

# Record

April 2007

Federal Election Commission

Volume 33, Number 4

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## Reports

### April Reporting Reminder

All principal campaign committees of House and Senate candidates must file a quarterly report by April 15, 2007. 11 CFR 104.5(a).

Principal campaign committees of Presidential candidates must file a report on April 15, if they are quarterly filers, or on April 20, if they are monthly filers.

All national party committees, and those political action committees and state, district and local party committees that file monthly, must file a report on April 20. Absent a special election, all other PACs and party committees will next file a Mid-Year Report, due July 31.

### Notification of Filing Deadlines

In addition to publishing this article, the Commission makes the filing deadlines available on its web site and via its automated Faxline, and notifies committees through reporting reminders called prior notices. Since January 1, 2007, prior notices have been distributed exclusively by electronic mail. They are no longer sent to committees using U.S. mail. See [December 2006 Record](#), page 1. For that reason, it is important that every committee update its Statement of Organization (FEC Form 1) to disclose a current e-mail address. Each

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## Compliance

### MUR 5487: Progress for America Voter Fund

The Commission entered into a conciliation agreement with Progress for America Voter Fund (PFA-VF) to settle violations of the Federal Election Campaign Act (the Act). PFA-VF's violations included failing to register with the Commission as a political committee, failing to report its contributions and expenditures, knowingly accepting excessive contributions from individuals and knowingly accepting prohibited corporate contributions. PFA-VF agreed to pay a civil penalty of \$750,000, the third-largest civil penalty in the Commission's history.

### Background

The Act and Commission regulations require a group whose major purpose is to influence federal elections to file a Statement of Organization with the Commission within ten days of receiving contributions or making expenditures to influence federal elections that exceed \$1,000 per calendar year. 11 CFR 100.5. All political committees must file regular reports with the Commission disclosing the committee's receipts and disbursements. Additionally, political committees may not accept any contributions from corporations

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## Reports

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committee may have only one official e-mail address. Providing more than one e-mail address may result in the committee not receiving a notice.

### Treasurer's Responsibilities

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

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

the Senate's) close of business on the last business day before the deadline.

### Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations that receive contributions or make expenditures, including independent expenditures,<sup>1</sup> in excess of \$50,000 in a calendar year—or have reason to expect to do so—must file all reports and statements with the FEC electronically. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines. Reports filed electronically must be received and validated by 11:59 p.m. Eastern Time on the applicable filing deadline.

The Commission's electronic filing software, FECFile 5, can be downloaded from the FEC's web site at <http://www.fec.gov/electfil/electron.shtml>. Filers may also use commercial or privately-developed software as long as the software meets the Commission's format specifications, which are available on the Commission's web site.

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

### Timely Filing for Paper Filers

*Registered and Certified Mail.* Reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by certified mail should keep its mailing receipt

with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by certified mail. A committee sending its reports by registered mail should keep its proof of mailing. Please note that a Certificate of Mailing from the USPS is not sufficient to prove that a report is timely filed using Registered, Certified or Overnight Mail.

*Overnight Mail.* Reports filed via overnight mail<sup>2</sup> will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Express or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports.

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

### Filing Frequency for Party Committees

National committees of political parties must file on a monthly schedule in all years and may not choose to change their filing schedule in non-election years. 2 U.S.C. 434(a)(4)(B).

A state, district and local party committee that filed monthly in 2006 due to its federal election activity

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

<sup>2</sup> "Overnight mail" includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service's on-line tracking system.

**Federal Election Commission**  
999 E Street, NW  
Washington, DC 20463

800/424-9530  
202/694-1100  
202/501-3413 (FEC Faxline)  
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Published by the Information  
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Director

**Meredith E. Metzler**, Editor

<http://www.fec.gov>

must notify the Commission in writing if it wishes to file semiannually in 2007. 11 CFR 104.5(b)(2). After filing a notice of change in filing frequency with the Commission all future reports must follow the new filing schedule. Electronic filers must file this request electronically.

### Political Action Committees

PACs (separate segregated funds and nonconnected committees) may file on either a semiannual or monthly basis in non-election years. A committee may change its filing frequency only once a year and after giving notice of change in filing frequency to the Commission, all future reports must follow the new filing frequency. 11 CFR 104.5(c).

### Additional Information

For more information on 2007 reporting dates:

- See the reporting tables in the [January 2007 Record](#);
- Call and request the reporting tables from the FEC at 800/424-9530 or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or
- Visit the FEC's web page at [http://www.fec.gov/info/report\\_dates.shtml](http://www.fec.gov/info/report_dates.shtml) to view the reporting tables online.

