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Commission

Draft FEC Strategic Plan, FY 2014-2019, Available for Public Comment

The FEC's Draft Strategic Plan, FY 2014-2019, is now available for public comment on the FEC website at <http://www.fec.gov/pages/budget/budget.shtml>. The strategic objectives and activities identified in this draft plan challenge the FEC to engage in new activities, streamline and improve its operations and achieve its mission within the constantly changing landscape of campaign finance law and practices. In creating its new Draft Strategic Plan, the Commission focused on building long-term programs and practices capable of transforming agency operations for the better.

The Commission will finalize this draft plan in December, and the new plan will take effect in early 2014. The FEC is requesting public comments on the draft to help the Commission better understand the perspectives and meet the needs of individuals and groups who may be affected. Individuals may submit their comments via email at StrategicPlanComments@fec.gov through November 11, 2013.

(Posted 9/27/2013; By: Amy Kort)

Advisory Opinions

AO 2013-04: Democratic Governors Association/Jobs and Opportunity

As an association of state candidates, the Democratic Governors Association ("Association") must use federal funds to finance its voter registration, get out the vote, voter identification, and generic campaign activities ("federal election activity" or "FEA") in connection with the 2014 elections. The Commission could not approve by the required four affirmative votes an answer as to whether another political organization, "Jobs and Opportunity," whose only members will be the Association's executive director and chief operating officer, must also use federal funds to finance its FEA.

Background

The Association is an unincorporated political organization not affiliated with any political party committee and its only members are incumbent Democratic governors. It supports Democratic governors and gubernatorial candidates by providing strategic advice to their campaigns, highlighting their achievements, providing policy guidance, and criticizing policies of Republican governors. It funds these operations using funds that are outside the amount limitations and source prohibitions of the Act ("nonfederal funds"). The Association does, however, report these activities to the appropriate state campaign-finance agencies, as required by state law.

Jobs & Opportunity will also be a political organization and plans to make "independent expenditures" in selected gubernatorial races. Its only members will be the Association's executive director and its chief operating officer; no officeholders or candidates will be members of Jobs & Opportunity, and the Association's members "will generally not play a role" in decisions about Jobs & Opportunity's daily operations or how it spends its funds.

Both the Association and Jobs & Opportunity plan to make disbursements for voter registration, GOTV activities, voter identification, and generic campaign activities in connection with the 2014 elections. Both would use nonfederal funds to pay for these activities, but neither would use nonfederal funds to pay for public communications that promote, support, attack, or oppose federal candidates.

Analysis

The Act and Commission regulations require any "association or similar group" of state or local candidates or officeholders to pay for FEA with funds subject to the limitations, prohibitions, and reporting requirements of the Act. 2 U.S.C. §441i(b)(1); 11 CFR 300.32(a)(1). This includes voter registration activity within 120 days before a federal election, voter identification, GOTV, and generic campaign activity conducted in connection with an election in which a candidate for federal office appears on the ballot. 2 U.S.C. §431(20)(A)(i)-(ii); 11 CFR 100.24(b). Because it is an "association... of individuals holding State or local office," the Association is required to use federal funds to pay for its proposed FEA.

The Commission was unable to approve by the required four affirmative votes an answer as to whether Jobs & Opportunity must also pay for FEA with only federal funds.

Date Issued: September 12, 2013; Length: 3 pages

(Posted 9/16/2013; By: Travis Drake)

Resources:

- [Advisory Opinion 2013-04](#) [PDF]
- [Commission consideration of AOR 2013-04](#) 

AO 2013-12 – Service Employees International Union Committee (SEIU) and the SEIU Committee on Political Education (SEIU COPE)

The Service Employees International Union Committee (SEIU) and its separate segregated fund, the SEIU Committee on Political Education (SEIU COPE), may use recorded telephone conversations to obtain and maintain restricted class members’ authorizations for payroll deduction contributions to SEIU COPE.

