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Court Cases

FEC v. Adams

On March 6, 2008, the U.S. District Court for the Central District of California denied defendant Stephen Adams' motion to dismiss and granted the Commission's motion for partial judgment on the pleadings. Following that decision, the Commission's counsel and the defendant reached a proposed settlement agreement and the court stayed the case.

Background

In 2004, Stephen Adams contracted for a \$1 million advertising campaign to place billboards expressly advocating the reelection of President George W. Bush in four "battleground" states. See the [October 2007 Record](#), page 15. The billboards first appeared on September 7, 2004, and ran through the general election.

The ads were independent expenditures, and thus required disclosure and proper disclaimers. While persons who make independent expenditures at any time during the calendar year, up to and including the 20th day before an election, must disclose this activity within 48 hours each time the expenditures aggregate \$10,000 or more, Mr. Adams did not file the required independent expenditure reports until October

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Statistics

House and Senate Candidates Raise \$507 Million in 2007

Congressional campaigns raised a total of \$507 million in 2007, an eight percent increase from 2005. While receipts for House candidates increased in 2007, receipts for Senate candidates declined.

Senate candidates raised \$164.5 million in 2007, 14 percent less than in 2005. During 2007, Senate candidates reported expenditures of \$57.9 million, down from \$69.8 million spent during 2005. Comparing Senate races between election cycles is difficult because states hold Senate elections in different years. Many states holding Senate elections in 2008 have smaller populations that often result in lower campaign contributions. Six years ago when these same Senate seats were up for election, candidates raised \$93.8 million in the year before the election year.

Candidates for the U.S. House of Representatives raised \$342.8 million during 2007, an increase of 22 percent from 2005. The campaigns spent \$186 million, 26 percent more than 2005. The increased receipts for House candidates were limited to Democratic candidates, who raised \$200.1 million, 64 percent

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28, 2004—only five days before the general election. See 2 U.S.C. §434(g)(2)(A). Additionally, the billboards did not include adequate disclaimers. See 2 U.S.C. §441d(a)(3).

The Commission received two complaints regarding Mr. Adams' independent expenditures. Based on these complaints and additional information obtained in the course of carrying out its supervisory duties, on November 8, 2006, the Commission found probable cause to believe that the violations occurred. After the Commission tried but failed to reach an acceptable conciliation agreement with Mr. Adams, the Commission filed a complaint in the U.S. District Court for the Central District of California on July 6, 2007.

Court Decision

Motion to Dismiss. The district court denied the defendant's motion to dismiss, in which the defendant

argued that the Commission failed to "meet its statutory obligation to make a good faith effort to conciliate prior to filing suit." The court found that the Commission satisfied the Federal Election Campaign Act (the Act) by attempting to conciliate with the defendant. The court deferred to the Commission's judgment as to the specifics of the proposed conciliation agreements offered by the Commission and the defendant.

Judgment as to Six Affirmative Defenses. The district court also granted the Commission's motion for partial judgment on the pleadings. The defendant asserted eight affirmative defenses, and the Commission sought to strike six of the defenses. The court agreed with the Commission and found that the six challenged defenses had no basis as a matter of law. Two of the affirmative defenses dealt with the defendant's claim that the Commission failed to properly conciliate. Since the court found that the Commission attempted to conciliate adequately, it struck these two defenses.

The other four challenged affirmative defenses involved claims that the Act's independent expenditure reporting requirement violates the First Amendment and that the Commission's enforcement of that provision violates the Due Process Clause of the Constitution. Regarding the First Amendment claim, the court followed U.S. Supreme Court and Ninth Circuit precedent, dismissing the affirmative defenses and holding that, while the Act "may infringe on some First Amendment freedoms, the infringement is minimal and reasonable to keep the electorate fully informed about the source of campaign funds and to deter or expose corruption."

The court also rejected the defendant's due process defenses, stating that the disclosure law was sufficiently straightforward. While the defendant claimed that "virtually no one was aware of [the disclosure] requirement at the time of the 2004

general election," the court rejected this argument because the law was promulgated two years before the election in question and ten other individuals filed the proper disclosures with the Commission. Additionally, the defendant did not present any evidence that the Commission brought suit based on improper or discriminatory grounds.

