Record

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AO 2004-27

Use of Campaign Funds for Unpaid Salary of Former Employees

Quayle 2000 Inc. (the Committee) may not use its remaining campaign funds to pay salary to campaign employees who agreed to work without salaries in 1999. Because the Committee initially treated the unpaid service as volunteer work and has never reported the unpaid amounts as debt, it cannot now consider the funds to be a permissible use of campaign funds. 2 U.S.C. §439a(a).

Background

During the 2000 campaign, two Committee employees agreed to work without salaries from March 1 to March 31, 1999, when the Committee was low on funds. Each employee signed a "Statement of Volunteer Services." See 11 CFR 116.6. The Committee currently has funds with which to pay these former employees the salary they would have received during this

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Shays and Meehan v. FEC

On September 18, 2004, the U.S. District Court for the District of Columbia granted in part and denied in part the plaintiffs' motion for summary judgment in this case. The court remanded to the FEC a number of FEC regulations implementing certain provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA), requiring the Commission to reconsider these rules and/or the way in which the rules were promulgated. The court also granted in part and denied in part the Commission's request for summary judgment, upholding four of the challenged regulations.

The Commission filed a Notice of Appeal of this decision on September 28, 2004, and plaintiffs cross-appealed on October 13, 2004. The court denied the Commission's motion for a stay pending appeal on October 19, 2004, but confirmed that the Commission's regulations remain in effect.

Background

The BCRA required the Commission to promulgate rules implementing its soft-money provisions within 90 days of the BCRA's enactment, and to promulgate rules implementing other BCRA provisions within

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270 days. President Bush signed the BCRA into law on March 27, 2002, and the Commission completed its rulemaking process within the required timeframes.

On October 8, 2002, Representatives Christopher Shays and Martin Meehan filed a complaint charging that many of these regulations "contravene the language" of the statute and "will frustrate the purpose and intent of the BCRA by allowing soft money to continue to flow into federal elections and into the federal political process." The plaintiffs asked the court to invalidate these regulations, alleging that they are contrary to the statutory instructions provided by Congress. See the December 2002 *Record*, page 13.

Court Decision

The standard for judicial review in a case such as this, where one party alleges that an agency's actions are contrary to the statute, is called *Chevron* review, after the Supreme Court's decision in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). In *Chevron* review, the court asks first whether Congress has spoken to the precise issue at hand. If so, then the agency's interpretation of the statute must implement Congress's unambiguous intent. If, however, Congress has not spoken explicitly to the question at hand, the court must consider whether the agency's rules are based on a permissible reading of the statute.

In this case, the plaintiffs also claimed that in some instances the FEC failed to engage in a reasoned analysis when it promulgated the regulations, or failed to follow proper procedures regarding public notice and comment. Under the Administrative Procedure Act, regulations that are promulgated without a reasoned analysis may be found "arbitrary and capricious" and may be set aside by a reviewing court. 5 U.S.C. §706(2)(A).

The court found that the challenged portions of four regulations passed *Chevron* review and were consistent with requirements of the Administrative Procedure Act:

- The safe harbor at 11 CFR 300.2(c)(3) that provides that an entity will not be considered to be directly or indirectly established, maintained or controlled by another entity based solely on activities that occurred before November 6, 2002;
- The rules at 11 CFR 300.32(a)(4) providing for the payment of Levin fund fundraising costs;
- The rules at 11 CFR 300.30(c)(3), which describe permissible accounting procedures for keeping nonfederal and Levin funds in a single account; and
- The definition of "State committee," "district committee" and "local committee" at 11 CFR 100.14.

The court, however, found that portions of other challenged regulations either failed to pass *Chevron* review or violated the Administrative Procedure Act. These included:

- The coordinated communications content test regulations at 11 CFR 109.21(c), including the provision excluding Internet communications from the coordinated communication rules at 11 CFR 109.21(c)(iv);
- The definition of "agent" under the coordination rules at 11 CFR 109.3 and the nonfederal funds rules at 11 CFR 300.2(b);
- The definitions of "solicit" and "direct" at 11 CFR 300.2(m) and 300.2(n);
- The safe harbor for federal candidates' and officeholders' activities at state party fundraisers at 11 CFR 300.64(b);
- The definitions (for the purposes of defining "federal election activity") of voter registration activity, get-out-the-vote activity, voter identification and generic campaign activity at 11 CFR 100.24(a)(2)-(a)(4) and 100.25;
- The requirements for paying the salaries and wages of state party committee employees who spend less than 25 percent of their compensated time on activities in connection with a federal election (11 CFR 300.33(c)(2);
- The exemption allowing certain federal election activity expenses that are under $5,000 in the aggregate to be paid entirely with Levin funds (11 CFR 300.32(c)(4);
- The exemption for section 501(c)(3) organizations from the electioneering communications rules at 11 CFR 100.29(c)(6); and
- The requirement at 11 CFR 100.29(b)(3)(i) that electioneering communications must be distributed for a fee.

The court denied the plaintiffs' request to enjoin the Commission from enforcing these regulations and to require the Commission to commence proceedings to promulgate new regulations within 15 days

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of the court's decision. Instead, the court remanded the case to the Commission for further action consistent with the court's opinion.

U.S. District Court for the District of Columbia, CV02-1984.

—*Amy Kort*

LaRouche's Committee for a New Bretton Woods v. FEC

On July 29, 2004, the U.S. Court of Appeals for the District of Columbia granted the FEC's motion to dismiss this case. The plaintiff had asked the court to review the FEC's determination requiring it to repay to the U.S. Treasury a portion of the Presidential primary matching funds it received for the 2000 Presidential election. However, the court found that it lacked jurisdiction because the plaintiff was concurrently seeking an administrative reconsideration from the Commission, and the plaintiff could not seek judicial review until the rehearing was concluded. See the June 2004 *Record*, page 7.

