Record

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Regulations

New Rules Address *MCFL* Supreme Court Decision

On June 28, 1995, the Commission approved new rules precipitated by the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life, Inc.*[1] In that decision, the Supreme Court ruled that communications must contain express advocacy in order to be subject to the prohibition on independent expenditures[2] at 2 U.S.C. §441b. The Court also ruled that this provision of the Federal Election Campaign Act (the Act) impinged

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[1] These new rules are a part of a broader rulemaking. See page 1 of the August 1992 Record *for a summary of the complete proposed rules. Additional changes to rules for corporations and labor organizations are forthcoming.*

[2] Independent expenditures are expenditures made without coordination with a candidate's campaign for a communication which expressly advocates the election or defeat of a clearly identified candidate for federal office. This is the only type of expenditure a qualified nonprofit corporation can make in connection with a federal election. In all other respects, such as the making of contributions, the corporate ban still applies. Business corporations, labor organizations and political parties can not make independent expenditures.

Court Cases

FEC v. Colorado Republican Federal Campaign Committee

On June 23, 1995, the U.S. Court of Appeals for the Tenth Circuit reversed the district court's ruling that express advocacy is a defining feature of coordinated party expenditures, an expenditure type limited by the Federal Election Campaign Act (the Act). 2 U.S.C. §441a(d). Further, it concluded that the Act's limitation of these expenditures does not violate the defendant committee's First Amendment rights. The court remanded the case to the district court with instructions to enter judgment in favor of the FEC and to impose on the defendant a proper civil penalty under 2 U.S.C. §437g(a)(6).

This case involved the making of a $15,000 expenditure by the Colorado Republican Federal Campaign Committee (the committee) for a radio advertisement that criticized the voting record of Senator Tim Wirth, who at the time was seeking the Democratic nomination in the 1986 U.S. Senate race in Colorado. In its campaign finance reports, the committee characterized the ad as a generic voter education expense that was not subject to the §441a(d) limits. The FEC, however, viewed it as a coordinated party

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upon the First Amendment rights of certain nonprofit corporations by precluding them from making independent expenditures. See page 4 of the February 1987 *Record* for a summary of that decision.

Subsequently, the Commission undertook a rulemaking to implement this decision. The new rules clarify what constitutes "express advocacy" and also exempt certain "qualified nonprofit corporations" from the ban on independent expenditures by corporations and labor organizations.

These rules, accompanied by an Explanation and Justification, were published in the Federal Register on July 6, 1995 (60 FR 35292). They were submitted to Congress on June 30. The Commission will publish an Announcement of Effective Date in the Federal Register following a Congressional review period of 30 legislative days.

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Express Advocacy

A communication that is not coordinated with a federal campaign is considered an independent expenditure if its message expressly advocates the election or defeat of a clearly identified federal candidate. Independent expenditures may only be made by individuals, groups of individuals, nonparty political committees and, now, "qualified nonprofit corporations." If express advocacy exists, certain FEC regulations governing reporting and disclaimer notices apply.

The new rules seek to clarify what is meant by express advocacy.[3] Under the new rules, express advocacy in a communication is properly determined by viewing all elements of the communication collectively and, to a limited degree, in the context of external events. Express advocacy exists when a communication is found to contain a message that unmistakably urges the election or defeat of one or more clearly identified federal candidates. A communication will be found to clearly identify a candidate if it contains the candidate's name, nickname, photograph or otherwise makes an unambiguous reference to a candidate. The focus, it should be noted, is on the audience's reasonable interpretation of the message and not on the sender's intent.

The rules include an extensive list of phrases which constitute express advocacy per se. For example: "re-elect your Congressman," "support your Democratic nominee," "Bill McKay in '94," "reject the incumbent," and, when accompanied by names or photographs of candidates identified as either supporting or opposing some issue, phrases such as "Vote Pro-Choice." Also included in the definition of express advocacy are messages on posters, bumper stickers, advertisements, etc. that clearly show support of or opposition to a candidate, such as "Nixon's the One," "Carter '76," and "Reagan/Bush."

In the absence of the above specified language, a communication that, for instance, comments on a candidate's character, qualifications or accomplishments may be considered express advocacy if, in context, it has no other reasonable meaning than to encourage actions to elect or defeat a federal candidate. The Commission will consider the relevance of the timing of these communications on a case-by-case basis.

Messages such as "Vote Democrat" and "Vote Republican" will also be considered on a case-by-case basis.

It should be noted that communications that only advocate issues and not the election or defeat of federal candidates are not subject to FEC regulations; the Act applies only to federal candidate elections. Therefore, a communication that prompts individuals to call the White House and urge the President to veto a particular piece of legislation is not subject to FEC rules. However, add to this communication a call to vote against the President should the President not veto the bill, and the communication becomes subject to FEC rules. This is because an electoral component has been introduced into the message. In cases such as this, the electoral portion of the communication must be unmistakable, unambiguous and suggestive of only one meaning in order for it to be subject to FEC regulations.

[3] *The new rules move the definition of express advocacy from 11 CFR 109.1 to 11 CFR 100.22. The definition of express advocacy is thus in the section containing other general definitions. This was done because the definition of express advocacy is relevant to a number of areas, including independent expenditures, disclaimers and corporate and labor expenditures.*

Qualified Nonprofit Corporations

Under the new rules, a "qualified nonprofit corporation" is allowed to make independent expenditures. The rules establish a list of criteria for determining what is a qualified nonprofit corporation. These criteria, which are based on the Supreme Court's *MCFL* decision, are listed below.

- The corporation's only express purpose is the promotion of political ideas (i.e., issue advocacy, election influencing activity, political research, political training and education);
- It may not engage in business activities;
- It does not have shareholders or persons, other than employees and creditors, who (1) are either affiliated in a way that would allow them to make a claim on the organization's assets or earnings, or (2) receive a benefit that is a disincentive for them to disassociate themselves from the organization (for example, credit cards, insurance policies, savings plans, education or business information);
- It was not established by a business corporation or labor organization, does not accept any donations from such types of organizations, and, if unable to demonstrate that it has not accepted such donations, has a written policy against accepting donations from corporations and labor organizations; and
- It is a social welfare organization under 26 U.S.C. §501(c)(4) (the Internal Revenue Code).

A nonprofit corporation may reconstitute itself in order to meet these criteria. It must purge its accounts of all corporate business and labor union monies before it can become a qualified nonprofit corporation.

For reporting purposes, qualified nonprofit corporations are treated as individuals; they must abide by the reporting requirements pertaining to independent expenditures in excess of $250 [4] and by the disclaimer regulations pertaining to the making of all independent expenditures. 11 CFR 109.2 and 110.11.

Qualified nonprofit corporations have two additional responsibilities under the new rules. Upon making its first independent expenditure, the corporation must certify that it meets the above criteria for qualified nonprofit corporations by submitting either a letter or a Form 5, the form individuals use to report independent expenditures.[5] And, the corporation must include language in its solicitations informing donors that their contributions may be used for political purposes, such as supporting or opposing federal candidates. ✦

Revised Public Funding Regulations Before Congress

On June 12, 1995, the Commission submitted to Congress new rules governing publicly funded Presidential campaigns. These rules were published in the Federal Register along with an Explanation and Justification on June 16, 1995 (60 FR 31854). An Announcement of Effective Date will be published in the Federal Register after Congress has had 30 legislative days to review the rules.