Background

SEIU COPE is registered with the Commission as SEIU’s separate segregated fund (“SSF”). SEIU COPE receives its contributions mostly through payroll deductions from SEIU’s restricted class. Currently, members of the restricted class authorize these payroll deductions either in handwritten documents or by electronic signatures provided via email or web-based communications.

SEIU and SEIU COPE propose to obtain and maintain payroll deduction authorizations from SEIU’s members through recorded telephone conversations.

Analysis

Under Commission regulations, a labor organization PAC may use payroll deduction or a check-off system to solicit and collect contributions from the organization’s restricted class (i.e., its executive and administrative personnel, members and the families of both groups). 11 CFR 114.1(j) and 114.2(f)(4)(i). The solicitation must include certain notices designed to ensure contributions are voluntary. See 11 CFR 114.5(a). Also, the donor must provide an affirmative authorization for payroll deduction. [Federal Election Commission v. National Education Association](#), 457 F.Supp. 1102 (D.D.C. 1978).

The required affirmative authorization often takes the form of a donor’s signature. That signature functions as a unique identifier for the member and satisfies the regulatory recordkeeping requirements. 11 CFR 104.14(b). Those records must be preserved for at least three years after the related report or statement is filed. 11 CFR 104.14(b).

SEIU plans to call its current members, verify that the individual is within the restricted class, and then solicit contributions to SEIU COPE. The caller will inform the member that the conversation is being recorded and provide the statements required by 11 CFR 114.5(a).

If the member agrees to contribute via payroll deduction, the member's consent will be stored in an electronic database along with the amount of the authorized contributions, the date of the call and the identity of the caller. The enrolled member will be provided with contact information in order to cancel or modify their contributions at any time. SEIU will maintain a record of the authorization in retrievable form and a recording of the telephone conversation for at least three years after the contributions are reported.

In past advisory opinions, the Commission has approved payroll-deduction authorizations in a form other than the traditional written signature. (See [AOs 2001-04](#) (Morgan Stanley Dean Witter Political Action Committee), [1999-06](#) (National Rural Letter Carriers Association) and [1999-03](#) (Microsoft Corporation).) In fact, the Commission issued a policy statement in 2006 to clarify its application of the Act's authorization and recordkeeping requirements for payroll deductions. See [Statement of Policy; Recordkeeping Requirements for Payroll Deduction Authorizations, 71 Fed. Reg. 38,513](#) (July 7, 2006).

In this case, the procedural safeguards and recordkeeping mechanisms satisfied the Act's authorization and recordkeeping requirements and led the Commission to approve SEIU's proposal.

Date Issued: 9/12/2013; Length: 4 pages

(Posted 9/23/2013; By: Kathy Carothers)

Resources:

- [Advisory Opinion 2013-12](#) [PDF]
- [Commission consideration of Advisory Opinion 2013-12](#) 

Alternative Disposition of Advisory Opinion Request 2013-14 (Martin Long)

On September 12, 2013, the Commission considered an Advisory Opinion Request (AOR) from Congressional candidate Martin Long regarding the use of campaign funds to produce and distribute campaign materials that include a reference to a book he wrote. The Commission was unable to approve a response by the required four affirmative votes, and concluded its consideration of the request without issuing an Advisory Opinion.

(Posted 9/13/2013; By: Dorothy Yeager)

Resources:

- [Commission consideration of AOR 2013-14](#) 
- [Advisory Opinion Request 2013-14](#) [PDF]

Litigation

Conway for Senate v. FEC

On August 20, 2013, the U.S. District Court for the Western District of Kentucky dismissed Conway for Senate's challenge to the Commission's assessment of a \$4,950 civil monetary penalty for filing the 2010 Year-End Report late.

Background

The Federal Election Campaign Act (the Act) requires federal candidate committees to file various financial statements, including quarterly reports. Quarterly reports are due by the 15th day of the month following the calendar quarter, except for the Year-End Report, which is due by January 31 of the following year. Senatorial candidates file their reports with the Secretary of the Senate, which must then forward a copy of the report to the Commission within two business days.

