

# Record

July 2010

Federal Election Commission

Volume 36, Number 7

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## Reports

### July Reporting Reminder

The following reports are due in July:

- All principal campaign committees of House and Senate candidates must file a quarterly report by July 15, 2010. The report covers financial activity from April 1 (or the day after the closing date of the last report) through June 30;
- Principal campaign committees of Presidential candidates must file a report by July 15, if they are quarterly filers (the report covers financial activity from April 1 through June 30), or by July 20, if they are monthly filers (the report covers activity for the month of June); and
- National party committees, political action committees (PACs) following a monthly filing schedule and state, district and local party committees that engage in reportable "federal election activity" (see "State, District and Local Party Committees, on page 9) must file a monthly report by July 20. This report covers activity for the month of June. 11 CFR 104.5.

### Notification of Filing Deadlines

In addition to publishing this article, the Commission notifies

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## Advisory Opinions

### [AO 2010-05](#)

### Sale of Ad Time on a Foreign-Owned Television Station

Starchannel Communications, Inc. (Starchannel), the domestic representative of Televisa, a Mexican broadcasting corporation, may sell advertising time on Televisa television stations to federal candidates. A prohibited contribution would not result from offering federal candidates the "Lowest Unit Charge" (LUC) for time slots on Televisa since it is the usual and normal charge for similar federal candidate advertisements in the market in which the advertisements will be aired.

### Background

Starchannel is a Delaware corporation that sells advertising time slots on television broadcast stations in Mexico that are owned by Televisa. The broadcast stations that carry these ads broadcast into markets in areas of Texas that are located on the border between the United States and Mexico ("U.S. border market"). Through a contractual agreement, Starchannel acts as the exclusive representative of Televisa in the sale of advertising time in the U.S. border market. The contract states

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## Advisory Opinions

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that Starchannel may not negotiate a price with a buyer for an advertising time slot that is lower than the Televisa-established minimum price, but it may negotiate higher prices. The two corporations are independent of each other and Televisa does not exercise any ownership or control over Starchannel.

Starchannel wishes to expand its business by selling advertising time slots on Televisa's broadcasting stations to federal candidates. Starchannel plans to offer federal candidates the LUC for time slots on Televisa. Starchannel does not believe it is re-

quired to offer federal candidates the LUC because Televisa is a Mexican corporation.<sup>1</sup> Nevertheless, Starchannel plans to offer the LUC because, in its business judgment, it could not otherwise compete with American television stations that offer advertising time to federal candidates at the LUC. Starchannel plans to require federal candidates to comply with all paperwork, disclaimer and other requirements of the Communications Act and Federal Communications Commission regulations, just as if the ads were being run on a U.S. station.

### Analysis

The Federal Election Campaign Act (the Act) and Commission regulations prohibit foreign nationals, including foreign principals such as partnerships, associations, corporations, organizations or other combination of persons, from making a contribution or donation of money or other things in connection with a federal, state or local election. 2 U.S.C. §441e(a)(1)(A) and 22 U.S.C. §611(b)(3); see also 11 CFR 110.20(b). The Act also prohibits corporations from making contributions in connection with any federal election. 2 U.S.C. §441b(a).

Any gift, subscription, loan, advance or deposit of money or "anything of value" made by any person for the purpose of influencing a federal election is a "contribution." 2 U.S.C. §431(8)(A)(i) and 11 CFR 100.52(a); see also 2 U.S.C. §441b(b)(2) and 11 CFR 114.2(b)(1). "Anything of value" includes goods or services provided without charge or at less than the "usual and normal charge." 11 CFR 100.52(d)(1). "Usual and normal charge" means the price of goods in the market from which they ordinarily would have been purchased at the

time of the contribution, or the commercially reasonable rate prevailing at the time the services were rendered. 11 CFR 100.52(d)(2).

Based on the information provided by Starchannel, the Commission concluded that it does not appear that Televisa would be providing any goods or services at less than the usual and normal charge. Under Televisa's contract with Starchannel, Televisa establishes a minimum price for advertising time that does not depend upon the identity of the buyer. Because Televisa's role in the sale of advertising time remains the same and conforms to its usual and normal business practices regardless of the buyer's identity, Televisa would not be making a contribution under the plan.

With respect to Starchannel, the Commission noted that Starchannel plans to offer advertising time to federal candidates using the same business practices in which it customarily engages when offering advertising time to other customers, except that it plans to offer federal candidates the LUC even if it is not required to do so under 47 U.S.C. §315(b) and 47 CFR 73.1942.