—Elizabeth Kurland

### Need FEC Material in a Hurry?

Use FEC Faxline to obtain FEC material fast. It operates 24 hours a day, 7 days a week. Hundreds of FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

Use a touch tone phone to dial 202/501-3413 and follow the instructions. To order a complete menu of Faxline documents, enter document number 411 at the prompt.

## Compliance

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and, in the case of a political action committee (PAC), may accept no more than \$5,000 per calendar year from an individual or another PAC.

**Failure to File and Report.** PFA-VF raised \$44.9 million in the five months before the 2004 general election. The group's fundraising solicitations clearly stated that the funds would be used to target the election or defeat of specific federal candidates in the upcoming election. The funds received in response to these solicitations were contributions that triggered the \$1,000 political committee registration threshold.

PFA-VF also spent over \$31.1 million in communications related to the 2004 general election, including television and radio advertisements, direct mailings, e-mails and Internet banner ads. Certain communications expressly advocated either the election of President Bush or the defeat of Senator Kerry. As a result, payments for the express advocacy communications were expenditures that formed a separate basis for triggering the \$1,000 political committee registration threshold.

**Corporate and Excessive Contributions.** PFA-VF accepted \$41,613,000 from individuals who contributed more than the \$5,000 per calendar year PAC contribution limit and \$2,465,000 from sources prohibited by the Act.

### Conciliation Agreement

PFA-VF will pay a civil penalty of \$750,000 and has agreed to cease and desist from violating the Act. The conciliation agreement settled all alleged violations as to PFA-VF's status as a federal political committee. PFA-VF will file reports disclosing the activity that they should have disclosed as a federal PAC. The Commission agreed that PFA-VF may meet this requirement by filing copies of its IRS reports with the FEC along with supplemental information. PFA-VF must register

and report as a federal PAC if it engages in future activity that triggers registration.

—Meredith Metzler

## Policy Statement on Initial Stage of Enforcement Process

On March 1, 2006, the Commission approved a policy statement that clarifies the various actions the Commission may take when beginning the enforcement process. In the initial stages of the process, the Commission will either:

- Find reason to believe;
- Dismiss the matter;
- Dismiss the matter, but send an admonishment letter; or
- Find no reason to believe.

### Background

Congress gave the Commission exclusive jurisdiction over civil enforcement of violations of the Federal Election Campaign Act (the Act). The Commission may open enforcement matters based on complaints from the public, information learned in carrying out its normal duties, including referrals from the Audit and Reports Analysis Divisions, referrals from other government agencies and self-reported submissions.

According to the Act, the Commission shall investigate alleged violations when at least four Commissioners find that there is "reason to believe" that a violation has occurred. Such a finding does not mean that a violation actually occurred, rather that the Commission found sufficient legal justification to open an investigation to determine whether a violation occurred.

### Initial Enforcement Determinations

**Reason to Believe.** The Commission will find "reason to believe" in situations where there is enough evidence to warrant an investigation and where the alleged violation is serious

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## Compliance

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enough to require an investigation or immediate conciliation. A “reason to believe” finding will always be followed either by an investigation or a pre-probable cause conciliation.

A “reason to believe” finding does not itself establish that a violation has occurred. If the Commission accepts a conciliation agreement, the agreement will contain the Commission’s ultimate findings. If the Commission does not enter into a conciliation agreement and does not file a lawsuit, individuals can look at the Commission’s Statement of Reasons, Factual and Legal Analysis or a General Counsel’s Report for further explanation of the Commission’s conclusions.

Previously, the Commission used the finding “reason to believe, but take no further action” when the

Commission found a basis for investigating or attempting to conciliate but declined to investigate or conciliate. The Commission has determined that the phrases “dismissal” or “dismissal with admonishment” are clearer about the Commission’s intentions than “reason to believe, but take no further action.”

*Dismissal.* The Commission has broad discretion to determine how to proceed with complaints or referrals. The Commission may exercise its prosecutorial discretion to dismiss cases that do not merit the use of Commission resources. Dismissal requires the vote of at least four Commissioners. Factors influencing dismissal could include insignificance of the alleged violation, weakness of evidence, likely difficulties with an investigation or the lack of the necessary four votes to proceed with the matter. The Commission may dismiss when the cost of investigating is great but the violation is minor.

*Dismissal with Admonishment.* The Commission may dismiss a matter when the Commission concludes that a violation did occur, but the violation is of minor significance. In such a matter, the Commission will send a letter admonishing the respondent. Examples of such situations include when the respondent admits to a violation but the violation does not require a monetary penalty or if a complaint convincingly alleges a violation but the significance of the violation is too low to warrant further investigation by the Commission.