—*Amy Kort*

Jim Sykes v. FEC, et al.

On September 9, 2004, the U.S. District Court for the District of Columbia granted the FEC's motion to dismiss and also granted all other defendants' requests for dismissal "to the extent that other defendants' motions to dismiss join in Defendant's FEC's motion…." The plaintiff filed a Notice of Appeal on October 13, 2004.

Background

On February 24, 2004, Jim Sykes, the Green Party's nominee in Alaska's November 2 Senate election, filed a complaint asking the court to find unconstitutional unspecified provisions of the Federal Election Campaign Act (the Act) that allow non-Alaska residents to make contributions to a Senate candidate in Alaska's 2004 general election, either personally or through political committees. The plaintiff alleged that these non-resident contributions unconstitutionally burdened his First and Fifth Amendment rights to associate politically, both as a candidate and a voter, with other Alaska voters.

Court Decision

In order to have standing to bring suit in federal court, a plaintiff must meet a three-part test. The plaintiff must:

- Demonstrate an "injury in fact" that is concrete, distinct and palpable;
- Establish a causal connection between the injury and the conduct described in the suit, such that the injury is "fairly traceable" to the action of the defendants and not the result of some third party that is not before the court; and
- Show the "substantial likelihood" that the requested relief will remedy the alleged injury in fact.

The court found that the plaintiff was unable to establish any of these three requirements for standing.

Having found that the plaintiff did not have standing in this case, the court did not reach the issue of whether the case was also frivolous. The court granted the FEC's motion to dismiss the case in its entirety and found that there was no need to convene a three-judge panel or to certify the plaintiff's questions to the appeals court.

See the April 2004 *Record*, page 12.

U.S. District Court for the District of Columbia, 1:04CV00293.

—*Amy Kort*

John Hagelin, et al. v. FEC

On October 6, 2004, the U.S. District Court for the District of Columbia granted the FEC's motion to stay its decision in this case, pending appeal. On August 12, 2004, the court had granted in part and denied in part the motion for summary judgment brought against the FEC by John Hagelin, Ralph Nader, Patrick Buchanan, Howard Phillips, Winona LaDuke, the Green Party of the United States and the Constitution Party. It also granted in part and denied in part the FEC's cross-motion for summary judgment. The plaintiffs charged that the FEC erroneously dismissed their administrative complaint, which asserted that the Commission on Presidential Debates (CPD) was partisan and therefore could not lawfully sponsor Presidential debates. See also *Hagelin et al. v FEC* in the August 2004 *Record*, page 9, and the October 2004 *Record*, page 3.

U.S. District Court for the District of Columbia, 1:04-cv-731.

—*Amy Kort*

New Litigation

Shays and Meehan v. FEC

On September 14, 2004, U.S. Representatives Christopher Shays and Martin Meehan filed a complaint in the U.S. District Court for the District of Columbia. The complaint challenges the Commission's alleged "failure . . . to promulgate legally sufficient regulations to define the term 'political committee,'" particularly as that term is applied to so-called 527 organizations. The plaintiffs ask the court to require the Commission to promulgate regulations, on an expedited basis, defining "political committee" and defining when a 527 organization becomes a political committee.

Definition of "political committee." The Federal Election Campaign Act (the Act) defines a "political committee" as "any club, committee, association or other group of persons" that receives contributions or makes expenditures aggregating in excess of $1,000 during a calendar year. 2 U.S.C. §431(4); see also 11 CFR 100.5(a). Political committees must register and report with the FEC and are limited in the sources and amounts of contributions they may make and receive. 2 U.S.C.

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§§433, 434, 441a(a)(1)-(2), 441b(a) and 441f.

In *Buckley v Valeo*, 424 U.S. 1, 79 (1976), the Supreme Court stated that the term "political committee" only encompasses "organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." The definition of "political committee" set forth in the Commission's regulations repeats the statutory language described above and does not refer to the Court's "major purpose" standard.

Definition of "527 organizations." The tax code at section 527 provides tax exempt treatment for certain income received by a "political organization." A "political organization" is defined as a "party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." 26 U.S.C. §527(e)(1). An "exempt function" means the "function of influencing or attempting to influence the selection, nomination, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors . . ." 26 U.S.C. §527(e)(2).

FEC Rulemaking. On March 11, 2004, the Commission published a Notice of Proposed Rulemaking suggesting revisions to the definition of political committee and other changes to the regulations, including proposals to address when 527 organizations meet the "major purpose" requirement.[1] On August 19, 2004, the Commission approved final rules resulting from this Notice of Proposed Rulemaking, but, according to the plaintiffs, the Commission did not promulgate new rules addressing the "major purpose" of an organization or further clarifying when a 527 organization is a "political committee" under the Act.

Court Complaint. The plaintiffs allege that the Commission's failure to issue new rules defining "political committee" leaves in place "a legally inadequate rule that fails to properly implement the law, and under which multiple section 527 groups are currently spending tens of millions of dollars of soft money plainly for the purpose, and with the effect, of influencing the 2004 presidential and congressional elections." The plaintiffs ask the court to find that the Commission's decision not to promulgate regulations requiring 527 organizations to register as political committees when their major purpose is to influence federal elections and they raise or spend more than $1,000 to do so is:

- Arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law;
- Contrary to the Act, as construed by the Supreme Court, and invalid because it constitutes agency action unlawfully withheld; and
- Invalid insofar as the Commission, by initiating a rulemaking, acknowledged the need to revisit the definition of "political committee," but failed to state its reasons for not addressing the "major purpose" test or the status of 527 organizations.

The plaintiffs ask the court to require the Commission to begin an expedited rulemaking to promulgate appropriate regulations to define "political committee" and to define when a 527 organization must register and file as a political committee.

