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Advisory Opinions

[AO 2015-08: Company May Operate Candi- date Contribution Charitable Match Platform](#)

A for-profit corporation may operate a web-based platform allowing members to pledge money to a federal candidate and, at the same time, designate a charity to receive the contribution instead, should an opposing federal candidate receive matching pledges.

Background

Repledge, a for-profit corporation, plans to operate a web-based platform that will allow supporters to pledge money to a federal candidate. Repledge "members" will simultaneously designate a charity to receive the funds if their pledges to a federal candidate are matched by pledges to the opposing candidate.

This matching pledge platform will operate with respect to the two major party nominees in the 2016 presidential election. For example, if Repledge members pledge \$1,000 to Candidate X and \$700 to opponent Candidate Y (for total pledges of \$1,700), then \$1,400 (the amount of matched pledges) will be donated to the selected charities. The remaining \$300 (the amount of unmatched pledges) will be contributed to Candidate X, and no money will be contributed to Candidate Y. Pledges to one candidate effectively cancel out pledges to the opposing candidate. Repledge will transmit the individual contributions based on the percentage of candidate pledges that go unmatched. For example, if 10 members each pledge \$100 to Candidate X (totaling \$1,000) and 20 members pledge \$20 to Candidate Y (totaling \$400), then 60 percent (\$600 out of \$1,000) of each individual's pledge to Candidate X will be contributed to Candidate X. The remaining 40 percent of each individual pledge to Candidate X (and 100 percent of Candidate Y pledges) will be donated to the chosen charities.

Repledge will operate "fund drives," lasting seven to 14 days, in which members will make pledges to their preferred candidates and charities by entering their credit card information. The payment processor will "pre-approve" the pledge by placing a hold on the account. At the end of the drive, based on the presence or

absence of matched pledges to the opposing candidate, the credit card payments will be processed and the funds will be allocated among the candidate committees and/or charitable organizations. Repledge will charge a commercially reasonable transaction fee estimated at one percent of each pledge.

The requestor will inform members of the contribution limits established by the Federal Election Campaign Act (the Act) and will not allow members to pledge excessive contributions. Repledge will also require each member to attest to their eligibility to make a contribution before pledging funds. Finally, Repledge will require each member to provide the necessary contributor information (name, address, occupation, and employer), and will forward this information to the recipient candidate committees.

Analysis

Repledge's plan builds on other web-based contribution platforms approved by the Commission in the sense that Repledge member contributions will only be transmitted at the member's request. Like proposals addressed in previous advisory opinions, Repledge will not contract with the recipient political committees, except possibly to authorize fund transfers from member contributions. AOs [2007-04](#) (Atlatl., Inc.), [2011-06](#) (Democracy Engine).

However, Repledge's proposal differs from these other web-based contribution platforms approved by the Commission in two ways. First, Repledge will limit its services to the two major party nominees in the 2016 presidential election. The Commission found that Repledge's selection of a pair of opposing candidates does not raise concerns that Repledge is selecting candidates as recipients in order to influence the outcome of the election, as long as Repledge transmits the funds to the opposing candidates, as requested by its members, on identical terms and without any preferential placement or treatment.

Second, the ultimate amount of a member contribution to a presidential candidate depends in part on how much other members pledge to that candidate's opponent. The Commission determined this difference was immaterial, considering Repledge will establish and communicate the specific criteria of the platform to members before any pledges are made. The criteria for member pledges will not be subject to change, and Repledge will disclose all the transaction costs and the amounts distributed to the recipient charities and political committees, thereby enabling verification of matching calculations. Given these circumstances, the Commission found Repledge's proposal to be consistent with Commission findings in previous advisory opinions.

The Commission concluded that Repledge members would not make a contribution to a political committee merely by pledging funds, because a pledge represents merely a conditional promise to make a contribution at a future date. As such, pledges would not be subject to the contribution forwarding requirements of 52 U.S.C. § 30102(b).

Repledge would not make an impermissible corporate contribution when processing and forwarding contributions to recipient committees. The Commission further concluded that, under its proposal, Repledge would not violate the prohibition on corporations acting as a conduit for contributions earmarked to candidates.