*No reason to believe.* If available information provides no basis for proceeding with the matter, the Commission will find “no reason to believe.” Such a finding occurs when the complaint, the response by the respondent and any publicly available information, taken together, fail to suggest that a violation has occurred. Examples of “no reason to believe” include when a complaint alleges a violation but the response shows that no violation occurred, the complaint is not credible or too vague or if the

complaint does not describe a violation of the Act.

The “Statement of Policy Regarding Commission Action in Matters at the Initial State in the Enforcement Process” was published in the Federal Register on March 16, 2007 (72 FR 12545) and is available on the Commission’s web site at <http://www.fec.gov/law/policy.shtml#policy>.

—Meredith Metzler

## Regulations

### 2007 Rulemaking Priorities

On February 16, 2007, the Commission approved rulemaking priorities for 2007. The priorities include:

- Implementing any changes or additions to the rules necessary as a result of Congressional action;
- Explaining how to allocate expenses for advertisements that include both a federal candidate and a generic party reference;
- Conforming the Commission’s ethics regulations with government-wide ethics rules;
- Finalizing the policy statement and regulation regarding a treasurer’s best efforts in the Administrative Fines Program (see January 2007 *Record*, page 6);
- Addressing the federal election activity exemption for nonfederal election activities that expires September 1, 2007;
- Finalizing the Millionaires’ Amendment interim rules at 11 CFR 400;
- Finalizing policy or implement regulations regarding the disclosing of materials at the close of an enforcement matter (see August 2003 *Record*, page 1); and
- Conforming the personal use regulations to the revised statute at 2 U.S.C. 439a.

The full list of priorities is available on the FEC’s web site at <http://www.fec.gov/agenda/2007/mtg-doc07-10.pdf>.

### Federal Register

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

#### Notice 2007-4

Policy Statement Establishing a Pilot Program for Probable Cause Hearings (72 FR 7551, February 16, 2007)

#### Notice 2007-5

Filing Dates for the Georgia Special election in the 10th Congressional District (72 FR 10761, March 9, 2007)

#### Notice 2007-6

Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (72 FR 12545, March 16, 2007)

## Court Cases

### Bialek v. Gonzales, Marcus v. Gonzales and Beam v. Gonzales

During February and March 2007, Barry Bialek, Jon Marcus and Jack and Renee Beam filed separate, but substantially similar complaints with district courts in Colorado, Arizona and Northern Illinois, respectively, alleging that the Commission violated the Federal Election Campaign Act (the Act) by “tacitly cooperating and conspiring with” Attorney General Alberto Gonzales to circumvent the Act.

These cases are related to the *Fieger v. Gonzales* case currently pending in the Eastern District of Michigan, in which Geoffrey Fieger alleges that the Act grants the Commission exclusive jurisdiction over criminal violations and bars the Department of Justice from conducting any grand jury investigations unless and until the Commission makes a referral. See [March 2007 Record](#).

#### Complaints

The plaintiffs made contributions to John Edwards’ 2004 presidential campaign. According to the complaints, the plaintiffs are being investigated by the Department of Justice for violations of the Act. Mr. Bialek was summoned before a grand jury in November 2006 and Mr. Marcus was summoned before a grand jury in October 2006.

The plaintiffs assert that by giving “exclusive jurisdiction” over the Act to the Commission, Congress determined that no criminal investigation can take place unless the Commission has formally referred the criminal matters to the Attorney General. The plaintiffs claim that the Attorney General’s investigations are unlawful and unconstitutional since the Commission did not refer the plaintiffs’ alleged violations to the Attorney General.

In addition to those allegations, the *Beam* plaintiffs allege that Attorney Gonzales intentionally interfered with the Commission’s investigation and that the Commission’s failure to conduct its own investigation violates the Act and the Administrative Procedures Act.

#### Relief

The *Bialek* and *Marcus* complaints seek a declaration that the defendants’ actions are unlawful and the award of costs and attorneys’ fees. In addition to this relief, the *Beam* complaint asks the court to declare that the Commission has failed to uphold the Act and to issue a Writ of Mandamus requiring the Commission to conduct its own investigation into the matter prior to any investigation by the Attorney General.

*Bialek v. Gonzales*, U.S. District Court for the District of Colorado, 07-CV-00321-WYD-PAL.

*Marcus v. Gonzales*, U.S. District Court for the District of Arizona, CV070398-PCT-EHC.

*Beam v. Gonzales*, U.S. District Court for the Northern District of Illinois, 07CV1227.

—Meredith Metzler

### New Campaign Guide Available

The 2007 *Campaign Guide for Corporations and Labor Organizations* is now available on the Commission web site at <http://www.fec.gov/info/publications.shtml>. Paper copies will be available by May 2007.

For each type of committee, a *Campaign Guide* explains, in clear English, the complex regulations regarding the activity of political committees. It shows readers, for example, how to fill out FEC reports and illustrates how the law applies to practical situations.