U.S. District Court for the District of Columbia, 1:04CV01597.

—*Amy Kort*

Bush-Cheney '04 v. FEC

On September 17, 2004, Bush-Cheney '04 filed a complaint in the U.S. District Court for the District of Columbia. The complaint challenges the FEC's alleged failure to issue regulations interpreting the phrase "for the purpose of influencing a federal election" which appears in the statutory definitions of "contribution" and "expenditure." 2 U.S.C. §431(8)(A)(i) and 431(9)(A)(i). The plaintiff asks the court to require the Commission to commence proceedings to promulgate such regulations and, by extension, to address whether certain so-called 527 organizations are "political committees" under the Act.

Background. The Federal Election Campaign Act (the Act) defines a "political committee" as "any club, committee, association or other group of persons" that receives contributions or makes expenditures aggregating in excess of $1,000 during a calendar year. 2 U.S.C. §431(4); see also 11 CFR 100.5(a). Under the Act, political committees must register and report with the FEC and are limited in the sources and amounts of contributions they may make and receive. 2 U.S.C. §§433, 434, 441a(a)(1)-(2), 441b(a) and 441f.

The Act defines "contribution" and "expenditure" in terms of funds raised or spent "for the purpose of influencing any election for federal office." 11 CFR 100.52(a) and 100.111(a).

Court Complaint. The plaintiff alleges that in *McConnell v FEC* the Supreme Court expanded the Act's "for the purpose of influencing" standard reach beyond "express advocacy." According to the plaintiff, the Commission has failed to respond to the Court's decision by adopting any regulations or taking any other action in advisory opinions or enforcement matters setting forth clear standards for when entities organized under section 527 of

[1] *See "Notice of Proposed Rulemaking on Political Committee Status," 69 FR 11736 (March 11, 2004).*

the tax code are required to register as political committees.[1]

The plaintiff alleges that the Commission failed to address this issue through the rulemaking process. On March 11, 2004, the Commission published a Notice of Proposed Rulemaking suggesting revisions to the definition of political committee and other changes to the regulations, including proposals to address when 527 organizations become political committees under the Act. The plaintiff contends that the Commission subsequently concluded this rulemaking, on August 19, by "promulgating rules on two collateral matters" while it "refused to issue any rule addressing the central question that had prompted the rulemaking in the first place: the definition of a political committee and the requirement for Section 527 groups to register as political committees."

The plaintiff alleges that the Commission's failure to issue rules addressing the activities of 527 organizations is arbitrary and capricious, an abuse of discretion and not in accordance with law. The plaintiff asks the court to:

- Declare that the Commission's failure to issue appropriate regulations implementing the statutory phrase "for the purpose of influencing a federal election" constitutes agency action unlawfully withheld and an abuse of the FEC's discretion; and
- Issue an order requiring the FEC to promulgate, on an expedited basis, regulations implementing this statutory phrase and, by extension, to address which organizations are political committees under the Act.

U.S. District Court for the District of Columbia , No. 1:04CV01612.

—Amy Kort

Citizens for Responsibility and Ethics in Washington v. FEC

On September 30, 2004, Citizens for Responsibility and Ethics in Washington (CREW) asked the U.S. District Court for the District of Columbia to find the FEC in violation of the Freedom of Information Act (FOIA) and to require the FEC to immediately respond to CREW's FOIA request by releasing all responsive documents.

Background. On July 12, 2004, CREW, a nonprofit 501(c)(3) corporation, asked the FEC to provide it with a investigative report prepared by counsel for Westar Energy Company (Westar) regarding possible campaign finance violations by the company. CREW believed the report had been voluntarily forwarded by Westar to the FEC.

The FEC denied CREW's request for information, citing the "confidentiality provision" of the Federal Election Campaign Act (the Act). Under this provision, any "notification or investigation made under this section shall not be made public by the Commission without the written consent of the person receiving such notification or the person with respect to whom such investigation is made." 2 U.S.C. §437g(a)(12)(A).

CREW appealed the FEC's denial of its FOIA request, arguing that the "confidentiality provision" does not apply to the Westar report.

Court complaint CREW alleges that the statutory time limit for the FEC to respond to its FOIA appeal has run out and that CREW has exhausted its available administrative remedies. See 5 U.S.C. §522(a)(6)(C). CREW requests that the court find the FEC in violation of FOIA. CREW asks the court to order the FEC immediately to release all appropriate records in response to the FOIA request.

U.S. District Court for the District of Columbia, 1:04CV01672.

—Amy Kort

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period had they not agreed to forgo salary payments.[1]

Analysis

Treatment of unpaid employee services. Under Commission regulations, when a political committee does not pay an employee for services rendered to the committee, the unpaid amount may be treated as either a debt owed by the political committee to the employee, or as volunteer services if the employee signs a written statement agreeing to be considered a volunteer. 11 CFR 116.6(a). If the service is considered a debt, the Committee must initially disclose the debt in a timely manner, and must continuously report that debt until the debt is extinguished. 2 U.S.C. §434(b)(8); 11 CFR 104.3(d) and 104.11(a) and (b); see also AOs 1997-21, 1991-9 and 1977-58. In this case, the two employees agreed to treat their employment as volunteer services, and the Committee has never reported the amounts as debt.