Repledge's receipt of the transaction fee would not constitute receipt of a contribution from the member. Additionally, a Repledge member's payment of a transaction fee to Repledge or its payment processor would not constitute a contribution to the recipient political committee.

Date issued: 11/09/2015; 10 pages

(Posted 11/16/2015; By: Isaac Baker)

Resources:

- [Advisory Opinion 2015-08](#) [PDF]
- [Commission Consideration of Advisory Opinion 2015-08](#) 

[AO 2015-09: Activities Conducted by Super PACs, Single-Candidate Committees, 527 Organizations, Candidates and Prospective Candidates](#)

The Commission addressed several questions posed by two Super PACs (i.e., independent expenditure-only committees) regarding activities by Super PACs, single-candidate committees, 527 organizations, candidates and prospective candidates.

Background

Senate Majority PAC and House Majority PAC (the Super PACs) are both registered with the Commission, and both accept contributions in unlimited amounts as well as from corporations and labor organizations. Both PACs represented to the Commission upon registration that they would not use those funds to make contributions to federal candidates. See: *SpeechNow v. FEC*.

In their request, the two Super PACs proposed a number of activities to be undertaken with the active involvement of prospective candidates, including the formation of single candidate committees which would collaborate on strategy and advertising with the potential candidates. The Super PACs also proposed the formation of section 527 political organizations which would raise nonfederal funds to pay the testing-the-waters expenses of prospective candidates, including polling, travel, research, consulting and administrative expenses. The Super PACs intend to stop working closely with prospective candidates once those individuals have become candidates under the Federal Election Campaign Act (the Act).

Once an individual's candidacy has been established, the Super PACs propose to ask individuals associated with the candidate's campaign to also raise funds for the single-candidate committees and the Super PACs. The Super PACs also intend to ask the candidates themselves to speak, attend or be a featured guest at fundraisers for the single candidate committees and the Super PACs, with all solicitations of nonfederal funds made by the PAC or single-candidate committees and not by the candidate.

Analysis

The opinion provides a response to seven specific questions asked in the request:

Questions regarding testing-the-waters activities. Under the Act, an individual who seeks nomination for election or election to federal office becomes a "candidate" (and thereby triggers registration and reporting requirements) if he or she receives contributions or makes expenditures in excess of \$5,000 or consents to another person's doing so in excess of \$5,000 on the individual's behalf. 52 U.S.C. § 30101(2)(A); 11 CFR 100.3(a). Under FEC regulations, an individual who raises or spends money only to "test the waters" (but not to campaign for office) does not become a candidate. 11 CFR 100.72, 100.131.

In regard to proposed testing-the-waters activities funded by 527 organizations, the opinion sets forth that the proposed 527 organizations' use of funds raised outside of the Act's limits and prohibitions to pay for an individual's testing-the-waters activities would violate FEC regulations if that individual decides to become a candidate. The Commission was unable to render an opinion on whether a violation of the Act would occur if the individual never decides to become a candidate. (*Question 4.*)

The opinion also affirms that an individual would become a candidate for federal office, when he or she privately determines that he or she will run for office (assuming that more than \$5,000 has been raised or spent on testing-the-waters activities). (*Question 5.*) Although an individual may raise or spend more than \$5,000 on activities to explore a potential candidacy without becoming a candidate, the testing-the-waters exemption no longer applies once an individual has decided to become a candidate. 11 CFR 100.72(b), 100.131(b); see also [Advisory Opinion \(AO\) 1981-32](#) (Askew).

Moreover, while FEC regulations specify that conducting testing-the-waters activities in close proximity to the election or over a protracted period of time are examples of activities that indicate that an individual has decided to become a candidate, the regulations do not establish a specific time limit for such activities. (*Question 6.*) Thus, the length of time that an individual spends deliberating whether to become a candidate is just one factor and does not by itself determine whether the individual has become a candidate (assuming that more than \$5,000 has been raised or spent on testing-the-waters activities). 11 CFR 100.72(b)(4), 100.131(b)(4); see also: Factual and Legal Analysis at 6, MUR 5722 (Friends for Lauzen).

