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Nov 27 12 34 PM '95

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November 13, 1995

The Honorable Danny L. McDonald
Chairman, Federal Election Commission
999 E Street, NW
Washington, DC 20463

AOR 1995 - 44

Dear Mr. Chairman:

On behalf of the Forbes for President Committee, Inc. ("FPC"), I have been requested to seek an Advisory Opinion in accordance with the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), specifically 2 U.S.C. §437f, pertaining to the factual scenario and questions presented below.

A. Summary of Request

Are the various Presidential caucuses each considered to be an election for purposes of determining a Title II presidential candidate's obligation to file a 48-hour disclosure notice pursuant to 2 U.S.C. §434(a)(6)(A)?

B. Factual and Legal Background

Malcolm S. Forbes, Jr. is a candidate for the 1996 Republican Party nomination for President of the United States. FPC is the principal campaign committee for Mr. Forbes.

Mr. Forbes has chosen not to apply for or accept federal matching funds pursuant to the Presidential Primary Matching Payment Account Act, as amended (26 U.S.C. §9031 *et. seq.*). Instead, FPC will solicit and accept contributions subject to the limits and prohibitions of 2 U.S.C. §431 *et. seq.* In addition to soliciting and raising contributions, Mr. Forbes has to date used, and plans to continue to use, personal funds to make periodic loans to FPC.¹

¹

Such loans are made in accordance with 11 C.F.R. §110.10.

The Act requires that a contribution of \$1,000.00 or more, which is received by FPC after the 20th day but more than 48 hours before any election, be disclosed to the Commission within 48 hours after the receipt of such contributions². In view of the fact that Mr. Forbes intends to make loans³ to FPC in excess of \$1,000.00 and may in fact receive contributions in excess of \$1,000.00⁴ within the 20 days before the various presidential primaries, then the 48-hour reporting provision appears to apply to Mr. Forbes for each primary "election".

The term "election" is defined in the FECA as follows:

- (A) A general, special, primary, or run-off election;
- (B) A convention or caucus of a political party which has authority to nominate a candidate;
- (C) A primary election held for the selection of delegates to a national nominating convention of a political party; and
- (D) A primary election held for the expression of a preference for the nomination of individuals for election to the office of President.⁵

On November 3, 1995, the Commission issued a public document setting forth the 1996 presidential primary dates, a true and complete copy of which is attached hereto at Exhibit "A" and fully incorporated herein.

Included in Exhibit A, at page 3, is a footnote indicating that no presidential primary is held in Alaska, Hawaii, Iowa, Minnesota, Missouri, North Dakota (Democrats), South Carolina (Democrats), Utah, Virginia, Wyoming. In addition, our research indicates that American Samoa, and Guam, are also caucus states holding no presidential primary ("Caucus States"). I have attached at Exhibit "B" a list of Caucus States and the respective dates on which those caucuses are to be held.

The issue of whether caucuses or conventions constitute elections has been addressed in a variety of advisory opinions previously issued by the Commission. In those instances when the caucus or convention had the authority under state law to nominate a candidate, then the Commission considered such caucuses or conventions to constitute an election as defined by the Act (Advisory Opinion 1978-30; Advisory Opinion 1980-60). Conversely, when the caucuses or conventions did not have the authority under state law to nominate, the Commission held such caucuses and

² 2 U.S.C. §434(a)(6)(A). This notice is made by completing and timely filing FEC Form 6.

³ A candidate loan comes within the definition of a contribution. 2 U.S.C. §431(8).

⁴ These contributions would be received from qualified multi-candidate committees, pursuant to 2 U.S.C. §441a(a)(2)(A).

⁵ 2 U.S.C. §431(1).

conventions did not constitute an election (Advisory Opinion 1978-25; Advisory Opinion 1979-71; Advisory Opinion 1981-29; Advisory Opinion 1984-16; Advisory Opinion 1986-6).

C. Issues Presented

Based on the preceding facts, I request the Commission's response to the following questions and/or confirmation of the statements posed.