Permissible uses of campaign funds. The Federal Election Campaign Act (the Act) provides four categories of permissible uses of a candidate's campaign funds:

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[1] *Entities organized under 26 U.S.C. 527 are considered "political organizations," defined generally as a party, committee or association that is organized and operated primarily for the purpose of influencing the selection, nomination or appointment of any individual to any federal, state or local public office, or office in a political organization. 26 U.S.C. §527(e)(1) and (e)(2).*

[1] *In 1999, the Committee received matching funds under the Primary Matching Payment Account Act. In 2002, the Commission approved an audit report finding that no repayment of federal matching funds was required. After the audit, the Committee had campaign funds remaining in its account. However, because the Committee's account no longer contains federal matching funds and the Committee does not owe a repayment, the analysis below focuses only on the Federal Election Campaign Act. See 11 CFR 9038.2.*

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1. Otherwise authorized expenditures in connection with the candidate's federal campaign;
2. Ordinary and necessary expenses incurred as a federal officeholder;
3. Contributions to charitable organizations described in 26 U.S.C. §170(c); and
4. Unlimited transfers to national, state or local political party committees.

2 U.S.C. §439a(a); 11 CFR 113.2.[2]

In no case may campaign funds be converted to "personal use" by any person. 2 U.S.C. §439a(b)(1); 11 CFR 113.2. Commission regulations define "personal use" as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g); 2 U.S.C. §439a(b)(2).

Because the Committee has never reported the unpaid amounts of these employees' salaries as debts, there are no debts or obligations that could give rise to an authorized expenditure under the first permissible use of funds listed above.[3] Any payment now for services that had been considered volunteer services since 1999 would not be an authorized expenditure of the Committee. 2 U.S.C. §439a(a)(1). The payment for volunteer services also does not fit with any of the other three permissible uses of campaign funds. Thus, the Committee may not use its campaign funds to make the payments to these former employees.

Date Issued: September 9, 2004; Length: 4 pages.

—*Amy Kort*

[2] *In the Bipartisan Campaign Reform Act of 2002, Congress removed "any other lawful purpose" from the list of permissible uses of campaign funds in section 439a.*

[3] *In addition, allowing the Committee to pay these amounts in 2004 would mean that, contrary to the volunteer services arrangements, unreported debts or obligations did exist. Because these amounts were neither initially disclosed nor continuously reported, permitting payment would result in reporting violations by the Committee.*

AO 2004-28

Disclosure of Donations to State Party Committee Nonfederal Office Building Fund

The Iowa Ethics and Campaign Disclosure Board (the Board) may require Iowa state party committees to disclose donors to the committees' nonfederal office building funds. The Federal Election Campaign Act (the Act) and Commission regulations now specifically allow a state to require the disclosure of donors to such funds. 2 U.S.C. §453 and 11 CFR 300.35.

Background

The Board administers the campaign finance laws in Iowa with regard to state and local elections. Both the Iowa Democratic and Republican parties have nonfederal office building funds. In AO 1998-8, the Commission concluded that the Act and Commission regulations preempted the Iowa state law that had sought to prohibit corporate donations to state party committee nonfederal office building funds. However, the Commission did not directly address the issue of whether federal law would also prohibit Iowa from requiring disclosure of building fund donations. In its request for AO 1998-8, the Iowa Democratic Party acknowledged the state's ability to regulate such disclosure under AO's 1997-14 and 1991-5.

Analysis

In the Bipartisan Campaign Reform Act of 2002, Congress amended the Act to provide that a state party may, subject to state law, use exclusively nonfederal funds for the purchase or construction of its office building. 2 U.S.C. §453. Consistent with this amendment to the Act, Commission regulations provide that if a state party committee uses nonfederal funds to purchase or construct its office building, then the sources, uses and disclosure of those funds are subject to state law (so long as funds are not donated by foreign nationals). 11 CFR 300.35(a) and (b)(1). Thus, Iowa may require its state party committees to disclose donors to nonfederal office building funds.[1]

Date Issued: September 9, 2004; Length: 3 pages.

—*Amy Kort*

AO 2004-29

Federal Candidate's Support of Ballot Initiative Committees

Representative Todd Akin, a member of Congress and candidate for reelection, may support or oppose ballot initiatives using his campaign funds, and may reference the initiatives in solicitations for his principal campaign committee (PCC). Representative Akin may also appear in ads focusing on ballot initiatives if the ads are paid for by his PCC, by the initiative committees with permissible funds and within permissible contribution limits or by a combination thereof. Finally, Representative Akin may use contributions received by his PCC to make donations to state and local candidates who support his positions on specific ballot initiatives.

Background

In Missouri, citizens may use the ballot initiative process to change state laws and the state constitution. Representative Akin would like to support some ballot initiative committees. He was not involved in

[1] *In its AO request, the Board stated that it did not wish to prohibit corporate donations to state party nonfederal office building funds.*

establishing any of the ballot initiative committees. None of the ballot initiative committees are political committees under the Federal Election Campaign Act and Commission regulations.

Analysis

Donations to ballot initiative committees from the PCC. Representative Akin may use contributions accepted by the PCC to make donations to a ballot initiative committee. The Act lists four categories of permissible uses of contributions received by a federal candidate:

1. Otherwise authorized expenditures in connection with the candidate's campaign;
2. Ordinary and necessary expenses incurred in connection with duties as a federal office holder;
3. Contributions to organizations described in 26 U.S.C. §170(c); and
4. Unlimited transfers to national, state or local party committees. 2 U.S.C. §439a and 11 CFR 113.2(a), (b) and (c).

Donations from the PCC to the ballot initiative committees are permissible because they will be in connection with his campaign for reelection.

Referencing ballot initiative donations in PCC solicitations. Representative Akin may note in a solicitation for his PCC that funds received may be donated to ballot initiative committees that support his positions. The contributions received in response to such solicitations must be treated like any other contributions to the PCC and thus must comply with the amount limitations, source prohibitions and reporting requirements of the Act.