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[4] In MCFL, *the Supreme Court ruled that a qualified nonprofit corporation that makes extensive independent expenditures may have adopted campaign activity as its major purpose, causing the corporation to become a political committee subject to further reporting requirements. In this regard, the Commission is developing a "major purpose" test in another rulemaking. Until those rules are promulgated, the Commission will exercise its judgment in determining when a qualified nonprofit corporation has become a political committee.*

[5] The Commission will modify FEC Form 5 for this purpose.

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expenditure and filed suit against the committee for violating the Act's expenditure limits and reporting requirements for this type of expenditure. The committee counterclaimed with a First Amendment challenge to the constitutionality of the §441a(d) limits.

The District Court Decision

The district court ruled that the ad was not subject to the limits at 2 U.S.C. §441a(d) because, in the court's view, only communications that expressly advocate the election or defeat of a candidate qualify as coordinated party expenditures. The court decided that the radio ad did not contain express advocacy, and therefore was not a coordinated party expenditure.

The district court reasoned that in *FEC v. Massachusetts Citizens for Life,* the Supreme Court established that the presence of express advocacy determined whether or not an independent expenditure was made "in connection with" a federal election. Although the *MCFL* decision dealt with independent expenditures rather than coordinated party expenditures, the district court noted that §441a(d) also includes the phrase "expenditure in connection with" a federal election. The court therefore followed a common law rule: a phrase recurring in a statute is to be interpreted consistently.

The district court then referred to the list of words and phrases, contained in the Supreme Court's *Buckley v. Valeo* decision as examples of express advocacy. Finding that the committee's ad did not contain any of these words or phrases, the district court ruled that the expenditure for the ad did not constitute a coordinated party expenditure and therefore did not count toward the committee's §441a(d) limit. See page 1 of the

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November 1993 *Record* for a summary of the district court's decision.

Coordinated Party Expenditures and Independent Expenditures

The court of appeals noted that both *Buckley* and *MCFL* distinguish between these two types of expenditures:

> "The Supreme Court cases have distinguished between the potential for corruption that attaches to contributions and coordinated party expenditures, and those that might develop from independent expenditures, finding less inherent risk in the latter."

The court of appeals noted that in *Buckley* the Act's limits on independent expenditures were struck down because they were an unwarranted infringement on the First Amendment rights of individuals, whereas the Act's limits on party expenditures were upheld because they served the substantial government interest of preserving the integrity of the electoral process. The validity of this interest has been reinforced in subsequent court case decisions.

In the appeals court's view, the distinctions made in these precedents indicate that the phrase "expenditures in connection with" should not be construed the same way with respect to independent expenditures and coordinated party expenditures.

Rather, the court held that judicial deference was due to the Commission's interpretation of its statute. Advisory Opinions 1984-15 and 1985-14 establish the Commission's criteria for determining whether or not a party expenditure counts against the §441a(d) limit: an expenditure counts against the limit if it is made for a communication that (1) clearly identifies a candidate and (2) contains an electioneering message. The presence of express advocacy is not a factor in this determination.

The court then found that the ad identified a candidate (Senator Wirth) and "unquestionably contained an electioneering message," since it sought to diminish public support for Senator Wirth and garner support for the then-yet-to-be-named Republican nominee. Consequently, the court reasoned that the radio ad resulted in an "expenditure made in connection with" an election and thus counted against the party committee's §441a(d) limit.

The First Amendment and the Government's Interest

Citing the reasoning of the Supreme Court in *Buckley* and subsequent cases, the court of appeals ruled that, as with contribution limits, the coordinated party expenditure limits are a justifiable infringement on the First Amendment rights of party committees.

> "The opportunity for abuse is greater when the contributions (or in the instant case, coordinated party expenditures) derive from sources inherently aligned with the candidate, rather than with independent expenditures."

The coordinated party expenditure limits were adopted because of Congressional concern that unchecked party spending would give citizens who make large contributions to party committees undue influence on elected officials. The court concluded that the §441a(d) limits diminish this potential with a minimal impact on the important role of political parties. This follows the precedent set in *Buckley* that found that these and other contribution and expenditure limits served the overriding government interest of preserving the integrity of the electoral process.

U.S. Court of Appeals for the Tenth Circuit (93-1433 and 93-1434), D.Ct. No. 89-N-1159, June 23, 1995. ✦

FEC v. NRSC (93-1612)

On June 12, 1995, the U.S. District Court for the District of Columbia found that, as stipulated by both parties in a Stipulation to Final Judgment, the National Republican Senatorial Committee (NRSC) violated 2 U.S.C. §§441a(h) and 434(b) by directing the redesignation of contributions it received and by failing to properly report this activity.

Additionally, the court, in concurrence with the other provisions of the Stipulation to Final Judgment, precluded the NRSC from arguing the legality of its scheme (the workings of which are discussed below) in future cases, and required the NRSC to report itself as a contributor through the end of 1998 whenever it asks contributors to redesignate their contributions to specific candidates.

The FEC was precluded from collecting civil penalties in this case because in a February 24, 1995, decision, the court ruled that the 5-year statute of limitations had expired. See page 4 of the April 1995 *Record* for a summary of this decision.

Background

In its original suit (see page 8 of the June 1993 *Record* for a summary), the FEC alleged that during the 1986 election cycle the NRSC, having exhausted its contribution and coordinated party expenditure limits, contacted its contributors and asked them to redesignate a portion of their NRSC contributions to the principal campaign committee of Republican Senate candidate Jim Santini. The NRSC then forwarded these newly earmarked contributions to the Santini committee.

Under 11 CFR 110.6(d)(2), the full amount of a contribution earmarked by a contributor at the direction of an intermediary counts against both that contributor's and that intermediary's contribution limit for the recipient. In the matter

at hand, this rule caused the NRSC to exceed its contribution limit for Mr. Santini by $183,500—$104,200 of which was the total value of the earmarked contributions and $79,300 of which was the cost of securing the redesignations (an in-kind contribution).

Stipulation to Final Judgment

In this stipulation, the NRSC admitted to engaging in the alleged conduct, but stated that it offered this admission only to bring this case to a close. In addition, the NRSC agreed to accept, in all future matters, the FEC's position that this conduct constitutes violations of 2 U.S.C. §§441a(h) and 434(b), and 11 CFR 110.6(d)(2). Furthermore, the NRSC agreed that through December 31, 1998, it would report all contributions that it asks contributors to redesignate to candidates as contributions from both itself and the contributor. ✦

Froelich v. FEC

On June 14, 1995, the U.S. Court of Appeals for the Fourth Circuit affirmed the district court's decision in this case and found the plaintiff's appeal to be without merit.

