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Commission

Statement of Chairman Matthew Petersen and Vice Chairman Steven Walther

With the 2016 presidential election cycle well underway, the Commission anticipates one of its busiest years in recent memory. This election season will present many challenges, but it will also offer many opportunities. As Chairman and Vice Chairman, we look forward to working with our fellow Commissioners to make this as productive a year as possible.

Being an election year, we expect that the number of complaints filed with the Commission will likely surge, as will the volume of advisory opinion requests. We stand ready to act quickly on these items to ensure greater clarity regarding the scope and meaning of the Federal Election Campaign Act and Commission regulations and to provide timely resolution and closure for those involved in the enforcement process.



Matthew S. Petersen Steven T. Walther

Much has been written about disagreements on the Commission. While we do not deny the existence of vigorous debates among Commissioners, they need not limit the Commission's ability to identify and move forward on issues and initiatives that improve compliance with the law, provide helpful information to the public, and enhance Commission operations. To that end, we are committed to finding common ground and to compromise where necessary to make tangible progress on constructive proposals.

For instance, we plan to build on the efforts of past-Chairs Goodman and Ravel to improve the design and functioning of the Commission's website in order to provide the most useful and user-friendly website possible

for practitioners, the regulated community, and the public alike. Earlier this month, the Commission released a new customizable download feature that allows users to quickly export summary level data in a readily understandable format. Soon, users will similarly be able to download transaction-level data regarding contributions and disbursements, and new website features will be unveiled, such as (i) an improved Commission calendar featuring filters, subscriptions, and automatic updates and (ii) improved access to Commission legal documents, including regulations, advisory opinions, and enforcement and compliance matters.

Furthermore, the FEC continues to expand its outreach programs to provide practitioners and the public with valuable compliance tips and up-to-date information regarding recent developments in campaign finance law. The Commission will offer a series of day-long webinars for candidates, parties, and PACs, along with workshops and regional conferences on election-year reporting requirements and other timely topics. These programs constitute a core component of the Commission's obligation to promote voluntary compliance.

Finally, we would like to thank the employees here at the Commission for their hard work and dedication. It is our hope that as a result of the efforts of Commissioners and staff, 2016 will be an effective and rewarding year.

(Posted 02/11/2016; By: Chairman Matthew Petersen and Vice Chairman Steven Walther)

Resources:

- [Meetings and Hearings](#)
- [Campaign Finance Disclosure Portal](#)

Commission Elects Officers for 2016

At its open meeting of December 17, 2015, the Federal Election Commission elected Matthew S. Petersen as Chairman and Steven T. Walther as Vice Chairman for 2016. Mr. Petersen has served once before as Chairman and twice as Vice Chairman. Mr. Walther, too, has previously served in both positions.

From 2005 until his appointment to the Commission in 2008, Mr. Petersen served as Republican chief counsel to the U.S. Senate Committee on Rules and Administration, providing counsel on issues relating to federal campaign finance and election administration laws as well as the Standing Rules of the Senate.

Prior to that position, Mr. Petersen served as counsel to the U.S. House of Representatives Committee on House Administration. Mr. Petersen was extensively involved in the crafting of the Help America Vote Act of 2002 (HAVA) and the House-Senate negotiations that culminated in HAVA's passage. From 1999 to 2002, Mr. Petersen specialized in election and campaign finance law at the law firm of Wiley Rein LLP in Washington, D.C.



Matthew S. Petersen



Steven T. Walther

Mr. Petersen received his J.D. in 1999 from the University of Virginia School of Law, where he was a member of the Virginia Law Review. He graduated *magna cum laude* with a B.A. in philosophy from Brigham Young University in 1996. He also received an A.S. with high honors from Utah Valley University.

Mr. Petersen received his J.D. in 1999 from the University of Virginia School of Law, where he was a member of the Virginia Law Review. He graduated *magna cum laude* with a B.A. in philosophy from Brigham Young University in 1996. He also received an A.S. with high honors from Utah Valley University.

Before joining the FEC as a Commissioner in 2006, Mr. Walther practiced law in the Reno, Nevada, law firm he co-founded, Walther, Key, Maupin, Oats, Cox & LeGoy, now known as Maupin, Cox & LeGoy.

Mr. Walther is a co-founder and past chair of the American Bar Association (ABA) Center for Human Rights and currently serves as the Special Advisor. He is a former president of the State Bar of Nevada, the Western States Bar Conference, and the National Caucus of State Bar Associations. He has served as past chair of the 6,000-member Fellows of the American Bar Foundation, the legal research arm of the ABA. From 1971 until his FEC appointment, Mr. Walther served as a member of the Nevada State Advisory Committee to the U.S. Commission on Civil Rights.

Mr. Walther has lectured extensively, both domestically and internationally, on rule of law, human rights and international law issues, and has served as an official election observer in several countries. He served on the Board of the ABA Rule of Law Initiative (ROLI), which oversees the ABA's democracy-building programs in over 50 countries. Mr. Walther received his J.D. from Boalt Hall School of Law, University of California, Berkeley. He received his undergraduate degree, with a major in Russian, from the University of Notre Dame, Notre Dame, Indiana.

(Posted 12/28/2015)

Commission Recommends Legislative Changes

On December 16, 2015, the Commission unanimously approved seven recommendations for changes to current campaign finance law. Some of the recommendations relate to the law's registration and reporting requirements, including expansion of electronic filing requirements, while others seek Congressional authority needed in order to better fulfill the agency's mission.

Electronic Filing of Senate Reports

The Commission recommends that Congress require electronic filing by senatorial committees that have, or expect to have, financial activity in excess of an established threshold (currently \$50,000 per calendar year). Senate filers are the only political committees not required to file disclosure reports electronically once they reach this threshold. The Commission recommendation notes that reports filed electronically are normally available to the public within minutes, while Senate paper filings (which often comprise thousands of pages) can take up to 30 days to be integrated into the Commission's searchable databases. The Commission estimates at least \$681,000 per year in costs directly attributable to current Senate filing procedures would be saved by requiring electronic filing.

Electronic Filing of Electioneering Communication Reports

The Commission recommends Congress require reports of electioneering communications be filed electronically with the Commission, rather than on paper. Many independent expenditure reports are already subject to mandatory electronic filing. However,

because political committees do not file electioneering communication reports, and because funds spent on electioneering communications are considered “disbursements,” and not “expenditures,” the mandatory electronic filing provisions generally do not apply to electioneering communication reports. The Commission suggests only entities that report more than \$50,000 of electioneering communications should be subject to mandatory electronic filing.

Authority to Create Senior Executive Service Positions

The Commission recommends Congress allow the FEC to create Senior Executive Service (SES) positions within the agency. Currently, the agency has several senior management positions that the Commission believes would satisfy the criteria for SES positions codified at 5 U.S.C. §3132, but the agency is prohibited by law from creating SES positions. The recommendation states these changes are needed to bring the Commission’s personnel structure in line with that of other comparable federal agencies and to ensure the Commission is better able to compete in recruiting and retaining key management employees. The recommendation estimates the Commission's expenses would not increase significantly if allowed to participate in the SES program.

Fraudulent Misrepresentation of Campaign Authority

The Commission recommends Congress revise the existing prohibitions on fraudulent misrepresentation of campaign authority to include all persons claiming to act on behalf of candidates and real or fictitious political committees. Currently, the statute does not prohibit fraudulent misrepresentation or solicitation on behalf of, for example, a separate segregated fund or a non-connected political committee. The Commission recommendation states that the fraudulent misrepresentation prohibition should extend to any person who would disrupt a campaign by unlawful means, rather than being limited to candidates and their agents and employees. The Commission also recommends Congress remove the current requirement that the fraudulent misrepresentation must pertain to a matter that is “damaging” to another candidate or political party, as proving damages is often difficult and impedes the Commission's ability to pursue persons who employ fraud and deceit.

Make Permanent the Administrative Fine Program for Reporting Violations

The Commission recommends Congress make permanent the agency’s authority to assess administrative fines for violations of the law requiring timely filing of disclosure reports. The Administrative Fine Program was first implemented in 2000. In December of 2013, President Obama signed legislation extending the program until the end of 2018. From its inception through the end of fiscal year 2015, the Commission has processed and made public 2,857 cases and assessed more than \$5.3 million in fines. The Commission feels the Administrative Fine Program has been very successful and cost-effective, resulting in a decrease in the number of late and non-filed reports.

