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Regulations

Final Rules on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations

On October 9, 2014, the Commission approved final rules that permit corporations and labor organizations to finance independent expenditures and electioneering communications. The rules were promulgated in response to a Petition for Rulemaking filed by the James Madison Center for Free Speech petitioning the Commission to revise its regulations in response to the Supreme Court's decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), which invalidated the ban on corporate independent expenditures and electioneering communications.

Background

The Federal Election Campaign Act (the Act) and Commission regulations prohibit corporations and labor organizations from using their general treasury funds to make contributions or expenditures in connection with a federal election. 52 U.S.C. § 30118 (formerly 2 U.S.C. § 441b), and 11 CFR 114.2. This ban extends to payments for independent expenditures and electioneering communications. See 52 U.S.C. §§ 30101(17), 30104(f)(3), 30118(b)(2) (formerly 2 U.S.C. §§ 431(17), 434(f)(3), 441b(b)(2)); 11 CFR 100.16(a), 100.29(a).

In January 2010, the Supreme Court held that the Act's prohibitions against corporate spending on independent expenditures or electioneering communications were unconstitutional. However, the Supreme Court upheld statutory provisions that require these communications to contain disclaimers and be reported to the Commission.

Since that time, the Commission has not enforced any statutory or regulatory provisions prohibiting corporations and labor organizations from making independent expenditures and electioneering communications. With this rulemaking, the Commission formally implements regulatory changes in response to the *Citizens United* decision. In addition to technical and conforming edits, the Commission approved the following changes to the regulations:

11 CFR 114.2. The Commission revised 11 CFR 114.2 to remove paragraphs (b)(2)(i), (b)(2)(ii) and (b)(3), which had prohibited corporations and labor organizations from making expenditures, express advocacy communications and electioneering communications beyond the restricted class. In addition, the Commission added a note referring to court decisions that corporations and labor organizations may make contributions to independent expenditure-only committees (Super PACs) and independent expenditure-only accounts maintained by Hybrid PACs.

11 CFR 114.3. The Commission revised the regulations on voter registration and get-out-the-vote (GOTV) drives aimed at the restricted class. The Commission removed language in paragraph (c)(4) that prohibited corporations and labor organizations from withholding voter registration or GOTV assistance based on support for or opposition to a particular federal candidate or party. The Commission concluded that the holding in *Citizens United* applies to all corporate and labor organization expenditures that are not coordinated and that do not otherwise constitute in-kind contributions. Accordingly, the Commission revised paragraph (c)(4) to permit partisan voter registration and GOTV activities, but prohibited corporations from coordinating with any candidate or party committee in conducting the drives.

Although the Commission did not edit the reporting requirements under 11 CFR 114.3(b), it should be noted that, while disbursements for nonpartisan voter registration and GOTV drives are not reportable expenditures under 52 U.S.C. § 30104(c)(1) (formerly 2 U.S.C § 434(c)(1)), disbursements for partisan drives aimed at the restricted class may be reportable expenditures. These disbursements must be reported if the activity includes express advocacy and exceeds the \$2,000 reporting threshold.

11 CFR 114.4. The Commission removed all prohibitions on express advocacy beyond the restricted class in the communications described in 11 CFR 114.4(c). The Commission retained paragraphs (c)(2)-(6) as a non-exhaustive list of the types of permissible communications that corporations and labor organizations might make. The Commission also reorganized paragraph (c) to include explicit permission to make independent expenditures and electioneering communications, but included a general prohibition on coordination with candidates or party committees (unless coordinating with a candidate for endorsements to the restricted class under (c)(6) or for appearances at an educational institution under paragraph (c)(7)). The Commission also removed the exception for electioneering communications made by Qualified Nonprofit Corporations (QNCs) since *Citizens United* permits all corporations and labor organizations to make electioneering communications.

Finally, the Commission revised 11 CFR 114.4(d), the regulation on voter registration and GOTV drives aimed at the general public. The Commission removed the prohibition against corporations and labor organizations withholding assistance based upon support for or opposition to a particular candidate or party and removed the prohibition on express advocacy as part of those drives.

11 CFR 114.10. The Commission revised part 114.10 to remove the exemption for QNCs and to cross-reference the regulations applicable to corporate and labor organization independent expenditures and electioneering communications. This provision also restates the prohibition on coordinated expenditures, coordinated communications and contributions, and appends a note referring to court decisions that corporations and labor organizations may make contributions to independent expenditure-only committees (Super PACs) and independent expenditure-only accounts maintained by Hybrid PACs.

11 CFR 114.14 and 114.15. The Commission removed parts 114.14 and 114.15 in their entirety. These provisions placed restrictions on how general treasury funds may and may not be used for electioneering communications. Since *Citizens United* held that corporations and labor organizations may use general treasury funds to make all electioneering communications, the Commission removed sections of the regulations that distinguished between them.