The request also asked if an individual would become a candidate should that person make a public statement that he or she is running for office, but then subsequently attempts to withdraw the statement. (*Question 8.*) Commission regulations provide that any written or oral statements made or authorized by the individual that refer to him or her as a candidate for a particular office are examples of activities that indicate that the individual has decided to become a candidate. 11 CFR 100.72(b)(3), 100.131(b)(3); see also: Factual and Legal Analysis at 4-8, MUR 5363 (Sharpton). Thus, if an individual makes or authorizes such a statement, it would generally reflect the individual's decision to become a candidate, and so the statement may trigger candidacy regardless of any subsequent retraction attempts (assuming that more than \$5,000 has been raised or spent on testing-the-waters activities). The Commission also noted that a demonstrably inadvertent misstatement does not necessarily indicate that the individual has decided to become a candidate. Similarly, the opinion notes that an individual who has raised or spent more than \$5,000 on testing the waters activities and who informs the media (either directly or through an advisor) that he or she "will announce candidacy" would be a candidate. (*Question 9.*) Such an announcement is a clear signal that the individual has decided to become a candidate. See MURs 2262 (Robertson) and 5363 (Sharpton).

Questions regarding fundraising activities. In regard to the ability of individuals who are agents of federal candidates to raise nonfederal funds on behalf of the Super PACs, the Commission determined that individuals who are agents of federal candidates may solicit nonfederal funds to the Super PACs as proposed. (*Question 11.*) While the Act prohibits federal officeholders and candidates from raising nonfederal funds, it does not prohibit individuals who are agents of a candidate from also raising nonfederal funds for other, outside groups. 52 U.S.C. § 30125(e)(1)(A); 11 CFR 300.61.

The Commission found that the proposed activities in this instance are consistent with those found to be permissible in prior advisory opinions. The Super PACs propose to have individuals who are agents of federal candidates solicit funds “on their own” and “not at the request or suggestion” of federal candidates. When fundraising, individuals would identify themselves as raising funds only for the Super PACs, would not use their campaign titles or campaign resources, and would inform potential contributors that they are “making the solicitation on [their] own and not at the direction of [the federal candidates] or their agents.” Moreover, the individuals would not solicit contributions for the federal candidate at the same time. In prior AOs, the Commission had determined that individuals who are agents of federal candidates may solicit funds on behalf of other organizations if the individuals act in their own capacities “exclusively on behalf of” the other organizations when fundraising for them, “not on the authority of” the candidates, and raise funds on behalf of the candidates and the other organizations “at different times.” See: AOs [2007-05](#) (Iverson) and [2003-10](#) (Nevada State Democratic Party et al.). The Commission could not approve a response by the required four affirmative votes to the question of whether the individuals would be permitted to raise nonfederal funds on behalf of single-candidate committees (as defined in the Advisory Opinion).

The Super PACs asked if FEC regulations at 11 CFR 300.64 require that there be a minimum number of expected attendees before a federal candidate can permissibly speak, attend, or be featured as a special guest at nonfederal fundraising events. The Act and Commission regulations state that federal candidates and officeholders may not solicit nonfederal funds, but may attend, speak at, or be a featured guest at fundraising events where nonfederal funds are being raised. They may also solicit funds provided that the solicitation is limited to funds that comply with the Act’s amount limitations and source prohibitions. Candidates may limit their solicitations through a clear and conspicuous written notice or oral statement by the candidate that the solicitation is not for nonfederal funds and that the candidate does not seek funds in excess of federally permissible amounts or from prohibited sources. 11 CFR 300.64(c)(3)(A). The name or likeness of a federal candidate or officeholder may appear in publicity for such an event that contains a solicitation of nonfederal funds if the publicity identifies the candidate in a manner not related to fundraising and includes a clear and conspicuous oral or written disclaimer that the solicitation is not being made by the federal candidate or officeholder. 11 CFR 300.64(c)(3)(B). The Commission concluded that in light of the Super PACs’ factual representations and their representations that they will comply with all of the requirements of 11 CFR 300.64 and any other requirements under the Act and applicable Commission regulations when engaging in the specified activity, a federal candidate may attend, speak, or be a featured guest as proposed. (*Question 12.*)

Other questions. The Commission was unable to approve a response by the necessary four votes on the remaining questions posed:

- Question 1 regarding the ability of a single-candidate committee to raise or spend nonfederal funds after a prospective candidate involved in the formation of the committee becomes a candidate;
- Question 2 regarding the creation and timing of public communications that use information shared with single-candidate committees and Super PACs by prospective candidates about their plans, projects, activities or needs;
- Question 3 regarding the use of video footage previously filmed of prospective candidates by single-candidate committees and Super PACs in public communications supporting the individual after candidacy is established;
- Question 7 regarding the amount of funds raised by a prospective candidate as a factor indicating an actual candidacy; and

- Question 10 regarding whether filming the video footage described in Question 3 would trigger candidacy for a prospective candidate.