Representative Akin's appearance in ads paid for by ballot initiative committees. Representative Akin may appear in newspaper, radio or television ads disseminated in his district before the November 2 election that focus on the ballot initiatives. Because the ads meet the three-pronged test defining a coordinated communication at 11 CFR 109.21 (the source of payment prong, the conduct standard and the content standard) and because the costs of the ads will likely exceed the contribution limits (and the ballot initiative committees' funds may be from prohibited sources) ,the PCC must reimburse the sponsor of the ad for the attributable portion of the cost of the communication to avoid receiving an in-kind contribution, or an excessive or prohibited contribution.[1] See 2 U.S.C. §441a(a). Amounts that the PCC donates to the sponsor organizations may be treated as payment for the ads if the PCC specifically indicates that purpose for the donation.

Representative Akin's appearance in advertisements paid for by the PCC. Payments made by the PCC for ballot initiative ads featuring Representative Akin (referenced as either a Member of Congress or a candidate) are permissible uses of campaign funds under 2 U.S.C. §439a(a), as discussed above. The ads must include all appropriate disclaimers. See 11 CFR 110.11.

Donations from the PCC to state and local candidates. Representative Akin may also use contributions received by his PCC to make donations to candidates for state and local office who support his positions on ballot initiatives. Such donations will be in connection with the Representative's reelection campaign and therefore are permissible as "otherwise authorized expenditures in connection with the campaign for Federal office." 2 U.S.C. §439a(a)(1).

Date Issued: September 30, 2004; Length: 8 pages.

—Meredith Trimble

[1] *See Advisory Opinion 2004-1, which discusses a permissible allocation and attribution formula under 11 CFR 106.1(a).*

AO 2004-32
SSF May Solicit Affiliated LLC

Spirit Airlines, Inc. PAC (Spirit PAC), the separate segregated fund (SSF) of Spirit Airlines Inc. (Spirit), may solicit the directors and senior employees of Oaktree Capital Management LLC (Oaktree), provided that those persons qualify as members of Oaktree's restricted class, because Spirit and Oaktree are affiliated. 11 CFR 100.5(g)(4)(i) and ii(A)-(J).

Background

Oaktree is a limited liability company that provides investment management for various "Oaktree funds," which are "diversified private equity vehicles." Through two existing Oaktree funds and three Oaktree managed holding companies, created specifically for investment in Spirit, Oaktree has invested $125 million in Spirit. Oaktree has the ability to "direct or participate in the governance of Spirit," it may select Spirit's board of directors and it has a significant presence on that board

Analysis

The Federal Election Campaign Act (the Act) permits a corporation or its SSF to solicit its restricted class and the restricted class of the corporation's subsidiaries, branches, divisions and affiliates and their families. 2 USC §441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). The Commission has long held that affiliates may include entities other than corporations, including limited liability companies. See AOs 2001-18, 1999-28 and 1982-18. The Commission considers an entity that owns a majority interest of another organization to be affiliated *per se* with that other organization. 11 CFR 100.5(g)(2). In the absence of *per se* affiliation, the Commission may determine, on a case-by-case basis, whether an organization is an

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affiliate of a corporation based on an examination of the relevant circumstantial factors found at 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J).

One affiliation factor considers whether an organization "owns a controlling interest in the voting stock" of another organization. 11 CFR 100.5(g)(4)(ii)(A); AO 1989-17. Although Oaktree does not directly own a controlling interest in Spirit, Oaktree controls 51 percent of the voting stock of Spirit through the two Oaktree funds and three Oaktree-managed holding companies. In the context of the overall relationship, the Commission concludes that Oaktree's control of 51 percent of the voting stock of Spirit is strong evidence of affiliation.

Another affiliation factor considers whether one organization has the authority or ability to direct or to participate in the governance of another sponsoring organization through provisions of constitutions, bylaws, contracts or other rules, or through formal or informal practices or procedures. 11 CFR 100.5(g)(4)(ii)(B). Oaktree has appointed four of the seven directors of Spirit; two of these directors are Oaktree principals. In addition, Spirit's bylaws state that its directors are elected annually by holders of voting stock and such elections are "determined by a plurality of the votes cast." Thus, Oaktree also has the ability to control the selection of all seven directors.

Considering these affiliation factors in the context of the overall relationship between Spirit and Oaktree, the Commission concludes that Spirit and Oaktree are affiliated for the purposes of the Act and Commission regulations. Therefore, Spirit PAC may solicit contributions from the directors and senior employees of Oaktree provided that those persons qualify as members of Oaktree's restricted class. 11 CFR 114.1(c) and 114.1(c)(1)(i). If any of these Oaktree senior employees do not qualify as members of its restricted class, Spirit PAC may still solicit such persons as part of a permissible twice-yearly solicitation of all employees of Spirit and its affiliates. 2 U.S.C. §441b(b)(4)(B) and 11 CFR 114.5(a) and 114.6. See also AOs 1994-7 and 1990-25.

Date Issued: September 30, 2004; Length: 5 pages

—Amy Pike

AO 2004-35
Presidential Campaigns May Use GELAC Funds for Recount Expenses

Kerry-Edwards 2004, Inc. (Kerry-Edwards), the authorized committee of Presidential and Vice-Presidential candidates Senators John Kerry and John Edwards, may use its general election legal and compliance (GELAC) fund to pay legal expenses, staff pay and office expenses that might result from a recount of the November 2, 2004, Presidential election.

Background

Publicly funded Presidential candidates may not raise or spend funds for their campaigns outside of the public funding grant, which is $74.62 million dollars for the 2004 election. However, the campaigns may accept contributions to a GELAC fund, which may only be used to pay for certain expenses. See 11 CFR 9003.3(a)(2). Contributions to a GELAC fund must comply with the amount limitations and source prohibitions of Federal Election Campaign Act. See 11 CFR 9003.3(a)(1)(i).