11 CFR 104.20. The Commission combined paragraphs (c)(7)(i) and (c)(7)(ii) into new paragraph (c)(7) to permit any person (including a corporation or labor organization) making electioneering communications to do so from a segregated account consisting of donations from persons who may lawfully finance electioneering communications. The Commission concluded that since an electioneering communication (regardless of whether it is functionally equivalent to express advocacy) may now be financed with individual, corporate or labor funds, there is no longer a need for the regulations to distinguish between accounts based on who contributes to them or whether the electioneering communications are functionally equivalent to express advocacy. For clarity, the Commission also expressly listed the entities that may not contribute to the segregated accounts because they are prohibited from financing electioneering communications (foreign nationals, national banks, and corporations created by a law of Congress). The Commission also revised paragraphs (c)(8) and (c)(9) to conform those paragraphs to the removal of 11 CFR 114.15. Finally, the Commission added language to paragraph (c)(9) to clarify that that paragraph applies when the reporting entity does not use the segregated account option of paragraph (c)(7).

Additional Information

The final rules and Explanation and Justification were published in the *Federal Register* on October 21, 2014 (79 Fed. Reg. 62797). They are available on the Commission's website at <http://sers.fec.gov/fosers/showpdf.htm?docid=305685>. Before final promulgation of the rules, the Commission transmits the rules to Congress for a thirty-day review period. The final rules were transmitted to Congress on October 10, 2014.

(Posted 10/23/2014; By: Zainab Smith)

Resources:

- *Federal Register* notice: [Final Rules on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations](#) [PDF; 23 pages]
- [Commission discussion of draft final rules](#) 
- [Citizens United v. FEC Litigation Page](#)

Commission Issues Interim Final Rule and ANPRM to Address Supreme Court Ruling in *McCutcheon*

On October 9, 2014, the Commission approved both an interim final rule and an Advance Notice of Proposed Rulemaking (ANPRM) to revise the Commission's regulations to reflect the Supreme Court's decision in *McCutcheon v. FEC*. The interim final rule removes regulations that impose aggregate contribution limits the Court held were unconstitutional, and the ANPRM invites public comment on whether the Commission should undertake a new rulemaking to revise or amend other regulations in light of the Court's ruling. The Commission intends to hold a hearing on the ANPRM on February 11, 2015, and invites public comment on what revisions, if any, it should consider.

Interim Final Rule

The Federal Election Campaign Act (the Act) limits the aggregate amount individuals may contribute in connection with federal elections during a two-year period. 52 U.S.C. § 30116(a)(3) (formerly 2 U.S.C. § 441a(a)(3)). During the period of January 1, 2013 through December 31, 2014, an individual could contribute up to \$48,600 to federal candidates and up to \$74,600 to all other federal political committees, of which no more than \$48,600 could go to political committees other than national party committees. On April 2, 2014, the Supreme Court issued its decision in *McCutcheon v. FEC*, holding that the Act's aggregate contribution limits are unconstitutional. See *McCutcheon v. FEC*, 572 U.S. ___, 134 S. Ct. 1434 (2014).

As a result of the decision, the Commission is removing its regulation at 11 CFR 110.5 that implemented the Act's aggregate contribution limits. It is also making technical and conforming amendments to several other regulations that make reference to the aggregate limits at 110.5. These revisions take effect immediately and were published in the *Federal Register* on October 17, 2014.

Advance Notice of Proposed Rulemaking

In addition to the interim final rule, the Commission is also requesting comments from the public on whether to begin a new rulemaking to revise other regulations in light of the Court's decision in *McCutcheon*. The ANPRM also appeared in the *Federal Register* on October 17, 2014.

In the *McCutcheon* decision, the Court stated that there are "multiple alternatives available to Congress that would serve the Government's interest in preventing circumvention [of the contribution limits] while avoiding 'unnecessary abridgment' of First Amendment rights." See *McCutcheon*, 134 S. Ct. at 1458. Mechanisms that could be implemented or amended to prevent circumvention include earmarking regulations, affiliation factors, joint fundraising regulations and disclosure requirements. The Commission seeks comment on whether it should modify its regulations or practices in these areas.

Earmarking. The Act provides that "all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate," are contributions from that person to the candidate. 52 U.S.C. § 30116(a)(8) (formerly 2 U.S.C. § 441a(a)(8)). See also 11 CFR 110.6(b)(1).

In enforcement actions, however, the Commission has determined that funds are considered to be "earmarked" only when there is "clear documented evidence of acts by donors that resulted in their funds being used" as contributions. See, for example, Factual & Legal Analysis at 6-7, MUR 5732 (Matt Brown for U.S. Senate) (2007). The Commission asks if it should revisit the manner in which it enforces its earmarking regulations to encompass "implicit agreements" to circumvent the contribution limits. Commission regulations also provide that the amount of a person's contributions to a candidate and to a political committee supporting the same candidate must be aggregated under certain conditions. 11 CFR 110.1(h). The Commission asks whether it should amend the regulation by, for example, establishing a maximum percentage of a political action committee's funds that can be directed to a single candidate in order "to ensure that a substantial portion' of a donor's contribution is not rerouted to a certain candidate." See *McCutcheon* at 1459.

Affiliation. Commission regulations provide that "[a]ll committees...established, financed, maintained, or controlled, by the same ... person, or group of persons ... are

affiliated,” and thus share a single contribution limit. 11 CFR 100.5(g)(2) and 110.3(a)(1) (ii). The Commission asks if its current regulations are adequate to prevent circumvention of the base limits. The Commission also asks whether it should revisit its affiliation factors and, if so, how.