The Commission concluded that Starchannel may sell advertising time on Televisa stations to federal candidates at the LUC, consistent with the Act and Commission regulations, under the specific facts present here. Because Starchannel plans to offer the LUC only to federal candidates who comply with all relevant requirements of the Communications Act, these federal candidates would be entitled to receive the LUC from a U.S. broadcaster for advertisements airing in the U.S. border market, even if Starchannel is not required to offer them the LUC. Thus, the LUC reflects the usual and normal charge for Communications Act-compliant candidate advertising in the U.S. border market. 11 CFR 100.52(d). Further, the LUC represents the commercially reasonable

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

800/424-9530 (Toll-Free)  
202/694-1100 (Information Div.)  
202/501-3413 (FEC Faxline)  
202/219-3336 (TDD for the  
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**Myles G. Martin,**  
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<http://www.fec.gov>

<sup>1</sup> The Communications Act sets certain requirements for U.S. broadcasters providing advertising time to federal candidates. See 47 U.S.C. §315 and 47 CFR 73.1942.

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Soon, all records will be replaced by new & improved technology

The new web-based  
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Coming  
Summer 2010



## FEC Record to Become a News Site

In an effort to provide more timely and user-friendly information, the FEC *Record* will transition this summer from a print-based online publication to a wholly web-based format that better utilizes the medium. We're excited to improve this already useful resource in a way that will help our readers keep up with FEC-related news even better than before.

Converting the *Record* into a continuously updated news site will allow us to provide campaign finance information in a more timely and responsive manner, adding stories as regulations are approved, advisory opinions are issued and court cases are decided. We will be able to add links within articles that point to related resources, including audio of Commission meetings, advisory opinion documents, *Federal Register* notices and helpful web-based training materials devoted to new or complex areas of the law.

The new *Record* will be more searchable than the old PDF version, with a custom search bar for the site providing more useful results. The categories and tags we've added will make browsing and navigating the *Record* faster and more convenient than before, and you will be able to subscribe to the RSS feed to receive automatic updates as stories are posted. We look forward to our transition this summer and hope you'll let us know how we can continue to improve and better serve our readers.

## Advisory Opinions

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rate prevailing for ads complying with the Communications Act at the time the ads are broadcast. 11 CFR 100.52(d)(2). Thus, Starchannel also would not be making a contribution under the plan by charging the LUC.

Accordingly, the Commission ruled that no contribution would result from the sale of advertising time to federal candidates on behalf of Televisa at the LUC rate for ads that comply with the Communications Act.

Date issued: May 27, 2010;  
Length: 6 pages.

—Stephanie Caccamo

## AO 2010-06

### Political Affinity Accounts for Revenue-Generating Web Platform

Famos LLC, a for-profit limited liability company marketing a web-based platform (Famos Platform) that allows users to receive compensation from personal endorsements of products and services, may allow political committees to obtain a political affinity account and receive contributions from other individual platform users without making a prohibited corporate contribution.

#### Background

The Famos Platform will allow users to receive compensation from personal endorsements of products. For example, if a Famos account holder sends an e-mail to a friend recommending a movie, the Famos Platform may direct the friend to a website selling tickets for that movie. When Famos receives a commission from that website for directing the account holder's friend to purchase a movie ticket, Famos will share some of that revenue with the account holder.

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## Advisory Opinions

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The Famos Platform, like nearly all contemporary web-based marketing platforms, will be offered free of charge to prospective account holders. Famos and its account holders may earn and share revenue from three types of transactions: web searches, web shopping and online referrals. Famos plans to keep twenty percent of any revenue generated in the three types of transactions, with the remaining eighty percent shared by the rest of the “referral path.”

Famos plans to offer the Famos Platform to political committees, including authorized committees, nonconnected committees and party committees, but excluding separate segregated funds. Famos will offer its platform to political affinity account holders on much the same terms as to other account holders: free of charge, with a \$200 per hour customization rate for non-standard customizations to their Famos Platform. Political affinity account holders will need to make certain non-standard customizations to comply with the Federal Election Campaign Act (the Act).

Famos account holders will be able to keep their share of revenue or direct it (or any portion of it) to a charity or non-profit organization that also holds a Famos account. Famos will not distribute revenue shares to account holders or designated non-profit entities until their account balance is above ten dollars. Political affinity account holders will be removed from the revenue generating chain, with any revenue generated being passed down to the next account holder or entity in the referral path.

Famos account holders may have their share directed to political affinity account holders, just as they can to other non-profit or charity account holders.

Famos account holders will have to make the following certifications

as described in AO 1995-09: that they are making the contribution from their own funds and not those of another; that the contributions are not from the general treasury funds of a corporation, labor organization or national bank; and that contributors are not federal government contractors or foreign nationals who lack permanent resident status in the United States.

Famos account holders will be informed that federal law requires the political affinity account holders to use their best efforts to collect and report the name, mailing address, occupation and name of employer of each individual whose contributions exceed \$200 in a calendar year.