Increase and Index for Inflation Registration and Reporting Thresholds

The Commission recommends Congress increase and index for inflation certain registration and reporting thresholds contained in the Federal Election Campaign Act (the Act). Most of the contribution limits and registration and reporting thresholds were set in the 1970s, and decades of inflation has effectively reduced FECA's contribution limits in real dollars. The Bipartisan Campaign Reform Act of 2002 increased most of the Act’s contribution limits to adjust for some of the effects of inflation, but that Act did not cover certain registration and reporting thresholds, which have remained static. The Commission asks Congress to index for inflation the \$1,000 per calendar year registration threshold for political committees at 52 U.S.C. § 30101(4)(A) and the \$250 per year threshold for

reporting independent expenditures. The Commission suggests these increased thresholds will ease the compliance burdens on smaller organizations (especially local party committees) and exempt some smaller organizations that engage in only minimal spending from the Act's registration and reporting requirements. The Commission requests both thresholds be increased to an amount determined by Congress and indexed for inflation.

Authority to Accept Gifts

The Commission recommends Congress give the agency authority to accept gifts of goods and services that will assist the agency's goal of enhancing transparency. The Commission seeks authorization to accept gifts from private sources in order to further its goal of facilitating transparency through a state-of-the-art, web-based public disclosure system. The Commission only seeks the authority to accept gifts for the purpose of carrying out this mission. The Commission recognizes that vigilant review would be required to limit conflicts of interest and would promulgate a rule governing disclosure of any gifts prior to their acceptance.

The complete legislative recommendations document is [available on the FEC's website](#).

(Posted 12/28/2015; By: Isaac Baker)

Resources:

- [2015 Legislative Recommendations](#) [PDF]

Litigation

Libertarian National Committee, Inc., v. FEC (New)

On January 25, 2016, the Libertarian National Committee, Inc. (LNC), filed suit against the Commission in the U.S. District Court for the District of Columbia challenging the Federal Election Campaign Act's (the Act) annual limits on contributions to national party committees.

Background

The LNC, the national committee of the Libertarian Party of the United States, seeks immediate access to the full \$235,575.20 bequeathed to it by the late Joseph Shaber.

Last year, in response to an advisory opinion request from Mr. Shaber's trustee, the Commission reaffirmed its longstanding interpretation that the Act's annual limit on contributions from an individual to a national party committee — currently \$33,400 (the Party Limit) — applies to contributions made by testamentary bequest. See, AO 2015-05 and 52 U.S.C. §§ 30116, 30125. As a result, Mr. Shaber's bequest must be distributed to the LNC in installments of no more than that annual limit, as adjusted for inflation every two years.

National party committees may also establish separate accounts to cover certain costs associated with presidential nominating conventions; election recounts and other legal proceedings; and headquarters buildings. The contribution limits applicable to the separate accounts are 300% of the Party Limit--currently \$100,200 for individuals. The LNC has declined to accept any portion of the Shaber bequest into one of these accounts.

Complaint

The LNC argues that applying the annual Party Limit to bequests unconstitutionally infringes upon the speech rights of both donors and recipients. The plaintiff further contends that in light of the higher limits on contributions to convention, legal expense and building accounts, the Party Limit effectively "imposes a content-based restriction on a national party's speech: a party can only spend \$33,400 of a donor's money on general political speech, but nearly ten times that amount on government-favored purposes."

The LNC also asserts that bequeathed funds do not "create the appearance or possibility of quid pro quo corruption ... [and] cannot effectively circumvent contribution limits to political candidates because the donor often has no idea which candidates might benefit from the contribution, no candidate can predictably rely on receiving the money from a bequest, and neither candidates nor political parties risk offending the donors of bequests once the money is received."

The plaintiff asks the court to grant it declaratory relief and to enjoin the Commission from enforcing the Party Limit "generally or in relation to the Shaber bequest."

U.S. District Court for the District of Columbia: Case 1:16-CV-00121

(Posted 02/08/2016; By: Alex Knott)

Resources:

- [Libertarian National Committee, Inc., v. FEC Ongoing Litigation Page](#)
- [Advisory Opinion 2015-05](#) (PDF)

[Van Hollen v. FEC](#)

On January 21, 2016, the U.S. Court of Appeals for the District of Columbia reversed a 2014 district court decision that invalidated a Commission regulation governing the disclosure of certain donations used to fund electioneering communications. The regulation in question (11 CFR 104.20(c)(9)) requires disclosure of only those donations made for the purpose of furthering electioneering communications. In reversing the U.S. District Court for the District of Columbia's 2014 decision, the appellate court upheld the Commission regulation as a reasonable interpretation of the disclosure provisions of the Federal Election Campaign Act (FECA).

Background

The Federal Election Campaign Act (the Act) defines an electioneering communication as any broadcast, cable or satellite communication that refers to a clearly identified candidate for federal office, is publicly distributed within certain time periods before an election and is targeted to the relevant electorate. 52 U.S.C. §30104(f)(3). Every person who makes disbursements for an electioneering communication aggregating over \$10,000 per year must file a report with the FEC identifying, among other things, the person who made the disbursement. 52 U.S.C. §30104(f)(1), (2). If the disbursement is paid out of a segregated account consisting of funds donated by individuals directly to the account for electioneering communications, the report must disclose the names and addresses of all those who donated an aggregate of \$1,000 or more within a certain time period to the account. If the disbursements were not made from a segregated account, then the report must disclose the names and addresses of all contributors who contributed over \$1,000 within a certain

communications, the report must disclose the names and addresses of all those who donated an aggregate of \$1,000 or more within a certain time period to the account. If the disbursements were not made from a segregated account, then the report must disclose the names and addresses of all contributors who contributed over \$1,000 within a certain time period to the person making the disbursement. 52 U.S.C. §30104(f)(2)(E).

The regulation at issue in this case, 11 CFR 104.20(c)(9), was promulgated in 2007 after the Supreme Court's decision in *FEC v. Wisconsin Right to Life, Inc.* which allowed all corporations and unions to make certain types of electioneering communications for the first time.¹ Because these corporations and labor organizations had not previously been permitted to make electioneering communications, the statute did not specify how such electioneering communications should be reported. The Commission's regulation requires corporations or labor organizations that make electioneering communications to disclose the name and address of each person who made a donation aggregating \$1,000 or more to the corporation or labor organization, "for the purpose of furthering electioneering communications." 11 CFR 104.20(c)(9). (Emphasis added.)

In April 2011, Rep. Christopher Van Hollen filed suit against the Commission challenging the regulation as contrary to the law it was supposed to implement. In a 2012 opinion, the district court found that the Act requires every person who funds electioneering communications to disclose all contributors, and the Act cannot be construed to include a "purpose" requirement.

On September 18, 2012, the appellate court reversed the judgment of the district court, finding the statute's disclosure provisions ambiguous. The appeals court remanded the case to the district court for further consideration. The district court then directed the Commission to inform the court whether the agency planned to initiate a rulemaking or defend its current regulation. On October 4, 2012, the Commission informed the court of its decision not to initiate a rulemaking to amend its regulations governing the disclosure of electioneering communications, but instead to continue to defend the current regulation at 11 CFR 104.20(c)(9).

Having found the law in question to be ambiguous, the appellate court directed the district court to determine whether the Commission's regulation is based on a permissible construction of the statute. In its November 2014 opinion, the district court concluded that the Commission's promulgation of 11 CFR 104.20(c)(9) was arbitrary, capricious and contrary to law because it requires disclosure of only those donations made for the purpose of furthering electioneering communications.

Court Decision

In its January 21 opinion, the appellate court found the Commission's purpose requirement to be reasonable and consistent with the text, history and purpose of the law. The opinion reiterates the opinion of the previous appeals panel that Congress left the meaning of "contributor" ambiguous and that Congress implicitly delegated authority to the agency to "fill in the statutory gaps." The opinion states the Commission's interpretation of the statute is not only permissible, but persuasive.

In analyzing whether the regulation was "arbitrary and capricious," the opinion described the Commission's three explanations for the purpose requirement:

- A "Support Rationale." Without the purpose requirement, individual contributors to a union or corporation who do not support the entity's electioneering communications could be mistakenly characterized as supporting the messages.

- A "Burden Rationale." The purpose requirement ensures disclosing entities are not obliged to create an exhaustive list of every individual who provided more than \$1,000, which could be very costly and require an inordinate amount of effort.
- A "Privacy Rationale." The Commission tailored its regulations in a way that both effectuates the law's disclosure requirements and protects the constitutional interests in privacy.

The court concluded, "Because we can reasonably discern the FEC's analytical path from these three rationales, we uphold its purpose requirement against Van Hollen's challenge."

United States Court of Appeals for the District of Columbia Case 15-5016

(Posted 02/01/2016; By: Isaac Baker)

1. The Supreme Court's 2010 decision in *Citizens United* removed entirely the ban on corporate and union electioneering communications.

