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2011 Edition of FEC Regulations Now Available

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Court Cases

Libertarian National Committee v. FEC

On March 17, 2011, the Libertarian National Committee, Inc. (LNC) filed suit against the Commission in the U.S. District Court for the District of Columbia. The LNC is seeking to permanently enjoin the application of the Federal Election Campaign Act's (the Act) contribution limits to the solicitation and receipt of contributions made by bequest from a deceased person's estate. The LNC argues that the ban on national party committees soliciting or receiving any funds not subject to the limitations, prohibitions and reporting requirements of the Act (2 U.S.C. §441i) cannot be constitutionally applied to decedents' bequests.

Background

The LNC is the national committee of the Libertarian Party of the United States, which is headquartered in Washington, DC. Its purpose is "to field national Presidential tickets, to support its state party affiliates in running candidates for public office, and to conduct other political activities in furtherance of a libertarian public policy agenda in the United States."

In April 2007, Raymond Groves Burrington of Knox County, Ten-

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Advisory Opinions

AO 2011-03

National Party Committees May Fund Litigation Expenses Using Recount Funds

Several requesting national party committees may use recount funds to pay costs associated with a lawsuit, filed under Texas law, which seeks disgorgement of contributions and donations that were allegedly the proceeds of a Ponzi scheme.

Background

The Democratic Senatorial Campaign Committee (DSCC), the National Republican Congressional Committee (NRCC), the Republican National Committee (RNC), the Democratic Congressional Campaign Committee (DCCC) and the National Republican Senatorial Committee (NRSC) (collectively the national party committees) were sued in the U.S. District Court for the Northern District of Texas by Mr. Ralph Janvey, who was appointed receiver over the property, assets and records of Allen Stanford. Mr. Stanford, together with others, is alleged to have run a Ponzi scheme. Mr. Janvey claims that proceeds from this scheme were donated and contributed to the national party com-

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nessee, died, and, in his last will and testament, bequeathed \$217,734 to the Libertarian Party. As indexed for inflation according to 2 U.S.C. §441a(c), the current annual limit for an individual contribution to a national party committee is \$30,800. In previous Advisory Opinions, the Commission has concluded that contributions made by bequest from a deceased person's estate are subject to the Act's contribution

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limits. AOs 2004-02, 1999-14. As a result, the Plaintiff did not accept the entire bequest at once, but rather accepted annual contributions from the Burrington Estate of \$28,500 in 2007 and 2008, the maximum contribution permissible at the time. The remaining balance of \$160,734 was placed into an escrow account. The escrow account, established under agreement with the Burrington Estate and the LNC, provides that the LNC must withdraw annually the maximum amount permitted by the individual contribution limits.

Complaint

The Plaintiff argues that applying the annual contribution limits and the bar on national party committees' soliciting and receiving funds not subject to the Act to decedents' bequests violates the First Amendment speech and associational rights of the LNC and its supporters. The suit asserts that limiting contributions from decedents' bequests does not serve any valid governmental interest. The Plaintiff seeks to implement a planned giving program to solicit bequests exceeding the contribution limits.

Because the LNC alleges that it is challenging the constitutionality of portions of the Bipartisan Campaign Reform Act of 2002 (BCRA), the Plaintiff requests a three-judge court to hear the case. Section 403 of BCRA allows for a three-judge court to hear a case brought for declaratory or injunctive relief to challenge the constitutionality of any provision or amendment of BCRA.

The full text of the court complaint is available at: http://www.fec.gov/law/litigation/lnc_lnc_complaint.pdf.

U.S. District Court for the District of Columbia: Case 1:11-cv-00562-RLW (filed March 17, 2011).

—Isaac J. Baker

Advisory Opinions

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mittees, and he seeks disgorgement of those donations and contributions along with payment of interest and attorney's fees.

Prior to the enactment of the Bipartisan Campaign Reform Act of 2002 (BCRA), national party committees were allowed to accept funds outside of the limits and prohibitions of the Federal Election Campaign Act (the Act) into their nonfederal accounts. Mr. Janvey's litigation principally concerns whether nonfederal, also called "soft money," donations to the national party committees made prior to the BCRA's effective date constitute fraudulent transfers under applicable state law. Nearly all of Mr. Stanford's donations to the national party committees were "soft money" contributions made to the parties' nonfederal accounts prior to the enactment of BCRA. Thus, for the most part, Mr. Janvey seeks disgorgement of funds that the national party committees have been prohibited from raising and spending since 2002. 11 CFR 300.12(a) and (c).

The national party committees have moved to dismiss the Janvey litigation and wish to draw on their respective recount funds to finance expenses associated with that litigation. A recount fund is a separate fund maintained by a national party committee that may be used to pay expenses incurred in connection with recounts and election contests of federal elections. See AO 2009-04.

Analysis

Under the circumstances presented in this request, the Commission concluded that the national party committees may use their recount funds to defray expenses for defending against the Janvey litigation.

Date Issued: April 7, 2011;

Length: 4 pages.

—Myles Martin

Advisory Opinions

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AO 2011-04

Candidate Position Papers Posted on Members-Only Section of Website

A nonprofit corporation may post candidate position papers on the members-only section of its website.

Background

The American Israel Public Affairs Committee (AIPAC) is a nonprofit 501(c)(4) corporation dedicated to maintaining and improving the bonds between the United States and Israel that the Commission has previously determined qualifies as a membership organization under 11 CFR 114.1(e). Although primarily a lobbying organization, AIPAC also encourages its members to be involved in campaign activities, such as volunteering for campaigns and making contributions. AIPAC compiles information on candidates and races for federal office, including the political history of the district or state, information about money raised by the candidates, public polling data, recent news about the race and a list of announced candidates for the office. AIPAC also compiles voting records of incumbents and encourages its members to review those records, but the organization does not itself rate or endorse candidates.