Famos asks if it may enter into the proposed program with political committees without making prohibited corporate contributions.

### Analysis

Famos may enter into the proposed program because it would not violate the prohibition against corporate contributions. In prior advisory opinions, the Commission has examined a number of business arrangements between political committees and service providers that were either affinity programs or similar to affinity programs. In these advisory opinions, the Commission indicated that the Act permits corporations to offer affinity programs and enter into affinity-type business arrangements so long as the corporation and political committee enter into a commercially reasonable transaction in which the political committee pays the usual and normal charge for any services provided, and the amounts contributed to political committees via rebates or rewards are from individual customers' funds and not corporate funds. AOs 2006-34, 2003-16 and 2002-07.

Because nearly all web-based platforms now offered in the marketplace are made available free of charge, Famos may provide its basic platform free of charge to political affinity account holders as part of

its standard practice. In exchange, Famos would receive the value of the political affinity account holders' marketing services. Because each additional user of the Famos Platform may potentially produce revenue for Famos as well as generate possible future contributions for the political affinity account holder, the provision of the Famos Platform in exchange for the political affinity account holder's promotion of the Famos Platform would represent a commercially reasonable transaction made in the ordinary course of business. AOs 2007-04, 2004-19, 1995-34 and 1994-33.

Political affinity account holders would be required to pay the usual and normal charge for any customization of the platform, an “industry rate” charged to other Famos account holders of \$200 per hour for customization beyond the basic options provided as part of the political

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## FEC Accepts Credit Cards

The Federal Election Commission now accepts American Express, Diners Club and Discover Cards in addition to Via and MasterCard. While most FEC materials are available free of charge, some campaign finance reports and statements, statistical compilations, indexes and directories require payment.

Walk-in visitors and those placing requests by telephone may use any of the above-listed credit cards, cash or checks. Individuals and organizations may also place funds on deposit with the office to purchase these items. Since prepayment is required, using a credit card or funds placed on deposit can speed the process and delivery of orders. For further information, contact the Public Records Office at 800/424-9530 or 202/694-1120.



## Advisory Opinions

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affinity account holders' setup and administrative page. Because Famos will not provide necessary customizations for free or at a reduced rate, the provision of those services will not result in a prohibited in-kind contribution. 11 CFR 100.52(d)(1).

The Commission has concluded in previous advisory opinions that any contributions from rebates or rewards must be made by individuals from their own funds and not by the corporate service provider. In general, the Commission has concluded that affinity programs in which a corporation transfers to a political committee a portion of the revenue collected result in a prohibited corporate contribution. AOs 2008-18 and 2003-16. However, the Commission has concluded that it is permissible for affinity programs to generate revenue in the form of rebates or rewards to individuals, who may then choose to pass their earned revenue to political committees who are affinity partners. AOs 2006-34 and 2003-16. Because the revenue in these programs was offered to individuals in the ordinary course of business, the revenue was the property of the customer or individual who controlled the direction of the revenue.

The remittances at issue in this instance would be offered in the ordinary course of business, with individual Famos account holders directing the disposition of their revenue shares. Famos will inform account holders of the appropriate requirements of the Act, requiring the certifications described in AO 1995-09. Additionally, Famos's plan to credit account holder-confirmed contributions to political committees through an automated clearinghouse transaction on the last day of each month in which the remittance is earned complies with the requirement that any person who receives a contribution of \$50 or less for a political committee must forward the

contribution to the political committee within thirty days of receipt. 2 U.S.C. §432(b)(2)(A); 11 CFR 102.8(b)(1). Because the account holder does not make a contribution until Famos sends a separate confirmation note to the account holder that Famos intends to distribute to the political affinity account holder, the plan complies with the requirement that contributions to authorized political committees be forwarded, along with any required information, no later than ten days after receiving the contribution. 2 U.S.C. §432(b)(1); 11 CFR 102.8(a). Finally, Famos's proposal to transmit the contributor's name, address, occupation and employer to the receiving political committee within ten days of the transfer of funds conforms with 11 CFR 102.8(b)(2). Thus, the proposed program does not violate the Act's prohibition against corporate contributions under the conditions set forth in this opinion.

Date Issued: May 27, 2010;

Length: 9 pages.

—*Christopher Berg*

### AO 2010-07

#### **Members of Congress May Solicit Funds for State Ballot Measure**

Members of Congress may solicit funds on behalf of a state ballot measure in the state of California outside the amount limitations and source prohibitions of the Federal Election Campaign Act (the Act) during the period before the initiative qualifies for the ballot. After the initiative qualifies for the ballot, Members of Congress may solicit funds within the amount limitations and source prohibitions of the Act and may also solicit up to \$20,000 from individuals on behalf of the state ballot measure. The Commission was unable to agree on whether, during the post-qualification period, Members of Congress may solicit donations of more than \$20,000 and from persons other than individuals.

