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Commission

Message from the Chairman

The Commission will face many challenges and opportunities in the year ahead. Last month, the Supreme Court issued its decision in *Citizens United v. FEC*—a landmark campaign finance ruling that will have a large impact on the Commission's enforcement, rulemaking, and litigation activities. Other pending cases involving the FEC may also result in significant changes to the law, as the agency works to promulgate regulations based upon earlier court rulings.

For example, this year, the Commission has undertaken rulemakings to implement the *Shays III* decision and has scheduled hearings regarding coordinated communications and federal candidate solicitations, respectively. The Commission also recently published a Notice of Proposed Rulemaking to implement the court's decision in *EMILY's List v. FEC*.

With the 2010 midterm elections approaching, the number of advisory opinion is likely to surge. The Commission intends to act on these requests quickly in order to provide real-time advice to those involved in the federal campaign process.

The Commission will also continue to build upon recent initiatives

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Court Cases

Citizens United v. FEC

On January 21, 2010, the Supreme Court issued a ruling in *Citizens United v. Federal Election Commission* overruling an earlier decision, *Austin v. Michigan State Chamber of Commerce (Austin)*, that allowed prohibitions on independent expenditures by corporations. The Court also overruled the part of *McConnell v. Federal Election Commission* that held that corporations could be banned from making electioneering communications. The Court upheld the reporting and disclaimer requirements for independent expenditures and electioneering communications. The Court's ruling did not affect the ban on corporate contributions.

Background

The Federal Election Campaign Act (the Act) prohibits corporations and labor unions from using their general treasury funds to make electioneering communications or for speech that expressly advocates the election or defeat of a federal candidate. 2 U.S.C. §441b. An electioneering communication is generally defined as "any broadcast, cable or satellite communication" that is "publicly distributed" and refers to a clearly identified federal candidate

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Commission

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aimed at improving the transparency of our operations, bolstering our interaction with the public, and enhancing procedural fairness. As part of our Website Improvement Initiative, we have added a new Disclosure Data Blog that provides timely information and allows readers to submit comments and questions on FEC procedures and data search capabilities.

In addition, the Commission continues to expand the universe of information available on our website. Matters Under Review (MURs) dating back to 1975 have been posted

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online, and the Commission plans to continue enhancing the usability of those documents. Also, FEC staff members are currently hard at work adding older AO-related documents to the online database. You can expect to see these and other improvements to the Commission's website in the coming months.

At the same time, the FEC will conduct outreach programs to ensure that the public is provided with up-to-date information regarding developments in the law and Commission regulations. The Commission will again host several conferences and informational sessions—including a regional conference in New Orleans this February—and roundtable sessions on election-year reporting requirements and the recently passed travel rules.

I look forward to working with my fellow Commissioners and the dedicated staff at the Commission in the coming year in meeting all of the foreseen (and unforeseen) challenges that lay ahead.

Sincerely,

—*Matthew S. Petersen*
Chairman

FEC Introduces New Compliance Map

The Commission has introduced a new Compliance Map on its website, which sets out key dates and timeframes for disclosure of campaign finances in each state. The new feature provides a quick reference for citizens and for the candidates, party committees and political action committees (PACs) participating in elections.

The map provides schedules for pre- and post-election reporting, independent expenditures, coordination, federal election activity (FEA) and electioneering communications. It also provides election dates, as well as contact information for key

state offices, including those offering information on ballot access and state campaign finance questions.

The Compliance Map is available on the FEC's homepage at www.fec.gov/info/ElectionDate.

—*Myles Martin*

Court Cases

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and is made within 30 days of a primary or 60 days of a general election. 2 U.S.C. §434(f)(3)(A) and 11 CFR 100.29(a)(2).