The district court had dismissed Francis E. Froelich's suit because of lack of standing. Plaintiff's original suit challenged the constitutionality of the use of out-of-state contributions by U.S. Senate campaigns. See page 9 of the August 1994 *Record* for a summary of the district court's decision.

U.S. Court of Appeals for the Fourth Circuit (94-1777), D.Ct. No. 93-1640-A, June 14, 1995. ✦

FEC v. Free the Eagle FEC v. RUFFPAC

On June 5, 1995, the U.S. District Court for the District of Columbia issued consent judgments in these two cases. In both cases the FEC sought enforcement of conciliation agreements (Matter Under Review 2191) entered into by Free the Eagle and by RUFFPAC and Tammy J. Lyles. Ms. Lyles was the managing director of Free the Eagle and the treasurer of RUFFPAC.

In the stipulations for consent judgments, both defendants and Ms. Lyles admitted to being in breach of the conciliation agreement. Free the Eagle owed the Commission $5,000, and RUFFPAC and Ms. Lyles owed the Commission $8,000, both with interest accrued since November 15, 1994. Defendants and Ms. Lyles agree to the following:

- Free the Eagle and RUFFPAC, both in conjunction with Ms. Lyles, would make monthly payments of $250 and $350, respectively, until their debts, with compounded interest, were paid in full.
- Should either Free the Eagle or RUFFPAC file for bankruptcy, Ms. Lyles would be personally obligated to make all of the defendant organization's remaining payments. Ms. Lyles would remain liable for these amounts even if her relationship with Free the Eagle and RUFFPAC were terminated, unless she secured a written assumption of liability from her successor at each organization. This assumption would have to be approved by the Commission prior to the effective date of Ms. Lyles' resignation.

Additionally, a $5,000 civil penalty was assessed against each defendant under 2 U.S.C. §437g (a)(6)(A) for breach of the conciliation agreement. The FEC agreed to waive both civil penalties provided that all parties complied with the court's consent judgment order and that all payments were timely.

U.S. District Court for the District of Columbia, No. 95CV00297, June 5, 1995. ✦

Motor Voter

FEC Submits Report on NVRA Implementation to Congress

On June 30, the Commission presented Congress with a status report on the implementation of the National Voter Registration Act (NVRA). This is the first progress report on the implementation of the NVRA. The FEC will submit future progress reports in June of every odd-numbered year.

The '95 report is based on the survey responses of 37 states[1] and the District of Columbia, and contains a discussion of some of the implementation problems they experienced. Quantifiable data is limited to voting registration and voting age population figures. This is because the NVRA has been in effect only since January of this year. This short time period also made it premature to assess the NVRA's impact on the administration of elections or to recommend legislative changes; therefore, these issues are absent from the '95 report.

The contents of the report are summarized below.

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[1] Of the 13 states not covered by this report, AR, ID, MN, ND, NH, VT, WI and WY consider themselves exempt from the NVRA for varying reasons. The remaining states—CA, IL, PA, SC and VA—have challenged the constitutionality of the NVRA and refused to comply with its provisions. District courts have upheld the constitutionality of the NVRA in the CA, IL and PA cases. See page 1 of the May Record for a summary of the decision in the CA case. IL lost on appeal to the U.S. Court of Appeals for the Seventh Circuit. Additionally, one survey respondent, MI, also challenged the NVRA's constitutionality.

Motor Voter

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Motor Voter Registration

The NVRA requires states to provide voter registration services at their Department of Motor Vehicle (DMV) offices, where more than 90 percent of adults go to obtain either driver's licenses or state ID cards.

Survey respondents reported that this was relatively easily accomplished. More than half of them had such a system in place before the NVRA took effect, and those implementing it for the first time experienced only minor difficulties.

Agency Voter Registration

The NVRA also requires states to provide voter registration services at the offices of public assistance agencies, the offices of state agencies serving persons with disabilities, and armed forces recruitment offices. Additionally, the states are required to select other appropriate agencies to provide this service.

Some survey respondents reported challenges in coordinating their efforts with public assistance agencies, which often operate as separate individual bureaus. Others reported difficulties in identifying appropriate registration sites other than those mandated.

Almost one third of respondents reported difficulties with a required declination form, which is used to record applicants' decisions not to register to vote.

Seven respondents advocated limiting the mandatory offering of voter registration to only initial applicants and those changing their address.

Mail Registration

The NVRA requires states to allow voter registration by mail. As of this writing, all 38 respondents allow their residents to register to vote by mail. In addition to their own forms, respondents also accept the FEC-designed national voter registration form as a valid registration document.

Maintenance of Voter Lists

The NVRA prohibits states from removing names from their voter rolls merely because an individual failed to vote. States may use other systematic methods to purge their lists.

Respondents reported using the following criteria to remove names from their lists: death, criminal conviction, mental incompetence, change of address and duplicate registrations. Respondents reported various problems with the NVRA's list-maintenance provisions, most of which related to confirming changes of address via the U.S. Postal Service.

Fail-Safe Voting Provisions

The NVRA seeks to reduce the number of incidents in which citizens are denied the right to vote due to some oversight on their part or to some clerical error on the part of the state election office.

For instance, citizens in some states are required to reregister when they change address, even if the move is entirely within one registrar's jurisdiction; citizens sometimes only discover this when they attempt to cast a vote. Other times a clerical mistake, such as an erroneous change of address, results in a citizen's missing a voting opportunity. The NVRA requires states to maintain a registered voter's eligibility to vote so long as that individual remains an eligible voter in that jurisdiction.

Survey respondents have taken various approaches to comply with this mandate. These are technical matters, however, and they have yet to face the test of experience. Therefore, they drew no substantive comment from the respondents. ✦

Public Funding

1992 Clinton/Gore Final Repayment Set At $109,061

On June 1, 1995, the Commission issued a final repayment determination for the Clinton/Gore '92 Committee, the principal general election committee of President Bill Clinton and Vice President Al Gore. The final determination required the committee to make a repayment of $84,421 and a payment of $24,640, for a total of $109,061 due to the U.S. Treasury.

The payment amount consisted of $24,640 in stale-dated checks.

The repayment amount is comprised of $76,775 for nonqualified campaign expenditures, $6,646 for earnings on the investment of public funds and $1,000 for the unlawful acceptance of a contribution.

Additionally, in the course of campaigning, the general election committee exceeded its expenditure limit. To reduce general election spending to a permissible level, monies were transferred from the General Election Legal and Accounting (GELAC) fund[1] to the committee to reimburse the committee for compliance costs it had originally paid.

The Commission's final determination reflects changes from the initial determination contained in the final audit report. See page 5 of the February 1995 *Record* for a summary of the final audit report's findings. The payment amount was reduced because some of the previously outstanding stale-dated checks

[1] *Publicly funded general election campaigns may establish GELAC funds, which are special accounts used to pay for legal and accounting expenses incurred solely to comply with the campaign finance law, and other specified expenses. GELAC funds are the only permissible depositories for private contributions received by publicly funded general election campaigns. GELAC spending does not count against a campaign's expenditure limits.*

were subsequently resolved. The repayment items the Commission reconsidered are summarized below.