## Background

Yes on FAIR is a ballot measure committee in the state of California that has applied to the Internal Revenue Service for recognition as a section 501(c)(4) organization under Title 26 of the Internal Revenue Code. Karen Bass, who is currently a federal candidate (and state officeholder), is identified in Yes on FAIR's official name.<sup>1</sup> However, the requestor maintains that Yes on FAIR was not directly or indirectly established by, and is not financed, maintained or controlled by, any federal candidate or officeholder.

The requestor represents that Yes on FAIR's sole purpose is to support the qualification and passage of the Financial Accountability In Redistricting Act (FAIR Act), a proposed ballot initiative, for the statewide November 2, 2010, general election ballot.

Once the ballot initiative has qualified for the general election ballot in California, Yes on FAIR intends to engage in "an extensive campaign to promote the FAIR Act's passage," including, among other things, get-out-the vote programs specifically designed to get the measure's supporters to the polls on election day. Yes on FAIR maintains

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<sup>1</sup> The requestor's full name is Yes on FAIR, a coalition of entrepreneurs, working people, Karen Bass, and other community leaders devoted to eliminating bureaucratic waste of taxpayer dollars on the political game of redistricting committee ("Yes on FAIR"). The requestor represents that California state law requires that the official name of a ballot initiative committee identify state officeholders who have contributed \$50,000 or more to the committee. Ms. Bass is a California State legislator, and state political committees associated with her have made two contributions to Yes on FAIR totaling \$50,000. Subsequently, Ms. Bass decided to run for election to the U.S. House of Representatives from California.

## Advisory Opinions

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that their campaign advertisements will not promote, support, attack or oppose any federal candidate or result in coordinated communications under Commission rules.

### Analysis

Members of Congress may solicit funds outside the amount limitations and source prohibitions of the Act and Commission regulations on behalf of Yes on FAIR during the period before the initiative qualifies for the November ballot. The Act prohibits federal candidates and officeholders, their agents and entities directly or indirectly established, financed, maintained or controlled by them or acting on their behalf from raising and spending funds in connection with an election unless the funds are consistent with the limitations and prohibitions contained in the Act. 2 U.S.C. §441i(e)(1) and 11 CFR 300.61 and 300.62. The Commission concludes under the facts of this advisory opinion that 2 U.S.C. §441i(e)(1) does not apply to solicitations on behalf of the initiative before it qualifies for the ballot.

Members of Congress may also solicit funds within the limitations and prohibitions of the Act on behalf of Yes on FAIR after the initiative qualifies for the ballot. However, the Commission is unable to agree on whether Members of Congress may solicit funds outside the Act's limits and prohibitions.

Finally, the Commission concludes that Members of Congress may solicit up to \$20,000 from individuals on behalf of Yes on FAIR after the initiative has qualified for

the ballot.<sup>2</sup> However, as discussed above, the Commission is unable to agree on whether Members of Congress may solicit funds outside the Act's limitations and prohibitions after the initiative qualifies for the ballot.

Date Issued: June 14, 2010;

Length: 4 pages.

—Myles Martin

### AO 2010-08

#### Film Production, Distribution Costs Qualify for Press Exemption

The funds a non-stock corporation spends to produce and distribute documentary films that mention federal candidates are covered by the press exemption from the Federal Election Campaign Act's (the Act's) definitions of expenditure and electioneering communication.

### Background

Citizens United is a Virginia-based non-stock corporation that describes its principal purpose as promoting "social welfare through informing and educating the public on conservative ideas and positions on issues, including national defense, the free enterprise system, belief in God, and the family as the basic unit of society." Its activities include issue advocacy, direct e-mail communications, disseminating publications and advertising and litigation. It also conducts political activities, such as making contributions, through a separate segregated fund. Citizens United is not owned or controlled by any political party, political committee or candidate.

<sup>2</sup> The Act contains an exception to the limitations of 2 U.S.C. §441i(e)(1) that applies to solicitations for specific types of federal election activity on behalf of certain tax exempt organizations, provided that the solicitations are made only to individuals and do not seek more than \$20,000 per individual. 2 U.S.C. §441i(e)(4) and 11 CFR 300.65.

This organization also produces and distributes films, which frequently deal with political issues and mention political candidates, through its in-house production arm, Citizens United Productions, and sometimes through affiliated agencies. Citizens United distributes these films as DVDs and theatrical releases, and on broadcast, cable and satellite television.

Citizens United asked whether the costs of producing and distributing its films, and related marketing activities, are covered by the press exemption from the Act's definitions of "expenditure" and "electioneering communication."