Joint Fundraising. The Act and Commission regulations authorize the creation of joint fundraising committees, which may involve multiple federal candidates, committees, or nonfederal organizations raising funds in a single effort. 52 U.S.C. § 30102(e)(3)(A)(ii) (formerly 2 U.S.C. § 432(e)(3)(A)(ii)). On this point, the *McCutcheon* decision noted that the joint fundraising rules could be revised, for instance, to limit the size of joint fundraising committees or require that funds received by participants in a joint fundraising committee could be spent “only by their recipients.” See *McCutcheon* at 1458-59. The Act includes provisions that can affect transfers between committees engaged in joint fundraising. Accordingly, the Commission asks if it can or should revise its joint fundraising rules and, if so, how.

Disclosure. The Court also stated that disclosure provisions may “deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.” *McCutcheon* at 1459-60. The Court also noted that, due to developments in technology, “disclosure offers much more robust protections against corruption” because “[r]eports and databases are available on the FEC’s [website] almost immediately after they are filed.” See *id.* at 1460. The Commission asks what regulatory changes or other steps it should take to further improve its collection and presentation of campaign finance data.

Submission of Comments and Commission Hearing

The Commission invites comments on both the interim final rule and the ANPRM. All comments must be in writing and may be submitted electronically via the Commission’s website at <http://sers.fec.gov/fosers>, reference REG 2014-01. Comments may also be submitted in paper form, although the Commission recommends that they be submitted electronically to ensure timely receipt. Paper comments should be sent to:


Federal Election Commission
Attn: Amy L. Rothstein, Assistant General Counsel
999 E Street, NW
Washington, DC 20463

All comments must include the full name and postal service address of a commenter (or each commenter if filed jointly) or they will not be considered. At the conclusion of the comment period, the Commission will post all received comments on its website. **Comments on the Interim Final Rule must be received by November 17, 2014, and comments on the ANRPM must be received by January 15, 2015.**

The Commission will hold a hearing on the ANPRM on February 11, 2015. Anyone wishing to testify must file written comments by the due date above and must include a request to testify in the written comments.

Posted 10/17/2014; By: Myles Martin

Resources:

- *Federal Register* Notice: [Interim Final Rule](#) [PDF]
- *Federal Register* Notice: [Advance Notice of Proposed Rulemaking](#) [PDF]
- [Supreme Court Decision in *McCutcheon v. FEC*](#) (April 2, 2014) [PDF]
- Commission Discussion of [Interim Final Rule](#) and [Advance Notice of Proposed Rulemaking](#) 

Petition for Rulemaking on Federal Office Definition

On August 28, 2014, the Commission received a Petition for Rulemaking from National Convention PBC. The petition urges the Commission to expand its regulatory definition of "federal office" to include delegates to a constitutional convention. Currently, the definition includes "the office of President or Vice President of the United States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States." 11 CFR 100.4. Public comments on this petition are due by November 3, 2014.

(Posted 10/02/2014; By: Alex Knott)

Resources:

- [Federal Register Notice of Availability: Petition for Rulemaking](#) [PDF]
- [Text of Petition for Rulemaking from National Convention PBC](#) [PDF]

Advisory Opinions

AOs 2014-14 & 2014-15: Professors May Receive Fringe Benefits from College During Campaigns

Two federal candidates, who are also college faculty members, may continue to receive fringe benefits payments from their employer during their unpaid leaves of absence to run for Congress. These candidate/employees' receipt of these benefits does not violate the ban on corporate contributions because the college's payment is part of a consistent policy available to all qualified employees and will be made on the same terms as other faculty members.

Background

Requestors John Trammell and David Brat are both professors at Randolph-Macon College, who are taking unpaid leaves of absence to campaign for the same U.S. House seat, in Virginia's 7th District. Both filed separate advisory opinion requests — Trammell (2014-14) and Brat (2014-15) — asking whether they can continue to receive fringe benefits from the college while on their leaves of absence to run for federal office.

Democratic nominee Trammell has been employed by Randolph-Macon College (a Virginia corporation) since 2000, and he currently is employed as the Director of Disability Support Services and as an Assistant Professor. His opponent, Brat, won the Republican nomination and has been teaching at the college since September 1, 1996. Brat is currently a full-time, tenured professor at the college.

After Trammell and Brat won their respective nominations, the college offered them both unpaid leaves of absence on materially identical terms beginning on August 8, 2014. Memorandums of Understanding between the professors and the college lay out terms for their leaves of absence, which include the college's continuation of its fringe benefits, including medical, life and disability insurance, as well as tuition reduction, exchange and remission.

The college is continuing to pay fringe benefits for both candidates under its pre-existing policy for employees during a leave of absence. The benefit payments would continue during the candidates' unpaid leave and end when Trammell and Brat either return to work or resign to take office, but not later than January 1, 2015, in either situation.

Both candidates asked the Commission whether the college's payment of the employer portion of their fringe benefits complies with the Federal Election Campaign Act (the Act) and Commission regulations.

Analysis

The Commission determined that the college may continue to pay the employer's portion of fringe benefits, including tuition remission, during Trammell's and Brat's unpaid leaves of absence.