Revised Final Audit Repayments

Illegal receipt of in-kind contribution. The final audit report contained a determination that the committee had received a $111,100 in-kind contribution from the Democratic National Committee (DNC) to defray qualified campaign expenses. The Commission initially regarded this as the receipt of an unlawful contribution; publicly funded campaigns may not receive contributions. 11 CFR 9003.2(a)(2).

The committee argued that the supposed contribution resulted from the DNC's assumption of a portion of a media contract. Upon assumption of the contract, the committee maintained that the DNC directed the vendor to produce generic advertisements urging support for Democratic candidates in general without mentioning a specific candidate. The committee presented the Commission with an affidavit from the vendor, videotapes of four of the advertisements and invoices of the production costs.

In light of this documentation, the Commission concluded that the DNC had not made an in-kind contribution because its advertisements did not specifically support the committee's Presidential ticket.[2] Subsequently, this $111,100 repayment was dropped from the Commission's final repayment determination.

Duplicate payments to vendors. The final audit report contained a determination that the committee had made duplicate payments of $8,329 to vendors. The committee subsequently documented that it had received a $1,850 refund of a duplicate payment. The Commission adjusted the repayment amount accordingly. ✦

[2] The Commission noted that had the DNC wished to create advertisements that specifically supported President Clinton's candidacy, it could have legally done so by applying the expense toward its coordinated party expenditure limit for Clinton/Gore '92.

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Some of the issues addressed in the new rules are discussed below.

Streamlined Audit Process

The FEC adopted new regulations governing the audit process in order to save time and money for all involved. The new rules eliminate the interim audit report, reducing the process to the following stages:

- An expanded exit conference, resulting in a written exit conference memo, to which the committee may make a written response;
- An audit report that includes the Commission's repayment determination;
- The opportunity for an FEC administrative review of the audit report, including, upon the committee's request, an oral presentation with respect to specified repayment issues; and
- A post-review repayment determination accompanied by a Statement of Reasons.

Additionally, the committee's receipt of the audit report now constitutes notification for purposes of the 3-year statute of limitations.

General Election Legal and Compliance Fund

Under the new regulations,[1] solicitations for this fund (the GELAC fund)[2] must inform contributors that publicly funded general election campaigns may not pay campaign expenses with private funds. The solicitation must also include instructions on how to properly designate a contribution to the GELAC fund.

The new rules also state that only those contributions clearly designated in writing for the GELAC fund may be deposited in the GELAC account. The new rules define what constitutes a proper written designation. Contributions with a questionable designation must be deposited initially in a primary election account and reported as primary election contributions.

The new rules state under what circumstances a committee may transfer primary election contributions to the GELAC fund and when redesignations from contributors must be secured. In all cases, the primary election committee must have all its debts settled before its monies may be transferred to the GELAC fund. GELAC monies can be used to retire primary election debts (or for any other lawful purpose) only after all GELAC expenses are paid.

Contributions designated or redesignated for the GELAC fund are not matchable.

The new rules reduce the percentage of computer-related costs that may be paid for with GELAC monies from 70 percent to 50 percent; a higher percentage figure may be adopted if a committee is able to demonstrate that it is warranted. Computer expenses incurred after the end of the expenditure report period, however, may be paid for entirely with GELAC funds. The same is true for salary and overhead payments.

Funding General Election Expenses with Primary Funds

The Commission has added certain bright-line rules that set criteria for determining whether

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[1] More far reaching changes contained in a Petition for Rulemaking submitted by the Center for Responsive Politics were not adopted. See 60 FR 31855-31856.

[2] Publicly funded general election campaigns may establish GELAC funds—special accounts used to pay legal and accounting expenses incurred solely to comply with the campaign finance law, and other specified purposes. GELAC funds are the only permissible depositories for private contributions received by these campaigns. GELAC spending does not count against the expenditure limits.

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certain expenses are to be attributed to the primary election or general election expenditure limits. These rules are relevant only to nominees.

Expenditures for goods and services used exclusively for either the primary or the general election effort are attributable to the limits applicable to that election. Note that, for primary elections, the state limits, as well as the overall limit, apply.

Polling expenses are attributed according to the date the poll's results are received relative to the date of the nomination.

Attribution of overhead expenditures and salary costs for running campaign offices is based on the date of the nomination. Those expenses incurred prior to this date are attributable to the corresponding primary election limits and those incurred after are attributable to the general election limit. However, when an office is used exclusively by persons working on general election preparations, these expenses are attributable to the general election limit, even if incurred prior to the date of the nomination.

The cost of campaign materials such as bumper stickers, brochures and buttons that were purchased by the primary election committee and later transferred to the general election committee are attributable to the general election limit only if they are used in connection with that election.

Production costs for media communications broadcast or published both before and after the date of the nomination are split equally between the primary and general election limits. Distribution costs, however, are attributed based on the date the communication is distributed.

The costs of a solicitation are attributable based on the purpose of the solicitation—either to raise monies for the primary election committee or the GELAC fund, since publicly funded candidates may not accept private funds for their general election efforts. If a solicitation requests monies for both purposes, then its cost is split equally between them.

Campaign-related travel expenses are attributed based on the date the travel occurs. If it occurs before the date of the nomination, it is a primary election expense, unless the person traveling is working exclusively on the general election effort; in that case, the travel cost is a general election expense. Travel to and from the nominating convention is considered a primary election expense.

Travel on Government Conveyance

When using government aircraft, whether federal, state or local, the committee must reimburse the government no less than the lowest, unrestricted, non-discounted, first class commercial air fare for that trip at that time for each campaign-related passenger. The following persons are considered campaign-related passengers: the candidate, his or her campaign staff, media personnel and Secret Service agents. When travel is to cities not serviced by first class flights, then the reimbursement will be no less than the coach fare for the trip. When travel is to cities not serviced by commercial flights, then the charter rate applies. In such instances, the charter rate must reflect the expense of chartering an aircraft large enough to accommodate all campaign-related travelers. When the airplane must be flown to a takeoff point to pick up passengers, the committee must reimburse the greater of either the government's bill or the single passenger fare for the positioning flight.

For travel using other government vehicles (e.g. helicopters, cars, other ground conveyance), the committee must reimburse the government the commercial rental fee for a similar vehicle.

A trip will be considered campaign related if it entails: soliciting, making or accepting contributions; expressly advocating the nomination, election or defeat of a candidate; or other factors listed in the new rules.