- (1) For purposes of determining whether the §434(a)(6)(A) 48-hour notice is required to be filed by FPC, do any of the caucus states identified at Exhibit B qualify as an "election" on the dates specified. If so, please identify which caucus the Commission deems to be an election.
- (2) If the answer to question 1 is "no", please confirm that the New Hampshire primary on February 20, 1996, is the first "election" which requires a §434(a)(6)(A) 48-hour notice to be filed by FPC.
- (3) Please confirm that the §434(a)(6)(A) 20-day period is measured from each primary or caucus election date independently and only for those elections in which Mr. Forbes is a candidate. For example, were Mr. Forbes not to be on the ballot in Kansas (April 2, 1996 primary election) but on the Pennsylvania ballot (April 23, 1996), FPC would not have a §434(a)(6)(A) 48-hour notice requirement until April 3, which would commence the 20-day reporting period prior to the Pennsylvania primary election.

Should you have further questions or require further documentation, please contact me directly at (202) 682-4725.

Sincerely,



Paul E. Sullivan, Esq.
General Counsel
Forbes for President Committee, Inc.

EXHIBIT A

FEDERAL ELECTION COMMISSION

Press Office
 999 E Street, N.W., Washington, D.C. 20463
 Phone: Local 202-219-4155 Toll Free 800-424-9530



FOR IMMEDIATE RELEASE
 NOVEMBER 3, 1995

CONTACT: IAN STIRTON
 RON HARRIS
 SHARON SNYDER
 KELLY HUFF

FEC PUBLISHES UPDATED 1996 PRESIDENTIAL PRIMARY DATES AND FILING DEADLINES FOR BALLOT ACCESS

WASHINGTON -- An updated list of 1996 presidential primary dates and candidate filing deadlines for ballot access arranged alphabetically by state has been compiled by the Public Records Office of the Federal Election Commission. Also included is a second chart which lists the primary dates in chronological order.

Information for the listing was obtained from data supplied by state election offices. The dates listed are still subject to change by state legislatures or court challenges. As changes occur, the list will be updated.

This information may also be obtained by calling FlashFAX 202/501-3413 (document #650).

1996 PRESIDENTIAL PRIMARY DATES AND CANDIDATE FILING DEADLINES FOR BALLOT ACCESS (Data as of 10/13/95)

Notes: Dates subject to change / General Election date 11/5/96

STATE	PRIMARY DATE	FILING DEADLINE FOR PRIMARY BALLOT ACCESS	INDEPENDENT FILING ¹ DEADLINE FOR GENERAL ELECTION
Alabama	6/4	3/15	8/31 Independent 7/1 Third/Minor
Alaska	*2	n/a	8/7
Arizona	2/27 *3	1/18	6/27
Arkansas	5/21	Noon 4/2	5/1
California	3/26	1/11 Democrats 1/12 All Others	8/9
Colorado	3/5	1/2	7/16
Connecticut	3/5	1/19	8/7 Independent/Third 9/11 Minor
Delaware	2/24	12/15/95	9/3
D.C.	5/7	3/8	8/20
Florida	3/12	1/11	7/15
Georgia	3/5	n/a	7/9
Hawaii	*2	n/a	9/6
Idaho	5/28	4/29	8/24
Illinois	3/19	12/18/95	8/5
Indiana	5/7	Noon 3/8	Noon 8/1
Iowa	*2	n/a	8/16
Kansas	4/2	Noon 2/12	Noon 8/5 Independent Noon 6/10 Third/Minor
Kentucky	5/28	4:00pm 1/30	8/6
Louisiana	3/12	1/12	5:00pm 9/3
Maine	3/5	12/1/95	6/1

1996 U.S. PRESIDENTIAL PRIMARY DATES AND CANDIDATE FILING DEADLINES FOR BALLOT ACCESS

(Data as of 10/13/95)