Case Stayed for Proposed Settlement

The parties notified the court on April 7, 2008, that Commission counsel and Adams had reached a proposed settlement agreement. The defendant agreed to transfer within 30 days the full amount of the proposed civil penalty to a trust account held by his attorney's firm. If the Commission approves the agreement once it has a quorum, the parties will file a proposed consent agreement and request dismissal of the case. The defendant's attorney will then transfer the civil penalty to the Commission. On April 9, 2008, the court granted the parties' request to stay the case until the Commission votes on the proposed settlement.

U.S. District Court for the Central District of California, 2:07-cv-04419-DSF-SH.

—Meredith Metzler

Tierney v. FEC

On March 12, 2008, the U.S. District Court for the District of Columbia granted the FEC's motion to dismiss Thomas P. Tierney's suit against the Commission for lack of standing. The court found that the FEC's decision to dismiss Mr. Tierney's administrative complaint was not contrary to law.

Background

Mr. Tierney was a candidate for Congress in Massachusetts in the 2004 general election. Shortly before the election, Mr. Tierney filed an administrative complaint with the FEC asserting that the Massa-

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chusetts Republican State Congressional Committee (the Committee) unlawfully failed to spend its federal funds to support Republican candidates for federal office in Massachusetts. He alleged that the Committee spent most of more than \$3 million in federal contributions received during the 2004 election cycle on state and local campaigns, rather than for federal campaign activity.

The FEC considered Mr. Tierney's complaint and concluded that the Committee had not violated the Federal Election Campaign Act (the Act). The Commission concluded that the Act neither requires the Committee to spend its federal funds on Congressional candidates nor bars it from spending federal funds on state and local elections. Mr. Tierney then sought review of that decision in the district court.

Court Decision

The court concluded that Mr. Tierney has not established standing to pursue this action because he conceded that the Committee had no obligation to provide financial support to his particular candidacy. Mr. Tierney thus did not have a "concrete and particularized" injury in fact for standing purposes. Additionally, his alleged injury was not caused by the FEC's conduct in dismissing his complaint, but the independent decision of the Committee not to spend its federal funds to support his candidacy.

The court also concluded that the FEC's dismissal of Mr. Tierney's administrative complaint was not "contrary to law" because the FEC's decision was based on the plain language of the Act. There is no provision in the Act that requires state political party committees to disburse federal funds only for the specific purpose of supporting federal candidates. The court concluded that it is not for the courts to create restrictions on the use of federal funds for nonfederal purposes. Any such restrictions should

instead be considered by the political branches, particularly Congress. U.S. District Court for the District of Columbia, CV 06-0663 (JDB).

—Myles Martin

Marcus v. Mukasey

On March 10, 2008, the U.S. District Court for the District of Arizona granted the Commission's motion to dismiss the suit filed by Jon Marcus against the U.S. Attorney General and the Chairman of the FEC, and denied the plaintiff's motion for declaratory judgment, holding that the Attorney General has discretion over whether to investigate and prosecute criminal violations of the Federal Election Campaign Act (the Act) and is not required to wait for a referral of a case from the Commission.

Background

This case, which stems from the alleged activity of a specific Michigan law firm, is related to other similar lawsuits: *Barry Bialek v. Gonzales, et al.* (see the [August 2007 Record](#), page 3), *Geoffrey N. Fieger, et al. v. Gonzales, et al.* (see the [March 2007 Record](#), page 3) and *Beam v. Gonzales, et al.* (see next column). Each of these plaintiffs made contributions to the John Edwards 2004 Presidential campaign. According to the complaints, the plaintiffs are being investigated by the Department of Justice for violations of the Act. In each case, the plaintiffs alleged, among other things, that the Commission must refer, by a vote of the majority of the Commission, a matter to the Attorney General prior to the Attorney General investigating or prosecuting a violation of the Act.