Date Issued: November 13, 2015; 9 pages

(Posted 11/20/2015; By: Dorothy Yeager)

Resources:

- [Advisory Opinion 2015-09](#) [PDF]
- [Commission consideration of Advisory Opinion 2015-09](#) 
- Brochure: [Candidate Registration](#)
- [Overview: Nonfederal Fundraising by Federal Candidates](#)

[AO 2015-10: Counting Cable and Satellite Subscribers for Definition of Electioneering Communication in Presidential Primary States](#)

In determining whether televised advertisements reach enough viewers to qualify as "electioneering communications," 21st Century Fox may exclude its cable and satellite customers whose subscription packages do not provide access to the sports networks on which the ads will air.

Background

21st Century Fox owns and operates a number of regional sports networks (RSN) that televise sporting events to cable and satellite customers within the RSN's local market. Customers elsewhere may subscribe to a supplemental package to access RSNs from all over the country, but cannot view an RSN from outside of their own region without purchasing such a package.

21st Century Fox plans to sell advertising time on RSNs for campaign-related communications, including ads that refer to clearly identified presidential primary candidates and air in states shortly before their respective presidential primaries. Since subscribers who reside both within and outside those states will see the ads, the company asks how it should determine whether a communication can be received by 50,000 or more persons and thereby qualifies as an electioneering communication.

Analysis

Under the Act and Commission regulations, an electioneering communication is any broadcast, cable, or satellite communication that refers to a clearly identified federal candidate and is "public distributed." 52 U.S.C. § 30104(f)(3)(A)(i); 11 CFR 100.29(a). In regard to presidential primary candidates, a communication is "publicly distributed" when it is disseminated through television, radio, cable or satellite and can be received by 50,000 or more persons in a state within 30 days of its primary election. 11 CFR 100.29(b)(3).

Formula for Determining Cable/Satellite Viewership. To determine whether cable or satellite viewership meets the 50,000 person threshold, the number of subscribers within a state, "or a part thereof," is multiplied by the current national average household size (determined by the Census Bureau). 11 CFR 100.29(b)(7)(ii). However, if a cable or

satellite system does not carry the network that runs the ad, that system's subscribers need not be counted.

Conclusion

21st Century Fox may exclude from electioneering communication calculations cable or satellite customers who do not subscribe to a package that includes the RSNs, as those customers could not receive the communication. The formula, described above, would apply only to those customers in the state who subscribe to a package that includes RSNs. If the result of that calculation shows that the communication could not be received by 50,000 or more persons in a state(s) holding a presidential primary election within 30 days, the ad would not constitute an electioneering communication. 11 CFR 100.29(b)(3)(ii)(A).

Date Issued 10/30/2015; 3 pages

(Posted 11/05/2015; By: Dorothy Yeager)

Resources:

- [Advisory Opinion 2015-10](#) [PDF]
- [Commission Discussion of Advisory Opinion 2015-10](#) 

[AO 2015-12: Company May Develop App to Match Users with Candidates Based on Political Views](#)

Ethiq, Inc., a non-partisan, for-profit company, may develop and market a mobile application (the App) that will enable users to identify candidates and corporations who may share their views on a variety of political, social, and economic issues. Since Ethiq will only use aggregate contributor data collected from disclosure reports filed with the Commission, it may license its proprietary algorithm and dataset to generate revenue. The company may also sell advertising space at the usual and normal charge through the App without making contributions or expenditures.