Analysis

Although Commission regulations governing GELAC funds do not specifically address recount expenses, the regulations do provide that GELAC funds may be used for certain legal and accounting compliance expenses and winding down expenses, which are described as expenses "associated with the termination of the candidate's general election campaign." See 11 CFR 9003.3(a)(2)(i)(A), 9003.3(a)(2)(i)(I) and 9004.11(a). Legal expenses and fees, fees for payment of staff and administrative overhead and office equipment expenses that result from a recount generally fit within these permissible GELAC fund uses. Thus, Kerry-Edwards may use GELAC funds to pay the expenses. See 11 CFR 9003.3(a)(2). All receipts and disbursements from the GELAC account, including those related to a recount, must be reported to the FEC in a separate report. 11 CFR 9003.3(a)(3)(ii) and 9006.1(b)(2).

Date Issued: September 30, 2004; Length: 3 pages.

—Amy Kort

AO 2004-36
Reporting In-Kind Contribution of Office Space

Risley for Congress (the Committee) must report as an in-kind contribution one-fifth of the normal rental value of donated office space that it shares with four other candidate committees.

Background

An individual contributor has donated office space to the Committee and four other candidates. The office space is shared equally by all five committees. However, the committees do not share telephone lines, staff, campaign resources or information, and they do not intermingle funds. The usual and normal charge for the rental property is $2,000 per month.

Analysis

The provision of goods or services to a federal campaign at no charge or at less than the usual and normal charge is considered an in-kind contribution. 11 CFR 100.52(d)(1). In this case, the donation of the free use of office space is an in-kind contribution to each of the five campaigns

using the space. The value of the in-kind contribution to the Committee is its proportionate share of the usual and normal rental value of the property for each month that the Committee uses it. Consequently, the contributor is giving $400 to the Committee on each rental due date.[1]

For reporting purposes, it is as though the contributor is giving the Committee money to pay for the office space. As a result, the Committee must report the receipt of this in-kind contribution as both a "contribution" and an "expenditure." 11 CFR 100.111(e) and 104.13(a)(2). The Committee must also itemize all contributions from a single individual that aggregate in excess of $200 per election cycle. Thus, the Committee must report and itemize the in-kind contribution of office space in the report covering the dates on which the contribution was received (in other words, the rental due dates), along with the election-to-date totals for this contributor. In the same report, the Committee must also report the contribution amount as an expenditure for rental of the space. 11 CFR 104.13(a)(2).

Date Issued: October 7, 2004; Length: 4 pages.

—Amy Kort

Advisory Opinion Requests

AOR 2004-37

Brochure made by federal candidate's authorized committee or leadership PAC expressly advocating election of other federal candidates; reimbursements by those candidates. 20-day expedited decision (Representative Maxine Waters, Citizens for Waters and People Helping People, October 8, 2004)

[1] *This contribution is subject to the Act's contribution limits of $2,000 per candidate, per election, and it must be aggregated with any other contributions that contributor has made for the same election. 2 U.S.C. §441a(a)(1)(A) and 11 CFR 110.1(a) and (b)(1).*

AOR 2004-38

Candidate's raising and spending of funds for recount expenses (George Nethercutt and the Nethercutt for Senate Committee, October 13, 2004)

AOR 2004-39

State party committee's raising and spending of nonfederal funds for recount expenses (Washington State Republican Party, October 13, 2004)

Regulations

Final Rules and Reporting Form for Inaugural Committees

On September 30, 2004, the Commission approved final regulations and a new disclosure form to implement provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) governing Presidential inaugural committees.

The new rules require inaugural committees to:

- Register with the FEC by letter within 15 days after appointment by the President-elect;
- Report, within 90 days after the inauguration, all accepted (i.e., deposited) donations that aggregate $200 or more from a donor;
- Report any refunds of reported donations;
- File supplements to disclose any reportable donations accepted or refunds made after the initial filing;
- Retain records for three years; and
- Reject donations from foreign nationals.

The new rules, and their accompanying Explanation and Justification were published in the October 6, 2004, *Federal Register* (69 FR 59775). The rules will take effect on November 5, 2004. The *Federal Register* notice containing the final rules is available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml. In addition, the new FEC Form 13 "Report of Donations Accepted for Inaugural Committee(s)" will be available on the web at http://www.fec.gov/info/forms.shtml.

—Dorothy Yeager

Alternative Dispute Resolution

ADR Program Update

The Commission recently resolved fifteen additional cases under the Alternative Dispute Resolution (ADR) program. The respondents, the alleged violations of the Federal Election Campaign Act (the Act) and the final disposition of the cases are listed below.

1. The Commission reached agreement with Friends of John Conyers and M. Mickey Williams, its treasurer, regarding the committee's failure to report receipts and disbursements and failure to accurately report election-cycle-to-date and beginning cash-on-hand figures.

The respondents acknowledged that a violation of the Act inadvertently occurred due to a change in staff and interface problems between old and new filing software, and they agreed to pay a $7,500 civil penalty. In an effort to avoid similar errors in the future, the respondents agree to:

- Appoint a staff member to be the FEC compliance officer;
- Develop an FEC compliance manual for staff use;
- Attend an FEC seminar within 12 months of the effective date of this agreement;
- Work with staff from the Reports Analysis Division to ensure that reporting requirements are being met; and

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Alternative Dispute Resolution

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- Correct and file all relevant reports within 90 days of the effective date of this agreement. (ADR 146*)

2. The Commission reached agreement with Friends of David Worley and Gregg Brasher, its treasurer, regarding excessive contributions resulting from the acceptance of contributions designated for 2002 General or Runoff elections, in which the candidate did not participate. The respondents acknowledged that an inadvertent violation of the Act occurred, and, upon learning of the time constraints for refunding, redesignating or reattributing excessive contributions, they refunded $11,500. The respondents agreed to pay a $1,000 civil penalty, and, in an effort to avoid similar errors in the future, agreed to refund the remaining $100,950 in excessive contributions. The respondents also agreed to file amended reports reflecting the refunds and to work with FEC staff to terminate the committee within 90 days. (ADR 149*)

3. The Commission reached agreement with Citizens Committee for Gilman for Congress and Murray M. Rosen, its treasurer, regarding excessive contributions resulting from the acceptance of contributions designated for the 2002 General election, in which the candidate did not participate.

