
SAVE New York Political Action Committee

April 21, 2008

Ms. Deborah Ruth Kant, Director
Alternative Dispute Resolution Office
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: ADR 446 (RAD 08L-06)
Save New York PAC and Robert Hornak, Treasurer

Dear Ms. Kant:

Your letter dated March 3, 2008 informed the Committee that the Reports Analysis Division had referred Save New York PAC to your office "...for a series of reporting errors and other FECA violations during the 2006 election cycle." A table is provided listing thirteen (13) "Violations for which Audit Points were Assessed" (see Attachment "A"). These "violations" fall within five (5) categories:

#	COMMITTEE	REPORTS ANALYSIS DIVISION
1	Administrative Expenses	Failure to Disclose Administrative Expenses
2	"Best Efforts"	Failure to Itemize Contributions
3	Purpose of Disbursement	Failure to clarify Candidate Fundraising Expenses
4	Multi-Candidate Status	Excessive or Prohibited Contributions
5	Mathematical Error	Mathematical Discrepancies

The Committee would like to discuss each of the five (5) categories of "violations".

1. ADMINISTRATIVE EXPENSES

On two (2) occasions, the Reports Analysis Division (RAD) contacted the Committee by sending a Request for Additional Information (RFAD); that stated, in part, the following:

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Your report discloses limited payments for administrative expenses. Administrative expenses are payments made for the purpose of operating a political committee including, but not limited to, rent, utilities, salaries, telephone service, office equipment and supplies. Any such payments to a person aggregating in excess of \$200 in a calendar year must be disclosed on Schedule(s) B supporting Line 21(b) of the Detailed Summary Page, 2 U.S.C. §434(b)(5). If these expenses are being paid by a connected organization, your Statement of Organization must be amended to reflect this relationship, 2 U.S.C. §433(b)(2). In addition, if expenses have been incurred but not paid in a reporting period, the activity should be disclosed as a debt on Schedule D, if the obligation is \$500 or more, or outstanding for sixty days or more, 11 CFR §104.11.

Any goods or services provided to your committee by a person, except volunteer activity (i.e., a person's time), would be considered an in-kind contribution from that person, and would be subject to the disclosure requirements of 2 U.S.C. §434(b)(3) and 11 CFR §104.13, and the limitations and prohibitions of 2 U.S.C. §441a and 441b.

Separate Segregated Funds (i.e., corporate and union PACs) have the advantage of having their administrative expenses paid for by their connected organization. Non-connected multi-candidate PACs do not share this advantage; therefore, given the high cost of fundraising, if these PACs are to provide any funds in the form of contributions to candidates, they must operate with little or no administrative expenses.

In its response to RAD, the committee stated the following:

The committee has reported limited payments for administrative expenses because it has no formal office, staff (aside from the Chairman and Treasurer) or equipment. Therefore at the present time, Save New York PAC makes no payments for rent, utilities, salaries, telephone services, office supplies or equipment. This may change in the future as the PAC grows.

Conclusion: Given that the Committee had no administrative expenses to report, it can hardly be found to have committed a FECA violation for failure to disclose all categories of administrative expenses.

2. "BEST EFFORTS"

After every report filing, the Reports Analysis Division (RAD) contacted the Committee by sending an RFAI; that stated, in part, the following:

Commission Regulations require that a committee disclose the identification of all individuals who contribute in excess of \$200 in a calendar year. (11 CFR §104.3(a)(4)(i)) Identification for an individual is defined as the full name, mailing address, occupation and name of employer. (11 CFR §100.12) Your report discloses contributions from individuals for which the identification is not complete.

You must provide the missing information, or if you are unable to do so, you must demonstrate that "best efforts" have been used to obtain the information.

From its inception, Save New York PAC has undertaken a national direct mail fundraising effort with the intention of building a large national donor base and generating net funds to be utilized for the benefit of candidates through direct Federal Campaign contributions. And when responding to the RFAIs, the Committee stated the following:

Given that the majority of the contributions received are a result of direct mail solicitations and despite the fact that each appeal includes a clear and conspicuous request for the contributor information as well as occupation and employer; many of the donors do not provide that information on the initial request.