Other Issues Addressed by the New Regulations

Other issues affected by the new regulations include:

- Candidate agreements (new requirement to include closed captioning[3] on television commercials);
- Documentation of disbursements (canceled checks required for disbursements in excess of $200);
- Lost or damaged equipment (may be considered a nonqualified campaign expense);
- Investment of public funds (repayment obligation arises if profit is garnered);
- Statement of Net Outstanding Qualified Campaign Expenses (submission schedule revised, breakdown of estimated winding down costs required);
- Reporting (schedules of receipts, disbursements and debts must be alphabetized);
- Sampling (use of statistical sampling to audit primary contributions and to quantify dollar value of related audit findings);
- Disgorgement (repayment of certain excessive and prohibited contributions to the U.S. Treasury);
- Interest charged on late repayments (assessed after certain repayment periods have ended);
- Matching fund eligibility requirements (past history[4] no longer considered in declaring a candidate

[3] *Congress added this new requirement to 26 U.S.C. §9003(e).*

[4] *This reflects the U.S. Court of Appeals decision in* LaRouche v. FEC. *See page 3 of the September 1993* Record.

eligible);
- Gifts and bonuses paid with public funds ($150 gift cap per campaign worker, but not more than $20,000 for all gifts to campaign workers; bonuses must be provided for in written contracts and paid by specified date);
- Option to use digital imaging for matching fund submissions (must supply Commission with equipment to read the data); and
- Repayment ratio (calculated 90 days after date of ineligibility).
- Administrative record for judicial review of repayment determinations (committees may add materials to the record provided they submit them to the Commission within specified time limits).

The Commission is also continuing to consider the Petition for Rulemaking submitted by Mr. Anthony F. Essaye and Mr. William Josephson (59 FR 63274, December 8, 1994). This petition poses questions in connection with campaign activity that is focused on either the electoral college or the U.S. House of Representatives in event of, or in anticipation of, an indecisive general election result. ✦

Commission Repeals Three Obsolete Regulations

The Commission published a final rule in the Federal Register on June 15, 1995 (60 FR 31381) repealing three obsolete rules. These rules regulated activity that has now been concluded and that can not recur. They involved:

- Contributions to retire pre-1975 debts;
- Certain 1976 payroll deductions for separate segregated funds; and
- An alternative reporting option for candidates in Presidential elections held prior to January 1, 1981.

This marks the first time the Commission used the direct final rules procedure, which is endorsed by the National Performance Review and the American Bar Association. This time-saving procedure allows the Commission to publish a proposed rule in the Federal Register as a "final rule with request for comments," under the assumption that the rule will not receive adverse public comments. Should adverse comments be received, however, the rule would have to be published a second time as a Notice of Proposed Rulemaking, per the normal procedures.

The public comment period on the final rule repealing these provisions closed on July 17. No adverse comments were received, and the Commission subsequently forwarded the rule to Congress, which has 30 legislative days to review it. An announcement of effective date will be published in the Federal Register. ✦

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AO 1995-12
Affiliation and Cross Solicitation Between Trade Association Federation and State Associations

The Independent Bankers Association of America (IBAA) is considered a trade association federation composed of state independent banking associations (SIBAs). Furthermore, the relationship between IBAA and the SIBAs indicate that they are affiliated, allowing them to solicit each others' members—including stockholders and eligible personnel of incorporated members (with the required prior approval). Because the national and state associations are affiliated, their separate segregated funds (SSFs or PACs) are treated as one committee for purposes of the contribution limits and they may make unlimited transfers to one another.

Definition of Trade Association

IBAA and the typical SIBA are nonprofit corporations organized to promote the interests of community banking. They both have membership structures with two principal membership classes, including active members, who pay dues and have sufficient voting rights to meet the definition of "member" contained in 11 CFR 114.1(e)(2)(ii).

IBAA and the SIBAs meet the definition of trade association: a nonprofit membership organization composed of persons in a related line of commerce and organized to promote and improve business conditions in that line of commerce. 11 CFR 114.8(a).

For example, IBAA's active members are community financial institutions supporting IBAA's goals, and a typical SIBA has active members consisting of national banks, state banks and trust companies which agree with its principles and are approved by the Board.

Federation of Trade Associations

A federation of trade associations is "an organization representing trade associations involved in the same or allied line of commerce." 11 CFR 114.8(g)(1). Although IBAA's constitution and bylaws do not recognize the SIBAs as official state components, the national association qualifies as a trade association federation because of the organizational relationship between IBAA and the SIBAs and because IBAA performs a major coordinating and representative function. According to the formal rules and practices of IBAA and a typical SIBA:

- IBAA Board members elected by community banks in a given state

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serve on the Board of that state's SIBA.
- Two SIBA executives—the President and President-Elect of the SIBA Council—sit on the IBAA Board. (The Council is a group composed of the chief executive staff persons of the SIBAs.)
- Members of the SIBA Council serve as nonvoting members on all but three of IBAA's standing committees.
- IBAA consults with the SIBAs on the division of states into districts, which elect a member to the IBAA Board.
- Each IBAA Board member representing a specific state or district serves as a liaison between the IBAA and the SIBA in that state.
- SIBA executives meet at least once a year with the IBAA executive committee.

IBAA also coordinates and involves the SIBAs in its national lobbying efforts, is provided with a free booth at SIBA conventions, provides the main speaker at those conventions and seeks advice from the SIBAs concerning the activities of its SSF (IBAAPAC). All the above factors—as well as the similarities in the purposes and membership structures of the national and state associations—indicate that IBAA acts as a federation of SIBAs.

Affiliation

When a federation and its state associations are affiliated, their respective SSFs are also affiliated and treated as one political committee for purposes of the contribution limits. Affiliation is based on the relationship between the organizations, analyzed in terms of the affiliation factors set out at 11 CFR 100.5(g)(4). 11 CFR 114.8(g)(1). See AO 1994-19.

Because of the composition of the Boards of IBAA and a typical SIBA, as well as other facts, a number of those factors apply to the relationship between IBAA and the SIBAs: the national and state associations have the ability to participate in each other's governance; they have overlapping directors; IBAA and a typical SIBA each have some ability to chose decision makers in the other association; and a significant percentage of their memberships overlap. 11 CFR 100.5(g)(4)(ii)(B)–(E).

Based on this analysis, IBAA and the SIBAs are affiliated with each other.

Solicitations

A trade association may, with the prior approval of an incorporated member, solicit contributions to its SSF from the corporate member's restricted class, i.e., its individual stockholders, its executive and administrative personnel and the families thereof. 11 CFR 114.8(c) and (d).

Because IBAA and its federated SIBAs are all affiliated with one another, a SIBA need not have an SSF of its own in order to solicit, collect and transmit contributions to IBAAPAC or any SIBA SSF. In acting as a fundraising arm, a SIBA—or IBAA—must comply with the collecting agent regulations (11 CFR 102.6(b) and (c)).

Furthermore, their affiliated status would allow IBAA or a SIBA to solicit a member of an incorporated bank's restricted class provided that person is also a member of (as defined in the Act) either IBAA or a SIBA, and provided that the bank first gives its solicitation approval to one of the associations.

Affiliation between the SSFs of the federation would also allow IBAAPAC to accept a transfer from a SIBA SSF even if the funds contained contributions from personnel of non-IBAA members. Affiliated committees are permitted to accept transfers of any amount, assuming the transferred funds come from permissible sources. 11 CFR 102.6(a)(1)(i) and (iv). If the underlying contributions were from the SIBA's solicitable sources, the transferred funds could be accepted.