The respondents agreed to pay a $25,000 civil penalty. They contend that they had disclosed information regarding redesignations of contributions, provided copies of refund checks, refunded all remaining campaign funds and amended their reports appropriately. They noted that the committee had closed its offices and had no funds in its accounts with which to make further refunds. In order to resolve this matter and enable the respondents to conclude the activities of the committee, they agree to work with the FEC's Reports Analysis Division to amend and conclude the committee's reporting obligation and to subsequently file for termination. (ADR 150*)

4. The Commission reached agreement with Richard Pombo for Congress and Randall Pombo, its treasurer, regarding the failure to accurately report receipts (the committee's amended report revealed an 84 percent increase in unreported receipts). The respondents agreed to pay a $2,500 civil penalty and, in an effort to resolve these matters and avoid similar errors in the future, they agreed to work with staff of the Reports Analysis Division to amend their previously filed July 2003 Quarterly report and to resolve all outstanding issues concerning this report. In addition, they will designate one staff member to be responsible for FEC compliance and select at least one individual representing the committee to attend an FEC seminar on reporting requirements within 12 months of the effective date of this agreement. (ADR 153*)

5. The Commission reached agreement with NARAL Pro-Choice America PAC and John Botts, its treasurer, regarding the committee's failure to file 24-hour reports for independent expenditures. The respondents agreed to pay a $2,000 civil penalty. (ADR 158*)

6. The Commission reached agreement with John Sullivan for Congress, Gregory Colpitts, its treasurer, and John Sullivan regarding failure to accurately report debts. The respondents acknowledge that inadvertent reporting violations may have occurred when the committee was converting to new compliance software. In an effort to avoid similar errors in the future, the respondents agreed to work with Reports Analysis Division staff to ensure compliance with reporting requirements, including filing amended reports as necessary. The respondents will also designate an FEC compliance officer from the committee staff or employ an accounting firm to ensure future compliance with the Act, and they will designate committee staff to attend an FEC-sponsored seminar within 12 months. (ADR 163/ MUR 5368)

7. The Commission reached agreement with Superior Savings Bank of New England, N. A., regarding contributions from a national bank. The respondent acknowledged making the contributions; however, it contends that the error was due to the mistaken belief that the bank was governed by New York state regulations rather than the Act. The respondent agreed to pay a $1,000 civil penalty. In order to resolve this matter and avoid similar errors in the future, it will adopt and distribute within 30 days of the effective date of this agreement a corporate policy advising bank officers and directors that it is illegal for any national bank to make a contribution or expenditure in connection with any election to any political office or for any officer or director of a national bank to consent to such a contribution or expenditure. The respondent will also appoint an appropriate bank officer to attend a FEC-sponsored seminar within 12 months of the effective date of this agreement. (ADR 148/ Pre-MUR 414)

8. The Commission reached agreement with Conservative Leadership PAC and David Fenner, its treasurer, regarding the committee's failure to provide contributor information, adequately report the purpose of disbursements and amend its Statement of Organization timely.

The respondents acknowledge that violations of the Act occurred due to difficulties with the vendor with whom they contracted for reporting software and compliance. Respondents were unable to file amended reports because the required information regarding "best efforts" and other matters was lost or destroyed. The respondents agreed to pay a $2,000 civil penalty and,

** Cases marked with an asterisk were internally generated within the FEC.*

in an effort to avoid similar errors in the future, agreed to designate a staff member to attend an FEC seminar within 12 months of the effective date of this agreement. The respondents will work with Reports Analysis Division staff to determine how to adequately supplement the reports and file an amended Statement of Organization with a current mailing address. (ADR 156*)

9. The Commission reached agreement with Sonoma National Bank regarding contributions from a national bank. The respondent acknowledged purchasing tickets to an award dinner; however, it contends that it was unaware that the prohibition on national banks contributing to election campaigns would be applied to the purchase of such tickets. The respondents agreed to pay a $500 civil penalty. In order to resolve this matter and avoid similar issues in the future, it also agreed to adopt and distribute within 30 days of the effective date of this agreement a corporate policy advising bank officers and directors that it is illegal for any national bank to make a contribution or expenditure in connection with any election to any political office or for any officer or director of a national bank to consent to such a contribution or expenditure. The respondent will incorporate this policy statement into its Standards of Conduct Policy. (ADR 160/ Pre-MUR 418*)

10. The Commission reached agreement with Citizens for Anderson and Marilyn Anderson, its treasurer, regarding the committee's failure to file a Statement of Organization timely and its filing of an incomplete Statement of Organization. The respondents acknowledged filing an incomplete Statement of Organization and stated that they were unaware of the problem with their reports until the complaint was forwarded to them. They subsequently corrected and filed on January 30, 2004, an amended report. They acknowledged their violations of the Act and agreed to work with the Reports Analysis Division to ensure that all reports filed with the Commission are accurate and complete. They will file for termination and accept an admonishment for the numerous errors contained in the Statement of Organization they filed. (ADR 166/ MUR 5407)

11. The Commission reached agreement with Risley for Congress and Jan Risley, its treasurer, regarding the committee's failure to file disclosure reports, omitted disclaimer statements, failure to report receipts and disbursements and failure to file a 48-hour report. The respondents acknowledged violating the Act when they failed to file the Pre-Primary report and 48-hour report on time. They agreed to pay a $200 civil penalty and, in order to resolve this matter and avoid similar errors in the future, agreed to work with the Reports Analysis Division to ensure the Committee's reports are correct and in compliance with the regulations. (ADR 170/ MUR 5436)