Background

In order to help its users "make more educated voting and purchasing decisions," Ethiq has developed a free, downloadable mobile App that will help users identify candidates and corporations that align with their views on a variety of political, social and economic issues. Users will create a personal profile on the App by answering a series of questions relating to current events, politics and social issues. Ethiq will then attempt to match users with candidates and corporations who share their views by compiling factual information such as voting records, public statements, and information retrieved from reports filed with the Commission, such as contributions received by candidates, contributions made by a corporation's separate segregated fund (SSF) and contributions made by top executives of a corporation. Based on users' answers and the information that Ethiq will compile about candidates and corporations, Ethiq's algorithm will then assign an individualized score to corporations and candidates based on their match with the user's individual values.

Ethiq maintains that while it will attempt to match users with candidates and corporations, it does not support any candidate, party, organization or cause and will not engage in any express advocacy for or against any candidate.

Ethiq also plans to sell digital advertising space on the App to third parties, including candidates and other political committees at current market rates. It also will license its proprietary algorithm and dataset to companies conducting market research. Ethiq states that it will not provide licensees or users with any individualized contributor information taken from reports filed with the Commission.

Analysis

The Federal Election Campaign Act (the Act) and Commission regulations prohibit corporations from making contributions to federal candidates. 52 U.S.C. § 30118(a). A contribution includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value...to any candidate, campaign committee, or political party or organization, in connection with any [federal] election..." 52 U.S.C. § 30118(b)(2) and 11 CFR 100.52(a). Since Ethiq proposes to distribute factual information about candidates to the general public, the Commission noted that it was analogous to a corporation's ability to develop and distribute voter guides, which are permissible under Commission regulations. See 11 CFR 114.4(c)(5). Ethiq's algorithm also resembles a similar method proposed in [AO 2014-07](#) (Crowdpac), which also matched users to like-minded candidates based on users' political views. Based on these similarities, the Commission concluded that Ethiq is permitted to display factual information about candidates and corporations without such display constituting a contribution.

The Commission concluded that Ethiq is permitted to use Commission data to assist in matching users to candidates and corporations since the aggregated data that Ethiq will make available does not contain contributors' individualized contact information from disclosure reports filed with the Commission. The Act requires political committees to disclose the name, mailing address, occupation and employer of any individual who contributes more than \$200 in a calendar year to the committee (or more than \$200 in the election cycle, if made to a candidate committee). 52 U.S.C. §§ 30101(13)(A), 30104(b)(3)(A). However, the Act prohibits any information copied from Commission reports from being sold or used by any person for the purpose of soliciting contributions or for commercial purposes. 52 U.S.C. § 30111(a)(4). Since Ethiq's proposed use and presentation of the data to users consists of non-individualized contribution data that is presented in aggregate form, the Commission concluded that Ethiq's proposal is permissible under the Act and Commission regulations. Similarly, Ethiq is permitted to license its algorithm and dataset because, as proposed, the data provided would not contain individual contributors' contact information. The Commission has previously held that sale and use of Commission data that does not contain "sufficient information to generate solicitations" is permissible. See [AO 1995-09](#) (NewtWatch).

Ethiq is permitted under the Act and Commission regulations to sell advertising space at the usual and normal charge to candidates and political committees. In previous advisory opinions, the Commission has recognized that advertising space provided to candidates and other committees at normal market rates does not result in a contribution, so long as the seller makes advertising space available to candidates and committee on the same terms and conditions as other advertisers. See AOs [2011-19](#) (GivingSphere) and [2005-07](#) (Mayberry).

Finally, in implementing its proposal, Ethiq will not make contributions or expenditures or engage in other activities that would trigger a reporting requirement under the Act or Commission regulations.

Date Issued: November 13, 2015; 6 pages

(Posted 11/17/2015; By: Myles Martin)

Resources:

- [Advisory Opinion 2015-12](#) [PDF]
- [Commission Discussion of Advisory Opinion 2015-12](#) 

Pending Advisory Opinion Requests as of November 30, 2015

Advisory Opinion Requests (AORs) pending before the Commission as of the end of the month are listed below. Procedures for commenting on pending AORs are [described here](#).