While affiliation permits the associations to cross-solicit members and transfer unlimited funds between their SSFs, it restricts the contribution activity of their SSFs. As affiliated committees, IBAAPAC and SIBA SSFs share the same limits on contributions received and made. The SSFs should establish procedures to keep one another informed about their incoming and outgoing contributions to avoid exceeding the limits.

Date Issued: June 30, 1995; Length: 14 pages. ✦

AO 1995-13
Definition of Member Applied to Membership Association

The American Society of Association Executives (ASAE) is an incorporated membership association with 22,250 members including association executives and staff and representatives of suppliers for the association community. ASAE's "regular members," numbering 6,411, meet the membership requirements set out in FEC regulations and may be solicited for contributions to ASAE's PAC (A-PAC). ASAE's life members, who total 3 percent of overall membership, do not meet the membership requirements and may not be solicited for contributions to A-PAC. The Commission was unable to reach a conclusion on the membership status of the two other ASAE membership types—section and associate—that include 15,195 individuals representing 68 percent of ASAE's total membership.

Under 11 CFR 114.1(e), to qualify as a solicitable "member" of a membership association, a person must:

- Pay regular dues and be entitled to vote for at least one member of the association's "highest governing body" or for those who choose at least one member of that body;
- Have a significant financial attachment to the association in addition to the payment of dues;
- Have the right to vote directly for all those on the association's highest governing board; or
- Have an organizational and financial attachment to the association that is significant enough to qualify as a "member," as determined by the Commission on a case-by-case basis.

ASAE's "regular members" have both the right to vote for the elected officers of ASAE and the ASAE Board of Directors and the obligation to pay regular membership dues. They therefore satisfy the membership requirements set out at 11 CFR 114.1(e)(2)(ii).

ASAE's life members do not vote for any ASAE officer, director or any person who can vote for an ASAE officer or director. In addition, the Commission had no evidence that life members pay dues. Based on these facts, the Commission concluded that life members do not meet the membership requirements and may not be solicited for contributions to A-PAC.

The Commission could not reach agreement on the status of associate and section members. Although they pay dues and have certain participatory rights, they are not entitled to vote for ASAE's elected officers or the ASAE Board of Directors.

Date Issued: June 9, 1995; Length: 7 pages. ✦

AO 1995-14
Operating a Booth at a Joint Convention

The Oral and Maxillofacial Surgery PAC (OMSPAC) may operate a fundraising booth at a convention jointly sponsored by the American Association of Oral and Maxillofacial Surgeons (AAOMS), which is its connected organization, and another membership organization provided that OMSPAC complies with the guidelines summarized below. At the convention, OMSPAC may solicit and receive contributions from the following types of AAOMS members: fellows, life fellows, retired fellows, members, life members and retired members. The Commission could not agree on whether or not affiliate members could be solicited.

Background

OMSPAC planned to set up a booth to collect contributions at a joint convention of AAOMS and the American Association of Orthodontists (AAO). OMSPAC expects about 900 AAOMS and AAO members at the convention, and an additional 1,325 attendees who are not members of either organization.

AAOMS and AAO do not have common members, directors, trustees, officers or key employees.

OMSPAC has a policy of rejecting contributions from individuals who are not executive level AAOMS employees or members of AAOMS.

Status of AAOMS

AAOMS is a membership organization for purposes of federal election law because it expressly provides for membership in its bylaws, actively recruits new members and acknowledges an individual's status as an AAOMS member by sending him or her membership publications; in these ways it fulfills the requirements for a membership organization under 11 CFR 114.1(e)(1)(i), (ii) and (iii), respectively.

Who May Be Solicited at the Convention

OMSPAC may solicit AAOMS's administrative and executive personnel and their families, and those AAOMS members who qualify as "members" under 11 CFR 114.1(e)(2). To be considered a "member" under this provision, a person must:

- Pay regular dues and be entitled to vote for at least one member of the association's "highest governing body" or for those who choose at least one member of that body;
- Have a significant financial attachment to the association in addition to the payment of dues;
- Have the right to vote directly for all those on the association's highest governing board; or
- Have an organizational and financial attachment to the association that is significant enough to qualify as a "member," as determined by the Commission on a case-by-case basis.

AAOMS has four classes of membership: fellow, member, affiliate and honorary. An individual belonging to any of these membership classes attains life or retired status over time.

OMSPAC may solicit fellows and members because they pay dues and have voting rights. It may also solicit life and retired members and fellows because, even though they no longer pay dues, they retain their voting rights. They therefore qualify under the case-by-case rule at 11 CFR 114.1(e)(3).

OMSPAC may not, however, solicit honorary members, or inactive members of other classes, because these individuals do not pay dues, do not have voting rights and do not have a significant financial attachment to the organization.

AAOMS affiliate membership is open to individuals in foreign nations who are recognized professionally in that nation as oral and

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maxillofacial surgeons. This class pays dues but does not have voting rights. Upon reaching life or retired status, the dues paying obligation ceases to exist. The Commission was unable to decide whether affiliate members qualified as "members." Nevertheless, noting that affiliate and honorary memberships were available to individuals in foreign nations, the Commission cautioned OMSPAC about soliciting affiliates who may be foreign nationals. Foreign nationals are prohibited from making contributions in connection with U.S. elections. 2 U.S.C. §441e.

Operating the Booth

A membership organization's PAC may direct its solicitation activities only to the organization's members and its executive and administrative personnel and their families. Booth activities are considered solicitations if they do more than simply provide factual information about the PAC.

OMSPAC's policy of rejecting contributions from persons who are not members of AAOMS or part of AAOMS executive personnel enables it to follow a precedent established in Advisory Opinion 1978-17.

In accordance with that opinion, OMSPAC may operate a booth to solicit contributions at the convention provided that:

- Its booth displays signs clearly stating OMSPAC's policy of rejecting contributions from persons who are not members of AAOMS or part of AAOMS executive personnel; [1]
- Those manning the booth enforce this policy;
- A method of identifying solicitable attendees is maintained; and
- OMSPAC abides by the record keeping requirements at 2 U.S.C. §432(c) with respect to all contributions collected at the booth.

Additionally, the distribution of any pre-convention mailings and convention registration packets containing advertisements for the OMSPAC booth must be limited to solicitable members and their families. Similarly, presentations to convention attendees should not include invitations to the booth or booth promotions if the group includes individuals who are not solicitable.

Date Issued: June 19, 1995; Length: 14 pages. ✦

Federal Register

Federal Register notices are available from the FEC's Public Records Office.

1995-10
11 CFR 100, 106, 109 and 114: MCFL Rulemaking; Final Rules on Express Advocacy, Independent Expenditures and Corporate and Labor Organization Expenditures (60 FR 35292, July 6, 1995)

AO 1995-15
Foreign-Owned Subsidiary: Earmarked Contributions and Payroll Deductions

Allison Engine Company (the company) may continue to operate its political action committee (Allison PAC) after the company is acquired by Rolls-Royce, a corporation registered in the United Kingdom; the PAC's proposed safeguards ensure its compliance with the prohibition on foreign national participation at 11 CFR 110.4(a)(2).