The Act prohibits a corporation from making any contribution in connection with a federal election. See 52 U.S.C. § 30118(a), (a)(2). Unearned corporate compensation for candidates could amount to a prohibited contribution, and Commission regulations state that a corporation may not pay fringe benefits to an employee who is on leave without pay in order to campaign as a federal candidate. See 11 CFR 114.12(c)(1).



However, the Commission's explanation and justification for this regulation clarifies that the ban does not apply to fringe benefits for employees whose contract entitles them to take leave for any purpose. Additionally, under Commission regulations, a corporation's payment of compensation to an employee does not amount to a prohibited contribution when the employee engages in campaign activity using bona fide vacation time or other earned leave time. See 11 CFR 100.54(c).

In its opinions, the Commission compared both professors' requests to [Advisory Opinion 1992-03](#) (Reynolds Metal Company), in which a corporation had established an unpaid leave policy of paying fringe benefits for 31 days after an employee's last day of work. In that opinion, the Commission found that, because the benefits policy was pre-existing and not created to benefit an employee seeking federal office, the payment of benefits was a form of compensation payable to the employee as part of other earned leave time. In Trammell's and Brat's situations, the Commission found that the college's continuation of benefits for employees on leave is a form of conditional compensation for faculty members. The Commission noted the college plans to provide materially identical benefits to both employees/candidates in the same federal election. The college's payment of fringe benefits, including tuition remission, to Trammell and Brat was found to be part of a consistent policy available to all qualified employees, and in keeping with the college's policy of liberally granting sabbaticals and continuing benefits to employees, including those who take unpaid leave for non-political purposes.

Date Issued: October 10, 2014; AO 2014-14, 5 pages; AO 2014-15, 5 pages

(Posted 10/23/2014; By: Isaac Baker)

Resources:

- [Advisory Opinion 2014-14](#) [PDF]
- [Commission Consideration of Advisory Opinion 2014-14](#) 
- [Advisory Opinion 2014-15](#)
- [Commission Consideration of Advisory Opinion 2014-15](#) 

AO 2014-12: Separate Contribution Limits for National Convention Committees

The Democratic National Committee (DNC) and the Republican National Committee (RNC) may establish convention committees to raise funds subject to separate contribution limits because such convention committees qualify as “national committees” under the Federal Election Campaign Act (the Act) and Commission regulations.

Background

The DNC and the RNC (the Committees) are national party committees that raise contributions for the day-to-day operations of their respective parties. They asked the Commission whether the committees they establish to finance their presidential nominating conventions have a separate contribution limit under the Act. See 52 U.S.C. §§ 30101-30146 (formerly 2 U.S.C. §§ 431-457).

Until recently, the Presidential Election Campaign Act (the Funding Statute) entitled eligible party committees to receive a public grant to finance their nominating conventions. Most recently, in 2012, each major party’s convention committee received an inflation adjusted grant of \$17,689,800 from the United States Treasury. See 26 U.S.C. § 9008.

Effective April 3, 2014, the [Gabriella Miller Kids First Research Act](#) ended the parties’ entitlement to public funds. See 26 U.S.C. § 9008(i). As a result, the Committees’ request states that they now “must identify private sources of funding for their presidential nominating conventions.”

The Committees each propose to raise convention funds for deposit into a segregated account, or to establish a convention committee to raise and spend convention funds, which they believe should have its own separate contribution limit under the Act.

Analysis

A “national committee” of a political party is an organization which, “by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission.” See 52 U.S.C. § 30101(14) (formerly 2 U.S.C. § 431(14)); 11 CFR 100.13. The Act and Commission regulations contemplate that this definition can include, at minimum, each party’s House and Senate committees, and each has separate contribution limits. See 52 U.S.C. § 30125(a)(1) (formerly 2 U.S.C. § 441i(a)(1)); 11 CFR 110.1(c)(2). In determining whether a committee qualifies as a national committee of a political party, the Commission has generally considered two questions. The first is whether the party itself meets the definition of “political party” at 52 U.S.C. § 30101(16) (formerly 2 U.S.C. § 431(16)); and the second is whether the committee has demonstrated significant activity at a national level.

The Democratic and Republican parties are both well-established political parties, so the analysis here turns on whether the convention committees conduct sufficient activity at the national level. The Commission has looked at several factors to make that determination, including whether the committee nominates candidates for federal offices in a number of states, engages in ongoing party activities, publicizes issues of importance to the party, holds a national convention and establishes a national office with state affiliates.

Applying those criteria to the convention committees, the Commission determined that they essentially satisfy all of the factors that the Commission considers in determining “national committee” status. Under FEC regulations, convention committees are “responsible for conducting the day to day arrangements and operations” of “a convention, caucus or other meeting ... held by a political party at the national level.” 11 CFR 9008.2 (g) and 9008.3(a)(2). The conventions also include party-building activities, such as adoption of party rules and platforms, and give nationwide publicity to issues of importance to the party. Additionally, having been held every four years for more than 150 years, the conventions also qualify as ongoing activities.