Please contact the Information Division at 800/424-9530 to order paper copies.

## Advisory Opinions

### Advisory Opinion 2006-34: Political Committee Sponsored Affinity Program

Working Assets may offer an affinity wireless telecommunication program to sponsoring political committees that would allow customers to direct a 10 percent rebate from their monthly charges as a contribution to the political committee sponsor (the sponsor). Customers would also have the option to “round-up” their bills and apply the excess amount as a contribution to the sponsor.

The proposed program would not result in any impermissible corporate contributions under the Federal Election Campaign Act (the Act) because (i) the sponsors would pay the usual and normal charge for the solicitation services and other services provided by Working Assets as part of a commercial transaction and (ii) the contributions to the sponsors resulting from rebates and round-ups would be made by the individual customers and not by Working Assets.

#### Background

Working Assets, a for-profit corporation specializing in donation-linked telecommunications and credit card services, has offered affinity programs to non-profit organizations for over 20 years. Under the programs, Working Assets donates a portion of each credit cardholder’s purchases or long distance or wireless charges to non-profit organizations. The company also offers a program called “Citizen Action” in which bills sent to customers would contain “alerts” encouraging the customers to express their views on legislative and policy issues to elected and appointed officials.

Working Assets proposes to expand its affinity sponsor programs to political party committees, nonconnected political committees

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## Advisory Opinions

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and qualified non-profit corporations (QNCs). The proposed affinity program would be made available without regard to political party affiliation or ideological orientation. However, the program for each particular sponsor would have to be commercially viable as determined by common commercial principles, such as size of membership and potential for long-term customer commitments.

The proposed program would allow Working Assets to use the sponsoring political committee's name, trademark and supporter list in marketing Working Assets' mobile phones and wireless services to the sponsor's members and supporters, via direct mail and/or online communications. The marketing would include messages from the sponsor soliciting support. Some messages might refer to past elections or electoral results, but they would not refer to current or future elections or federal candidates. Working Assets would pay the cost of the marketing.

Working Assets would offer an automatic 10 percent rebate from monthly charges to their customers. When customers enrolled they could choose one of two options: (1) receive the rebate in the form of a credit on their next bill or (2) direct the rebate amount as a contribution to the sponsoring political committee.

Customers would also be given the option to "round up" their monthly billed amount and specify the rounded up portion as a contribution to the sponsor. In addition, Working Assets plans to expand its Citizen Action Alerts to political committee sponsors and to include advertising space with content created by the sponsors in customers' bills.

Working Assets' proposal details how contributions from customers would be made and forwarded. First, customers would be able to switch their option for use of the rebate at any time. Second, when customers authorize the forwarding of rebates

as contributions, and when those opting to contribute pay their bills, they would be asked to provide their name, address, occupation and employer. All contributor information would be forwarded to the sponsor in time to meet the Act's recordkeeping and reporting requirements. Rebates directed to the sponsors would be forwarded through an automated clearinghouse within 24 hours of Working Assets' receipt. Donation forms in the bills would have all disclaimers as required by 11 CFR 110.11.

Working Assets' proposal also details how the program would be financed. The arrangement would be based on the sponsor giving Working Assets access to its member and supporter list in exchange for Working Assets' solicitation of the individuals on the list to participate in the program. The full cost of marketing the program would exceed the fair market rental value of the list, but Working Assets asserts that only a portion of the marketing costs should be attributable to the sponsor based on the division of the wireless charges. Since individuals would receive a 10 percent rebate on their monthly charges that they may direct to the sponsoring political committee and Working Assets would retain 90 percent of the proceeds, the company proposed to allocate 10 percent of the marketing costs to the committee sponsor and 90 percent to itself. Working Assets would ensure that the portion of the marketing costs attributable to the sponsor would not exceed the fair market rental value of the sponsor's list.

In addition, the sponsor would pay Working Assets directly for any costs associated with processing the rebates or round-ups, transmitting contributions and forwarding contributor information. The sponsor would also pay for all space in the bills associated with the Citizen Action Alerts, all expenses related to customers' Citizen Action phone calls to officials, and for sponsor advertising space in the customers' bills.

## Analysis

The Act and Commission regulations prohibit corporations from making contributions in connection with any federal election and prohibit federal candidates and committees from accepting such contributions. 2 U.S.C. 441b(a). In several past advisory opinions, the Commission has permitted corporations to offer affinity programs, or programs similar to affinity programs, as long as the corporation and the political committee:

- Enter into a commercially reasonable transaction in which the committee pays the usual and normal charge for services rendered (AOs 2003-16, 2002-7 and 1995-34); and
- Ensure that amounts contributed to committees are from the individual customer's funds and not from corporate funds (AOs 2003-16 and 1994-33).