Furthermore, Allison PAC may offer its executive and administrative employees a payroll deduction plan that enables them to earmark their PAC contributions for up to three federal candidates of the employee's choice. Allison PAC may not, however, use a payroll deduction plan to carry out twice-yearly solicitations of employees outside the company's restricted class. 2 U.S.C. §441b(b)(4)(B).

Foreign-Owned Subsidiary

Allison Engine Company is organized under the laws of Delaware and has its principal place of business in Indianapolis, Indiana. Rolls-Royce intends to purchase 100 percent of Allison Engine's stock. When this occurs, the company will become a domestic subsidiary of a foreign corporation.

2 U.S.C. §441e places broad prohibitions on the involvement of foreign nationals in U.S. elections. Foreign nationals are prohibited from playing any role in a PAC's decision-making process. 11 CFR 110.4(a)(3).

A PAC of a domestic subsidiary of a foreign corporation may not allow foreign national members of the subsidiary's board to vote on matters concerning the PAC or to select individuals who will operate the PAC and exercise decision-making authority with respect to its contributions and expenditures.

In anticipation of its acquisition by Rolls-Royce, Allison PAC adopted bylaws instituting the following safeguards against foreign national participation:

- All Allison PAC members must be U.S. citizens;
- Changes to Allison PAC, including PAC membership and determinations about disbursements, are to be made by majority vote of PAC members;
- All contributors to the PAC must be U.S. citizens;
- Contributors must certify that they were not influenced by a foreign national in their decision to earmark a contribution; and
- PAC disbursements will not be

[1] *OMSPAC may also solicit its own executive and administrative personnel, if it wishes.*

made under the influence of foreign nationals, and members of the PAC will disclose any such effort to influence disbursements.

The Commission concluded that these safeguards were sufficient to ensure the PAC's compliance with the foreign national prohibition.

Employee Earmarking Program

Allison PAC also proposed instituting a monthly payroll deduction plan for the company's restricted class.[1] Under this plan, employees would have the opportunity to designate a percentage of their yearly deduction total for the PAC to as many as three federal candidates of their choosing. Allison PAC would treat these deductions as both contributions to the PAC and contributions earmarked for specific candidates, and would forward them to the candidates each October.

The Commission noted that, because the PAC is treating the contributions as contributions to and from the PAC, the company's funds may be used to pay for the administration of the program and the solicitation of the contributions.

Under FEC rules at 11 CFR 102.8, contributions that are earmarked must be forwarded by the conduit, in this case Allison PAC, to the ultimate recipient within 10 days of receipt. Because Allison PAC's transfer plan would not comply with the 10-day time limit, the Commission approved Allison PAC's plan subject to the following modifications: Allison PAC must inform restricted class personnel that during a 10-day window in October they will have the opportunity to earmark their PAC contributions for up to three federal candidates of their choice.

The funds to be earmarked would be accounted for in "book accounts" maintained by the PAC.[2] This would constitute a reasonable accounting method for ensuring that funds to be earmarked in the future would not be used until the time of designation. Contributions in an employee's book account would be forwarded to candidates only after the PAC received a written designation from the contributor.

During the 10-day window in October, Allison PAC would accept designation forms on which employees could list any candidates to whom they wished to contribute with the amounts each would receive from that employee's book account. Employees could also denote a percentage of funds in their book accounts to be used at the PAC's discretion.

Allison PAC should report receipts from participating employees as contributions to the PAC at the time the PAC receives the monthly payroll deduction proceeds. As a conduit of earmarked contributions, Allison PAC should also identify the original donor and disclose the conduit transaction in its reports to the FEC.

These earmarked contributions are considered contributions from the participating employee(s). And, as Allison PAC stated, these earmarked contributions would be treated as contributions from the PAC, as well. The letter accompanying the contributions to the candidate should make clear to the recipient committee that the contribution amount is attributable to both the contributing individual(s) and the PAC. The letter should also provide identifying information (name, address, occupation and employer) for each individual and, if the check includes designations by more than one employee, the amount earmarked by each individual.

Allison PAC should also inform participating employees that all or part of their contributions might not be sent to the specified candidate. Because candidate contributions are attributable to Allison PAC as well as to the participating employee, Allison PAC might exhaust its $5,000 per election limit for a candidate before one or more of the contributing employees exhausts his or her individual limit.

After the October contributions are made, Allison PAC should send a notice to participating employees informing them of the amount of contributions attributed to them with respect to each recipient candidate.

Payroll Deduction Plan for Nonrestricted Class Employees

Although Allison PAC may conduct twice-yearly solicitations of employees outside the company's restricted class, according to the guidelines set out in 11 CFR 114.6, Commission regulations specifically forbid the establishment of a payroll deduction plan to facilitate the making of contributions in response to these twice-yearly solicitations. This prohibition exists along with, not in place of, the guidelines for a proper twice-yearly solicitation.

Date Issued: June 30, 1995; Length: 10 pages. ✦

AO 1995-18
Campaign Funds Given for Portrait of House Committee Chairman

Congressman James A. Leach, Chairman of the House Committee on Banking and Financial Services, and other Members of Congress may donate their excess campaign funds to commission an official portrait of the former Chairman. The portrait will be donated to the U.S. House of Representatives for

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[1] *A corporation's restricted class includes its executive and administrative personnel, its stockholders, and the families of both groups.*

[2] *This follows the example set in Advisory Opinion 1991-29.*

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display in committee rooms (a traditional method of honoring former Chairmen). The proposed use of excess campaign funds is permissible under 2 U.S.C. §439a, which specifically permits making excess fund donations to organizations described in 26 U.S.C. §170(c). This includes the United States Government if the donation is exclusively for public purposes. The Commission concluded that is the case here, assuming that the portrait will remain the official property of the U.S. House of Representatives in perpetuity. See also 11 CFR 113.2(b).

The Commission expressed no opinion on the tax ramification of the proposed activity, since those issues are outside its jurisdiction.

Date Issued: June 30, 1995; Length: 3 pages. ✦

AO 1995-20
Campaign Funds Used for Travel Expenses of Candidate's Family

When traveling with his wife—who is also his campaign advisor—on campaign trips from Washington, D.C., to his home district, Congressman Tim Roemer may use campaign funds to pay for an airline ticket for his young son even if his son does not participate in picnics or other campaign events. Such payments would not constitute the personal use of campaign funds.

While campaigns have wide discretion in spending their funds, they are not permitted to convert them to personal use. 2 U.S.C. §439a. New FEC regulations[1] define "personal use" as the use of campaign funds to pay for expenses "that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g). The regulations state that the Commission will determine on a case-by-case basis whether payment of travel-related expenses constitutes personal use. 11 CFR 113.1(g)(1)(ii).

In this case, the travel expenses of the Congressman's wife, in her capacity as senior campaign advisor, would clearly be campaign related, and therefore permissible expenses.

The expenses of the Congressman's children, however, require a different analysis. Because of their ages (an infant and a 2-year-old), they need to accompany their parents on campaign trips to the district. The children's expenses are therefore campaign related because they are necessitated by the campaign trips of their parents.