In January 2008, Citizens United, a non-profit corporation, released a film about then-Senator Hillary Clinton, who was a candidate in the Democratic Party's 2008 Presidential primary elections. Citizens United wanted to pay cable companies to make the film available for free through video-on-demand, which allows digital cable subscribers to select programming from various menus, including movies. Citizens United planned to make the film available within 30 days of the 2008 primary elections, but feared that the film would be covered by the Act's ban on corporate-funded electioneering communications that are the functional equivalent of express advocacy, thus subjecting the corporation to civil and criminal penalties. Citizens United sought declaratory and injunctive relief against the Commission in the U.S. District Court for the District of Columbia, arguing that the ban on corporate electioneering communications at 2 U.S.C. §441b was unconstitutional as applied to the film and that disclosure and disclaimer requirements were unconstitutional as applied to the film and the three ads for the movie. The District Court denied Citizens United a preliminary injunction and granted the Commission's motion for summary judgment. The Supreme Court noted probable jurisdiction in the case.

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Court Cases

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Supreme Court Decision

The Supreme Court found that resolving the question of whether the ban in §441b specifically applied to the film based on the narrow grounds put forth by Citizens United would have the overall effect of chilling political speech central to the First Amendment. Instead, the Court found that, in exercise of its judicial responsibility, it was required to consider the facial validity of the Act's ban on corporate expenditures and reconsider the continuing effect of the type of speech prohibition which the Court previously upheld in *Austin*.

The Court noted that §441b's prohibition on corporate independent expenditures and electioneering communications is a ban on speech and "political speech must prevail against laws that would suppress it, whether by design or inadvertence." Accordingly, laws that burden political speech are subject to "strict scrutiny," which requires the government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. According to the Court, prior to *Austin* there was a line of precedent forbidding speech restrictions based on a speaker's corporate identity, and after *Austin* there was a line permitting them. In reconsidering *Austin*, the Court found that the justifications that supported the restrictions on corporate expenditures are not compelling.

The Court in *Austin* identified a compelling governmental interest in limiting political speech by corporations by preventing "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." However, in the current case the Court found that *Austin*'s "antidistortion" rationale "interferes

with the 'open marketplace of ideas' protected by the First Amendment." According to the Court, "[a]ll speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech." The Court held that the First Amendment "prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." The Court further held that "the rule that political speech cannot be limited based on a speaker's wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker's identity."

The Court also rejected an anti-corruption rationale as a means of banning independent corporate political speech. In *Buckley v. Valeo*, the Court found the anti-corruption interest to be sufficiently important to allow limits on contributions, but did not extend that reasoning to overall expenditure limits because there was less of a danger that expenditures would be given as a *quid pro quo* for commitments from that candidate. The Court ultimately held in this case that the anti-corruption interest is not sufficient to displace the speech in question from Citizens United and that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption."

The Court furthermore disagreed that corporate independent expenditures can be limited because of an interest in protecting dissenting shareholders from being compelled to fund corporate political speech. The Court held that such disagreements may be corrected by shareholders through the procedures of corporate democracy.

Finally, Citizens United also challenged the Act's disclaimer and disclosure provisions as applied to the film and three ads for the movie.

Under the Act, televised electioneering communications must include a disclaimer stating responsibility for the content of the ad. 2 U.S.C. §441d(d)(2). Also, any person who spends more than \$10,000 on electioneering communications within a calendar year must file a disclosure statement with the Commission identifying the person making the expenditure, the amount of the expenditure, the election to which the communication was directed and the names of certain contributors. 2 U.S.C. §434(f)(2). The Court held that, although disclaimer and disclosure requirements may burden the ability to speak, they impose no ceiling on campaign activities and do not prevent anyone from speaking. As a result, the disclaimer and disclosure requirements are constitutional as applied to both the broadcast of the film and the ads promoting the film itself, since the ads qualify as electioneering communications.

Additional Information

The text of the Supreme Court's opinion is available on the Commission's website at http://www.fec.gov/law/litigation/cu_sc08_opinion.pdf.

U.S. Supreme Court No. 08-205.

—Myles Martin

Advisory Opinions

AO 2009-29

Membership Organization May Establish SSF Without Vote of Its Membership

The Federal Election Campaign Act (the Act) does not require a non-profit 501(c)(4) incorporated membership organization to submit a proposal to its membership in order to form a separate segregated fund (SSF).

Background

The Retiree Support Group of Contra Costa County (“Contra Costa Retirees”) is a non-profit membership organization established under California law and organized under section 501(c)(4) of the Internal Revenue Code. Its members include retired employees of the Contra Costa County government, including the county’s special districts, and surviving spouses of certain retired employees.