*Usual and Normal Charge.* In order to determine if the proposed program would be commercially reasonable, the Commission considered whether the sponsors provided sufficient compensation, i.e., the usual and normal charge (including a reasonable profit) to Working Assets for the services that Working Assets would provide to them. See AOs 2004-19, 2002-7 and 1994-33. The Commission noted that, in contrast to solicitation services usually provided by commercial vendors to political committees, the marketing services provided by Working Assets would serve two distinct purposes: (i) the primary purpose of generating customers for Working Assets' wireless service and (ii) the secondary purpose (which would be contingent on individuals subscribing to the wireless service) of generating contributions to the sponsor. Under such circumstances, the Commission concluded that the proposed allocation to the sponsors of 10 percent of the marketing costs reflects the usual and normal charge for the services being provided to the sponsors under

the facts presented, and that Working Assets' provision of such services in exchange for the use of the sponsor's mailing list would not be a contribution to the political committee.

The Commission also approved of the proposal that the sponsor pay Working Assets directly for the expenses related to processing and transmitting contributor information and contributions and to the Citizen Action Alerts, and for advertising space in customers' bills. The Commission concluded that the sponsor need not pay in advance for these services but must pay the usual and normal charge within a commercially reasonable period of time in the ordinary course of business.

The Commission concluded that Working Assets would act as a commercial vendor in providing its services, and would not make or facilitate a corporate contribution to the sponsor. 11 CFR 114.2(b), (f)(1) and (f)(2)(i).

**Customer Contributions.** The Commission concluded that the provision of rebated and rounded-up amounts to sponsors would be contributions by the customers, rather than impermissible contributions by Working Assets through its customers. See 2 U.S.C. 441f (prohibiting contributions in the name of another). First, the rebates and round-ups would occur in the ordinary course of Working Assets' business as is evidenced by Working Assets agreements with other non-political sponsoring organizations. Second, the customers, not Working Assets, would control the disposition of rebates and round-ups. See AO 2003-16. The Commission noted that Working Assets must ensure that it does not forward any funds to sponsors until Working Assets receives and deposits the customer's bill payment, so a prohibited corporate advance does not result. 2 U.S.C. 441(b)(a) and (b)(2); 11 CFR 114.(a)(1).

**Collection and Transmittal of Contributions.** Working Assets proposes to forward contributions to the

sponsors within 24 hours of Working Assets' receipt of the bill payment. In addition, Working Assets must place the contributed amounts from rebates and round-ups in an account separate from its other accounts (*i.e.*, a separate bank account for payments by check, or merchant account for credit card transactions) before transmittal to the sponsor, in order to avoid the commingling of corporate funds with contributions. Working Assets may set up one separate merchant account and one bank account for check payments for all of the sponsors, as long as the company maintains separate records for contributions to each sponsor. See AOs 2004-19, 2002-7, 1999-22 and 1991-20. Contributions and contributor information must be forwarded to the sponsors within 10 days of receipt if the contribution is over \$50. 2 U.S.C. 432(b)(2)(B); 11 CFR 102.8(b)(2).

**Solicitations and Other Communications.** Working Assets' proposal states that the solicitations sent to prospective customers would not mention current or future elections or current federal candidates; this is consistent with AO 2003-16. In addition, the proposal explains that bills would include disclaimers. The appropriate disclaimer would be the disclaimer required for communications by political committees that are not authorized committees. See 11 CFR 110.11(b)(3). Such disclaimers must also be included on all initial and follow-up solicitations.

**Impact of Proposal on QNCs.** Working Assets proposes to offer its affinity program to QNCs. QNCs<sup>1</sup> are non-profit 501(c)(4) corporations that

<sup>1</sup> A QNC must also (1) have as its only express purpose the promotion of political ideas, (2) not engage in business activities, (3) have no shareholders or persons (other than employees and creditors) who are affiliated in such a way that they could have a claim on the corporation's assets or earnings, and (4) not be established by a business corporation or labor organization, nor accept donations from such sources. See 11 CFR 114.10(c).

may make independent expenditures and electioneering communications so long as they meet certain specified criteria at 11 CFR 114.10(c). One of the criteria is that the corporation has no persons who are offered or receive a benefit, such as a credit card or a training program, which would provide a disincentive to disassociate from the corporation based on the corporation's position on a political issue. 11 CFR 114.10(c)(3)(ii). The Commission assumed that the services and rebates offered by Working Assets would not be dependent on an individual's association with a QNC, and that an individual could continue to participate in the Working Assets program even if he discontinues his membership with the QNC. Therefore, the Commission concluded that a QNC would not lose its QNC status by becoming a sponsor.