Therefore, in these specific circumstances, the use of campaign funds to pay the travel-related expenses of minor children accompanying their parents between Washington, D.C., and the candidate's home district do not constitute the personal use of campaign funds provided that the parents are traveling for campaign purposes.

The Commission expressed no opinion on the tax ramifications of the proposed activity, since those issues are outside its jurisdiction. Date Issued: June 30, 1995; Length: 3 pages. ✦

[1] *The regulations became effective on April 5, 1995. They are not included in the 1995 edition of FEC regulations, but the final rules are available as reprints of the Federal Register notice (60 FR 7826, February 9, 1995). Call the FEC to order a copy, or use Flashfax (202/501-3413) to order document #228.*

Advisory Opinion Requests

Advisory opinion requests (AORs) are available for review and comment in the Public Records Office.

AOR 1995-23
Use of campaign funds for legal costs incurred by candidate (Christopher Shays; June 16, 1995; 1 page)

AOR 1995-24
Candidate committee's liquidation of debts through sale of book published by candidate (Robert Palmer; June 23, 1995; 4 pages)

AOR 1995-25
Applicability of allocation rules to party-paid advertisements advocating the passage of partisan legislation (Republican National Committee; June 29, 1995; 3 pages) ✦

Compliance

MURs Released to the Public

Listed below are summaries of FEC enforcement cases (Matters Under Review or MURs) recently released for public review. This listing is based on the FEC press releases of July 5 and 11. Files on closed MURs are available for review in the Public Records Office.

MUR 2717
Respondents: (a) Haig for President (VA); (b) Dominic J. Saraceno, treasurer, Haig for President (MA); (c) various individuals and corporations; (d) Olympic International Bank & Trust Company (MA) and Crown Equipment Corporation (formerly known as Crown Controls Corporation) (OH)
Complainant: FEC initiated (1988 Presidential audit)
Subject: Contributions in the name of another; corporate and bank contributions; excessive contributions
Disposition: (a) Waived further civil prosecution in exchange for committee's acceptance of conciliation agreement in MUR 3367; (b) waived further civil prosecution in exchange for Mr. Saraceno's guilty plea in *United States v. Dominic J. Saraceno;* (c) two civil penalties of $750 and $500; various findings of reason to believe, probable cause to

believe and no probable cause to believe, some knowing and willful; took no further action in some cases and closed the others; (d) reason to believe but took no further action

MUR 2903
Respondents: (a) Haig for President (VA); (b) Dominic J. Saraceno, treasurer, Haig for President (MA); (c) various corporations and individuals
Complainant: FEC initiated (1988 Presidential audit)
Subject: Corporate contributions; excessive contributions; extension of credit by bank
Disposition: (a) Waived further civil prosecution in exchange for committee's acceptance of conciliation agreement in MUR 3367; (b) waived further civil prosecution in exchange for Mr. Saraceno's guilty plea in *United States v. Dominic J. Saraceno;* (c) two $1,000 civil penalties and findings of reason to believe but took no further action

MUR 3182/3145
Respondents: (a) Kentucky State Democratic Central Executive Committee, Clay Patrick, treasurer (KY); (b) Harvey I. Sloane, M.D. and Sloane for Senate Committee (1990), Victoria Buster, treasurer (KY); (c) DNC Services Corporation, Robert T. Matsui, treasurer (DC); (d) Association of Trial Lawyers of America PAC, Joan C. Pollitt, treasurer (DC); (e) Mary C. Bingham (deceased) (KY); (f) Association of Trial Lawyers of America (DC); (g) Greer, Margolis, Mitchell & Associates (DC)
Complainants: Common Cause (DC); the Republican Party of Kentucky, Bob Gable, Chairman (KY)
Subject: Excessive contributions; failure to report disbursements; use of nonfederal funds for contributions; union contributions; failure to allocate federal/nonfederal expenses; excessive coordinated expenditures; failure to report coordinated expenditures properly; exceeding annual $25,000 contribution limit
Disposition: (a-e) Reason to believe, but took no further action; (f-g) no reason to believe

MUR 3342/3111/DSR 90-16 [1]
Respondents: (a) Richard A. Gephardt, Gephardt for President Committee and Gephardt for Congress Committee (S. Lee King and John R. Tumbarello, respective treasurers) (DC); (b) Beryl Anthony for Congress Campaign Committee, Joseph Hickey, treasurer (AR); (c) Slattery for Congress Committee, Mike Van Dyke, treasurer (KS); (d) Iowa Democratic Party (Federal Division), Mary Maloney, treasurer (IA); (e) various corporations; (f) various banks; (g) various individuals
Complainant: FEC initiated (1988 Presidential audit)
Subject: Excessive contributions; excessive transfers between principal campaign committees of a candidate; corporate contributions; spending in excess of Iowa state limit; spending in excess of candidate's personal limit; failure to report in-kind political party contribution
Disposition: (a) $80,000 civil penalty and refund of approximately $70,000 in excessive and prohibited contributions; file amended reports; (b) $1,500 civil penalty; (c) $750 civil penalty; (d) reason to believe but took no further action; (e) $1,900 civil penalty; findings of no probable cause to believe and reason to believe; took no further action; sent admonishment letter; (f) no reason to believe; (g) two civil penalties of $500 and $400 and various findings of probable cause to believe and reason to believe; took no further action

[1] *Debt Settlement Request (DSR): in this case, the committee's Debt Settlement Plan was combined with these MURs.*

MUR 3367
Respondents: (a) Haig for President, Dominic Saraceno, treasurer (VA); (b) Committee for America, Sherwood D. Goldberg, treasurer (DC)
Complainant: FEC initiated (1988 Presidential audit)
Subject: Excessive contributions; corporate contributions; furnishing fictitious or fraudulent information and falsifying information for primary matching fund certification; earmarked contributions
Disposition: (a-b) $60,000 civil penalty

MUR 3476
Respondents: Democratic Federal Campaign Committee of St. Louis City, Bruce B. Yamplosky, treasurer (MO)
Complainant: FEC initiated
Subject: Failure to file disclosure reports timely; deposit of nonfederal funds in federal account
Disposition: $7,000 civil penalty

MUR 3492
Respondents: (a) Jesse Jackson for President '88 Committee, Howard Renzi, treasurer (DC) and New Yorkers for Jesse Jackson '88, J. Wesley Parker, treasurer (NY); (b) various individuals; (c) Apollo Theater Patrons (NY) and various other groups; (d) F & S Development Company (MI) and two of its partners; (e) Capital National Bank (MI); (f) Florida Junior College at Jacksonville Foundation, Inc (FL); (g) Black Ford-Lincoln-Mercury Dealers Association, Inc. (MI); (h) Islamic Society of North America (IN)
Complainant: FEC initiated (1988 Presidential audit)
Subject: Excessive contributions from individuals, unregistered organizations and partnership; corporate and labor contributions; acceptance of loan not made in the ordinary course of business; failure to report loan and line of credit;
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