As national committees, the convention committees may collect contributions equal to the limits placed on other national party committees – \$15,000 per calendar year from each multicandidate political committee and \$32,400 (adjusted for inflation) per calendar year from an individual or non-multicandidate committee. See 52 U.S.C. § 30116(a)(1)(B), (2) (B) (formerly 2 U.S.C. § 441a(a)(1)(B), (2)(B)); 11 CFR 110.1(c)(1), 110.2(c)(1). These limits are separate from those that apply to other national party committees.

The Committees stipulated in the advisory opinion request that convention committees would use their funds “solely to pay for the same types of convention expenses for which public funds were previously used,” and not “for candidate advocacy” or “for general party building expenses.” See 26 U.S.C. § 9008(c); 11 CFR 9008.7(a)-(b)(1).

Date Issued: October 9, 2014; 7 pages.

(Posted 10/20/2014; By: Alex Knott)

Resources:

- [Advisory Opinion 2014-12](#) [PDF]
- [Commission Discussion of AO 2014-12](#) 

AO 2014-11: Health Care PACs No Longer Affiliated

The Commission concluded that Health Care Service Corporation Employees’ Political Action Committee (HCSC PAC) is no longer affiliated with BluePAC, the separate segregated fund (SSF) of Blue Cross and Blue Shield Association (BCBSA). As a result, they no longer share limits on contributions, and neither may solicit PAC contributions from the other’s restricted class.

Background

HCSC PAC’s connected organization, Health Care Service Corporation (HCSC), is a Chicago-based, nonstock health insurance corporation that, among other things, markets health insurance under licensing agreements with BCBSA.

In [Advisory Opinion 1990-22](#) (BCBSA), the Commission concluded that BCBSA is affiliated with each of its licensed plans in the United States. Accordingly, HCSC and BCBSA have treated their SSFs as affiliated PACs for purposes of the Federal Election Campaign Act (the Act).

In [Advisory Opinion 1999-39](#) (WellPAC), the Commission determined that the PAC of another BCBSA licensee was no longer affiliated with BBCBSA’s SSF, based in part on the fact that the licensee was not required to conduct its insurance and related businesses exclusively under the BCBSA brand and conducted extensive business under different

brands in direct competition with other BCBSA licensees. HCSC seeks the same conclusion, based on similar changes in its business relationship with BCBSA.

By letter, BCBSA indicated it is “neutral as to the merits of this request.”

Analysis

Under the Federal Election Campaign Act and FEC regulations, political committees, including SSFs, are per se “affiliated” if they are established, financed, maintained or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof. See 52 U.S.C. § 30116(a)(5) (formerly 2 U.S.C. § 441a(a)(5)); 11 CFR 100.5(g)(2), 110.3(a)(1)(ii). HCSC and BCBSA do not meet these criteria.

In the absence of per se affiliation, the Commission examines other factors set forth in its regulations to determine whether organizations are affiliated, including ownership stake, governance, hiring authority, overlapping personnel or members and ongoing financial involvement between the organizations. 11 CFR 100.5(g)(4).

The financial ties between HCSC and BCBSA weigh in favor of affiliation. Nearly all of HCSC’s health insurance revenue comes from BCBSA products. However, the Commission has repeatedly determined that negotiated business arrangements between two entities do not by themselves establish affiliation. Additionally, HCSC over the last decade, has diversified and offers other brands of health insurance through subsidiaries in states across the country. In some cases, these and other non-BCBSA related products, such as life insurance and other services, actually compete directly with other BCBSA licensees.


All of the other factors considered suggest disaffiliation. For instance, BCBSA played no role in the formation of HCSC, and neither organization maintains ownership or hiring authority in the other. BCBSA has no voting rights in HCSC, and HCSC—like other licensees—holds just one of the 38 seats on BCBSA’s board of directors.

Based on these and other considerations, the Commission concluded that HCSC PAC is no longer affiliated with BCBSA’s SSF.

Date Issued: October 2, 2014; Length: 8 pages

(Posted: 10/15/2014; By: Alex Knott)

Resources:

- [Advisory Opinion 2014-11](#) [PDF]
- [Commission Discussion of AO 2014-11](#) 

Litigation

Independence Institute v. FEC

On October 6, 2014, the U.S. District Court for the District of Columbia dismissed a suit brought by the Independence Institute that challenged the statutory provisions governing electioneering communications. The plaintiff claimed the definition of electioneering communication is overbroad and the associated disclosure requirements are unconstitutionally burdensome. The court found the plaintiff's claims to be clearly foreclosed by the U.S. Supreme Court decision in [Citizens United v. Federal Election Commission](#), and ordered that judgment be entered for the Commission and dismissed the case.

Background

On September 2, 2014, the Independence Institute, a 501(c)(3) tax-exempt organization in Colorado, asked for a three-judge court to hear its challenge to the Bipartisan Campaign Reform Act's (BCRA) regulation of electioneering communications. BCRA defines an "electioneering communication" as any broadcast, cable or satellite communication that refers to a clearly identified federal candidate, is made within 30 days of a primary election or 60 days of a general, special or runoff election, and is targeted to the relevant electorate. 52 U.S.C. § 30104(f)(3)(A)(i) (formerly 2 U.S.C. § 434(f)(3)(A)(i)). The statute also requires certain disclosures concerning the sources and financing of electioneering communications. 52 U.S.C. § 30104(f)(1), (2)(A) (formerly 2 U.S.C. § 434(f)(1), (2)(A)). Under the Commission's regulations, when a corporation makes disbursements for an electioneering communication aggregating more than \$10,000 per year, it must file a report with the Commission, which includes disclosure of the names and addresses of all contributors who contributed more than \$1,000 to the corporation for the purpose of furthering electioneering communications. 11 CFR 104.20(c)(9). In its suit, the Independence Institute said it planned to run a 60-second radio ad within 60 days of the general election that would mention a federal candidate. While the group planned to raise funds specifically for this advertisement, it did not wish to disclose its donors.