Date Issued: February 9, 2007

Length: 9 pages.

—Carrie Hoback

## Advisory Opinion 2007-2: State Party Status for Arizona Libertarians

The Arizona Libertarian Party, Inc. (the Arizona Party), satisfies the requirements for state committee status.

### Background

The Federal Election Campaign Act (the Act) defines a state committee as "the organization which, by virtue of the bylaws of a political party, is part of the official party structure and is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. 431(15).

In order for a committee to achieve state party committee status under FEC regulations, the Commission must first determine whether the party itself qualifies as a "political party" under the Act and Commission regulations. See AOs 2004-40

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## Advisory Opinions

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and 2004-34. Secondly, the committee must satisfy the remaining requirements of state party committee status: (1) be part of the official party structure and (2) be responsible for the day-to-day operations of the political party at the state level. 2 U.S.C. 431(15) and 11 CFR 100.14. To determine day-to-day responsibility for operations, the Commission considers both the bylaws of the committee and whether the committee has successfully placed a federal candidate on the ballot. See AOs 2004-40 and 2004-34. Gaining ballot access for a federal candidate is an essential element of qualifying as a political party. See 11 CFR 100.15.

### Analysis

The Arizona Party meets all of the requirements for state political committee status. The Commission previously determined that the Libertarian Party qualifies as a political party and that the Libertarian National Committee qualifies as a national party committee. See AOs 2002-14 and 1975-129. The Arizona Party demonstrated that it is part of the official party structure by submitting a letter from the Libertarian National Committee designating it as the national committee's "sole affiliate" in the state of Arizona.

Regarding the day-to-day operational responsibilities, the Arizona Party's constitution and bylaws demonstrate activity equivalent to that of other committees that have qualified for state party committee status. See AOs 2004-40 and 2004-34. Finally, the Arizona Party successfully placed two federal House candidates on the ballot in 2006. Both candidates raised or spent in excess of \$5,000 during their 2006 campaigns, thus satisfying the Act's definition of "candidate" at 2 U.S.C. 431(2).

Date Issued: March 9, 2007

Length: 4 pages

—Meredith Metzler

## Advisory Opinion 2007-3: Private Contributions Do Not Preclude Public Funding

Senator Barack Obama's 2008 presidential campaign may solicit and receive private contributions for the general election, yet retain the option to refund those contributions and accept public financing if he receives his party's nomination for President.

### Background

Senator Obama's principal campaign committee, Obama for America, (the Committee) has begun to solicit and receive private contributions for both the 2008 primary and general election campaigns. However, Senator Obama has indicated that he will consider accepting public financing for the general election campaign if the Republican candidate agrees or independently decides to accept public funding.

Senator Obama proposes to deposit contributions designated for the general election in a separate account. Only the Committee's treasurer and its chief operating officer will have access to the account. Funds in that account would not be commingled with funds from other accounts and would not be used for any purpose whatsoever, until Senator Obama decides whether to accept public funds. If he decides to accept public funds, he will return all of the general election contributions in full to the contributors.

### Analysis

Major party nominees accepting public funds for the general election must certify that they have not accepted and will not accept any private contributions, with limited exceptions. 11 CFR 9003.2(a)(2).

Senator Obama's proposal is similar to the permissible practice of fundraising for the general election by candidates for the U.S. House of Representatives and Senate who have not yet won their primary elections. While candidates

may raise funds prior to receiving the nomination of their party, if they do not participate in the general election they must refund all contributions designated for that election within 60 days from the date that such funds become impermissible. See 11 CFR 102.9(e)(3), 103.3(b)(3), 110.1(b)(3)(i), (b)(5), 110.2(b)(3)(i), (b)(5), and Advisory Opinion 2003-18.

The Commission concludes that Senator Obama may solicit and receive contributions designated for the 2008 general election without waiving his eligibility to receive public funds for the general election under the facts presented in the advisory opinion request, in which (1) those funds are kept in a separate account, (2) only the committee treasurer and its chief operating officer will have access to the account and (3) the funds in the account will not be used for any purpose.

If Senator Obama opts to receive public financing for the general election, he must refund all contributions designated for the general election in full within 60 days after he certifies his eligibility to receive such funds with the Commission under 11 CFR 9003.2(a)(2).

Any interest earned on funds in Senator Obama's general election account must be disgorged to the U.S. Treasury within 60 days after Senator Obama certifies his eligibility to receive public funds under 11 CFR 9003.2(a)(2). However, interest earned may be used for bank or merchant fees related to that account.

Date Issued: March 1, 2007

Length: 7 pages.