### Analysis

The Act contains an exemption from the term expenditure for "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U.S.C. §431(9)(B)(i). The Act and Commission regulations also include a similar exemption

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### FEC Updates Electronic Format and FECFile Filing Software

As of June 1, 2010, FECFile Version 6.4.2.0 is available from the Commission's website at <http://www.fec.gov/electfil/updates.html>. Installation of the updated software is mandatory. The new version of FECFile is compatible with Microsoft Windows 7, has an auto-update feature and has an overall new look. A list of the changes to the software is available at that link as well.

## Advisory Opinions

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from the definition of electioneering communication for a communication that appears in a news story, commentary or editorial distributed through the facilities of any broadcast, cable or satellite television or radio station, unless such facilities are owned or controlled by any political party, political committee or candidate. 2 U.S.C. §434(f)(3)(B)(i) and 11 CFR 100.29(c)(2). Together, these exclusions are commonly referred to as the “press exemption” or “media exemption.”

In past advisory opinions, the Commission has applied the press exemption to a wide array of media, including cable television, the Internet, satellite broadcasts and other communications. The Commission conducts a two-step analysis to determine whether the media exemption applies. First, the entity engaging in the activity in question must be a press or media entity. AOs 2005-16, 1996-16, 1980-90. Second, the Commission must establish that the entity is not owned or controlled by a political party, a political committee or a candidate and that the entity is acting in its legitimate press function. *Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

While the Act and Commission regulations do not define the term “press entity,” the Commission has examined whether the entity in question regularly produces news stories, commentary and/or editorials. In the Explanation and Justification for the Final Rules on Electioneering Communications, the Commission stated that it will interpret “news story, commentary, or editorial” to include documentaries and educational pro-

gramming within the context of the media exemption to the “electioneering communication” definition in 11 CFR 100.29(c)(2). Citizens United has made 14 films since 2004, and is currently producing several more. The organization also devotes a substantial amount of its budget to producing and distributing its documentary films. Based on these facts, the Commission determined that Citizens United is a press entity for the purposes of this opinion.

Citizens United and its production affiliates are not controlled by any candidate, political party or political committee.

When considering whether an entity is serving a legitimate press function, the Commission examines whether the communication materials in question are available to the general public and whether they are comparable to those ordinarily issued by the entity. In *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 251 (1986), the Supreme Court held that a “Special Edition” newsletter did not qualify for the media exemption because the communication was not published through the same facilities as the regular newsletter, and it was distributed to a much larger group than the regular newsletter. The Commission found that the films discussed in Citizens United’s AO request are available to the general public and comparable in form to those previously produced. In addition, Citizens United receives monetary compensation from broadcasters that air its documentaries.

Based on these factors, the Commission determined that Citizens United’s documentary films are eligible for the media exemption.

Courts have held that where the underlying product is covered by the press exemption, so are advertisements to promote that product. See *FEC v. Phillips Publ'g*, 517 F. Supp. 1308, 1313 (D.D.C. 1981) (citing *Reader's Digest*, 509 F. Supp. at 1215). Thus, Citizens United’s ads would fall under the media exemption to the extent that they promote activities that are part of the organization’s legitimate press function. Ads that promote activities that are not part of Citizens United’s legitimate press function would not be covered by the media exemption.<sup>1</sup>

Date Issued: June 11, 2010;

Length: 12 pages.

—Isaac J. Baker

## Advisory Opinion Requests

### AOR 2010-09

Establishment and administration of, and solicitations by, a political committee that is connected to a 501(c)(4) corporation and only makes independent expenditures (Club for Growth, May 21, 2010)

### AOR 2010-10

Allocation of independent expenditures among federal candidates (National Right to Life PAC, June 10, 2010)

### AOR 2010-11

Nonconnected committee accepting corporate and union contributions to make independent expenditures (Commonsense Ten, June 11, 2010)

<sup>1</sup> Having found that Citizens United’s films qualify for the press exemption, the Commission determined that the question of whether the production and distribution of its films and related marketing activity constitute bona fide commercial activity by a commercial entity was moot.



## Reports

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committees of filing deadlines on its website, via its automated Faxline and through reporting reminders called prior notices. Prior notices are distributed exclusively by electronic mail. For that reason, it is important that every committee update its Statement of Organization (FEC Form 1) to disclose a current e-mail address. To amend Form 1, electronic filers must submit Form 1 filled out in its entirety. Paper filers should include only the committee's name, address, FEC identification number and the updated or changed portions of the form.

### Treasurer's Responsibilities

The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Federal Election Campaign Act (the Act) and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline. Accordingly, reports filed by methods other than electronically, or other than Registered, Certified or Overnight Mail must be received by the Commission's (or the Secretary of the Senate's) close of business on the last business day before the deadline.

### Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations that

receive contributions or make expenditures, including independent expenditures, in excess of \$50,000 in a calendar year—or have reason to expect to do so—must file all reports and statements with the FEC electronically.<sup>1</sup> Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the applicable filing deadline. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines. 11 CFR 104.18(e).

Senate committees and other committees that file with the Secretary of the Senate are not subject to the mandatory electronic filing rules, but may file an unofficial copy of their reports with the Commission in order to speed disclosure. The Commission's electronic filing software, FECFile, is free and can be downloaded from the FEC's website. New FECFile Version 6.4.2.0 is available for download from the FEC website at <http://www.fec.gov/electfil/updatelist.html>. All reports filed after June 1, 2010, must be filed in Format Version 6.4.2.0 (the new version). Reports filed in previous formats will not be accepted. Filers may also use commercial or privately developed software as long as the software meets the Commission's format specifications, which are available on the Commission's

website. Committees using commercial software should contact their vendors for more information about the Commission's latest software release.

### Timely Filing for Paper Filers

*Registered and Certified Mail.* Reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by certified or registered mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by certified mail. See 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

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## 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](http://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.

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



## Reports

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**Overnight Mail.** Reports filed via overnight mail<sup>2</sup> will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Express or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports. See 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

**Other Means of Filing.** Reports sent by other means—including first class mail and courier—must be received by the FEC (or the Secretary of the Senate) before close of business on the filing deadline. See 11 CFR 100.19 and 104.5(e).

Paper forms are available for downloading at the FEC's website (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency's automated fax system (202/501-3413). The 2010 Reporting Schedule is also available on the FEC's website ([http://www.fec.gov/info/report\\_dates\\_2010.shtml](http://www.fec.gov/info/report_dates_2010.shtml)), and from Faxline. For more information on reporting, call the FEC at 800/424-9530 or 202/694-1100.

### State, District and Local Party Committees

State, district and local party committees that engage in certain levels of "federal election activity" must file on a monthly schedule. See 11 CFR 300.36(b) and (c)(1). Committees that do not engage in reportable "federal election activity" may file on a quarterly basis in 2010. See 11 CFR 104.5(c)(1)(i).

### National Party Committees

National committees of political parties must file on a monthly schedule in all years. 2 U.S.C. §434(a)(4)(B) and 11 CFR 104.5(c)(4).

### Political Action Committees

PACs (separate segregated funds and nonconnected committees) that filed on a semi-annual basis in 2009 file on a quarterly basis in 2010. Monthly filers continue on the monthly schedule. PACs may change their filing schedule, but must first notify the Commission in writing. Electronic filers must file this request electronically. A committee may change its filing frequency only once a year, after giving notice of change in filing frequency to the Commission. The committee will receive a letter indicating the Commission's acknowledgment of the request. All future reports must follow the new filing frequency. 11 CFR 104.5(c).

### Additional Information

For more information on 2010 reporting dates:

- See the reporting tables in the January 2010 *Record*;
- Call and request the reporting tables from the FEC at 800/424-9530 or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or
- Visit the FEC's web page at [http://www.fec.gov/info/report\\_dates\\_2010.shtml](http://www.fec.gov/info/report_dates_2010.shtml) to view the reporting tables online.

—Elizabeth Kurland

### FEC Form 3L Due in July

Certain Leadership PACs, candidate committees and political party committees may be required to file FEC Form 3L in July. Under the lobbyist bundling disclosure rules, "reporting committees" (authorized committees, Leadership PACs and political party committees) must disclose certain information about lobbyists/registrants and lobbyist/registrant PACs that forward, or are credited with raising, two or more bundled contributions aggregating in excess of \$16,000 during a specific covered period. See 11 CFR 104.22(a)(6).

Committees file their FEC Form 3L, as necessary, on the same schedule as they file FEC Form 3, 3X or 3P. Committees that file Form 3X and 3P on a monthly basis may elect to file Form 3L quarterly, instead of monthly. 11 CFR 104.22(a)(5). Candidate committees, Leadership PACs and party committees that file Form 3L quarterly are required to file by the July 15, 2010, quarterly filing deadline. A committee must file Form 3L if a lobbyist/registrant or lobbyist/registrant PAC forwards to that committee or is credited by that committee with raising two or more bundled contributions that total more than \$16,000 during April 1 through June 30, 2010.

Leadership PACs, parties and Presidential committees that file Form 3L monthly are required to disclose lobbyist bundling activity by July 20, 2010, if they receive two or more bundled contributions that aggregate more than \$16,000 for the month of June. In addition to the above requirements, all reporting committees must also file Form 3L in July if they received two or more bundled contributions that aggregate more than \$16,000 during the six month semi-annual covered period.