Contra Costa Retirees has a Board of Directors (Board) which manages the organization. The Board is elected by the membership, and members may approve or disapprove of certain actions undertaken by the Board. Contra Costa Retirees is considering whether to establish an SSF to make political contributions in connection with state and federal elections.

Analysis

An incorporated membership organization may establish an SSF under the Act and Commission regulations for the purpose of making contributions or expenditures in connection with federal elections. 2 U.S.C. §441b(b)(2)(C) and 11 CFR 114.5. Commission regulations do not specifically address how a membership organization may form an SSF. However, Commission regulations do provide a non-exhaustive list of examples of events that

may suffice to form an SSF. These examples include: “[a] vote by the board of directors or comparable governing body of an organization to create a[n SSF] to be used wholly or in part for federal elections; selection of initial officers to administer such a fund; or payment of the initial operating expenses of such a fund.” 11 CFR 102.1(c).

Once an SSF is established by an organization, the SSF must file a Statement of Organization (FEC Form 1) with the Commission within 10 days after the establishment of the SSF. 11 CFR 102.2.

Since neither the Act nor Commission regulations specifically address how to determine whether or not to establish an SSF, the Commission concludes that Contra Costa Retirees is not required to submit the question to its members for a vote in order to establish an SSF.

Date Issued: January 19, 2010;
Length: 4 pages.

—*Myles Martin*

Regulations

NPRM on Funds Received in Response to Solicitations; Allocation of Expenses by Certain Committees

On December 17, 2009, the Commission approved a Notice of Proposed Rulemaking (NPRM) that would remove certain rules regarding funds received in response to solicitations and the allocation of certain expenses by separate segregated funds (SSFs) and nonconnected committees. The NPRM is in response to the United States Court of Appeals for the DC Circuit (DC Circuit Court) decision in *EMILY’s List v. FEC*, 581 F.3d 1 (DC Cir. 2009).

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PACronyms, Other PAC Publications Available

The Commission annually publishes an alphabetical listing of acronyms, abbreviations and common names of political action committees (PACs).

For each PAC listed, the index provides the full name of the PAC, its city, state, FEC identification number and, if not identifiable from the full name, its connected, sponsoring or affiliated organization.

This index is helpful in identifying PACs that are not readily identified in their reports and statements on file with the FEC.

To order a free copy of PACronyms, call the FEC’s Disclosure Division at 800/424-9530 or 202/694-1120.

PACronyms is also available on diskette for \$1 and can be accessed free on the FEC web site at www.fec.gov.

Other PAC indexes, described below, may be ordered from the Disclosure Division. Prepayment is required.

- An alphabetical list of all registered PACs showing each PAC’s identification number, address, treasurer and connected organization (\$13.25).
- A list of registered PACs arranged by state providing the same information as above (\$13.25).
- An alphabetical list of organizations sponsoring PACs showing the name of the PAC and its identification number (\$7.50).

The Disclosure Division can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St. NW.

Regulations

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Background

On September 18, 2009, the DC Circuit Court of Appeals ruled that Commission regulations at 11 CFR 100.57, 106.6(c) and 106.6(f) violated the First Amendment. The court also ruled that 11 CFR 100.57 and 106.6(f), as well as one provision of 106.6(c), exceeded the Commission's authority under the Federal Election Campaign Act (the Act). The D.C. District Court ordered that these rules are vacated. The Commission now proposes to remove these rules from its regulations.

Proposed Deletion of 11 CFR 100.57

According to paragraph (a) of section 100.57, funds received in response to a communication are treated as contributions if that communication indicates that any portion of the funds received would be used to support or oppose the election of a clearly identified federal candidate. Paragraph (b)(1) of section 100.57 provides that all funds received in response to a solicitation that refers to both a clearly identified federal candidate and a political party, but not to any nonfederal candidates, must be treated as contributions. Paragraph (b)(2) states that if a solicitation refers to at least one clearly identified federal candidate and one or more clearly identified nonfederal candidates, a minimum of fifty percent of the funds received in response to the solicitation must be treated as contributions. In response to the court's finding that these rules are unconstitutional and exceed the Commission's statutory authority, the Commission proposes removing section 100.57 from its regulations.