Conway for Senate, the principal campaign committee for Jack Conway's 2010 campaign in Kentucky, claims that a receptionist for the committee treasurer placed its 2010 Year-End Report, along with other items, into a FedEx envelope on January 25, 2011, and sent it overnight to the Senate Office of Public Records. The committee says the package was delivered to the Senate on January 26, 2011, and contained all the information required by the FEC. The Commission did not receive the report, and contacted the committee's treasurer on February 17, 2011. On April 1, 2011, the Commission found reason to believe that Conway for Senate violated the Act's reporting requirements by not filing the 2010 Year-End Report and assessed a civil penalty of \$4,950.

On May 10, 2012, Conway for Senate filed a complaint in the U.S. District Court for the Western District of Kentucky challenging that civil penalty. The complaint asked the Court to set aside or modify the civil penalty and the Commission's determination that Conway for Senate violated the Act.

The plaintiff claimed the Commission, in making its determination, failed to adequately take into account the statements and sworn affidavits submitted that indicate the 2010 Year-End Report was included in the January 25, 2011, FedEx package sent to the Senate Office of Public Records.

The Commission contacted the Superintendent of the Office of Public Records of the Senate and asked for a review of the reports received from Conway for Senate. The Office of Public Records acknowledged receiving five separate reports in the January 25, 2011, FedEx envelope, but stated that the 2010 Year-End Report was not included.

Court Opinion

Judge Charles R. Simpson III's opinion states that there was no dispute between the parties over the correct standard of judicial review to apply in this case. That standard allows a reviewing Court to overturn an agency action only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. §706(2) (A). An agency action is arbitrary and capricious if the agency failed to examine relevant evidence or failed to offer a satisfactory explanation for the action.

The Court found that the Commission had “not acted arbitrarily or capriciously,” in its consideration of all relevant evidence and made a plausible factual determination. The Court opinion states: “The evidence submitted by Conway for Senate does not compel a finding that the FEC acted arbitrarily or capriciously.” Because the Court found that the Commission’s decision was not arbitrary or capricious, it granted the agency’s motion and dismissed the case.

Date Issued: 8/20/2013; 11 pages

U.S. District Court for the Western District of Kentucky at Louisville: Case 3:12-cv-00244-CRS-JDM

(Posted 9/4/2013; By: Isaac Baker)

Resources:

- [Administrative Fines Program](#)
- [Conway for Senate v. FEC Ongoing Litigation Page](#)

Reporting

Louisiana Special Election Reporting: 5th District

On October 19, 2013, Louisiana will hold a Special General Election to fill the U.S. House seat being vacated by Representative Rodney Alexander in Louisiana’s 5th Congressional District. [fn1] If no candidate receives a majority of votes, the top two vote-getters will participate in a Special Runoff Election on November 16, 2013.

Candidate committees involved in this election must follow the reporting schedule posted at http://www.fec.gov/pages/report_notices/2013/la05.shtml. That schedule also applies to PACs and party committees that file on a semi-annual basis in 2013 and participate in this election. PACs and party committees that file monthly should continue to file according to their regular filing schedule. Please note that the FEC does not have authority to extend filing deadlines, even when they fall on weekends or holidays.

Filing Electronically

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern 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.

¹ In [AO 2000-29 \[PDF\]](#), the Commission determined that the last day to qualify for a position on the general election ballot in Louisiana--in this case 08/21/13--must be considered the primary election date for Louisiana candidates. See [11 CFR 100.2\(c\)\(4\)\(i\)](#).

Timely Filing for Paper Filers

Registered and Certified Mail. Reports sent by registered or certified mail must be post-marked on or before the mailing deadline to be considered timely filed. A committee sending its reports by certified mail should keep its certified 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. A committee sending its report by registered mail should keep its proof of mailing. Note that a certificate of mailing from the USPS is not sufficient to prove that a report is timely filed using registered, certified or overnight mail. 2 U.S.C. §434(a)(5) and 11 CFR 100.19 and 104.5(e) and (i).