Resources:

- [Van Hollen v. FEC Ongoing Litigation Page](#)
- [Van Hollen v. FEC Order](#)
- [Van Hollen v. FEC Opinion](#)

[Stop Hillary PAC, et al. v. FEC \(District Court\)](#)

On December 21, 2015, the U.S. District Court for the Eastern District of Virginia denied plaintiffs Stop Hillary PAC and Dan Backer's Motion for Preliminary Injunction. The plaintiffs had sought an interim order enjoining the FEC from taking any action to enforce the naming restriction for unauthorized political committees in section 52 U.S.C. § 30102(e)(4) against plaintiffs throughout the duration of their lawsuit challenging the constitutionality of that provision. The plaintiffs had also sought to enjoin the FEC from enforcing section 30102(e)(4) either facially or as applied to nonconnected political committees with names that clearly and unambiguously oppose a candidate. The court held that the plaintiffs did not show a likelihood of success on the merits of their claims that the naming restrictions for unauthorized political committees in 52 U.S.C. § 30102(e)(4) and 11 CFR 102.14 are a content-based restriction on speech or violate their First Amendment rights.

Background

The Federal Election Campaign Act (the "Act") states that "any political committee which is not an authorized committee [of a federal candidate]...shall not include the name of any candidate in its name." 52 U.S.C. § 30102(e)(4). Commission regulations further state that any political committee that is not the authorized committee of a candidate shall not include the name of any candidate in its name, which also includes "any name under which a committee conducts activities, such as solicitations or other communications, including a special project name or other designation." 11 CFR 102.14(a). However, Commission regulations state that an unauthorized committee may include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows opposition to the named candidate. 11 CFR 102.14(b)(3).

Plaintiff Stop Hillary PAC is a nonconnected, unauthorized committee that maintains a non-contribution account (Hybrid PAC). Its stated mission is "to engage in political advocacy,

make political contributions and expenditures, and organize supporters to help stop Hillary Rodham Clinton from becoming President of the United States." Plaintiff Dan Backer serves as its attorney and treasurer.

The committee registered with the FEC on May 16, 2013. After Hillary Rodham Clinton registered as a candidate for president in April 2015, the FEC asked Stop Hillary PAC and Mr. Backer to amend the committee's Statement of Organization so that its name would not include the name of a federal candidate. Mr. Backer and Stop Hillary PAC refused to change the committee's name.

On September 22, 2015, the plaintiffs [filed suit in the U.S. District Court for the Eastern District of Virginia challenging the Act and Commission regulations' naming restrictions](#). On October 6, 2015, the plaintiffs filed a Motion for Preliminary Injunction asking the court to prohibit the FEC from taking any action to enforce section 30102(e)(4) against plaintiffs throughout the duration of their lawsuit and from enforcing the political committee naming requirements either facially or as applied to non-connected political committees with names that clearly and unambiguously oppose a candidate.

District Court Decision

The court explained that "a party 'seeking a preliminary injunction must establish that 1) he is likely to succeed on the merits; 2) he is likely to suffer irreparable harm in the absence of preliminary relief; 3) the balance of the equities tips in his favor; and 4) an injunction is in the public interest.'" The court held that the plaintiffs did not show a likelihood of success on the merits to justify granting the Motion for Preliminary Injunction.

In this case, the plaintiffs claimed that a political committee's name is a protected form of political speech, and that the naming restrictions impose a substantial burden on their First Amendment rights without furthering an important or compelling government interest. However, the court held that there was no showing that the Act restricts plaintiffs' speech or that the naming restrictions were enacted because of the content of their speech.

The court first recounted the naming restrictions' long history of alleviating "the constant public confusion surrounding [PACs]." The court noted that, prior to the naming restrictions, the name of unauthorized PACs could contain a candidate's name without being authorized or endorsed by that candidate. "The voting public would mistake such unauthorized PACs as a candidate's official authorized PAC, resulting in misdirected campaign contributions and increased voter confusion." The court found that such confusion is still likely and "is exactly why 30102(e)(4)'s mandate why should not be disturbed."

The court rejected the plaintiffs' argument that section 30102(e)(4) is content based and subject to strict scrutiny and, citing *Citizens United* and *McConnell*, explained that section 30102(e)(4) "does not prevent anyone from speaking." The court found that, on the contrary, the naming restrictions allow unauthorized PACs "all forms of political speech" by allowing them "[the freedom] to discuss candidates—even by using a candidate's name—throughout their website, solicitations, special projects and various other communications," and even in the titles of their special projects "if the title clearly and unambiguously shows opposition to the named candidate." The court pointed out that the only area where the plaintiffs are not allowed to use a candidate's name is in the official title of the unauthorized PAC. The court found this "narrow and specific" requirement does not prohibit speech but limits potential confusion about which person, group or candidate the PAC represents and ensures transparency.

Instead, the court found section 30102(e)(4) requires "exacting" or intermediate scrutiny since it is part of the Act's disclosure regime. The court found the naming restrictions are "tailored to the governmental interest of limiting confusion, fraud and abuse of the political process." "Further, the fact that the government's interest only impedes on Plaintiffs' ability to include a candidate's name in its title alone, further demonstrates that 30102(e)(4) is the least restrictive means of accomplishing the government's interest for transparency in PACs."

Given the court's finding that the naming restrictions for unauthorized political committees are disclosure requirements that are substantially related to important government interests, the court found the plaintiffs unable to satisfy the first prong required for a preliminary injunction. The court also briefly noted that, in light of the fact that the requirements only require plaintiff Stop Hillary PAC to change its official committee name, it was not convinced that plaintiffs would suffer irreparable harm if the Motion is not granted or that the balance of hardships tips in the plaintiffs' favor. The court noted that, despite having to change the PAC's name, the plaintiffs are afforded, under the statute, "the unique ability to retain their official website, Facebook, and Twitter page." Finally, the court noted that, with the election approaching, "it is not in the public's interest to upend a statute that was created for the very purpose of ensuring the public are clearly informed."

(Posted 12/29/2015)

Resources:

- *Stop Hillary PAC v. FEC* [Ongoing Litigation Page](#)
- *Record* article: [Pursuing America's Greatness v. FEC \(District Court\)](#)

[FEC v. Lynch \(New\)](#)

On December 18, 2015, the Federal Election Commission (FEC) filed suit in the U.S. District Court for the Southern District of Florida against Edward Lynch, Sr., Lynch for Congress and Edward Lynch, Sr. in his official capacity as treasurer (defendants). The Commission seeks a declaration that defendants' conversion of campaign funds to personal use on or after August 12, 2010, was a violation of 52 U.S.C. § 30114(b). The FEC further seeks a permanent injunction against similar future violations and appropriate civil penalties against the defendants, as well as an order requiring Mr. Lynch to disgorge the converted funds.

Background

Lynch for Congress was the principal campaign committee for Edward J. Lynch, Sr. for his 2008 and 2010 campaigns for U.S. Congress. Between 2008 and 2010, evidence was uncovered that the defendants may have converted as much as \$53,500 of campaign contributions for Mr. Lynch's personal use; however, the complaint focuses on specific expenditures made on or after August 12, 2010. The FEC alleges that Mr. Lynch used campaign funds to pay for various personal expenses during that time period, including gym membership dues, personal loan payments, automobile expenses and retail purchases.

Compliance Action

The Federal Election Campaign Act defines "personal use" as the use of campaign funds "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 52

U.S.C. § 30114(b)(2). Personal use includes, among other things, payments of home mortgages, rent, or utilities; clothing purchases; non-campaign related automobile expenses; and health club dues, among other payments. 52 U.S.C. § 30114(b)(2); 11 CFR 113.1(g).

The Commission initiated enforcement proceedings against the defendants after reviewing information in the normal course of carrying out its supervisory responsibilities. Unable to secure acceptable conciliation agreements with the defendants following a finding of probable cause to believe that the defendants violated 52 U.S.C. § 30114(b), the Commission voted 6-0 to authorize this suit.

The FEC seeks a declaration that defendants' conversion of \$1,622 of campaign funds for Mr. Lynch's personal use on or after August 12, 2010, violated the Federal Election Campaign Act, the assessment of a \$7,500 civil penalty against Mr. Lynch in his personal capacity, and the assessment of a \$7,500 civil penalty against Lynch for Congress and Mr. Lynch in his official capacity as treasurer of that committee. The FEC also seeks an order requiring Mr. Lynch to disgorge the \$1,622 of campaign funds converted to personal use on or after August 12, 2010, and a permanent injunction against future similar violations by defendants.