The plaintiff asked the court to declare BCRA's definition of electioneering communication (52 U.S.C. § 30104(f)(3)(A)(i)) and associated reporting requirements at 52 U.S.C. § 30104(f)(1)-(2) overbroad as applied to its proposed advertisements.

Court Decision

In the interest of expediting the case, both parties agreed that the court would consider plaintiff's motion for a preliminary injunction as a motion for summary judgment and accordingly issue a final decision on the merits of the case in deciding that motion. The court found the plaintiff's case to be foreclosed by clear Supreme Court precedent, principally by *Citizens United v. Federal Election Commission*. The court denied the plaintiff's requests for a three-judge court and a preliminary injunction, ordered that judgment be entered for the Commission, and dismissed the case in its entirety.

In its 2010 *Citizens United* decision, the Supreme Court invalidated the prohibition on corporate and union expenditures, but upheld BCRA's disclosure requirements for electioneering communications. The Independence Institute claimed the disclosure requirements are overbroad as applied to its proposed radio ad because the advertisement is genuine issue advocacy as opposed to express advocacy or its functional equivalent. The district court explained that the *Citizens United* decision rejected the notion that

disclosure requirements must be limited to express advocacy or its functional equivalent, and concluded that that holding encompasses the facts in this case.

The Independence Institute also tried to distinguish its ad from an ad at issue in *Citizens United*, which had a pejorative tone when speaking about a federal candidate. The court found this argument unconvincing, stating that the decision in *Citizens United* does not suggest that the pejorative nature of Citizens United's advertisement was in any way important to the Supreme Court's conclusion regarding the constitutionality of the disclosure requirements.

On October 8, 2014, the Independence Institute filed a notice of appeal with the U.S. Court of Appeals for the District of Columbia Circuit.

U.S. District Court for the District of Columbia: Case 1:14-cv-01500-CKK

(Posted 10/08/2014; By: Isaac Baker)

Resources:

- *Independence Institute v. FEC* [Ongoing Litigation Page](#)
- [Memorandum Opinion of District Court](#) [PDF]
- Previous *Record* article: [Independence Institute v. FEC](#)

FEC v. Craig for U.S. Senate

On September 30, 2014, the United States District Court for the District of Columbia granted the Commission's motion for summary judgment in *FEC v. Craig for U.S. Senate*, finding that Craig for U.S. Senate (Craig Committee) and former Senator Larry Craig (Craig), both individually and in his official capacity as successor treasurer of the Craig Committee, unlawfully converted campaign funds to Craig's personal use.

Complaint

The Commission's complaint alleged that Craig, the Craig Committee, and Kaye L. O'Riordan, in her official capacity as treasurer of the Craig Committee, violated the Federal Election Campaign Act's ban on converting campaign funds to personal use when the Craig Committee paid more than \$200,000 in legal expenses related to Craig's 2007 arrest at the Minneapolis-St. Paul International Airport. 52 U.S.C. § 30114(b) (at the time 2 U.S.C. § 439a(b)).

Mr. Craig was substituted for Ms. O'Riordan as treasurer of the Craig Committee, and he then became a defendant in both his personal and official capacities.

The defendants moved to dismiss the suit, arguing that the use of campaign funds for then-Senator Craig's legal expenses was permissible under the FECA and not subject to the provisions banning personal use. The defendants claimed that several FEC Advisory Opinions (AOs), including [AO 2006-35](#) (Kolbe), approved the use of campaign funds for similar situations.

The district court denied the motion to dismiss on March 28, 2013. On September 30, 2013, the Commission filed a motion for summary judgment.

Court Opinion

The court found that all three defendants violated the FECA by converting \$197,535 in campaign funds to Craig's personal use when they paid personal legal expenses unrelated to his duties as a federal officeholder. The Court ordered defendant Craig to pay \$242,535 to the U. S. Treasury, representing disgorgement of the campaign funds impermissibly spent, plus a \$45,000 civil penalty.

The court declined to order Craig to disgorge the converted funds to the Craig Committee, and declined to impose penalties against the Committee or its treasurer in his official capacity, indicating that in light of the overall situation, including the Committee's inactive status, those measures would not be useful.

U.S. District Court for the District of Columbia: Case 1:12-cv-00958-ABJ
October 3, 2014

(Posted 10/06/2014; By: Christopher Berg)

Resources:

- *FEC v. Craig for U.S. Senate* [Ongoing Litigation Page](#)
- [Memorandum Opinion of U.S. District Court](#) (9/30/2014) [PDF]
- Previous *Record* article: [FEC v. Craig for U.S. Senate](#)

Compliance

FEC Cites 27 Committees for Failure to File Pre-General Report

The Federal Election Commission has cited 27 campaign committees for failing to file their 12-Day Pre-General Election Report required by the Federal Election Campaign Act of 1971, as amended (the Act) for the general election that is being held on November 4, 2014.