Court Decision

In this case, the court agreed with the court decisions in *Barry Bialek v. Gonzales, et al.* and *Geoffrey N. Fieger, et al. v. Gonzales, et al.* that the plain language of the Act does not "infring[e] the Attorney

General's plenary power to enforce criminal violations of the Act." The court further found that the Act's legislative history "demonstrates that Congress did not intend to limit or displace the Attorney General's independent authority to pursue criminal violations of the Act, and that prior case law has held that criminal enforcement may either originate with the Attorney General or stem from a referral by the Commission to the Attorney General."¹

The court denied the plaintiff's motions for a hearing and oral arguments and for declaratory judgment and granted the Commission's motion to dismiss the complaint with prejudice.

The plaintiff filed a Notice of Appeal in this case on March 18, 2008.

U.S. District Court for the District of Arizona, CV 07-0398-PCT-EHC.

—Amy Kort

Beam v. Gonzales

On March 7, 2008, the U.S. District Court for the Northern District of Illinois granted the Commission's motion to dismiss the First Amended Complaint filed by Jack and Renee Beam (the plaintiffs) against the U.S. Attorney General and the Chairman of the FEC. The court held that it lacked subject matter jurisdiction over plaintiffs' claims, that plaintiffs failed to establish Article III standing, the case was not ripe for review and the FEC did not violate the Federal Election Campaign Act (the Act).

Background

The *Beam* case is one of the several cases mentioned above concerning the investigation into the

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¹ The court specifically rejected the plaintiff's assertion that 1980 amendments to the Act had overturned *United States v. International Union of Operating Engineers, Local 701*, 638 F.2d 1161 (9th Cir. 1979).

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Michigan law firm of Fieger, Fieger, Kenney & Johnson (see *Marcus v. Mukasey* on page 3). According to the complaint filed March 2, 2007, the *Beam* plaintiffs made contributions to John Edwards' 2004 Presidential campaign. The plaintiffs allege that in November 2005, the Department of Justice began an investigation into possible violations of the Act by the plaintiffs and other members of the law firm. Plaintiff Jack Beam is "Of Counsel" to the law firm. On September 26, 2006, the Commission notified the plaintiffs that the Commission had begun an investigation of potential civil violations of the Act. See the [April 2007 Record](#), page 5.

The plaintiffs filed a complaint with the District Court in Illinois, alleging that the Department of Justice could not investigate the alleged criminal violations of the Act until the Commission formally referred the matter to the Department of Justice. Additionally, the complaint alleged that the Commission failed to uphold the Act and asked the court to require the Commission to conduct and conclude an investigation prior to referral to the Department of Justice. This Complaint was dismissed on June 22, 2007, but the court granted plaintiffs leave to file a First Amended Complaint. Plaintiffs filed their First Amended Complaint on June 29, 2007, raising substantially the same allegations contained in their initial Complaint, but adding new allegations that the Department of Justice and the Commission obtained their private bank records illegally in violation of the Right to Financial Privacy Act (RFPA), 2 U.S.C. § 3401 et seq., and that the defendants retaliated against plaintiffs for engaging in constitutionally protected activity.

Court Decision

The District Court found in favor of the Commission and the

Department of Justice on every issue addressed in the decision. The court held that the plaintiffs lacked standing necessary for the court to have subject matter jurisdiction over the suit. The plaintiffs did not allege in their complaint that the Department of Justice had "raided" their own home or seized their own bank records, but alleged only raids affecting other Fieger associates and employees. The plaintiffs did not show that they had suffered any harm and thus did not meet the judicial requirement of "injury in fact." The Court also found plaintiffs failed to establish standing with respect to the RFPA claim because they relied only upon "unsubstantiated speculation" that the Commission had possession of their private banking records and that the Commission had illicitly obtained those records.

The court also found that the plaintiffs' case was not ripe for review. The court stated that because neither the Attorney General nor the FEC had made decisions about whether or how to enforce applicable laws against the plaintiffs, the court could not assess whether any agency misconduct affected the plaintiffs. Additionally, the plaintiffs identified no hardship that they would suffer if the court were to wait to decide their claims until the alleged investigations were complete.