AIPAC would like to encourage all federal candidates to prepare position papers on the United States-Israel relationship, and asks the Commission if it can post the position papers unedited and in their entirety on a portion of its website that is accessible only to AIPAC members. The position papers would set forth the candidates' views on issues affecting the United States-Israel relationship and would not contain any express advocacy.

Analysis

The Federal Election Campaign Act (the Act) and Commission

regulations prohibit corporations, including incorporated membership organizations, from making contributions in connection with a federal election. 2 U.S.C. §441b(a); 11 CFR 114.2(b). However, communications by a membership organization to its restricted class are exempt from the definition of contribution and expenditure, and an incorporated membership organization may communicate with its restricted class on any subject, including by making express advocacy statements. 2 U.S.C. §431(9)(B)(iii) and (8)(B)(vi); 11 CFR 114.1(a)(2)(x) and 114.3(a)(2).

The Commission concluded that AIPAC may post candidate-prepared position papers on a section of its website accessible only by its members. Because posting the position papers constitutes a permissible communication between AIPAC and its membership, the Commission concluded that any costs associated with posting the papers would not be contributions or expenditures.

The Commission pointed out that, although a membership organization must report the costs incurred that are directly attributable to an express advocacy communication to its membership if those costs exceed \$2,000 for any election,¹ the member communications at issue do not contain express advocacy. Therefore AIPAC need not report any costs associated with the communications to the Commission. See 2 U.S.C. §431(9)(B)(iii); 11 CFR 114.3(b), 100.134(a) and 104.6(a).

Date: April 7, 2011;

Length: 4 pages.

—Zainab Smith

¹ Communications containing express advocacy but that are "primarily devoted to subjects other than the express advocacy" need not be reported. 2 U.S.C. §431(9)(B)(iii); 11 CFR 114.3(b), 100.134(a) and 104.6(a).

AO 2011-05

Use of Campaign Funds for Security Upgrades

Representative Lee Terry may use campaign funds to pay for enhanced security for his home. The payments would not be considered a prohibited personal use of campaign funds because the need for enhanced security stems from threats to Representative Terry stemming from his roles as a Member of Congress and as a candidate for federal office.

Background

Representative Terry is a member of the U.S. House of Representatives from Nebraska. Representative Terry was a federal officeholder and a candidate for re-election when, in October 2008, an individual became angry at receiving campaign literature from him and caused several disturbances at his Congressional

(continued on page 4)

Version 7 of FECFile Now Available

As of April 5, a new version of FECFile is available on the FEC website at <http://www.fec.gov/elect/update.html>. Current FECFile users need only open their software and accept the automatic update to Format Version 7. Reports filed in previous formats will no longer 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.

Advisory Opinions

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office. After Representative Terry's staff informed the individual that he should contact the Committee to complain, the individual stated that he knew where Representative Terry's residence was and that he would go to the residence to complain. This led the local Sheriff's office to increase its patrol presence in Representative Terry's neighborhood.

Between December 2008 and April 2009, the individual escalated his behavior, first leaving voicemails with the Nebraska Governor's office indicating his intention to appear at Representative Terry's house, and then leaving campaign literature on Representative Terry's front step. The individual was incarcerated from March to August, 2010. Since his release from custody, the individual has been observed driving past Representative Terry's Congressional office and through Representative Terry's neighborhood.

Several security measures were recommended by the Capitol Police. Representative Terry asks if he could use campaign funds to offset the costs of installing those recommended security measures at his home.

Analysis

The Federal Election Campaign Act (the Act) and Commission regulations prohibit campaign funds from being converted to personal use by any person. 2 U.S.C. §439a(b)(1) and 11 CFR 113.2(e). For items not listed in the regulations as examples of personal use, the Commission determines on a case-by-case basis whether an expense would fall within the definition of "personal use." 2 U.S.C. §439a(b)(2)(A)-(I); 11 CFR 113.1(g)(1)(i).

The Commission has previously concluded that payments for a home security system under circumstances similar to those presented here do not constitute personal use under the Act and Commission regulations.

AO 2009-08. In the facts at issue here, Representative Terry's campaign and his role as a Member of Congress appear to have motivated the individual to threaten him. The individual became angry at receiving campaign literature from Representative Terry, and left campaign literature addressed to him at the front step of his residence. The individual has stated to law enforcement that he is "striving against the abuse of power by public officials," and appears to have a history of stalking, harassment and threats. The individual may continue to pose a risk to Representative Terry and additional security measures, which are not intended to increase the value of Representative Terry's residence, have been recommended by authorities.

Based on these facts, the Commission concludes that the individual's actions would not have occurred had Representative Terry not been a Member of Congress or a candidate for re-election. The expenses for the proposed upgrades suggested by the U.S. Capitol Police would not exist irrespective of the Congressman's campaign or duties as an officeholder, and therefore, the use of campaign funds to pay the costs of the additional security measures would not constitute personal use of campaign funds under 2 U.S.C. §439a(b).

Date Issued: April 1, 2011;

Length: 5 pages.

—Christopher Berg

Advisory Opinion Requests

AOR 2011-06

Vendor collecting and forwarding contributions from individuals to political committees (Democracy Engine, April 8, 2011)

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2011 Conferences and Seminars

Seminars for Corporations and Their PACs

May 11 and 18, 2011

FEC Headquarters

Washington, DC

Sold Out

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

June 7 and 8, 2011

FEC Headquarters

Washington, DC

Sold Out

Regional Conference For Campaigns, Party Committees and Corporate/Labor/Trade PACs

September 7-8, 2011

Minneapolis, MN

Regional Conference For Campaigns, Party Committees and Corporate/Labor/Trade PACs

October 25-26, 2011

San Diego, CA

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