Proposed Deletion of 11 CFR 106.6(c) and 106.6(f)

Commission regulations at 11 CFR 106.6(c) require nonconnected committees and SSFs to use at least fifty percent federal funds to pay

for administrative expenses, generic voter drives and public communications that refer to a political party but not to any federal or nonfederal candidates. Paragraph (f) requires nonconnected committees and SSFs to pay for public communications and voter drives that refer to both federal and nonfederal candidates using proportionate percentages of federal and nonfederal funds.

Because the court found paragraphs (c) and (f) of section 106.6 unconstitutional and ordered them vacated, the Commission proposes removing these rules.

Interim Final Rule

In addition, through an interim final rule, the Commission is inserting a note in 11 CFR 100.57, 106.6(c) and 106.6(f), indicating that these regulations regarding solicitations and the allocation of certain expenses by separate segregated funds and nonconnected committees were vacated by court order. The Commission is first inserting these notes to give the public immediate guidance that these provisions were vacated by court order while the Commission completes the rulemaking process of implementing the *EMILY's List* decision. The interim final rule took effect December 29, 2009.

Additional Information

The NPRM was published in the December 28, 2009, *Federal Register* and is available on the FEC website at: http://www.fec.gov/pdf/nprm/emilyslistrepeal/notice_2009-31.pdf.

The interim final rule was published in the December 28, 2009, *Federal Register* and is available on the FEC web site at: http://www.fec.gov/pdf/nprm/emilyslistrepeal/notice_2009-30.pdf.

—Isaac J. Baker

Outreach

New Orleans Regional Conference; Washington, DC, Conference for Corporations and Their PACS

The Commission will hold a regional conference in New Orleans, Louisiana, on February 9-10, 2010. Commissioners and staff will conduct a variety of technical workshops on the federal campaign finance law. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. To view the conference agenda or to register for the conference, please visit the conference website at <http://www.fec.gov/info/conferences/2010/neworleans.shtml>.

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Conferences in 2010

Conference for Campaigns, Party Committees and Corporate/Labor/Trade PACs
February 9-10, 2010
InterContinental New Orleans
New Orleans, LA

Conference for Corporations and Their PACs
March 9-10, 2010
Westin Washington, DC City Center
Washington, DC

Nonconnected Committees Seminar
April 7, 2010
FEC Headquarters
Washington, DC

Conference for Candidates and Party Committees
May 3-4, 2010
Omni Shoreham Hotel
Washington, DC

Outreach

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Hotel Information. The conference will be held at the InterContinental New Orleans, 444 St. Charles Avenue, New Orleans, LA 70130. The hotel is located in the center of New Orleans, two blocks from the French Quarter and six blocks from the riverfront. To make your hotel reservations, please call 800/445-6563 or visit the hotel website at https://resweb.passkey.com/Resweb.do?mode=welcome_ei_new&eventID=1468821 and identify yourself as attending the Federal Election Commission conference. The hotel will charge the prevailing sales tax, currently 13 percent, and a \$2.00 per room, per night, occupancy fee. The FEC recommends waiting to make hotel and air reservations until you have received confirmation of your conference registration from Sylvester Management Corporation.

Campaign Guides Available

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.

The FEC publishes four *Campaign Guides*, each for a different type of committee, and we are happy to mail your committee as many copies as you need, free of charge. We encourage you to view them on our web site (www.fec.gov).

If you would like to place an order for paper copies of the *Campaign Guides*, please call the Information Division at 800/424-9530.

Registration Information. The registration fee for this conference is \$600. Complete registration information is available online at <http://www.fec.gov/info/conferences/2010/neworleans.shtml>.

Washington, DC, Conference for Corporations and their PACs

The Commission will hold a conference in Washington, DC, on March 9-10, 2010, for corporations and their PACs. FEC staff will conduct a variety of technical workshops on federal campaign finance law. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. To view the conference agenda or register for the conference, please visit the conference website at <http://www.fec.gov/info/conferences/2010/corporate10.shtml>.