Page Two

STATE	PRIMARY DATE	FILING DEADLINE FOR PRIMARY BALLOT ACCESS	INDEPENDENT FILING ¹ DEADLINE FOR GENERAL ELECTION
Maryland	3/5	12/26/95 Republicans 1/9 Democrats	8/5
Massachusetts	3/5	12/22/95	7/30
Michigan	3/19 #4	4:00pm 1/12	4:00pm 7/18 Independent 9/6 Third/Minor
Minnesota	#2	n/a	9/10
Mississippi	3/12	1/15	9/5
Missouri	#2	n/a	8/5
Montana	6/4	3/21	8/7
Nebraska	5/14	3/15	8/30
Nevada	3/26 #5	1/9	8/9 Independent 9/2 Third/Minor
New Hampshire	2/20	12/15/95	8/21
New Jersey	6/4	4/11	4/11
New Mexico	6/4	3/16	9/10 Independent 7/9 Third/Minor
New York	3/7	1/4	8/20
North Carolina	3/7	2/6	6/28 Independent
North Dakota	2/27 Republicans #2 Democrats	12/29/95	9/6
Ohio	3/19	1/19	8/22 Independent 1/19 Third/Minor
Oklahoma	3/12	1/10	7/15
Oregon	3/12	1/2	8/27
Pennsylvania	4/23	2/13	8/1
Puerto Rico	3/3 Republicans 3/10 Democrats	1/4 Republicans 1/14 Democrats	#6
Rhode Island	3/5	11/30/95	6/26
South Carolina	3/2 Republicans #2 Democrats	12/31/95	Noon 8/1 Independent Noon 9/2 Third/Minor
South Dakota	2/27	12/26/95	8/6
Tennessee	3/12	1/2	8/15
Texas	3/12	1/2	5/13
Utah	#2	n/a	8/15
Vermont	3/5	5:00pm 1/15	9/19
Virginia	#2	n/a	Noon 8/23
Washington	3/26	1/18	7/1
West Virginia	5/14	2/3	8/1
Wisconsin	3/19	1/30	9/3
Wyoming	#2	n/a	8/27 Independent 8/20 Third/Minor

1 The column Independent Filing Deadline shows the date for the filing of petitions by independent or third/minor party candidates. This is a general reference date for use by the public and voters. Candidates and others seeking specific information should contact the states for other deadlines that may need to be met. For example, the petitions may have to be checked by officials prior to this date. A declaration of candidacy may be due before the petitions are due. New parties may have different deadlines.

2 Caucus is held instead of a primary election. Other states may use a combination of both caucuses and primaries for delegate selection.

3 The Democratic state party will hold a primary on March 9 in accordance with national Democratic party rules.

4 The Democratic state party will hold a primary on March 16. Candidates may also participate in the March 19 state primary, but only the March 16 party primary will bind delegates to the national convention.

5 The parties must notify the state of their intention to hold a Presidential preference primary by November 1, 1995.

6 Puerto Rico does not hold a presidential general election as Puerto Ricans do not have the right to vote in presidential general elections.

1996 PRESIDENTIAL PRIMARY DATES IN CHRONOLOGICAL ORDER

(Data as of 10/13/95)

Note: Dates subject to change / General Election date 11/5/96

STATE	PRIMARY DATE
New Hampshire	2/20
Delaware	2/24
Arizona	2/27
North Dakota	2/27 Republicans
South Dakota	2/27
South Carolina	3/2 Republicans
Puerto Rico	3/3 Republicans
Colorado	3/5
Connecticut	3/5
Georgia	3/5
Maine	3/5
Maryland	3/5
Massachusetts	3/5
Rhode Island	3/5
Vermont	3/5
New York	3/7
Puerto Rico	3/10 Democrats
Florida	3/12
Louisiana	3/12
Mississippi	3/12
Oklahoma	3/12
Oregon	3/12
Tennessee	3/12
Texas	3/12
Illinois	3/19
Michigan	3/19
Ohio	3/19
Wisconsin	3/19
California	3/26
Nevada	3/26
Washington	3/26
Kansas	4/2
Pennsylvania	4/23
D.C.	5/7
Indiana	5/7
North Carolina	5/7
Nebraska	5/14
West Virginia	5/14
Arkansas	5/21
Idaho	5/28
Kentucky	5/28
Alabama	6/4
Montana	6/4
New Jersey	6/4
New Mexico	6/4

NOTE: No presidential primary is being held in Alaska, Hawaii, Iowa, Minnesota, Missouri, North Dakota (Democrats), South Carolina (Democrats), Utah, Virginia, Wyoming.

EXHIBIT B

OVERALL CAUCUS TIMELINE

1/25/96 – 1/31/96	Hawaii: CAUCUS DATES
1/26/96 – 1/29/96	Alaska: CAUCUS DATES
2/6/96	Louisiana: CAUCUS
2/12/96	Iowa: CAUCUS
3/5/96	American Samoa: CAUCUS
3/5/96	Minnesota: CAUCUS
3/9/96	Missouri: CAUCUS
3/23/96	Wyoming: CAUCUS
3/25/96	Utah: CAUCUS
3/30/96	Virgin Islands: CAUCUS
4/13/96	Virginia: CAUCUS
5/5/96	Guam: CAUCUS

***NOTE: The Hawaii Caucus merely selects delegates to the State GOP Convention. RNC delegates are selected at the state convention in May.**