- [AOR 2015-11](#) [PDF] Vendor collecting and forwarding contributions to political committees (FYP LLC, September 22, 2015)
- [AOR 2015-13](#) [PDF] Use of campaign funds for post-retirement employment of assistant (Senator Harry Reid, October 28, 2015)
- [AOR 2015-14](#) [PDF] Permissibility of providing school credit and stipend for student performing campaign-related activities (Hillary for America, October 29, 2015)
- [AOR 2015-15](#) [PDF] Use of web platform to make contributions to federal candidates (WeSupportThat.com, November 20, 2015)

(Posted 12/02/2015; By: Dorothy Yeager)

Resources:

- [Advisory Opinion Search](#)

Public Funding

Commission Declares Martin O'Malley Eligible to Receive Federal Matching Funds

On November 19, 2015, Martin J. O'Malley became the first 2016 presidential candidate to be declared eligible by the Federal Election Commission to receive federal matching funds. O'Malley is seeking the Democratic nomination for president.

To become eligible for matching funds, candidates must raise a threshold amount of \$100,000 by collecting \$5,000 in 20 different states. Although an individual may contribute up to \$2,700 to a primary candidate in the current election cycle, only a maximum of \$250 per individual applies toward the \$5,000 threshold in each state.

Other requirements to be declared eligible include agreeing to an overall spending limit, abiding by spending limits in each state, using public funds only for legitimate campaign-related expenses, keeping financial records and permitting an extensive campaign audit.

Based on documents filed by O'Malley for President on November 3, 2015, contributions were verified for threshold purposes from: California, Colorado, Connecticut, District of Columbia, Florida, Iowa, Illinois, Kentucky, Massachusetts, Maryland, Michigan, Minnesota, North Carolina, New Jersey, New York, Pennsylvania, Rhode Island, Tennessee, Texas and Virginia.

All of the materials included with this submission may be viewed here. Based on O'Malley's initial threshold submission, the Commission will request that the United States Treasury make an initial payment of \$100,000 to O'Malley's campaign.

Once declared eligible, campaigns may submit additional contributions for matching funds on the first business day of every month. The U.S. Treasury Department may pay the Commission-certified amounts beginning in January 2016.

The presidential public funding program is financed through the \$3 check-off that appears on individual income tax returns. The program now has two elements: matching payments to participating candidates during the primary campaign and grants available to nominees to pay for the general election campaign. On April 3, 2014, President Barack Obama signed legislation to end the public funding of presidential nomination conventions.

(Posted 11/23/2015; By: Dorothy Yeager)

Resources:

- [FEC Press Release](#)
- Brochure: [Public Funding of Presidential Elections](#)
- Brochure: [The \\$3 Tax Checkoff](#)

Regulations

[Commission Announces Disposition of Rulemaking Petition on Candidate Debates](#)

On November 6, 2015, the Commission voted not to initiate a rulemaking in response to a petition filed by Level the Playing Field that sought changes to the candidate debate regulations at 11 CFR 110.13.

The petition, [made available for public comment](#) in November 2014, asked that the Commission revise the criteria governing the inclusion of candidates in presidential and vice presidential debates. See 11 CFR 110.13(c). Specifically, Level the Playing Field asked the Commission to require debate staging organizations to have a set of objective, unbiased criteria for debate participation that do not require candidates to satisfy a polling threshold.

After evaluating the petition and the public comments received, the Commission decided not to initiate a rulemaking. A [Notice of Disposition](#) was published in the Federal Register at 80 Fed. Reg. 72616 (November 20, 2015).

(Posted 11/20/2015; By: Dorothy Yeager)

Resources:

- Federal Register [Notice of Disposition](#) [PDF]
- [Concurring Statement by Commissioner Lee E. Goodman](#) [PDF]
- [Searchable Electronic Rulemaking System](#)

Litigation

[Republican Party of Louisiana v. FEC \(District Court\)](#)

On November 25, 2015, the U.S. District Court for the District of Columbia granted the plaintiffs' application to convene a three-judge court to hear their constitutional challenges.

The plaintiffs—the Republican Party of Louisiana, the Jefferson Parish Republican Executive Committee and the Orleans Parish Republican Executive Committee—contend that the restrictions on party committees using funds raised outside the limits imposed by the Federal Election Campaign Act (FECA) to pay for federal election activity (FEA) unduly infringes on their First Amendment rights. (See our [RECORD summary](#) for details.)