Although the plaintiffs alleged that the Commission violated the Act in several ways, the court found that the allegations provided no basis for relief. The court agreed with the other District Court decisions in *Fieger v. Gonzales* and *Bialek v. Gonzales*. The court held that, contrary to plaintiffs' assertions, the FEC is not required to refer a matter to the Department of Justice prior to the Attorney General initiating an investigation. The Attorney General has sole authority to investigate and prosecute criminal violations of the U.S. Code, unless Congress clearly and unambiguously restricts that authority. The court found no evidence

that Congress intended to limit the Attorney General's authority to prosecute criminal violations of the Act.

Regarding the plaintiffs' request that the court order the FEC to conduct an investigation into the alleged illegal activities, the court found that "the judiciary has no power to dictate the timing or nature of an investigation," or require the FEC to conduct an investigation at all.

The court granted leave to plaintiffs to file a Second Amended Complaint. Plaintiffs filed their new complaint on March 24, 2008.

U.S. District Court for the Northern District of Illinois, 1:07-cv-01227.

—Meredith Metzler

Alternative Dispute Resolution

ADR Program Update

The Commission has successfully resolved six campaign finance enforcement matters through its Alternative Dispute Resolution (ADR) program. The Commission assessed civil penalties totaling \$11,450 for these six cases. The respondents, the alleged violations of the Federal Election Campaign Act (the Act) and the final disposition of the cases are listed below.

1. The Commission reached an agreement with the Van Taylor for Congress committee and Roy Giddens, as treasurer, regarding failure to disclose all financial activity on its 2006 12-Day Pre-General and 2006 30-Day Post-General reports. The committee filed amended reports in January 2007, disclosing additional disbursements of \$102,808.40 for the Pre-General report and \$58,836.58 on the Post-General. The respondents acknowledged the inadvertent errors on both reports. According to the committee,

the omission on the Pre-General was the result of an omitted media buy and two electronic funds transfers, and was corrected after discovery during an internal audit. The committee contended that the Post-General omissions were due to staff turnover. The respondents agreed to pay a civil penalty of \$5,300 and work with FEC staff to terminate the committee. (ADR 413*)

2. The Commission reached an agreement with Blue America PAC and Howard Klein, as treasurer, regarding failure to file six 24-Hour notices for independent expenditures totaling \$25,005.84. The committee later disclosed the expenditures on its 30-Day Post-General report. The committee acknowledged the inadvertent violation and agreed to pay a \$900 civil penalty, develop a compliance manual for internal use and participate in training with FEC staff. (ADR 409*)

3. The Commission reached an agreement with several contributors to Terrell for Senate, the principal campaign committee of 2002 Republican Senate candidate Suzanne Haik Terrell (LA). The Commission conducted an audit of the committee and found that the committee received numerous prohibited contributions from limited liability companies (LLCs) and corporations. The following respondents made a prohibited corporate contribution of \$250 and agreed to pay a civil penalty of \$125: S.J. Deshotels, Jr., M.D.; Todd J. Guerin, Professional Accounting Corporation; LaPorte, Sehrt, Romig & Hand, Professional Accounting Corporation; and Mirabeau Apartments, LLC. Each of the following respondents made a prohibited corporate contribution totaling \$500 and agreed to pay a civil penalty of \$250: Clovis & Roche, Inc.; Delta Medical Equipment & Supply, Co.; Gryon, LLC; and Schofield, Gerard, Veron, Singletary &

Pohorelsky, P.C. Each of the following respondents made a \$1,000 prohibited corporate contribution and agreed to pay a \$500 civil penalty: Bayou Boeuf Electric, LLC; Paul T. Finger, M.D., P.C.; Hollander Properties, Inc.; and Sher Garner Cahill Richter Klein & Hilbert, LLC. Additionally, Dorignac's Food Center, LLC, made prohibited corporate contributions totaling \$2,500 to Terrell for Senate and agreed to pay a civil penalty of \$1,250. (ADR 255*)