(Posted 12/29/2015)

Resources:

- [FEC v. Lynch Ongoing Litigation Page](#)

[FEC v. Johnson \(2:15-cv-00439-DB\) \(District Court\)](#)

On December 10, 2015, the Commission moved to amend its complaint against Utah businessman Jeremy Johnson to add John Swallow as a defendant. In June, the Commission had [filed suit against Johnson](#), alleging that he knowingly and willfully used straw donors to exceed contribution limits to federal candidates.

The Commission alleges that Swallow violated the Federal Election Campaign Act by knowingly and willfully making contributions in the names of others when he caused, helped, and assisted Johnson's scheme. See 52 U.S.C. § 30122. The FEC argues that its motion should be granted because of the overlapping fact patterns and legal issues involved, and states that both Swallow and Johnson reasonably should have been aware that Swallow could be added as a defendant.

(Posted 12/15/2015; By: Christopher Berg)

Resources:

- [FEC v. Johnson Ongoing Litigation Page](#)

[CREW v. FEC \(15-cv-02038\) \(New\)](#)

On November 23, 2015, Citizens for Responsibility and Ethics in Washington ("CREW"), and Melanie Sloan filed a Complaint for Injunctive and Declaratory Relief in the U.S. District Court for the District of Columbia. The Complaint alleges that the FEC's dismissal of CREW's administrative complaint against the Commission on Hope, Growth and Opportu-

nity ("CHGO") was arbitrary, capricious, an abuse of discretion and contrary to law. CREW seeks an order declaring that the dismissal was contrary to law and requiring the Commission to conform with that decision.

Background

CREW and its former Executive Director, Melanie Sloan, filed a complaint with the FEC on May 23, 2011 and an amended complaint on April 26, 2012. They alleged that CHGO spent over \$2.3 million in the 2010 elections in violation of FECA by disseminating electioneering communications and independent expenditures without including proper disclaimers, reporting its activity, or registering as a political committee with the FEC. (MUR 6471)

On October 1, 2015, the Commission, by a vote of three to three, did not find reason to believe that CHGO violated the Act, and the Commission then voted to close the file.

On November 23, 2015, CREW and Melanie Sloan filed a Complaint for Injunctive and Declaratory Relief in the U.S. District Court for the District of Columbia challenging the Commission's dismissal of its administrative complaint.

Legal Provisions

Under the Act and Commission regulations, an independent expenditure is an expenditure by a person for a communication that expressly advocates the election or defeat of a clearly identified candidate and that is not coordinated with a federal candidate or political party. 52 U.S.C. § 30101(17); 11 CFR 100.16(a). Independent expenditures must be reported to the FEC by political committees, and by every person that is not a political committee once the expenditures aggregate in excess of \$250 in a calendar year with respect to a given election. 52 U.S.C § 30104(c)(1); 11 CFR 109.10.

Electioneering communications are any broadcast, cable or satellite communication that refers to a clearly identified candidate for federal office, that is publicly distributed within certain time periods before an election, and that is targeted to the relevant electorate. 52 U.S.C. § 30104(f)(3)(A); 11 CFR 100.29(a). Electioneering communications must be reported to the FEC once spending exceeds \$10,000 in a calendar year. See 52 U.S.C. § 30104(f)(1); 11 CFR 104.10(b).

Both independent expenditures and electioneering communications must include a disclaimer stating who paid for the communication and whether it was authorized by any candidate or campaign committee. See 52 U.S.C. § 30120(d)(2); 11 CFR 110.11(c)(4).

Finally, "any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year," and whose major purpose is the nomination or election of a federal candidate, is a political committee that must register and report to the FEC. 52 U.S.C. § 30101(4)(A); 11 CFR 100.5; *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).

Court Complaint

Plaintiffs allege that the Commission's dismissal of their administrative complaint was arbitrary, capricious, an abuse of discretion, and contrary to law in that the dismissal rested on impermissible interpretations of the Act, ignored Commission and judicial precedent, and mischaracterized political campaign activities.

The plaintiffs ask the court to declare the dismissal contrary to law and issue an order requiring the Commission to conform with that decision.

(Posted 12/03/2015)

Resources:

- [MUR 6471](#)

Advisory Opinions

[AO 2015-15: Website May Help Users Make Contributions to Federal Candidates](#)

A corporation may establish a website designed to help users identify candidates whose actions they support. If they choose, users may contribute to those candidates through the website.

Background

WeSupportThat.com is a for-profit corporation that proposes to offer an internet-based service through which users will be able to support or oppose certain actions of federal candidates. It plans to create a website that allows users to find, research and contribute to candidates based on their legislative votes, sponsorship of bills and public statements.

The requestor's website will focus on current events and will feature activities and candidates that are gaining the most media interest. The website will provide to users who select a featured activity information about candidates associated with that activity. If there are candidates on both sides of an issue, the user will be able to click a button labeled "I support this" or "I don't support this" to bring up a list of candidates who align with the user's views. Then those users will be able to make contributions to one or more of the listed candidates by selecting the "contribute now" button.

WeSupportThat.com plans to collect each contributor's necessary disclosure information and require each user to confirm that he or she may lawfully make the contribution. The corporation will also request the contributing user's credit or debit card information. It plans to cover its costs and make a profit by assessing a processing fee. The user's credit or debit card will be charged for the full amount and proceeds deposited into two separate bank accounts — one for the processing fee and another that will be used exclusively for contributions. WeSupportThat.com will forward all contributions and contributor information to candidate committees within 10 days of receipt. The requestor plans to advertise its services through online banner ads and on Facebook and Google.

The requestor will not offer its services to candidates or their committees, nor will it receive payment from recipient committees. The requestor also will not "advanc[e] any particular issue, position on an issue, or any political outcome."

WeSupportThat.com asked the Commission whether its proposed business plan complies with the Federal Election Campaign Act (the Act) and Commission regulations and whether the user's payment of a processing fee to the corporation constitutes a contribution to the recipient candidate committee.

Analysis

The Act and Commission regulations prohibit a corporation from making a contribution in connection with a federal election. See 52 U.S.C. § 30118(a); 11 CFR § 114.2(b)(1). A contribution includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value...to any candidate, [or] campaign committee...in connection with any [federal] election... ." 52 U.S.C. § 30118(b)(2); 11 CFR § 114.2(b)(1); see also 52 U.S.C. § 30101(8)(A)(i); 11 CFR 100.52(a).

The Commission has previously concluded that entities that process contributions as a service to contributors, and not to the recipient political committees, are not making contributions to those committees. See, e.g., [AO 2014-07 \(Crowdpac\)](#) at 6 (distinguishing between companies that process contributions as service to contributors and companies that process contributions as service to recipient political committees); [AO 2012-22 \(skimmerhat\)](#) at 4-6 (same); [AO 2011-19 \(GivingSphere\)](#) at 7 (same); [AO 2011-06 \(Democracy Engine\)](#) at 5 (same). The requestor's proposed service differs from those previously approved by the Commission in that the requestor's website and advertising will list certain candidate activities that the requestor believes are most likely to motivate individuals to use its website to make contributions. The requestor's proposal, however, does not raise concerns that the requestor is selecting candidate recipients to influence the outcome of the election. Accordingly, under the circumstances presented in the request, the requestor's proposed business plan complies with the Act and Commission regulations.

The Commission further concludes that the fees will not be in-kind contributions to the recipient committees because the fees paid to the requestor "are for services rendered for the benefit of the contributors, not of the recipient political committees," and thus, "such fees do not relieve the recipient political committees of a financial burden they would otherwise have had to pay for themselves." [AO 2014-07 \(Crowdpac\)](#) at 6; [AO 2011-06 \(Democracy Engine\)](#) at 6.

Date Issued: 01/14/2016; 6 pages

(Posted 02/04/2016; By: Alex Knott)

Resources:

- [Advisory Opinion 2015-15](#) [PDF]
- [Commission Discussion of AOR 2015-15](#)



[AO 2015-11: App for Making Contributions by Rounding Up Purchases Made on Contributors' Credit Cards Permissible](#)

A limited liability company (LLC) taxed as a corporation may provide an app that "rounds up" each transaction on a user's credit or debit card to the next dollar, and provides the difference between that amount and the original charge—minus a service fee—to political committees or other nonprofits chosen by the user. The Commission concluded that this arrangement would not result in the LLC making contributions or serving as a conduit or intermediary, but was unable to agree on the legal basis for its conclusion by the required four affirmative votes.

Background

FYP, LLC, plans to develop a contribution processing platform called "MyChange." The app will round up each credit or debit card transaction to the next dollar and transmit the difference between that amount and the original charge to political committees or other nonprofit organizations designated by the user. For example, if a user were to purchase a cup of coffee for \$2.30, the app would charge an additional \$.70 to the user's card and transmit that amount, minus FYP's service fee, to the user's designated recipients (which could include federal political committees).