Overnight Mail. Reports filed via overnight mail [fn2] 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. 2 U.S.C. §434(a)(5) and 11 CFR 100.19 and 104.5(e).

Other Means of Filing. Reports sent by other means—including first class mail and courier—must be received by the FEC before the Commission’s close of business on the last business day before the filing deadline. 11 CFR 100.19 and 104.5(e).

Forms are available for downloading and printing 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).

48-Hour Contribution Notices

A participating candidate’s principal campaign committee must file a 48-hour notice each time it receives a contribution of \$1,000 or more between September 30 and October 16 for the Special General and between October 28 and November 13 for the Special Runoff.

24- and 48-Hour Reports of Independent Expenditures

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate \$1,000 between September 30 and October 17 for the Special General and between October 28 and November 14 for the Special Runoff. This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more during the calendar year up to and including the 20th day before an election. The 48-hour reporting requirement applies to independent expenditures that aggregate at or above \$10,000 prior to September 30 for the Special General. For the Special Runoff, the 48-hour reporting requirement applies to independent expenditures that aggregate at or above \$10,000 prior to October 28.

Electioneering Communications

The 60-day electioneering communications period in connection with the Special General runs from August 20 through October 19. The 60-day electioneering communications period in connection with the Special Runoff runs from September 17 through November 16.

² “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.

Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special election must simultaneously file FEC Form 3L if they receive two or more bundled contributions from any lobbyist/registrant or lobbyist/registrant PAC that aggregate in excess of \$17,100 during the special election reporting period. 11 CFR 104.22(a)(5)(v) and (b). For more information on these requirements, see the [March 2009 Record](#).

(Posted 9/6/13; By: Katherine Carothers)

Resources:

- [Louisiana 5th District Special Election Prior Notice](#)
- [2013 Reporting Dates](#)
- [Louisiana 5th District Special Election Compliance Page](#)
- [Federal Register Notice](#)

Outreach

FEC to Host Webinars for Campaign Committees

On September 25, 2013, the Commission will offer a webinar for new candidates and their committees. "*Candidate 101: Preparing for the Next Election Cycle*" provides an introduction to the campaign finance laws and regulations that apply to federal candidates and campaigns, covering topics such as candidate registration, treasurer responsibilities, contribution limits and prohibitions, and basic reporting requirements.

On October 2, 2013, the Commission will present reporting and FECFile webinars for campaign committees. The reporting session will address common filing problems and provide answers to questions committees may have as they prepare to file their October 15 quarterly reports. The electronic filing session will demonstrate the Commission's FECFile software and address questions filers may have concerning electronic filing.

Webinar Information. These workshops are available only online via webinar. Additional instructions and technical information will be provided to those who register.

Registration Information. The registration fee is \$15 per session. For the Candidate 101 webinar, a full refund will be made for all cancellations received by Friday, September 20; no refunds will be made for cancellations received after that time. For the reporting and FECFile webinars, a full refund will be made for all cancellations received by Friday, September 27; no refunds will be made for cancellations received after that time.

Complete registration information is available on the FEC's 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).

Registration Questions

Please direct all questions about webinar registration and fees to Sylvester Management at 1-800/246-7277 or email Rosalyn@sylvestermanagement.com. For other questions call the FEC's Information Division at 800/424-9530 (press 6), or send an email to Conferences@fec.gov.

Roundtable Schedule:**September 25, 2013**

Online Only

- "Candidate 101: Preparing for the Next Election Cycle", 11:00 AM — 12:30 PM EDT

October 2, 2013

Online Only

- Reporting for Candidate Committees, 1:00 — 2:30 PM EDT
- FECFile & E-Filing for Candidate Committees, 2:45 — 4:15 PM EDT

(Posted 9/3/2013; By: Molly Niewenhous)

Resources:

- [FEC Educational Outreach Page](#)