

Record

February 2011

Federal Election Commission

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Court Cases

FEC v. Kazran

On December 17, 2010, the Commission filed suit in District Court for the Middle District of Florida against Sam Kazran and 11-2001 LLC d/b/a Hyundai of North Jacksonville (“HNJ”). The Commission’s complaint alleges that Kazran and HNJ (collectively, “the Defendants”) violated the Federal Election Campaign Act (“Act”) by arranging for HNJ employees and others to make \$67,900 in contributions to the Vern Buchanan for Congress committee (“VBFC”) and then reimbursing them from HNJ funds. The complaint also alleges that HNJ violated the Act by making excessive contributions during the 2006 and 2008 election cycles.

Background

At the time of the alleged violations, HNJ was a car dealership in Jacksonville, Florida, that was organized as a partnership and registered as an LLC. Buchanan owned a majority interest in HNJ until 2008, when Kazran completed the purchase of Buchanan’s remaining interest of HNJ. VBFC was Buchanan’s principal campaign committee during his 2006 and 2008 campaigns for Florida’s 13th Congressional District.

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Advisory Opinions

AO 2010-30

Rental of E-Mail List to Committees at Fair Market Value Is Not Coordinated Expenditure or Coordinated Communication

Citizens United’s rental of its e-mail list to federal candidates and political committees at fair market value will not result in a prohibited coordinated expenditure or “coordinated communication.”

The Commission considered, but could not decide by the required four affirmative votes, whether or not Citizens United’s proposed activities violate the prohibition against corporate facilitation of contributions to candidates or political committees. See 11 CFR 114.2(f).

Background

Citizens United is a 501(c)(4) incorporated nonprofit membership organization which has developed a list of e-mail subscribers over a period of several years. The e-mail list includes members of Citizens United and non-members, such as individuals who have purchased DVDs from the organization. Citizens United regularly rents its e-mail list to other entities at fair market value through a commercial list brokerage firm.

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Court Cases

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Under 2 U.S.C. §441f of the Act, “[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person.”

The Commission’s complaint alleges that the defendants violated 2 U.S.C. §441f by using HNJ funds to reimburse HNJ employees, Kazran’s business partners, their family members and Kazran’s relatives for \$67,900 in contributions to Buchanan’s 2006 and 2008 congressional

campaigns. The complaint also alleges that HNJ violated 2 U.S.C. §441a(a) by contributing \$49,500 to VBFC during the 2006 election cycle, in excess of the \$2,100 per election limit in effect for that cycle, and \$18,400 to VBFC during the 2008 election cycle, in excess of the \$2,300 per election limit for that cycle.

On September 21, 2010, the Commission found probable cause to believe that HNJ and Kazran violated 2 U.S.C. §441f by using HNJ funds to make contributions to VBFC in the names of others. The Commission also found probable cause to believe that HNJ violated 2 U.S.C. §441a(a) by making contributions to VBFC in excess of the per election limits for the 2006 and 2008 election cycles.

The Commission attempted but failed to reach a conciliation agreement with the defendants and voted to authorize this civil suit.

U.S. District Court for the Middle District of Florida, 3:10-CV-1155-J-99TJC-JRK.

—Zainab Smith

Advisory Opinions

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Citizens United wants to rent its e-mail list to federal candidates, authorized committees of federal candidates, political party committees and other political committees using the same procedures it currently uses to rent its list to others. Under the brokerage firm’s standard practices, all communications on behalf of the renter of the list would appear to be from Citizens United, as Citizens United would be listed in the “from” line of the communication. However, the subject heading would indicate that the message and its content is from the e-mail list renter.

The political committee or federal candidate renting the list would pay the brokerage firm, which would deduct its fee then forward the remainder to Citizens United.

While committees must promise to pay before any e-mail messages are sent, the actual payments may occur afterward.

Analysis

The Federal Election Campaign Act (the Act) defines an “expenditure” as any “purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person” for the purpose of influencing a federal election. 2 U.S.C. §431(9)(A); 11 CFR 100.111(a). As an incorporated entity, Citizens United may use its treasury funds to make certain types of expenditures, but cannot coordinate its expenditures with a federal candidate or committee.¹ Doing so would result in a corporate contribution, which is prohibited under the Act. 2 U.S.C. §441b.

Commission regulations state that unless specifically exempted, “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for the goods or services is an expenditure.” 11 CFR 100.111(e)(1). “Usual and normal charge” is defined as 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).

Since Citizens United currently rents its e-mail list to other organizations at fair market prices, it may rent the list to federal candidates and political committees on the same terms without making an expenditure.