To enroll in MyChange, users must provide their credit or debit card information. If they intend to use the app to make political contributions, they must also verify their eligibility to make contributions under federal law and provide their contributor information, such as employer and occupation. Users will select recipients for their rounded up contributions from a pre-determined list included in the app. FYP will update that list each month and will include only committees that are in good standing with the Federal Election Commission and that share "users' ideology and values."

Within one business day after a user's credit or debit card is charged, funds that are designated as rounded-up amounts will be transferred from FYP's merchant account to the user's indicated recipient, less FYP's service fee. At the end of each month, FYP will reconcile funds processed via the MyChange app with its internal records.

User fees charged by FYP will be deducted from the rounded-up amounts before the rounded-up amounts are remitted to the political committees or organizations who are the recipients. The service fees will be calculated as a percentage of the total funds charged to the user's credit or debit card in a given transaction. FYP expects the fee to cover all of its costs in providing the processing and forwarding services and to provide FYP with a "reasonable profit."

Analysis

The Federal Election Campaign Act (the Act) and Commission regulations generally prohibit any corporation from making contributions in connection with federal elections. 52 U.S.C. § 30118(a); 11 CFR 114.2(b)(1). The term "contribution" includes any "direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value...in connection with any [federal] election." 52 U.S.C. §30118(b)(2); 11 CFR 114.1(a)(1). "Anything of value" includes in-kind contributions, such as the provision of goods or services without charge or at a charge that is less than the usual and normal charge. 11 CFR 100.52(d)(1). The "usual and normal charge" is "the price of those 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).

The Commission concluded that FYP's proposal would not result in prohibited corporate contributions from FYP to any recipient political committee, but the Commission was unable to agree on the legal basis for its conclusion by the required four affirmative votes. Nor could the Commission agree whether a MyChange user's payment of fees for the processing of a contribution to a political committee would constitute a contribution from the user to the recipient committee.

Similarly, the Commission also concluded, but could not agree on the legal basis by the required four affirmative votes, that FYP would not be acting as a "conduit or intermediary" of earmarked contributions when processing contributions from users to recipient political committees. Commission regulations prohibit corporations from serving as conduits or intermediaries of earmarked contributions to federal candidates. 11 CFR 110.6(b)(2)(ii).

Date Issued: December 2, 2015; 6 pages

(Posted: 12/15/2015; By: Myles Martin)

Resources:

[Advisory Opinion 2015-11](#) [PDF]

[Commission Discussion of AOR 2015-11](#)



[Pending Advisory Opinion Requests as of January 31, 2016](#)

Advisory Opinion Requests (AORs) pending before the Commission as of the end of the month are listed below. Procedures for commenting on pending AORs are [described here](#).

[AOR 2015-14](#) [PDF]

Permissibility of providing school credit and stipend to student performing campaign-related activities (Hillary for America, October 29, 2015; Extension of time to February 16, 2016, to respond to this request granted on January 27, 2016)

[AOR 2015-16](#) [PDF]

Use and disposition of general election contributions received before primary. (Niger Innis for Congress, received on December 15, 2015)

(Posted 02/03/2016; By: Alex Knott)

Resources:

- [Advisory Opinion Search](#)

[Pending Advisory Opinion Requests as of December 31, 2015](#)

Advisory Opinion Requests (AORs) pending before the Commission as of the end of the month are listed below. Procedures for commenting on pending AORs are [described here](#).

[AOR 2015-13](#) [PDF]

Use of campaign funds for post-retirement employment of assistant (Senator Harry Reid, October 28, 2015; Extension of time to January 25, 2016, to respond to this request granted on December 17, 2015)

[AOR 2015-14](#) [PDF]

Permissibility of providing school credit and stipend to student performing campaign-related activities (Hillary for America, October 29, 2015; Extension of time to January 25, 2016, to respond to this request granted on December 17, 2015)

[AOR 2015-15](#) [PDF]

Use of web platform to make contributions to federal candidates (WeSupportThat.com, received on November 20, 2015)

[AOR 2015-16](#) [PDF]

Use and disposition of general election contributions received before primary. (Niger Innis for Congress, received on December 15, 2015)

(Posted 01/04/2016; By: Dorothy Yeager)

Resources:

- [Advisory Opinion Search](#)

Public Funding

Commission Certifies Matching Funds for O'Malley

On January 20, 2016, the Commission certified \$846,365.09 in federal matching funds to presidential candidate Martin J. O'Malley for the 2016 primary election. O'Malley is seeking the Democratic nomination for president. The certified amount was in response to the first regular submission for matching funds made by the O'Malley campaign.

In November, O'Malley became the first 2016 presidential candidate to be declared eligible by the Commission to receive federal matching funds. Based on his initial threshold submission, the Commission requested that the United States Treasury make an initial payment of \$100,000 to O'Malley's campaign. The United States Treasury transferred the initial payment on January 4, 2016.

The Commission will now ask the Treasury to make an additional payment of \$846,365.09 to O'Malley for President.¹

To become eligible for matching funds, candidates must raise a threshold amount of \$100,000 by collecting \$5,000 in 20 different states. Although an individual may contribute up to \$2,700 to a primary candidate in the current election cycle, only a maximum of \$250 per individual is matched with funds from the Presidential Election Campaign Fund.

Other requirements to be declared eligible include agreeing to an overall spending limit, abiding by spending limits in each state, using public funds only for legitimate campaign-related expenses, keeping financial records and permitting an audit of campaign financial activity.

(Posted 01/22/2016; By: Alex Knott)

1 Following the tally vote completed today, the Commission will request the Treasury to make a payment of \$846,365.09 to O'Malley for President.

Resources:

- [FEC Press Release](#)
- Brochure: [Public Funding of Presidential Elections](#)
- Brochure: [The \\$3 Tax Checkoff](#)
- [Press Office Backgrounder on Presidential Election Campaign Fund](#)
- [2016 Presidential Matching Fund Submissions](#)
- [Income Tax Check-off Data](#)

Compliance

[FEC Introduces Online Payment Option for Administrative Fines](#)

The Commission is now accepting online payments for administrative fines. Respondents in Administrative Fine Program (AFP) cases now have the option of remitting payment by automated clearing house (ACH) withdrawal from a bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Staff in the Commission's Reports Analysis Division and Office of Administrative Review will be available to help respondents submit online payments and to update them on the status of their payments. This added convenience was created through a collaboration of the Commission and the Department of the Treasury's Bureau of the Fiscal Service.

Please visit the new www.fec.gov/af/pay.shtml to view the available payment options and be directed to [Pay.gov's AFP payment application](#).

(Posted 02/04/2016; By: Alex Knott)

Resources:

- [Administrative Fine Program](#)

Outreach

[FEC to Host March 23 Webinar for Candidate Committees](#)

The Commission will hold a one-day online seminar for federal candidates and their campaign committees on Wednesday, March 23, 2016. Commission staff will conduct several technical workshops on the federal campaign finance laws affecting candidate committees. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law.

Attendees can choose one of two options for the morning session, Basics and Best Practices or Recent Developments in the Law. The afternoon will feature a two-part workshop on Campaign Committee Operations. Participants will be able to download electronic copies of the workshop materials in advance, and will receive additional instructions and technical information shortly before the event. For more information, and a detailed agenda, please visit the Candidate Webinar web page: <http://www.fec.gov/info/conferences/2016/candidatewebinar.shtml>.

The cost to participate is \$80. Refunds (minus a \$20 registration fee) will be made for all cancellations received by Friday, March 18; no refund will be made for cancellations received after that date. Register online at: <http://www.cvent.com/d/1fqqq9>. Please direct



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

Webinar Schedule:

March 23, 2016

Morning Sessions

- Option 1: Basics and Best Practices, 10:30 AM - 12:00 PM EDT
- Option 2: Recent Developments in the Law, 10:30 AM - 12:00 PM EDT

Afternoon Sessions

- Campaign Committee Operations Part 1, 1:15 - 2:45 PM EDT
- Campaign Committee Operations Part 2, 3:00 - 4:30 PM EDT

(Posted 02/11/2016; By: Isaac Baker)

Resources:

- [FEC Educational Outreach Opportunities](#)

Lobbyist Bundling Disclosure Threshold Unchanged

The Federal Election Campaign Act, as amended by the Honest Leadership and Open Government Act of 2007 (HLOGA), requires certain political committees to disclose contributions bundled by lobbyists/registrants and lobbyist/registrator PACs once the contributions exceed a specified threshold amount. The Commission must adjust the threshold amount for inflation at the beginning of each calendar year.