Further, the Committee explained to RAD the steps taken upon receiving a contribution whose donor's annual aggregate contributions were equal to or greater than \$200; and where the occupation and employer information were missing. An example of one of those responses follows:

The committee has taken the following steps to satisfy the "best efforts" requirements: (i) within 30 days of first receiving a contribution with missing donor information we send a letter clearly asking for the missing information, without soliciting a contribution; (ii) we inform the contributor of the requirements of federal law for the reporting of such information; and (iii) we provide a return envelope, a fax number and an email address. Upon receipt of the information the committee updates its records or, when necessary; amends its reports to provide the newly obtained information.

In 2006, the committee mailed over two thousand (2,000) letters to donors requesting their occupation and employer information and we have scanned images of those letters. In addition, the committee has amended its reports to provide information obtained through these mailings.

Conclusion: Given that the Committee has taken the steps required in the Federal Regulations (11 CFR 104.7), to ensure "best efforts" to comply with the reporting requirements, it can hardly be found to have committed a FECA violation for failure to properly itemize contributions.

3. PURPOSE OF DISBURSEMENT

On at least one occasion, the Reports Analysis Division (RAD) contacted the Committee by sending an RFAI; that stated the following:

Schedule B discloses an expenditure(s) for "Direct Mail Fundraising Expense". If a portion or all of these expenditures were for public communications (as defined by 11 CFR §100.26) and voter drive activity (under 11 CFR §106.6(b)(2)(i)) containing express advocacy as defined under 11 CFR §100.22, this would constitute an in-kind contribution or an independent expenditure and should be properly disclosed on a Schedule B or E supporting Line 23 or 24 as appropriate. Public communications and voter drive activity that refer to a

clearly identified Federal candidate, but that do not expressly advocate the election or defeat of that candidate should be reported on Schedule B for Line 21(b) of the Detailed Summary Page. Please clarify whether this activity contained express advocacy and amend your report to properly disclose this activity, if necessary.

On another occasion, the RFAI stated:

Please clarify all expenditures made for "Direct Mail Fundraising", "Consulting – Management & Fundraising" on Schedule B. If a portion or all of these expenditures were made on behalf of specifically identified federal candidates, this amount should be disclosed on Schedules B or E supporting Lines 23 or 24 and include the amount, name, address and office sought by each candidate. 11 CFR §104.3(b) and 106.1

The Committee's response to the first RFAI was the following simple statement"

Disbursement descriptions such as "Direct Mail Fundraising Expense" relate to the committee's Direct Mail Fundraising program and are not made on behalf of any federal candidates.

In a later RFAI response, the Committee had this to say:

The committee wishes to confirm that all Direct Mail Fundraising Expenditures are on behalf of Save New York PAC and not for the benefit of any other Federal Committee. In addition, the disbursements to Michael Benjamin that display a purpose of: "Consulting – Management & Fundraising" represent compensation for his efforts as the committee's Executive Director. In that capacity, Mr. Benjamin has overall responsibility for the management of the PAC and its fundraising efforts.

Conclusion: Given the Committee's explanation for the disbursements in question, and their proper disclosure on Line 21(b) of Schedule B, it can hardly be found to have committed a FECA violation for failure to clarify candidate fundraising expenses.

4. MULTI-CANDIDATE STATUS

On September 20, 2006 the Committee made a \$5,000 contribution to a federal candidate. This is the maximum contribution that a Multi-Candidate Committee may make to a candidate for a given election. The Federal Regulations define a Multi-Candidate committee as a political committee that has been registered with the Commission for at least six (6) months; has more than fifty (50) contributors; and, with the exception of state party committees, has made contributions to at least five (5) candidates for federal office. [§100.5(e)(3)] Until such time as a Political Action Committee meets the qualifications for Multi-Candidate status it is limited to making contributions of \$2,000 (adjusted for inflation).