4. The Commission reached an agreement with Richard Pombo for Congress and David Bauer, as treasurer, concerning excessive contributions. An FEC audit of Pombo for Congress revealed that the committee accepted contributions from individuals and Native American tribes that exceeded the Act's contribution limits by \$24,400. In response to the audit, the respondents provided documentation showing that they had refunded excessive contributions totaling \$22,400 and presumptively reattributed a \$2,000 contribution to another donor. The Commission dismissed the matter. (ADR 421*)

5. and 6. The Commission reached an agreement with David Mejias, Mejias for Congress and Michael Norman, as treasurer of the committee, for failure to disclose accurate receipts and acceptance of corporate contributions. The matters were initiated by complaints filed with the Commission, alleging inaccurate reporting and failure to obtain information about the corporate status of some contributors. The respondents contended that the errors were inadvertent and due to inexperienced staff. The committee also contended that they made efforts to amend and correct the reports. The Commission determined that the matters did not merit further use of the Commission's resources and exercised its prosecutorial discretion to dismiss the matters. (ADR 371/365)

—Meredith Metzler

Statistics

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more than in 2005. All three types of Democratic House candidates increased their receipts (incumbents, challengers and open seat candidates). Republican House candidates raised \$142.6 million, nine percent less than in 2005. Much of the decline came from incumbent Republican candidates, while the Republican challengers raised significantly more and Republican open seat candidates slightly less than in 2005. The charts shown at the top of page 6 detail the total receipts of all Democratic and Republican House candidates in the off-year from 1995 to 2007.

Individual contributions remained the largest source of Congressional campaign revenues, although the \$278.9 million contributed by individuals in 2007 was six percent less than in 2005 and only 55 percent of the total contributions to Congressional candidates, down from 63 percent in 2005.

More information is available in an FEC press release dated April 7, 2008. The release, which is available on the Commission's web site at <http://www.fec.gov/press/press2008/20080407candidate/20080407candidate.shtml> includes tables detailing fundraising totals for the top 50 House and Senate campaigns in the following categories: total receipts, contributions from individuals, PAC contributions, disbursements and cash-on-hand. Comparative charts and graphs are also included, along with summary statistical information for House and Senate candidates in the non-election years from 1995 to 2007.

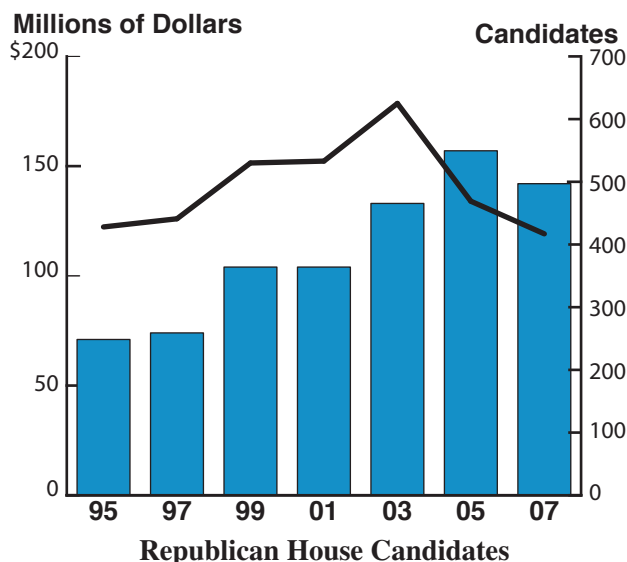
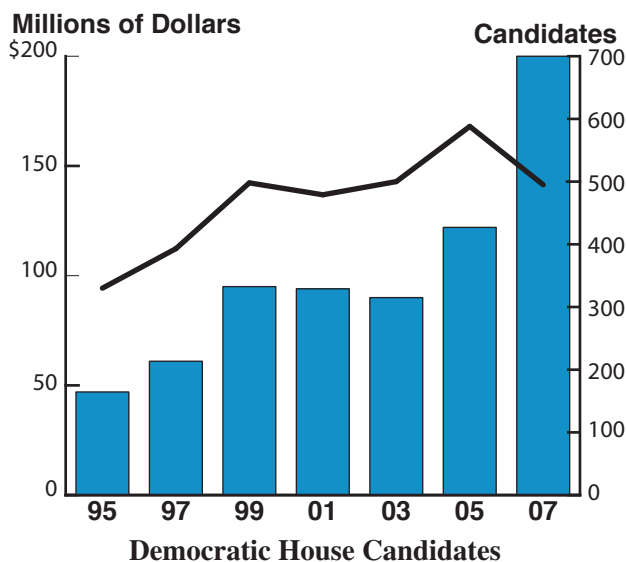
—Meredith Metzler