The threshold is adjusted by multiplying the \$15,000 statutory threshold by the difference between the preceding year's price index, as certified by the Secretary of Labor, and the price index for the base period (CY 2006). The resulting amount is rounded to the nearest multiple of \$100. 52 U.S.C. §§ 30104(i)(3), 30116(c)(1)(A)-(B). Based on this formula ($\$15,000 \times 1.17569$), the lobbyist bundling disclosure threshold for 2016 remains unchanged at **\$17,600**.

(Posted 02/10/2010; By: Alex Knott)

Resources:

- [Federal Register Notice](#) [PDF]
- [Lobbyist Bundling Disclosure FAQ](#)

Coordinated Party Expenditure Limits Adjusted

The 2016 coordinated party expenditure limits are now available. The limits are:

- \$23,821,100 for Presidential nominees.
- \$96,100 for House nominees in states that have only one U.S. House Representative. This adjustment is calculated by multiplying \$20,000 by the Cost of Living Adjustment provided by the Secretary of Labor (COLA) and rounding to the nearest \$100. The applicable COLA is 4.80703.
- \$48,100 for House nominees in states that have more than one U.S. House Representative ($\$10,000 \times \text{COLA}$); and
- A range from \$96,100 to \$2,886,500 for Senate nominees, depending on each state's voting age population (the greater of $\$20,000 \times \text{COLA}$ or $2\% \times \text{state voting age population (VAP)} \times \text{COLA}$)

Party committees may make these special expenditures on behalf of their 2016 general election nominees (including in special elections). National party committees have a separate limit for each nominee. Each state party committee has a separate limit for each House and Senate nominee in its state. Local party committees do not have their own separate limit. One party committee may authorize another committee of that party to make an expenditure against the authorizing committee's limit. Local committees may make coordinated party expenditures only with advance authorization from another committee within the party.

Coordinated party expenditure limits are separate from the contribution limits. Unlike contributions, the national Senatorial and Congressional committees do not have their own coordinated party expenditure limits; however, they may receive authorization to spend against the national limit or state party limits. They also differ from contributions in that the party committee must spend the funds on behalf of the candidate rather than give the money directly to the campaign. These expenditures may be made in consultation with the candidate; however, only the party committee making the expenditure – not the candidate committee – must report them. Coordinated party expenditures are reported on FEC Form 3X, line 25, and are always itemized on Schedule F, regardless of amount.

[Click here to view the 2016 coordinated party expenditure limits](#). The link also includes information on which party committees have the authority to make coordinated party expenditures; the formula used to calculate the coordinated party expenditure limits; and a listing of the state-by-state coordinated party expenditure limits for Senate candidates.

(Posted 02/10/2016; By Alex Knott)

Resources:

- [Federal Register Notice](#) [PDF]
- [Chapter 7, Campaign Guide for Political Party Committees](#) [PDF]
- [Compliance Map](#)

[FEC to Host February 24 Webinar for Party Committees](#)

The Commission will hold a one-day online seminar for political party committees on Wednesday, February 24, 2016. Commission staff will conduct several technical workshops on the federal campaign finance laws affecting party committees. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law.

Attendees can choose one of two options for the morning session, Basics and Best Practices or Recent Developments in the Law. The afternoon will feature a two-part workshop on Party Committee operations. Participants will be able to download electronic copies of the workshop materials in advance, and will receive additional instructions and technical information shortly before the event. For more information, and a detailed agenda, please visit: <http://www.fec.gov/info/conferences/2016/partyseminar.shtml>.



The cost to participate is \$80. Refunds (minus a \$20 registration fee) will be made for all cancellations received by Friday, February 19; no refund will be made for cancellations received after that date. Register online at: <http://www.cvent.com/d/xfq1wm>. Please direct all questions about registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; email: Rosalyn@sylvestermanagement.com). For other questions call the FEC's Information Division at 1-800/424-9530 (press 6), or send an email to Conferences@fec.gov.

Webinar Schedule:

February 24, 2016

Morning Sessions

- Option 1: Basics and Best Practices, 10:30 AM - 12:00 PM EST
- Option 2: Recent Developments in the Law, 10:30 AM - 12:00 PM EST

Afternoon Sessions

- Party Committee Operations Part 1, 1:00 - 2:30 PM EST
- Party Committee Operations Part 2, 2:45 - 4:15 PM EST

(Posted 01/22/2016; By: Isaac Baker)

Resources:

- [FEC Educational Outreach Opportunities](#)
- [Filing Dates](#)

[FEC Hosts Year-End Reporting and E-Filing Webinars](#)

The Commission will offer its annual Year-End Reporting and FECFile workshops in January 2016. The webinars for PACs and party committees will be held on January 13, while the webinars for candidates will be offered on January 20.

The reporting session will provide an overview of the Reports Analysis Division review process, address common filing problems and provide answers to questions committees may have as they prepare to file their January 31 Year-End Reports. The electronic filing session will demonstrate the Commission's FECFile software and address questions filers may have concerning electronic filing.

Webinar Information. All sessions will be online only. Additional instructions and technical information will be provided to those who register.

Registration Information. The registration fee is \$25 per webinar. For the PAC and party webinars, a full refund will be made for all cancellations received before 5 p.m. EST on Friday, January 8; no refunds will be made for cancellations received after that time. For the candidate webinars, a full refund will be made for all cancellations received before 5 p.m. EST on Friday, January 15; 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>.



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.

(Posted 12/16/2015; By: Isaac Baker)

Roundtable Schedule:

January 13, 2016

Webinar Only

Reporting for PACs & Party Committees, 1:00 - 2:30 PM Eastern

FECFile for PACs & Party Committees 2:45 - 4:15 PM Eastern

January 20, 2016

Webinar Only

Reporting for Candidate Committees, 1:00 - 2:30 PM Eastern

FECFile for Candidate Committees, 2:45 - 4:15 PM Eastern

Reporting

[Check the Box to Report Memo Entries](#)

In an effort to increase reporting clarity, the Commission has added a new "memo item" box to the Forms 3, 3P and 3X filed by campaigns, parties and political action committees. Treasurers will use the new check box to identify "memo entries." Memo entries are used to provide supplemental or explanatory information on a reporting schedule and the dollar amount is not included in the line item total. These entries are commonly used to report reimbursements, redesignations, reattributions, transactions associated with credit card payments, and other complex transactions.

Up to now, committees have identified memo entries by writing the phrase "Memo Item" on the form. The new check box will add clarity and consistency to memo item disclosure, shorten the Commission's document processing times, and allow the public to access disclosed data faster.



Paper forms that include the new check box are available for [download on the reporting forms page](#) of the FEC website. The [FECFile update \(Build 8.1.0.4\)](#) is also available, and commercial software vendors are expected to incorporate the change in the coming days. Filers should use the updated forms for their next FEC report.

(Posted 02/09/2016; By: Alex Knott)

Resources:

- [Updated Form 3](#) [PDF]
- [Updated Form 3X](#) [PDF]
- [Updated Form 3P](#) [PDF]
- [FECFile](#)
- [Campaign Guides](#)

[Reports Due in 2016](#)

This article on filing requirements for 2016 is supplemented by the reporting tables linked at http://www.fec.gov/info/report_dates_2016.shtml.

Year-End Reports Covering 2015 Activity

All committees must file a 2015 Year-End Report due January 31, 2016, that covers activity through December 31, 2015. To help committees prepare their reports, the Commission will host [reporting workshops](#) for PACs and party committees on January 13 and for candidates on January 20.

Since the January 31 deadline falls on a weekend in 2016, monthly and quarterly filers using methods other than electronic filing or registered, certified or overnight mail must en-

sure that their reports are received by the Commission's (or the Secretary of the Senate Public Records Office's) close of business on the last business day before the deadline (i.e., Friday, January 29). ^[FN1]

Reports Covering 2016 Activity

To find out which reports your committee must file in 2016, check the [Filing Frequency by Type of Filer](#) section of our reporting web page. Then check the links to tables for various categories of reporting dates. Please note that committees active in special elections in 2016 may have to file additional special election reports. All known FEC reporting dates are also available on the Commission's website at http://www.fec.gov/info/report_dates.shtml.

Notification of Filing Deadlines

In addition to publishing this article and the online reporting tables, the Commission notifies committees of filing deadlines through reporting reminders called prior notices. Prior notices are distributed exclusively by electronic mail, so every committee should ensure that the email address on its [Statement of Organization \(FEC Form 1\)](#) is current. Each committee may list up to two email addresses. To amend Form 1, electronic filers must submit Form 1 filled out in its entirety. Paper filers should include only the committee's name, address, FEC identification number and the updated or changed portions of the form.