Under a special judicial-review mechanism established by the Bipartisan Campaign Reform Act (BCRA), certain constitutional challenges to BCRA provisions must be heard by a three-judge court, whose decision may be appealed directly to the Supreme Court.

The district court determined that—unlike previous challenges that focused on the base contribution limits of FECA, which a BCRA three-judge court lacked the power to invalidate—the plaintiffs' claims represent a substantial constitutional challenge and they have standing to pursue those claims in that forum. As result, the court granted their motion to convene a three-judge court.

(Posted 12/01/2015; By: Christopher Berg)

Resources:

- *Republican Party of Louisiana v. FEC* [Ongoing Litigation Page](#)

Outreach

[Federal Elections 2014 – Compiled Election Results Now Available](#)

Federal Elections 2014: Election Results for the U.S. Senate and the U.S. House of Representatives, compiled by the Commission's Public Records Office, is [now available on the Commission's website](#).

This publication includes state-by-state election results for all 2014 U.S. House and Senate races. In addition to the state-by-state results, *Federal Elections 2014* also includes charts and color maps to summarize and illustrate the data. The online PDF version is accompanied by an Excel file containing all of the election data. This format enables users to sort the results according to their own preferences, and to import the data into existing data files.

Federal Elections 2014 is available at <http://www.fec.gov/pubrec/electionresults.shtml>. Printed editions will be available soon. To order a printed copy, please contact the FEC's Public Records Office at 800/424-9530 (option 2) or 202/694-1120.

(Posted 11/19/2015; By: Jonella Culmer)

Nonfederal Committees' Involvement in Federal Campaigns

As the 2016 elections draw closer, it is an ideal time to highlight some of the rules regarding nonfederal committees' involvement in federal elections, including the prohibition on transfers from a candidate's own nonfederal campaign committee and the federal registration requirements for state-registered committees.

Prohibited: Transfers from Candidate's Own Nonfederal Committee

A federal candidate's authorized committee may not accept funds or assets transferred from a committee established by the same candidate for a nonfederal campaign. Instead, the candidate's nonfederal committee may refund its leftover funds to its contributors and arrange for the federal campaign to solicit those same donors, within the limits and prohibitions of the Federal Election Campaign Act (the Act). The full cost of this solicitation must be paid by the federal committee. 11 CFR 110.3(d).

Contributions by nonfederal campaigns to the campaigns of other federal candidates are covered below.

Permissible but Restricted: Contributions from State PACs, Unregistered Local Party Organizations and Nonfederal Campaign Committees

State PACs, unregistered local party organizations and nonfederal campaign committees (nonfederal committees) may, under certain circumstances, contribute to federal candidates, but:

- The funds that comprise the contribution must come from permissible sources under the Act, as explained below; and
- Making the contribution may require the nonfederal committee to register with the FEC as a federal political committee, subject to federal laws and regulations. See 11 CFR 102.1.

Permissible Sources

When campaigns receive contributions from nonfederal committees, they must ensure the funds are permissible under the Act. See 11 CFR 300.61. Federal campaigns must confirm that the nonfederal committee making the contribution:

- Can demonstrate through a reasonable accounting method^[FN1] that it has sufficient federally acceptable funds to cover the amount of the contribution at the time it is made; or
- Has established a separate account containing only funds permissible under the Act. 11 CFR 102.5(b).

When itemizing such a contribution in its report, a federal campaign should note that the contribution contains only federally permissible funds. Contributions from nonfederal committees are subject to the \$2,700 per-election limit at 11 CFR 110.1(b). Note, however, that amount is well above the federal registration threshold for a nonfederal committee, as explained below.

Registration Thresholds for Nonfederal PACs

The federal registration threshold for a state-registered PAC depends on whether that PAC has a sponsoring connected organization.

¹ See 11 CFR 110.3(c)(4). See also [Advisory Opinion 2007-26](#) (Schock), [Advisory Opinion 2006-06](#) (Busby), and [Advisory Opinion 2004-45](#) (Salazar).