Reporting committees that are monthly filers of FEC Form 3, 3X

(continued on page 10)

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

## Reports

(continued from page 9)

or 3P that wish to change their FEC Form 3L filing frequency from monthly to quarterly or from quarterly to monthly must first notify the Commission in writing and will receive a letter indicating the Commission's acknowledgment of the request. Electronic filers must file this request electronically. A reporting committee may change its Form 3L filing frequency only once in a calendar year. 11 CFR 104.22(a)(5)(iv). The committee will receive an acknowledgment letter from the Commission. All subsequent Form 3L reports should be filed on the new schedule.

For more information about these filing requirements, see the March 2009 issue of the *Record*, page 1.

—Elizabeth Kurland

## Court Cases

### The Real Truth About Obama, Inc., v. FEC and U.S. Department of Justice

On June 8, 2010, the U.S. Court of Appeals for the Fourth Circuit reissued its opinion in part, and remanded the case to the district court for further consideration in light of the Supreme Court's holding in *Citizens United* and the Solicitor General's suggestion of mootness.

On July 30, 2008, The Real Truth About Obama, Inc. (RTAO), filed a complaint in the U.S. District Court for the Eastern District of Virginia challenging the constitutionality of three FEC regulations and an FEC enforcement analysis. At the same time, RTAO filed a Motion for Preliminary Injunction which sought to enjoin the FEC and DOJ from enforcing the challenged analysis and regulations. In September 2008, the district court denied RTAO's motion, concluding that RTAO was unlikely to succeed on the merits of its claims

that the challenged provisions were unconstitutional. The court also concluded that granting the injunction would cause greater harm to the government than to RTAO. RTAO appealed the district court's decision to the U.S. Court of Appeals for the Fourth Circuit, and in August 2009, that court also denied RTAO's motion for an injunction.

In December 2009, RTAO filed a Petition for a Writ of Certiorari with the U.S. Supreme Court stating, among other things, that the appellate court applied an incorrect legal standard in denying its request for a preliminary injunction. The FEC argued that the Court of Appeals applied the correct standard in denying RTAO's motion and that certain issues are moot as a result of subsequent litigation. The FEC requested that the Court grant the Petition for Writ of Certiorari and vacate the appellate court's judgment with respect to some of the challenged regulations, and requested that the Court remand the case with instructions to declare those claims moot. On April 26, 2010, the U.S. Supreme Court granted RTAO's Petition for Writ of Certiorari, vacated the appellate court's judgment and remanded the case to the Court of Appeals for further consideration in light of the Supreme Court's holding in *Citizens United* and the Solicitor General's suggestion of mootness. In its per curiam Order on Remand, the Court of Appeals reissued its opinion on the facts and legal standard for issuing a preliminary injunction. The Court of Appeals remanded the remaining issues to the district court for further consideration.

The text of the court's order is available at [http://www.fec.gov/law/litigation/rtao\\_ac\\_order\\_percuriam.pdf](http://www.fec.gov/law/litigation/rtao_ac_order_percuriam.pdf).

—Zainab Smith

## 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](http://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.

## Court Cases

(continued from page 10)

### SpeechNow.org v. FEC

On May 27, 2010, the U.S. District Court for the District of Columbia entered final judgment on behalf of SpeechNow.org and declared that the contribution limitations in 2 U.S.C. §§441a(a)(1)(C) and 441a(a)(3) cannot be constitutionally applied against SpeechNow.org and others who wish to contribute to SpeechNow.org and ordered that the Commission is permanently enjoined from enforcing those contribution limits.

On March 26, 2010, the D.C. Circuit Court of Appeals held that the provisions of the Federal Election Campaign Act that limit the contributions that individuals may make to SpeechNow.org, and the contributions that SpeechNow.org may accept from them, violate the First Amendment. See the May 2010 *Record*, page 1.

—Myles Martin

### U.S. v. O'Donnell

On June 14, 2010, the U.S. Court of Appeals for the 9<sup>th</sup> Circuit reversed and remanded an earlier decision by the U.S. District Court for the Central District of California which found that 2 U.S.C. §441f, which states that “no person shall make a contribution in the name of another person,” applied only to direct contributions made under false names. The U.S. Court of Appeals found instead that the statute applies not only to so-called false name contributions, but also to indirect, straw donor contributions.

#### Background

The case revolves around alleged political contributions from Pierce O'Donnell to the Edwards for President campaign in 2003. Mr. O'Donnell solicited 13 individuals to donate contributions to the campaign in their own names

under the arrangement that he would either advance them the funds for the contributions or reimburse them at a later date. He was charged with contributing in the names of others, which is a violation of §441f.

