign contributions "for any other lawful" purpose other than the conversion of such funds to the "personal use" of the candidate, officeholder or any other person 2 U.S.C. §439(a)(a)(6); 11 CFR 113.2(e). Provided the funds transferred to Ms. Jackson's campaign committee are used only for the committee's *bona fide* campaign purposes and are not otherwise converted to personal use, Representative Jackson may make unlimited donations to Ms. Jackson's campaign. The funds must be in amounts and from sources that are consistent with state law. 11 CFR 300.62.

Date Issued: December 10, 2007

Length: 5 pages.

—Amy Pike

AO 2007-30 **Matching Credit Card Contributions under Public Funding Program**

Contributions made to a Presidential candidate via credit card over the Internet and verified using the credit card's security code and either the contributor's street address or zip code may be matchable under the Presidential Primary Matching Payment Account Act (the Matching Payment Act). This verification procedure is sufficient to meet the requirements of FEC regulations, particularly when combined with the Dodd Campaign's existing data collection and required contributor affirmations.

Background

When accepting credit card contributions via the Internet, Senator Chris Dodd's Presidential campaign committee, Chris Dodd for President, Inc., requires contributors to provide their name, credit card number, credit card expiration date, mailing address, amount of contribution and employer/occupation information, as well as the three or four-digit security code printed on the credit card.¹ The committee forwards that information to its credit card processor, which validates the card's security code and either the contributor's street address or the contributor's zip code.

Analysis

The Matching Payment Act provides that if a candidate for the Presidential nomination of his or her party agrees to certain conditions and raises in excess of \$5,000 in individual contributions of \$250 or less from residents of at least each of 20 states, the federal government will match the first \$250 of each eligible contribution. 26 U.S.C. §§9033

(continued on page 22)

¹ As of November 27, 2007, Chris Dodd for President, Inc. has been certified by the Commission as eligible to receive matching funds.

Advisory Opinions

(continued from page 21)

and 9034. In order to be matched, the contribution must be made by a “written instrument which identifies the person making the contribution by full name and mailing address.” 26 U.S.C. §9034(a).

Commission regulations require that matchable contributions made by credit card over the Internet include an electronic record of the transaction created and transmitted by the cardholder, which includes the name of the cardholder and the card number. In order to be valid, Commission regulations require that the full name and card number of the cardholder who is the donor be entered and transmitted by the cardholder. 11 CFR 9034.2(b) and (c).

The Commission has not mandated specific procedures to verify the identity of an individual making a credit card contribution over the Internet—this approach ensures that the regulated community is able to take advantage of rapidly evolving technological innovations, so long as “necessary precautions” are in place due to the absence of any “direct paper transfers” in credit card contributions made over the Internet.²

Thus, while the proposed verification procedures in this request differ from those approved by the Commission in a past advisory opinion, AO 1999-9, and from those described in the Commission’s guidelines for publicly funded Presidential candidates, it is an acceptable method of verification because it satisfies the identification requirements of the Matching Payment Act and Commission regulations. See 11 CFR 9034.2(c). Under the Matching Payment Act, a campaign committee must take steps to ensure that the person making a credit card contribution over the Internet actually owns the card or

² See “Matching Credit Card and Debt Card Contributions,” 64 Fed. Reg. 32395.

account on which the charge is made. The use of a credit card’s security code provides adequate assurance that the person making the contribution is in physical possession of the credit card. Additionally, billing address verification helps to confirm that the person in physical possession of the credit card is also the owner of the credit card by soliciting and verifying personal information about the card’s owner. These procedures, in conjunction with the Committee’s collection of personal information about the contributor and its requirement that the contributor provide specific affirmations,³ are sufficient to allay concerns that the contributor is someone other than the credit card owner. Thus, contributions made under these verification procedures may be matchable, assuming they are otherwise in compliance with the applicable statutes and Commission regulations.