As of October 30, 2014, the required disclosure report had not been received from:

- Ron Leach for Congress Campaign Committee (KY-02)
- LeFlore for Congress (AL-01)
- Janis Kent Percefull for Congress (AR-04)
- Larry Smith Veteran for Congress (TX-34)
- Bergmann for Congress (TN-09)
- Committee to Elect Joyce Dickerson for US Senate (SC)
- Erick Wright for Congress (AL-02)
- Reis for Congress (RI-02)
- McMorris for Senate (LA)
- Ken Dious for Congress Inc (GA-10)
- Stephen H. Shogan for Senate (CO)
- Arthur Rich for Congress (NC-01)
- Josh for US House (NC-05)

- Janet Garret for Congress (OH-04)
- Jeff Jones for Senate (MI)
- Irvin for Congress (MO-04)
- Antonio Blue for US Congress (NC-08)
- Gordon Howie for Senate (SD)
- Buckley for Senate (WV)
- Krulick for Congress (FL-07)
- Ron Dickey for Congress (MS-01)
- Krepp for Congress (DC-00)
- Donka for Congress (VT-00)
- Wade for US Senate 14 (DE)
- Committee to Elect Ed Rabel to Congress (WV-02)
- Tom Hill for Congress (NC-11)
- Paul for Congress (NJ-09)

The 12-Day Pre-General Election Report was due on October 23, 2014, and should have included financial activity for the period of October 1, 2014, through October 15, 2014. If sent by certified or registered mail, the report should have been postmarked by October 20, 2014.

The Commission notified committees of their potential filing requirements on September 29, 2014. Those committees that did not file by the due date were sent notification on October 24, 2014 that their reports had not been received and that their names would be published if they did not respond within four business days.

Some individuals and their committees have no obligation to file reports under federal campaign finance law, even though their names may appear on state ballots. 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 units of a candidate's campaign, may also need to file a Pre-General Election Report if they file monthly or if they make previously undisclosed contributions or expenditures within the coverage dates for the report. 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 actions, and the FEC has implemented an Administrative Fine program with provisions for assessing monetary penalties.

(Posted 10/31/2014)

Resources:

- [FEC Non-Filer Press Release](#)
- [Compliance Map](#)
- [The Administrative Fine Program](#)
- [FEC Reporting Dates](#)
- [Late Filing and Other Enforcement Penalties](#) (Reports Analysis Division)

FEC Cites Committees for Failure to File October Quarterly Report

The Federal Election Commission has cited five campaign committees for failing to file the October Quarterly Report required by the Federal Election Campaign Act of 1971, as amended (the Act).

As of October 29, 2014, the required disclosure report had not been received from:

- Janis Kent Percefull for Congress (AR-04)
- Bergmann for Congress (TN-09)
- Ken Dious for Congress Inc (GA-10)
- Committee to Elect Ed Rabel to Congress (WV-02)
- McMorris for Senate (LA)

The report was due on October 15, 2014, and should have included financial activity for the period July 1, 2014 through September 30, 2014.

The Commission notified committees of their potential filing requirements on September 19, 2014. Those committees that did not file on the due date were sent notification on October 22, 2014 that their reports had not been received and that their names would be published if they did not respond within four business days.

Some individuals and their committees have no obligation to file reports under federal campaign finance law, even though their names may appear on state ballots. 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 units of a candidate's campaign, are also required to file quarterly reports, unless they file 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 actions, and the FEC has implemented an Administrative Fine program with provisions for assessing monetary penalties.

(Posted 10/31/2014)

Resources:

- [FEC Non-Filer Press Release](#)
- [Compliance Map](#)
- [The Administrative Fine Program](#)
- [FEC Reporting Dates](#)
- [Late Filing and Other Enforcement Penalties](#) (Reports Analysis Division)

Outreach

Basic Rules for Disclaimers on Radio and TV Ads

As we enter the final weeks of the 2014 election cycle, many political committees will take to the airwaves to make their final pitches to voters. Judging by the calls to our toll-free information line, many of those committees have questions about the disclaimers that must appear on their ads. This article answers some of the most common questions about disclaimers on radio and television ads.

What is the basic disclaimer language?

For messages paid for and authorized by campaign committees, the disclaimer must clearly state that the message has been paid for by the authorized committee. 11 CFR 110.11(b)(1).

For a communication that has been authorized by a candidate but has been paid for by any other person, the disclaimer must clearly state that the communication has been paid for by such other person and has been authorized by the candidate. 11 CFR 110.11(b)(2).

If a communication is not authorized by a candidate, the disclaimer must clearly state the full name and contact information – permanent street address, phone number, or website address – of the person or committee who paid for the communication, and state that it was not authorized by any candidate or candidate’s committee. 11 CFR 110.11(b)(3).

What is the “Stand by Your Ad” language?

Communications broadcast via radio or television must include statements by the person or committee broadcasting the message indicating that they are responsible for the content of the advertisement. The “Stand by Your Ad” language is required in addition to the regular disclaimer. 11 CFR 110.11(c)(3)-(4).