#### Analysis

The case came down to whether §441f applies only to direct, “false name” contributions or also to indirect contributions made through straw donors. False name contributions are those in which the actual contributor making the contribution does so directly but under either another individual's name or a fictional name. Straw donor contributions are those in which the actual contributor making the contribution does so secretly and indirectly, through an undisclosed third party, either by advancing or reimbursing the third party the contribution funds.

The court analyzed who in a straw donor situation would be considered to be the actual contributor who actually made the contribution. It found that the straw donor who actually delivers the money to the committee is only acting as a mechanism, and that the original source of the contribution is the individual who actually made the contribution. Therefore, because O'Donnell was the original source of the contribution, he was the individual who made the contribution to the committee and his name should have been provided as the source.

The court clarified that in the context of reimbursements of straw donors, when the defendant and straw donor have a prior arrangement for the straw donor to make a contribution, coupled with a promise by the defendant to reimburse the straw donor at a later date, the violation of §441f would occur the moment the committee receives the contribution from the intermediary.

The court determined that the purpose behind §441f is to “ensure the complete and accurate disclosure of the contributors who finance federal elections” and therefore, the statute applies to both indirect, straw donor contributions, as well as direct “false name” contributions. The appeals court reversed the district court's dismissal of counts one and two—which alleged violations of §441f—and remanded the case to the district court for further action consistent with its decision.

U.S. Court of Appeals for the 9<sup>th</sup> Circuit, 09-50296.

—Katherine Wurzbach

### Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* starting with January 1989 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 1989. 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.



## Nonfilers

### Committees Fail to File Pre-Election Reports

The Commission cited several campaign committees for failing to file the 12-Day Pre-Election Reports required by the Federal Election Campaign Act (the Act).

#### California Pre-Primary Report

The Commission cited two campaign committees for failing to file the 12-Day Pre-Primary Election Report required by the Act for the California primary election held on June 8, 2010.

As of June 4, 2010, the required disclosure report had not been received from:

- Al Ramirez for US Senate; and
- Goodwin Exploratory Committee (CA-19).

The reports were due on May 27, 2010, and should have included financial activity for the period April 1, 2010, through May 19, 2010. If sent by certified or registered mail, the reports should have been post-marked by May 24, 2010.

The FEC notified committees involved in the California primary election of their potential filing requirements on May 3, 2010. Those committees that did not file on the due date were sent notification on May 28, 2010, that their reports had not been received and that their names would be published if they did not respond within four business days.

#### South Carolina Pre-Primary Report

The Commission cited a campaign committee for failing to file the 12-Day Pre-Primary Election Report required by the Act for the South Carolina primary election held on June 8, 2010.

As of June 4, 2010, the required disclosure report had not been received from:

- Burton for Congress (SC-01).  
The report was due on May 27, 2010, and should have included financial activity for the period April 1, 2010, through May 19, 2010. If sent by certified or registered mail, the report should have been post-marked by May 24, 2010.

The FEC notified committees involved in the South Carolina primary election of their potential filing requirements on May 3, 2010. Those committees that did not file on the due date were sent notification on May 28, 2010, that their reports had not been received and that their names would be published if they did not respond within four business days.

#### Additional Information

Some individuals and their committees have no obligation to file reports under federal campaign finance law, even though their names may appear on the ballot. If an individual raises or spends \$5,000 or less, he or she is not considered a “candidate” subject to reporting under the Act.

Other political committees that support Senate and House candidates in elections, but are not authorized committees of a candidate’s campaign, are also required to file quarterly reports, unless they report monthly. Those committee names are not published by the FEC.

Further Commission action against non-filers and late filers is decided on a case-by-case basis. Federal law gives the FEC broad authority to initiate enforcement ac-

tions, and the FEC has implemented an Administrative Fine program with provisions for assessing monetary penalties.

—Myles Martin

### Visit the FEC’s Redesigned Web Site

FEC staff recently completed a significant upgrade of the Commission’s web site, [www.fec.gov](http://www.fec.gov). The redesigned site offers a wealth of information in a simple, clearly-organized format. Features include cascading menus that improve navigation and interactive pages that allow users to tailor content to their specific needs. Noteworthy among the new features is a search engine. This tool allows visitors to immediately access all pages on the site that contain a desired word or phrase. Another new feature, the Commission Calendar, helps users keep track of reporting deadlines, upcoming conferences and workshops, Commission meetings, comment deadlines and more.

The site also offers a robust new enforcement section that includes the Enforcement Query System, information on closed MURs, the Alternative Dispute Resolution and Administrative Fine programs and—for the first time—access to final audit reports issued by the Commission.

The Commission encourages the regulated community and the public to make use of this dynamic and interactive site by visiting [www.fec.gov](http://www.fec.gov).

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