Hotel Information. The conference will be held at the Westin Washington, DC City Center Hotel, in downtown Washington, DC, near several Metro subway stations and the K Street corridor. A room rate of \$249 (single or double) is available to conference attendees who make reservations on or before February 5, 2010. See the conference website listed above for a link to make reservations. The FEC recommends waiting to make hotel and air reservations until you have received confirmation of your conference registration from Sylvester Management Corporation.

Registration Information. The registration fee for this conference is \$499; a \$51 late fee will be added to registration received after 5 p.m. EST, February 5, 2010. Complete registration information is available online at <http://www.fec.gov/info/conferences/2010/corporate10.shtml>.

FEC Conference Questions

Please direct all questions about conference registration and fees to

Sylvester Management Corporation (Phone: 800/246-7277; e-mail: toni@sylvestermanagement.com). For questions about the conference program, or to receive e-mail notification of upcoming conferences and workshops in 2010, please call the FEC's Information Division at 800/424-1100 (press 6) (locally at 202/694-1100), or send an e-mail to Conferences@fec.gov.

—Dorothy Yeager

Roundtable on New Travel Rules

On February 24, 2010, the Commission will host a roundtable workshop on the new travel rules governing campaign travel on non-commercial aircraft. See the related article on page 1 of the January 2010 *Record*. The workshop will focus primarily on the rules for House and Senate candidates and their leadership PACs.

The roundtable will be held from 9:30 to 11:00 a.m. at the Federal Election Commission, 999 E St. NW, Washington, D.C. Attendance is limited to 50 people and the registration fee is \$25. Please call the FEC before registering to ensure that openings remain.

Advance registration and payment is required. A full refund will be made for all cancellations received

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Roundtable Schedule

Roundtable on New Travel Rules

FEC Headquarters
Washington, DC
February 24, 2010
9:30 a.m.-11:00 a.m.

Outreach

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before 5 p.m. EST on February 19, 2010. No refunds will be made for cancellations received after that date and time.

Complete registration information is available on the FEC website at <http://www.fec.gov/info/outreach.shtml#roundtables> and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, please call the Information Division at 800/424-9530, or locally at 202/694-1100.

—Katherine Carothers

Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* starting with January 1993 are available on the FEC web site as PDF files. Visit the FEC web site at <http://www.fec.gov/pages/record.shtml> to find monthly *Record* issues.

The web site also provides copies of the *Annual Record Index* for each completed year of the *Record*, dating back to 1993. The *Annual Record Index* list *Record* articles for each year by topic, type of Commission action and, in the case of advisory opinions, the names of individuals requesting Commission action.

You will need Adobe® Acrobat® Reader software to view the publication. The FEC's web site has a link that will take you to Adobe's web site, where you can download the latest version of the software for free.

Seminar for Nonconnected Political Action Committees

On April 7, 2010, the Commission will hold a one-day seminar for nonconnected committees (i.e., PACs not sponsored by a corporation, union, trade association or incorporated membership organization) at its headquarters at 999 E Street, NW, in Washington, DC. This seminar is recommended for:

- Treasurers of leadership PACs, partnership PACs and other nonconnected PACs;
- Staff of the above organizations who have responsibility for compliance with federal campaign finance laws;
- Attorneys, accountants and consultants who have clients that are nonconnected PACs or unregistered "section 527" organizations; and
- Anyone who wants to gain in-depth knowledge of federal campaign finance laws, including the recently enacted lobbyist bundling and disclosure rules, as they apply to leadership PACs and other types of nonconnected committees.

The seminar will address issues such as fundraising and reporting, as well as the FEC's rules on when section 527 organizations trigger federal reporting requirements. Experienced FEC staff will specifically discuss recent changes to the campaign finance law, as well as the rules specific to leadership PACs and partnership PACs.

The registration fee for this seminar is \$100 per attendee. Payment by credit card is required prior to the seminar. A full refund will be made for all cancellations received before 5 p.m. EST on April 2. Complete information is available on the FEC website at <http://www.fec.gov/info/conferences/2010/nonconnected2010.shtml>, along with the seminar agenda and a list of hotels located near the FEC. Further questions about the seminar should

be directed to the Information Division by phone at 800/424-9530 (press 6), or locally at 202/694-1100, or via e-mail to Conferences@fec.gov.

—Katherine Carothers

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