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*Cases marked with an asterisk were internally generated within the FEC.

Total Receipts for Democratic and Republican House Candidates in Off-Election Year, 1995-2007

■ Total Receipts
 — Number of Candidates



Outreach

Seminar for Nonconnected Political Action Committees

On May 14, 2008, the Commission will hold a one-day seminar for nonconnected committees (i.e., PACs not sponsored by a corporation, union, trade association or incorporated membership organization) at its headquarters at 999 E Street, NW, in Washington, DC. This seminar is recommended for:

- Treasurers of leadership PACs, partnership PACs and other nonconnected PACs;
- Staff of the above organizations who have responsibility for compliance with federal campaign finance laws;
- Attorneys, accountants and consultants who have clients that are nonconnected PACs or unregistered “section 527” organizations; and
- Anyone who wants to gain in-depth knowledge of federal campaign finance law (including the new provisions of the Honest Leadership and Open Government Act of

2007 (HLOGA)) as it applies to leadership PACs and other types of nonconnected committees.

The seminar will address issues such as fundraising and reporting, as well as the FEC’s rules on when section 527 organizations trigger federal reporting requirements. Experienced FEC staff will specifically discuss recent changes to the campaign finance law made by HLOGA, as well as the rules specific to leadership PACs and partnership PACs.

The registration fee for this seminar is \$150 per attendee, which covers the cost of the seminar, materials, a reception and refreshments. Payment by credit card is required prior to the seminar. A full refund will be made for all cancellations received before 5 p.m. (Eastern Time) May 9. Complete information is available on the FEC web site at <http://www.fec.gov/info/conferences/2008/non-connectedseminar2008.shtml>, along with the seminar agenda and a list of hotels located near the FEC. Further questions about the seminar should be directed to the Information Division by phone at 1-800/424-9530 (press 6), or locally at 202/694-1100,

or via e-mail to Conferences@fec.gov.

—Dorothy Yeager

June 23-24 Conference for Trade Associations, Membership Organizations and Labor Organizations

The Commission will hold a conference for trade associations, membership organizations and labor organizations on June 23-24, 2008, at the Embassy Suites Convention Center hotel in Washington, DC. At the conferences, Commissioners and staff conduct a variety of technical workshops on federal campaign finance law designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law.

Attendees are responsible for making their own hotel reservations. A room rate of \$249 single/\$269 double is available for hotel reservations made by May 30, 2008. Call 202-739-2001 or 1-800-EMBASSY and identify yourself as attending the Federal Election Commission conference to reserve this group

rate. The hotel will also charge the prevailing sales tax, currently 14.5%. Valet parking is available for \$29 per night. The hotel is walking distance from Metro subway (Metro Center station); public transportation is recommended. (Note: Please do not finalize travel reservations until you have received confirmation of your registration for the conference from our contractor, Sylvester Management Corporation.)

The registration fee is \$475, including a late registration fee of \$25 added to registrations received after 5 p.m. EDT on May 23. For additional information, or to register for the conference, please visit the conference web site at <http://www.fec.gov/info/conferences/2008/trade-memberlabor08.shtml>.

For More Information

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

—Dorothy Yeager

Congressional Primary Convention Reporting Dates

Several states hold conventions to nominate a party's candidate for the general election instead of holding a primary election. These conventions are treated like a primary election under federal election law. See 11 CFR 100.2. Please visit http://www.fec.gov/info/charts_primary_dates.shtml for information about upcoming state party conventions and reporting dates.

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