The Committee received an RFAI dated November 8, 2006 that stated, in part, the following:

Schedule B of your report (see attached) discloses one or more contributions which appear to exceed the limits set forth in the Act. 2 U.S.C. §441a(a) prohibits a non-multicandidate political committee and its affiliates, from making a contribution to a candidate for federal office in excess of \$2,100 per election.

If your committee has met the criteria for multicandidate status, please file FEC FORM 1M "Notification of Multicandidate Status" with the Commission. The treasurer must file FEC FORM 1M no later than ten (10) calendar days after qualifying for multicandidate committee status. 11CFR §102.2(a)(3)

Although the Committee had been in existence for two (2) years and had received contributions from thousands of donors; it had not attained Multi-Candidate Status. On October 18, 2006 the committee satisfied the requirements for Multi-Candidate status and filed Form 1M on October 19, 2006.

Conclusion: Given that the Regulations provide a political committee with sixty (60) days to correct an excessive contribution and in this case, the Committee attained Multi-Candidate within thirty (30) days of making the contribution, thereby rendering the excessive contribution, mute – the Committee asserts that it has not committed a FECA violation.

5. MATHEMATICAL DISCREPANCY

After filing the 2006 Year-End FEC Disclosure Report, the Committee received and RFAI dated March 19, 2007; that stated, in part:

The totals listed on Lines 11(a)(i) and 11(a)(ii), Column B of the Detailed Summary Page appear to be incorrect. Please be advised that you should add the "Calendar Year-to-Date" total from your previous report to the current "Total This Period" figure from Column A to derive the correct Column B totals. When an individual's aggregate exceeds the \$200 threshold, the amount should not be deducted from the Column B figure for Line 11(a)(ii). Please amend your report and any subsequent reports that may be affected by this correction.

The Committee has used and is using the Federal Election Commission's software, FECfile to electronically file its Disclosure Reports. By utilizing the software, the Committee has no ability to manipulate the Summary Sheet totals per period (Column A); nor in the aggregate (Column B), the software does that automatically. Therefore, as I am not a software engineer, I am at a loss as to explain how this discrepancy occurred, but can say that the report was amended and the problem seems to have resolved itself.

Conclusion: Given that the mathematical discrepancy appears to be a software related issue, there can be no cause for asserting that the Committee committed a FECA violation.

IN SUMMARY

Ms. Kant, as we have discussed in our two prior conversations, the main issue here appears to be that the RFAI's we received during the time period in question we not responded to within thirty (30) days as requested by RAD. We fully acknowledge that at that time we were not as

responsive as we should have been, but this situation has already been remedied. Since becoming treasurer in 2007 I have placed a priority on responding to all RFAI's within the thirty day filing requirement and have made a commitment to continue fulfilling this requirement.

After an extensive review of the FEC Disclosure Reports filed; the Requests for Additional Documentation received; and the responses to the RFAIs rendered, it is my opinion that the Committee has not committed any substantive FECA violations and should not be facing the prospect of paying a fine through the ADR process. I respectfully request that the Reports Analysis Division take a second look at the thirteen (13) listed "violations" and determine whether or not they would maintain their original assertions.

If there are any other suggestions for how the committee can continue to improve its' reporting, we would take those suggestions seriously and incorporate any thoughtful suggestions into our best efforts. As it stands, I make an effort to communicate regularly with our FEC representative to address any issues so that they do not repeat from report to report.

If the FEC's main interest is having our reporting be as compliant as possible, then you should recognize that we have made serious efforts since the committee was first formed to improve our reporting, even before we were contacted to enter into the ADR process. I would assert that our efforts exemplify the concept of "best efforts" and I would respectfully suggest that issuing a fine at this time would not only be unnecessarily punitive, but would not serve either of our interests.

I feel confident that you will acknowledge the seriousness of our commitment to constantly improving our level of compliance and will agree that punitive action at this time is unwarranted and unproductive. I look forward to working with you and the rest of the FEC team as we endeavor to provide the most accurate and timely reporting possible.

Sincerely,



Robert Hornak
Treasurer