State PAC With Sponsoring Connected Organization. A state PAC with a sponsoring connected organization (i.e., a corporation/labor organization/trade association/membership organization) that wants to make contributions to a federal campaign must register as a federal separate segregated fund (SSF) regardless of the amount it contributes. Under the Act and Commission regulations, there is no monetary threshold for having to register a separate segregated fund. Instead, any federal expenditure by a connected nonfederal PAC would trigger the requirement to register as a SSF within 10 days. 11 CFR 102.1(c); See Advisory Opinion (AO) [2003-29](#) (National Fraternal Order of Police PAC).

In order to bring the former nonfederal PAC into compliance with federal solicitation and reporting rules, the SSF must notify its current donors that it has become a federal SSF and offer them an opportunity to receive a refund. See AO 2003-29. The SSF must also disclose the sources of its cash-on-hand in its first FEC report. 11 CFR 104.12.

Moving forward, the committee must comply with all requirements for federally registered SSFs. It must maintain an account into which only funds that are permissible under the Act are deposited, and use that account to make contributions or expenditures in connection with federal elections. With limited exceptions, the committee's solicitations must be directed only to the restricted class of the connected organization, describe the SSF's political purpose and specify that persons have the right to refuse to contribute to the SSF without reprisal. See Chapters 1-3 of the [Campaign Guide for Corporations and Labor Organizations](#) for more information.

State PAC Without Sponsoring Connected Organization. A state PAC without a sponsoring connected organization, may make contributions to federal candidates, provided the funds used are permissible under federal law. Such contributions count towards the \$1,000 registration threshold. See 11 CFR 100.5(a) and (c) and 102.1(d).

Should the PAC raise or spend more than \$1,000 in federal contributions or expenditures in a calendar year, it must register with the FEC as a nonconnected committee (unless it is a local party committee, described below). 11 CFR 100.5(a) and (c). From that point on, the nonconnected PAC must file regular reports with the FEC and ensure that it maintains an account into which only federally permissible contributions are deposited for use in federal elections. See 11 CFR 102.5(a). On its first report, the committee must disclose the sources of the cash-on-hand. 11 CFR 104.12.

Registration Thresholds for Nonfederal Campaigns and Local Parties

A nonfederal campaign or unregistered local party organization also may contribute to federal candidates using federally permissible funds. Those contributions count toward the \$1,000 federal registration threshold, described above. A local party may also trigger registration if it receives federal contributions that exceed \$5,000 in a calendar year or if it spends more than \$5,000 on certain activities that are exempt from the Act's definitions of contribution and expenditure. (For additional information, see our [Local Party Activity brochure](#).) Once registered, the committee must file regular reports disclosing its receipts and disbursements, including the sources of its initial cash-on-hand. See 11 CFR 104.12; see e.g., [AOs 1997-20](#) (Friends of McCarthy), [1990-16](#) (Governor James R. Thompson and Citizens for Thompson) and [1982-38](#) (Committee to Re-Elect Senator Moynihan).

(Posted 11/04/2015; By: Jonella Culmer)

Resources:

- [SSF Registration Toolkit](#)
- [Nonconnected PAC Registration Toolkit](#)
- [Party Committee Registration Toolkit](#)

[FEC to Host December 2 Webinar for Nonconnected Committees](#)

The Commission will hold a webinar for non-connected political action committees (PACs), including Super PACs, Hybrid PACs and Leadership PACs on Wednesday, December 2, 2015. Commission staff will conduct two technical workshops on the federal campaign finance laws affecting these types of committees.



Registrants will be able to download electronic copies of the workshop materials in advance, and will receive additional instructions and technical information shortly before the event. To learn more, [download our webinar information sheet \[PDF\]](#).

The cost to participate is \$50. Refunds (minus a \$20 registration fee) will be made for all cancellations received by Friday, November 27; no refund will be made for cancellations received after that date. Register online at: <http://www.cvent.com/d/rfqj6d>. Please direct all questions about registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; email: Rosalyn@sylvestermanagement.com). For other questions call the FEC's Information Division at 1-800/424-9530 (press 6), or send an email to Conferences@fec.gov.

Webinar Schedule:

December 2, 2015

- Nonconnected PAC Operations Part 1, 1:00 - 2:30 PM (Eastern)
- Nonconnected PAC Operations Part 2, 2:45 - 4:15 PM (Eastern)

(Posted 11/05/2015; By: Isaac Baker)

Resources:

- [FEC Educational Outreach Opportunities](#)