Treasurer's Responsibilities

The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Federal Election Campaign Act (the Act) and Commission regulations. Committee treasurers are responsible for filing committee reports on time. Not receiving a prior notice does not excuse committee treasurers for failing to comply with any filing deadline.

Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations required to file with the FEC that receive contributions or make expenditures, including independent expenditures, aggregating in excess of \$50,000 in a calendar year — or that have reason to expect to do so — must file all reports and statements electronically. ^[FN2] Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the filing date. 11 CFR 100.19(c). Electronic filers who file on paper or submit an electronic report that does not pass the Commission's validation program by that time on the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines. 11 CFR 104.18(a)(2) and (e).

Senate campaigns and other committees that file with the Secretary of the Senate must file their FEC reports on paper, but may file an additional unofficial electronic copy of their report with the Commission in order to enhance disclosure.

The Commission's electronic filing software, FECFile, is free and can be downloaded at <http://www.fec.gov/elecfil/updatelist.html>. All reports filed after January 5, 2016, must be filed in Format Version 8.1.0.3. Reports filed in previous formats will not be accepted. Filers may also use commercial or privately developed software as long as the software meets the Commission's format specifications, which are available on the Commission's website. Committees using commercial software should contact their vendors to ensure their software meets the latest specifications.

Timely Filing for Paper Filers

Registered and Certified Mail. Quarterly reports sent by registered or certified mail are considered to be filed on the date of their postmark. 52 U.S.C. § 30104(a)(5) and 11 CFR 104.5(e). Accordingly, quarterly reports sent by registered or certified mail must be post-marked on or before the filing deadline to be considered timely filed. 11 CFR 100.19(b). A committee sending its reports by certified or registered mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of mailing because the USPS does not keep complete records of items sent by certified or registered mail. 11 CFR 104.5(i).

Overnight Mail. Reports sent via overnight mail ^[FN1] will be considered timely filed if the report is postmarked on or before the filing deadline. A committee sending its reports by Priority Mail or Priority Express Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports. See 52 U.S.C. § 30104(a)(5) and 11 CFR 100.19(b) 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 (or the Secretary of the Senate) before close of business on the filing deadline. See 11 CFR 100.19(b) and 104.5(e). (If the deadline falls on a weekend or federal holiday, such filers should plan accordingly and file reports by the close of business on the last business day before the filing deadline.)

Forms may be downloaded at <http://www.fec.gov/info/forms.shtml> and are available from FEC Faxline, the agency's automated fax system (202/501-3413).

Authorized Committees of Candidates

House and Senate Candidates. All campaigns that have a reporting obligation must file quarterly reports in 2016. Generally, an individual becomes a candidate for federal office, thus triggering registration and reporting obligations, when his or her campaign exceeds \$5,000 in either contributions received or expenditures made. If the campaign has not exceeded the \$5,000 threshold, it is not required to file reports. See 11 CFR 100.3(a)(1). See also 11 CFR 100.3(a)(2) and (3). The authorized committees of House and Senate candidates must also file pre-primary election and pre-general election reports before any election in which the candidate participates in 2016. These committees also must file a post-general election report if the candidate participates in the general election. 11 CFR 104.5(a)(2).

Principal campaign committees of candidates who ran in past elections or are running in future elections must also file quarterly reports in 2016. Before a committee can stop filing with the FEC, it must file a termination report with the Commission or the Secretary of the Senate, as appropriate. See 11 CFR 102.3. Committees must continue to file reports until the Commission notifies them in writing that their termination report has been accepted.

Presidential Candidates. All principal campaign committees of Presidential candidates must file on either a monthly or a quarterly schedule in 2016. If on January 1, 2016, the committee has received or anticipates receiving contributions aggregating \$100,000, or has made or anticipates making expenditures aggregating \$100,000, the committee files monthly reports in 2016. Committees which do not anticipate or have not exceeded the \$100,000 thresholds file quarterly reports in 2016. See 11 CFR 104.5(b)(1)(i) and (ii). Note that quarterly filers must also file a pre-election report for each election in which the candidate seeks nomination or election. See 11 CFR 104.5(b)(1)(ii).

Presidential committees able to change their reporting schedule and that wish to do so are required to notify the Commission in writing. Electronic filers must file this request electronically. After filing this notice of change in filing frequency with the Commission, all future reports must follow the new filing schedule. 11 CFR 104.5(b)(2). Please note that, as explained above, Presidential committees that have received contributions or made expenditures of \$100,000 or more during the current presidential election cycle must file monthly reports in 2016. 11 CFR 104.5(b)(1)(i).

The committee will receive a letter from the Commission approving the frequency change.

State, District and Local Party Committees

State, district and local party committees that engage in reportable "federal election activity" must file on a monthly schedule. See 11 CFR 300.36(b) and (c)(1). Committees that do not engage in reportable "federal election activity" may file on a quarterly basis in 2016. See 11 CFR 104.5(c)(2)(i).

National Party Committees

National committees of political parties must file on a monthly schedule. 52 U.S.C. § 30104 (a)(4)(B) and 11 CFR 104.5(c)(4).

Political Action Committees

PACs (separate segregated funds, committees with non-contribution accounts (also sometimes called "Hybrid" PACs), independent expenditure-only committees (Super PACs) and other nonconnected committees) that filed on a semi-annual basis in 2015 file on a quarterly basis in 2016. Monthly filers continue on a monthly schedule. PACs may change their filing schedule, but must first notify the Commission in writing. Electronic filers must file this request electronically. A committee may change its filing frequency only once a year. 11 CFR 104.5(c).

The committee will receive a letter from the Commission approving the frequency change.

Pre- and Post-Election Reports

Please note that in 2016, party committees and PACs that file monthly reports must file a pre-general election report and a post-general election report in lieu of the reports otherwise due in November and December. Party committees and PACs that file quarterly reports also file:

A pre-primary election report and a pre-general election report before any election in which the committee makes a contribution to or an expenditure on behalf of a candidate in that election, if not previously disclosed; and a post-general election report. 11 CFR 104.5(c)(1)(ii) and (iii).

Where to File

Committee treasurers must file campaign finance reports with the appropriate federal office, as discussed below. State filing requirements also apply to campaign finance reports filed by the principal campaign committees of candidates seeking office in Guam, Puerto Rico and the Northern Mariana Islands and to reports filed by PACs and party committees that support these candidates. 52 U.S.C. § 30113(a)(2)(B).

House Candidate Committees. Principal campaign committees of House candidates file with the FEC. 11 CFR 105.1.

Senate Candidate Committees. Principal campaign committees of Senate candidates file with the Secretary of the Senate. 11 CFR 105.2.

Presidential Committees. Principal campaign committees of Presidential candidates file with the FEC. 11 CFR 105.3.

Candidate Committees with More Than One Authorized Committee. If a campaign includes more than one authorized committee, the principal campaign committee files, with its own report (FEC Form 3 or 3P), a consolidated report of receipts and disbursements (FEC Form 3Z) showing its own activity as well as the activity of all other authorized committees of the candidate. 11 CFR 104.3(f).

PACs and Party Committees. Generally, PACs and party committees file with the FEC. 11 CFR 105.4. However, committees that support only Senate candidates file with the Secretary of the Senate, including the national Senatorial campaign committees. 11 CFR 105.2.

Joint Fundraising Committees. Joint fundraising committees supporting only Senate candidates file with the Secretary of the Senate. 11 CFR 105.2. All other joint fundraising committees file with the FEC. 11 CFR 105.4. Please note that joint fundraising committees supporting only federal candidates file on Form 3 and follow the reporting schedule for authorized committees. 11 CFR 102.17(a)(1)(i), (c)(8). Joint fundraising committees supporting both federal candidates and other party or non-party political committees (such as PACs) file on Form 3X and follow the reporting schedule for unauthorized committees. 11 CFR 104.5(c).

Independent Expenditures

Political committees and other persons^[FN3] who make independent expenditures may have to disclose this activity within 48 or 24 hours based upon the date and amount of the expenditure. Note that aggregations of independent expenditures must be calculated as of the first date on which a communication that constitutes an independent expenditure is publicly disseminated, and as of the date that any such communication with respect to the same election is subsequently publicly disseminated. 52 U.S.C. §30104(g) and 11 CFR 100.19(d), 104.4(b), (c) and (f) and 109.10(c) and (d).

Political committees must use [FEC Form 3X, Schedule E](#), to file 48- and 24-hour reports. Persons that are not political committees must use [FEC Form 5](#).