—Myles Martin

## Advisory Opinion Requests

### AOR 2007-4

Whether processing fees paid directly by a contributor to a vendor processing online credit card contributions for a federal political committee are considered a contribution (Atlatl, February 26, 2007)

### AOR 2007-5

Whether a Congressional staffer may serve as state party chairman and solicit, direct or control nonfederal funds on behalf of the state party in his capacity as chairman (Erik Iverson, March 8, 2007)

## Administrative Fines

### Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 30 new Administrative Fines cases, bringing the total number of cases released to the public to 1,342 with \$1,838,171 in fines collected by the FEC.

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

## Committees Fined and Penalties Assessed

Ada M. Fisher for Congress, October Quarterly 2004	\$3,000 <sup>1</sup>
Ada M. Fisher for Congress, 12-Day Pre-General 2004	\$900 <sup>1</sup>
Allegheny Energy, Inc. Federal PAC	\$500
Bi-County PAC (FKA Suffolk PAC)	\$385
Big Tent PAC	\$1,125
Citizens for Arlen Specter	\$5,200
Committee to Elect Bill Sinnott	\$1,800
Consolidated Edison Inc. Employees' PAC	\$900
Constellation Brands Inc. PAC	\$300 <sup>2</sup>
Direct Selling Association PAC	\$135
Gillespie for Congress	\$320 <sup>1</sup>
Hastings for Congress	\$975
Kim Clark for Congress	\$220
Louise Slaughter Re-Election Committee	\$450
Maata for Congress Campaign Committee	\$1,725 <sup>1</sup>
Michigan Doctors PAC – Michigan State Medical Society	\$900
Monroe County Democratic Committee, Year End 2005	\$6,875 <sup>1</sup>
Monroe County Democratic Committee, April Quarterly 2006	\$6,875
Murray for Congress	\$900
Office of the Commissioner of Major League Baseball PAC	\$1,125
Oregon Republican Party	\$900
Ned Lamont for Senate	\$4,400
Pennachio for Pennsylvania	\$1,400
Regions Financial Corp. Committee on Government Affairs	\$5,500 <sup>1</sup>
Republicans for Choice PAC	\$6,875 <sup>1 2</sup>
San Antonio Police Officers Association PAC	\$5,625
Serrano for Congress	\$900
Washington State Democratic Central Committee	\$15,000 <sup>2</sup>
Wegner for Congress	\$160
Zanzi for Congress	\$1,400

<sup>1</sup> This civil money penalty has not been collected.

<sup>2</sup> This civil money penalty was reduced due to the level of activity on the report.

of the contribution(s) not timely reported and any prior violations.

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

The committees listed in the adjacent charts, along with their trea-

surers, were assessed civil money penalties under the administrative fines regulations.

Closed Administrative Fine case files are available through the FEC Press Office and Public Records Office at 800/424-9530.

—Meredith Metzler

## Statistics

### Party Financial Activity

Between January 1, 2005, and December 31, 2006, federal committees of the two major political parties raised and spent nearly \$1.1 billion. Republican national, state and local party committees raised \$602.3 million in federally permissible “hard money” during 2005-2006. Democratic party receipts totaled \$483.1 million for the same period. Compared to 2002, the last election cycle without a Presidential election, Democratic receipts more than doubled and Republican receipts increased by 42 percent.

The national committees’ fundraising totals nearly equaled the 2002 election cycle totals, which was the last year that national party committees could raise “soft money.” National party committees are now restricted to only federal “hard money” contributions. For the 2005-2006 cycle, individuals could contribute up to \$26,700 to a national party committee and multicandidate PACs could contribute up to \$15,000. Contributions from corporations and labor organizations are prohibited.

Party spending also increased substantially in 2006. Democratic party committees reported making \$108.1 million in independent expenditures, with the Democratic Congressional Campaign Committee making \$64.1 million of those expenditures on House candidates. Republican party committees reported \$115.6 million in independent expenditures with the National Republican Campaign Committee making \$82.1 million of the total expenditures. Independent expenditures advocate the election or defeat of a federal candidate but are not coordinated with the candidate’s campaign. According to the committees’ reports, approximately 85 percent of the independent expenditures made by both national parties advocated the defeat of opposing candidates.

Democratic committees spent \$20.7 million on coordinated expenditures while Republican committees spent \$14.2 million. Coordinated expenditures, unlike independent expenditures, are subject to limitations.

Additional information on party committee activity is available in a press release dated March 7, 2007. The release includes detailed tables showing the sources of receipts for national party committees and financial overviews for national and state/local committees of the two major parties for the 2005-2006. Transfers from national to state parties are listed by state, as well as transfers from campaigns to parties. The press release is available on the FEC web site at <http://www.fec.gov/press/press.shtml>.