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¹ Prior to last year’s Supreme Court decision in *Citizens United v. FEC*, corporations were prohibited from making expenditures. 558 U.S. ___, 130 S. Ct. 876 (2010).

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Advisory Opinions

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Citizens United's rental of its e-mail list will also not constitute a "coordinated communication," which is prohibited by corporations. To determine if a communication constitutes a "coordinated communication," Commission regulations apply a three-prong test. First, the communication must be paid for, in whole or in part, by a person other than the candidate, the candidate's authorized committee, or the political party committee with whom it was coordinated (the "payment prong"). 11 CFR 109.21(a)(1). Commission regulations also apply a "content prong" and a "conduct prong." 11 CFR 109.21(a)(2) and (c); 11 CFR 109.21(a)(3) and (d)(1)-(5). All three prongs must be met in order for a communication to be considered "coordinated."

Under the Commission's coordination test, the payment prong would not be met since Citizens United will charge any federal candidate or political committee the usual and normal charge for the rental of the e-mail list.

Date Issued: December 23, 2010;
Length: 5 pages.

—Myles Martin

Alternative Disposition of Advisory Opinion Request

AOR 2010-25

On October 7, 2010, the Commission considered, but could not approve by the required four votes, an advisory opinion request by RG Entertainment, Ltd. The Commission concluded its consideration of the advisory opinion request without issuing an advisory opinion on January 6, 2011.

Advisory Opinion Requests

AOR 2011-01

Treatment of payment of litigation costs by legal defense fund as contributions (Robin Carnahan for Senate, January 5, 2011)

AOR 2011-02

Use of campaign funds for activities associated with candidate's book publication and promotion (Senator Scott Brown and Brown for U.S. Senate, Inc., January 14, 2011)

Outreach

DC Seminar for Political Party Committees

On March 2, 2011, the Commission will hold a one-day seminar for party committees at its headquarters in Washington, DC.¹ This seminar is recommended for:

- Treasurers and staff of national, state and local political parties who have responsibility for compliance with federal campaign finance laws;
- Attorneys, accountants and consultants who have clients that are national, state or local political party committees;
- Anyone who wants to gain in-depth knowledge of federal campaign finance law as it applies to political party committees; and
- Anyone who wants to learn about recent changes resulting from legislation and litigation.

The seminar will address fundraising and reporting rules, as well as recent changes to the law. Specific workshops are designed for those seeking an introduction to the basic provisions of the law, as well as those with more experience in

¹ This seminar replaces the FEC's annual Washington, DC, conference for party committees. For additional information, see the [October 2010 Record](#), page 14.

campaign finance law. Experienced FEC staff and Commissioners will conduct the workshops.

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 February 25, 2011. Complete information is available on the FEC web site at <http://www.fec.gov/info/conferences/2011/partyseminar.shtml>, along with the seminar agenda and a list of hotels located near the FEC. 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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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 website (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.

Outreach

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DC Seminar for House and Senate Campaigns

On April 6, 2011, the Commission will hold a one-day seminar for House and Senate campaign committees at its headquarters in Washington, DC.¹ This seminar is recommended for:

- Treasurers and staff of House and Senate campaigns who have responsibility for compliance with federal campaign finance laws;

¹This seminar replaces the FEC's annual Washington, DC, conference for campaign committees. For additional information, see the [October 2010 Record](#), page 14.

2011 FEC Seminars

Seminar for Political Party Committees

March 2, 2011
FEC Headquarters
Washington, DC

Seminar for House and Senate Campaigns

April 6, 2011
FEC Headquarters
Washington, DC

Seminar for Corporations and Their PACs

May 11, 2011
FEC Headquarters
Washington, DC

Seminar for Trade Associations, Labor Organizations and Membership Organizations and Their PACs

June 2011 (Date TBA)
FEC Headquarters
Washington, DC

- Attorneys, accountants and consultants who have clients that are any of the above;
- Anyone who wants to gain in-depth knowledge of federal campaign finance law as it applies to campaign committees; and
- Anyone who wants to learn about recent and possible future changes resulting from legislation and litigation.

The seminar will address fundraising and reporting rules, as well as recent changes to the law. Specific workshops are designed for those seeking an introduction to the basic provisions of the law, as well as those with more experience in campaign finance law. Experienced FEC staff and Commissioners will conduct the workshops.

The registration fee for this seminar is \$100 per attendee. Payment by credit card is required prior to the seminar. The FEC recommends waiting to make hotel and air reservations until you have received confirmation of your registration. A full refund will be made for all cancellations received before 5 p.m. EDT on April 1, 2011. Complete information is available on the FEC web site at <http://www.fec.gov/info/conferences/2011/candidateseminar.shtml>, along with the seminar agenda and a list of hotels located near the FEC. 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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