Date Issued: November 29, 2007

Length: 5 pages

—Myles Martin

Advisory Opinion Requests

AOR 2007-31

Matchability of earmarked credit card contributions forwarded by nonconnected committee (John Edwards for President, October 29, 2007)

³ The Committee requires the contributor to affirm he or she is not a federal government contractor or a foreign national who lacks permanent resident status in the United States and that the contribution is made from his or her own funds, on a personal credit or debit card for which he or she has the legal obligation to pay, and is made neither on a corporate or business entity card nor on the card of another, and is not made from the general treasury funds of a corporation, labor organization or national bank.

AOR 2007-32

Political committee status of an organization soliciting funds and making independent expenditures (SpeechNow.org, November 16, 2007)

AOR 2007-33

Application of disclaimer requirements to 10- and 15-second television advertisements (Club for Growth PAC, November 28, 2007)

AOR 2007-34

Federal candidate appearing in an advertisement endorsing a nonfederal candidate (Representative Jesse L. Jackson, November 13, 2007)

AOR 2007-35

Affinity program between corporation and political committees to provide Internet toolbars (Free-Cause, Inc., October 22, 2007)

AOR 2007-36

Use of campaign funds for legal expenses of federal officeholder (People for Pete Dominici, November 23, 2007)

Public Funding

Dodd and Biden Certified for Matching Funds

On November 26, 2007, the Commission certified that Christopher Dodd is eligible to receive Presidential primary matching funds. On December 3, 2007, the Commission also certified Joseph Biden as eligible to receive matching funds. Senator Dodd and Senator Biden are the fourth and fifth 2008 Presidential candidates that have been certified eligible to receive 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.

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

Treasury Department regulations require that funds for the convention

and general election grants be set aside before any matching fund payments are made, and the Commission has estimated that no funds will be available for matching payments in January 2008. As deposits are made from tax returns in the early months of 2008, matching fund payments will be made from those deposits until all certified amounts have been paid. The maximum amount a candidate could receive is currently estimated to be about \$21 million.

—Diana Veiga

Outreach

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

The Commission will hold a regional conference in Orlando, Florida, on February 12-13, 2008, at the Wyndham Orlando Resort. Commissioners and staff 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/orlando08.shtml>.

Hotel Information. The Wyndham Orlando Resort is located on International Drive near Universal Studios and offers complimentary shuttle service to Universal Studios, Sea World and Wet n' Wild amusement parks. A room rate of \$189 (single or double) plus a resort fee of 7.5% and a 12.5% tax is available to conference attendees who make reservations on or before January 11, 2008. To make hotel reservations, call 1-800/421-80001 or 1-407/351-2420.

State that you will be attending the Federal Election Commission conference to reserve this group rate. The FEC recommends that you wait 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 January 11, 2008. Complete registration information is available online at <http://www.fec.gov/info/conferences/2008/orlando08.shtml>.

Questions

Please direct all questions about conference registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; e-mail: 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.

—Dorothy Yeager

Index

The first number in each citation refers to the numeric month of the 2008 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "1:4" means that the article is in the January issue on page four.

Advisory Opinions

2007-19: Nonprofit Corporation Qualifies as Membership Organization, 1:15
2007-22: Campaign Committee May Accept Volunteer Services from Foreign Nationals, 1:16

(continued on page 24)

FEC Conference Schedule for 2008

Conference for Corporation/Labor/Trade Association PACs, House/Senate Campaigns and Political Party Committees
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

Index

(continued from page 23)

2007-23: State Party Committee Status for Independence Party of New York, 1:17

2007-24: Payment for Joint campaign Activities, 1:18

2007-26: Disposal of Excess State Campaign Funds by Federal Candidate, 1:19

2007-29: Donation to a Candidate for Local Party Office is Not Personal Use, 1:21

2007-30: Matching Credit Card Contributions Under Public Funding Program, 1:21

Court Cases

_____ v. FEC

– Morgan, 1:4

FEC v. _____

– Hearn, 1:5

Public Funding

Dodd and Biden Certified for Matching Funds, 1:22

Outreach

Orlando Regional Conference for House and Senate Campaigns, Political Party Committees and Corporate/Labor/Trade PACs, 1:23
Conferences Scheduled for 2008, 1:23

Regulations

Final Rules and Explanation for Electioneering Communications, 1:1

Reports

Illinois 14th District Special Election Reporting, 1:13

Reports Due in 2008, 1:5

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