—Meredith Metzler

## Information

### Staff Director Testifies on Senate E-Filing

On March 14, 2007, FEC Staff Director Patrina Clark testified at a hearing before the Senate Committee on Rules and Administration concerning electronic filing of Senate campaign finance reports. Senate committees are the only filers not permitted to file their official FEC reports electronically. Electronic filing is an option for all other committees, and is mandatory for those with more than \$50,000 of activity in a calendar year.

For many years, the Commission has included in its legislative recommendations a proposal to require electronic filing for Senate committees that exceed the \$50,000 threshold. As Ms. Clark noted in her testimony, electronic filing speeds disclosure and is more efficient for committees, the Commission and the public. Ms. Clark also assured committee members that the agency’s existing electronic filing infrastructure would be sufficient to handle Senate filings, should Congress amend the law to offer that option.

## Outreach

### Washington, DC Conferences

The Commission will hold conferences for various types of committees this spring 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.

#### April 24-25 Conference for Corporations and their PACs

The Commission will hold a conference for corporations and their political action committees on April 24 and 25, 2007, at the M Street Hotel, near the Georgetown and Foggy Bottom neighborhoods. Attendees are responsible for making their own hotel reservations. A room rate of \$235 (single/double) is available for hotel reservations made by April 2. Call 1-888-803-1298 or visit <http://mariott.com/hotels/travel/wasrw-m-street-hotel/?groupCode=fecfec&app=resvlink> to make your reservations. To receive this special rate, you must book online through the above address or must notify the hotel that you are attending the FEC campaign finance laws conference. The hotel is located within walking distance from both the Dupont Circle and Foggy Bottom subway stations. Valet parking is available for \$28 per night. (Note: Please do not finalize your travel reservations until you have received confirmation of your registration for the conference from our contractor, Sylvester Management Corporation.)

The registration fee is \$450 if received by March 30. A late registration fee of \$25 will be added to registrations received after that date. Registrations are limited to two attendees per organization. Early registration is highly recommended, as this conference has previously sold out. For additional information, or to reg-

ister for the conference, please visit the conference web site at <http://www.fec.gov/info/conferences/2007/corporate07.shtml>.

### May 10-11 Conference for House and Senate Campaigns and Political Party Committees

The Commission will hold a conference for campaigns and political party committees on May 10 and 11, 2007, at the Hyatt Regency Washington on Capitol Hill. Attendees are responsible for making their own hotel reservations. A room rate of \$225 (single) or \$254 (double) is available for hotel reservations made by April 16. Call 1-800-633-7313 to make your reservations or visit <http://washingtonregency.hyatt.com/groupbooking/wasrwfec2007>. To receive this special rate, you must book online through the above address or must notify the hotel that you are attending the FEC campaign finance laws conference. Valet parking is available for \$33 per night. The hotel is walking distance from Union Station (served by Amtrak, MARC and VRE commuter rail and Metro subway); public transportation is recommended. (Note: Please do not finalize your travel reservations until you have received confirmation of your registration for the conference from our contractor, Sylvester Management Corporation.)

The registration fee is \$450 if received by April 13. A late registration fee of \$25 will be added to registrations received after that date. Early registration is highly recommended, as this conference has previously sold out. For additional information, or to register for the conference, please visit the conference web site at <http://www.fec.gov/info/conferences/2007/cand-party07.shtml>.

### More Information

Please direct all questions about conference registration and fees to Sylvester Management Corporation at 1-800/246-7277 or by e-mail to [tonis@sylvestermanagement.com](mailto:tonis@sylvestermanagement.com). For questions about the conference pro-

gram, 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](mailto:Conferences@fec.gov).

—Dorothy Yeager

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## Roundtable Workshops:

On April 11, 2007, the FEC’s Public Records Office will host a free workshop on the agency’s new on-line Advisory Opinion (AO) Search System. The workshop will provide a hands-on introduction to the system and one-on-one help with the new search functions. Attendees will also explore the advanced search tools and gain insight on how to use key words and symbols to find information quickly.

To register for the workshop, visit the FEC web site at <http://www.fec.gov/info/outreach.shtml#roundtables> or call the FEC Information Division at 1-800-424-9530 (press 6) or locally at 202/694-1100. Attendance is limited to 15 people per session, and registration is accepted on a first-come, first-served basis.

Date & Time	Subject	Intended Audience
Wednesday, April 11, 2007 10:00 a.m.	<b>Using the New On-Line Advisory Opinion Search System</b>	Open to the Public <b>Sold Out!</b>
Wednesday, April 11, 2007 1:00 p.m.	<b>Using the New On-Line Advisory Opinion Search System</b>	Open to the Public

**To register, contact the FEC at 800/424-9530 (press 6)  
or visit <http://www.fec.gov/info/outreach.shtml#roundtables>.**

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