Commission regulations establish a safe harbor for the following statements as satisfying the Stand By Your Ad requirements for authorized committees:

- *I am [Candidate Name], a candidate for [office sought], and I approved this advertisement.*
- *My name is [Candidate Name]. I am running for [office sought], and I approved this message.*

11 CFR 110.11(c)(3)(iv)(A) & (B).

For messages not authorized by or paid for by a candidate or campaign, the regulations require that “_____ is responsible for the content of this advertising,” be spoken clearly, with the blank filled in with the name of the political committee or other person paying for the communication, and the name of the political committee’s connected organization, if any. 11 CFR 110.11(c)(4)(i).

How does this work on the radio?

The “Stand by Your Ad” language is spoken by either the candidate (for authorized committees) or a representative of the organization responsible for the ad (for messages not authorized or paid for by a campaign). 11 CFR 110.11(c)(3)(i) and (c)(4)(i).

In addition, the ad must contain the basic disclaimer language described above. For example, "XYZ PAC is responsible for the content of this advertising. Paid for by XYZ PAC and not authorized by any candidate or candidate's committee. Learn more at www.xyz.com." See 11 CFR 110.11(b)(3).

How does this work on television?

Authorized committees may satisfy the Stand by Your Ad requirement with either an unobscured, full-screen view of the candidate making the statement, or a voice-over by the candidate, accompanied by a clearly identifiable image of the candidate (at least 80% of vertical screen height). 11 CFR 110.11(c)(3)(ii). In addition, the printed statement must be included with the standard disclaimer appearing at the end of the message, and must be clearly readable. To meet the readability requirement, the statement must:

- Appear in letters equal to or greater than 4% of the vertical picture height.
- Be visible for at least four seconds.
- Have a reasonable color contrast with the background (e.g. black text on a white background).

11 CFR 110.11(c)(3)(iii).

Example: A campaign ad might start with the candidate saying, "Hi, my name is Jane Q. Public, a candidate for Congress, and I approved this message." After the substance of the ad, viewers would see the following, in white text over a black background, in letters occupying at least 4% of vertical picture height: "This message was approved by Jane Q. Public and paid for by Jane Q. Public for Congress."

Example: For messages not authorized or paid for by a candidate, the Stand by Your Ad provision is satisfied by either an unobscured full-screen view of a representative of the committee making the statement, or by that representative making the statement in voiceover. As with messages by an authorized committee, the Stand By Your Ad language must be included with the basic disclaimer language in a clearly readable format, meeting the requirements described above: "This message was paid for and approved by XYZ PAC and not authorized by any candidate or candidate's committee. Visit us online at www.xyz.com." 11 CFR 110.11(c)(4).

For more information on the disclaimers required on all types of public communications, please see our [Campaign Guides](#) as well as our [Special Notices on Political Ads and Solicitations brochure](#). If you have questions, please call our toll-free information line for assistance at 800-424-9530 (option 6).

Posted 10/21/2014; By: Christopher Berg

Resources:

- [Educational Outreach](#)
- [Resources for Committee Treasurers](#)

Post-General Reporting and Winding Down the Campaign Workshop

On November 19, 2014, the Commission will hold a roundtable workshop/webinar to help candidate committees prepare to file their 30 Day Post-General (30G) Report and wind down their campaigns. The workshop will include information on filling out the Post-Election Detailed Summary Page, raising funds to retire campaign debt, settling outstanding debts and terminating a committee. In-person attendees representing registered committees will have an opportunity to meet their assigned Campaign Finance Analyst after the session.



Webinar Information. The workshop will be simulcast for online attendees. Additional instructions and technical information will be provided to those who register for the webinar.

In-person Attendees. Attendance is limited to 50 people. The workshop will be held at the FEC's headquarters at 999 E Street, NW, Washington, DC. The building is within walking distance of several subway stations.

Registration Information. The registration fee is \$25 to attend in-person or \$15 to participate online. A full refund will be made for all cancellations received before 5 p.m. EST on Friday, November 14; no refund 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>.

Registration Questions

Please direct all questions about the roundtable/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.

Workshop Schedule

Wednesday, November 19, 2014
1:00 – 2:30 PM (EST)
FEC Headquarters, 999 E Street, NW, Washington, DC

(Posted 10/15/2014; By: Isaac Baker)

Resources:

- [Educational Outreach](#)

Updated List of Federal PAC Acronyms and Abbreviations

The Commission has published the 2014 edition of *PACronyms*, a list of the acronyms, abbreviations and common names of federal political action committees (PACs). This publication is helpful in identifying PACs that are not readily identified in their reports and statements on file with the FEC.

For each PAC listed, the index provides the full name of the PAC, its city, state, FEC identification number and its connected, sponsoring or affiliated organization.

PACronyms is available for download in either PDF or Excel formats at <http://www.fec.gov/pubrec/pacronyms/pacronyms.shtml>. To order a free paper copy of *PACronyms*, call the FEC's Public Records Office at 800/424-9530 (press 2) or 202/694-1120.

(Posted 10/07/2014; By Dorothy Yeager)

Resources:

- [Public Records Office](#)