Political committees must report all independent expenditures, regardless of whether or not they trigger the 48- or 24-hour reporting thresholds, on their regularly scheduled campaign finance reports. These independent expenditure reports are not required when a party committee or PAC makes a contribution directly to a candidate.

Persons that are not political committees must disclose independent expenditures in a quarterly report filed on [FEC Form 5](#) once the expenditures exceed \$250 in a calendar year in connection with an election. 11 CFR 104.4(b)(1) and 109.10(b). Form 5 filers are not required to file quarterly reports for periods in which they have not made any independent expenditures. However, they must file quarterly reports for periods in which they made expenditures aggregating over \$250 in a calendar year for a given election, regardless of whether or not they have already reported that activity in a 48- or 24-hour report.

For a chart of 2016 48- and 24-hour reporting periods for independent expenditures, consult the FEC website at http://www.fec.gov/info/charts_ie_dates_2016.shtml.

All persons and political committees, including committees that support Senate candidates, must file their 24- and 48-hour reports of independent expenditures with the Commission. 11 CFR 105.4. See also 11 CFR 104.4 and 109.10.

Committees Active in Special Elections

Committees authorized by candidates running in any 2016 special election must file pre- and post-election reports in addition to regularly scheduled reports. 11 CFR 104.5(h). They are also required to comply with the 48-hour notice requirement for any contribution of \$1,000 or more per source (including loans) received shortly before an election. See 11 CFR 104.5(f).

PACs and party committees supporting candidates running in special elections may also have to file pre- and post-election reports unless they file on a monthly basis. 11 CFR 104.5(c)(3) and 104.5(h). All PACs, as well as individuals, corporations, labor organizations and all other persons, are subject to 48- and 24-hour reporting of independent expenditures made before an election. See 11 CFR 104.4(b) and (c) and 104.5(g).

Reporting dates for special elections will be published in the *Record* and on the Reporting Dates page at http://www.fec.gov/info/report_dates_2016.shtml#special.

Electioneering Communications

Additionally, individuals and other persons who make disbursements for "electioneering communications" that aggregate in excess of \$10,000 must file disclosure statements with the Commission within 24 hours of distribution of the communications to the public. 11 CFR 104.5(j); See also 11 CFR 100.29. A chart detailing the electioneering communication periods for 2016 primary and runoff elections is available at http://www.fec.gov/info/charts_ec_dates_2016.shtml.

Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with an election (including special elections) 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 the lobbyist bundling disclosure threshold during the election reporting period. 11 CFR 104.22(b)(1).

The lobbyist bundling disclosure threshold for calendar year 2015 was \$17,600. This threshold amount may increase in 2016 based upon the annual cost of living adjustment (COLA). As soon as the adjusted threshold amount is available, the Commission will publish it in the Federal Register and post it on its website. 11 CFR 104.22(g) and 110.17(e) (2). For more information on these requirements, see the [March 2009 Record](#).

Additional Information

The [2016 Reporting Schedule](#) is also available on the FEC's website at http://www.fec.gov/info/report_dates_2016.shtml. For more information on reporting, call the FEC at 800/424-9530 or 202/694-1100. To obtain a list of 2016 reporting dates:

Call and request the reporting tables from the FEC at 800/424-9530 or 202/694-1100; Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or

Visit the FEC's web page at http://www.fec.gov/info/report_dates_2016.shtml to view the reporting tables online.

¹As used here, "overnight mail" includes Priority or Priority 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 online tracking system. See 11 CFR 100.19(b) (1) and (b)(3)(i). Note that "Express Mail" as referred to in FEC regulations has been re-named "Priority Express Mail" by the USPS.

²The regulation covers individuals and organizations required to file reports of contributions and/or expenditures with the Commission, including any person making an independent expenditure. 11 CFR 104.18(a). Disbursements for "electioneering communications" are not considered "expenditures" and thus do not count toward the \$50,000 threshold for mandatory electronic filing. See 11 CFR 104.18(a).

³As used in this article, "person" means an individual, partnership, association, corporation, labor organization, or group of persons. See 11 CFR 100.10.

(Posted 01/08/2016; By: Katherine Carothers)

Resources:

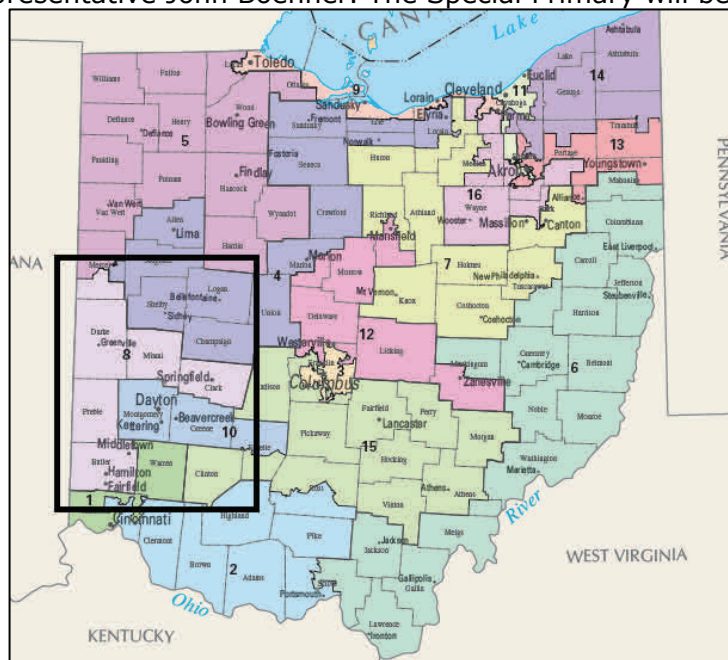
- [2016 Reporting Dates](#)
- [Compliance Map](#)
- [FEC Electronic Filing](#)
- Record article: [FEC to Host Year-End Reporting and E-Filing Webinars](#)

Ohio Special Election Reporting: 8th District

Ohio will hold special primary and general elections to fill the U.S. House seat in Ohio's 8th Congressional District vacated by Representative John Boehner. The Special Primary will be held on March 15, 2016, and the Special General will be held June 7, 2016.

Candidate committees involved in these elections must follow the reporting schedule posted at http://www.fec.gov/pages/report_notices/2016/oh08.shtml.

That schedule also applies to PACs and party committees that file on a quarterly basis in 2016 and participate in these elections. 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.



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.

Timely Filing for Paper Filers

Registered and Certified Mail. Generally, reports sent by registered or certified mail are considered to be filed on the date of their postmark. See 52 U.S.C. § 30104(a)(2)(A)(i), (a)(4)(A)(i) and (a)(5); 11 CFR 104.5(e). Accordingly, pre-election reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed; other reports must be postmarked by the filing deadline. 11 CFR 100.19 (b). A committee sending its reports by certified or registered mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of mailing because the USPS does not keep complete records of items sent by certified or registered mail. 11 CFR 104.5 (i).

Overnight Mail. Reports filed via overnight mail ^[FN1] will be considered timely filed if the report is received by the delivery service on or before the mailing/filing deadline. A committee sending its reports by Priority Mail or Priority Express Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports. 52 U.S.C. § 30104(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 filing deadline. 11 CFR 100.19 and 104.5(e). (If the deadline falls on a weekend or federal holiday, such filers should plan accordingly and file reports by the close of business on the last business day before the filing deadline.)

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 February 25 and March 12, 2016, for the Special Primary, and between May 19 and June 4, 2016, for the Special General Election.

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 or more between February 25 and March 13, 2016, for the Special Primary, and between May 19 and June 5, 2016, for the Special General. This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more 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 February 25, 2016, for the Special Primary, and prior to May 19, 2016, for the Special General.

Electioneering Communications

The 30-day electioneering communications period in connection with the Special Primary Election runs from February 14 through March 15, 2016. The 60-day electioneering communications period for the Special General Election runs from April 8 through June 7, 2016.

Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special elections 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 the lobbyist bundling threshold during the special election reporting periods. 11 CFR 104.22(a)(5)(v) and (b).

The lobbyist bundling disclosure threshold for calendar year 2015 is \$17,600. This threshold amount may increase in 2016 based upon the annual cost of living adjustment (COLA). As soon as the adjusted threshold amount is available, the Commission will publish it in the Federal Register and post it on its website. For more information on these requirements, see the [March 2009 Record](#). See 11 CFR 110.17(e)(2).

¹ "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 online tracking system.

(Posted 12/16/2015; By: Katherine Carothers)
Photo Source: [nationalatlas.gov](#)

Resources:

- [Ohio 8th District Special Election Prior Notice](#)
- [2015 Reporting Dates](#)
- [Ohio 8th District Special Election Compliance Page](#)
- [Federal Register Notice](#) [PDF]