12. The Commission reached agreement with the Democratic Party of Arkansas and Marcus Vaden, its treasurer, regarding the use of prohibited funds. The respondents acknowledge that a violation of the Act occurred and agreed to pay a $1,000 civil penalty. Moreover, they demonstrated that all but thirty-four of the filing fee assessments in question, which were paid by nonfederal candidates from their personal accounts and deposited in the respondents' federal account, were reimbursed by the candidates' committees with funds that were not prohibited under the Act. The total of those 34 filing fees, $34,019, was transferred to the respondents' nonfederal account and amended reports were filed with the Commission. The respondents, in an effort to avoid similar errors in the future, agreed to attend an FEC Seminar within 12 months and to develop and use a ballot access form to ensure that the ballot access fees are accurately identified. (ADR 175*)

13. The Commission closed the file involving Ciro D. Rodriguez for Congress and Juan J. Amaro, treasurer, regarding disclaimers. The ADR Office recommended the case be closed, and the Commission agreed to close the file. (ADR 180/ MUR 5417)

14. The Commission closed the file involving the Republican Liberty Caucus of Texas (RLC TX) and its treasurer, Don Zimmerman, Wes Riddle for Congress Campaign and its treasurer, J. Anthony Van Slyke, and the Republican Liberty Caucus PAC and its treasurer, Alan H. Cousin, regarding disclaimers. The ADR Office recommended the case be closed, and the Commission agreed to close the file. (ADR 181/ MUR 5423)

15. The Commission closed the file involving the Missouri Republican State Committee (MSRC) and Harvey Tettlebaum, its treasurer, concerning web site content, find-

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FEC Accepts Credit Cards

The Federal Election Commission now accepts American Express, Diners Club and Discover Cards in addition to Via and MasterCard. While most FEC materials are available free of charge, some campaign finance reports and statements, statistical compilations, indexes and directories require payment.

Walk-in visitors and those placing requests by telephone may use any of the above-listed credit cards, cash or checks. Individuals and organizations may also place funds on deposit with the office to purchase these items. Since prepayment is required, using a credit card or funds placed on deposit can speed the process and delivery of orders. For further information, contact the Public Records Office at 800/424-9530 or 202/694-1120.

Alternative Dispute Resolution

(continued from page 11)

ing that the alleged activity was not within the FEC's jurisdiction. The ADR Office recommended the case be closed, and the Commission agreed to close the file. (ADR 183/ MUR 5450)

—*Amy Kort*

Administrative Fines

Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 39 new Administrative Fine cases, bringing the total number of cases released to the public to 1,012, with $1,368,827 in fines collected by the FEC during the four years that the program has been in place.

Civil money penalties for late reports are determined by the number of days the report was late, the amount of financial activity involved and any prior penalties for violations under the administrative fines regulations. Penalties for nonfiled reports—and for reports filed so late as to be considered nonfiled—are also determined by the financial activity for the reporting period and any prior violations. Election sensitive reports, which include reports and notices filed prior to an election (i.e., 12-day pre-election, October quarterly and October monthly reports), receive higher penalties. Penalties for 48-hour notices that are filed late or not at all are determined by the amount of the contribution(s) not timely reported and any prior violations.

The committee and the treasurer are assessed civil money penalties when the Commission makes its final determination. Unpaid civil penalties are referred to the Department of the Treasury for collection.

Committees Fined for and Penalties Assessed

1. Allegiance Telecom Inc. PAC	$500
2. Brock Hill Campaign	$340
3. Clay Cox for Congress	$0[1]
4. Colleen for Congress	$900[1]
5. Committee to Elect Bill Kirby	$0[1]
6. Composition Roofers Local Union #30 Political Action & Education Fund	$1,800[2]
7. Congressional Black Caucus PAC (CBC-PAC)	$6,750
8. Daniel Webster for U.S. Senate	$5,200
9. Ed Bryant for Congress	$700
10. Friends of Bob Graham Committee	$1,850
11. Friends of Byron Dorgan	____[3]
12. Friends of Ferris	$1,100
13. Friends of Giuliani Exploratory Committee	$2,100[4]
14. Friends of Kent Conrad Year End 2002	____[3]
15. Friends of Kent Conrad April Quarterly 2003	____[3]
16. Friends of Ron Packard	$110
17. Gary Nolan for President	$380
18. General Aviation Manufacturers Association PAC (GAMAPAC)	$340
19. Human Rights Campaign PAC	$1,850
20. Idaho Republican Party	$135
21. International Longshore and Warehouse Union—Political Action Fund	$1,900
22. Jeff Ballenger for Congress April Quarterly 2003	$0[1]
23. Jeff Ballenger for Congress July Quarterly 2003	$0[1]
24. Jim Moore for the United States Senate	$175[4]
25. John Breaux Committee	____[3]
26. Lincoln Club of San Diego County	$1,875
27. Mark Boles for Congress	$1,400
28. Massachusetts Green Party Federal Fund (NKA Green-Rainbow Party Federal Fund)	$850[5]
29. McCarthy for Congress Committee	$900
30. McDermott, Will & Emery LLP PAC	$780
31. Nethercutt for Senate	$9,600

[1] This civil money penalty was reduced due to the level of activity on the report.

[2] This civil money penalty has not been collected.

[3] This case was dismissed. Misinformation received by the committee from the U.S. Postal Service led to report being filed late with the office of the Secretary of Senate.

[4] This civil money penalty was reduced after being recalculated for a change in the number of days the report was late.

[5] The civil money penalty was initially calculated with as though the committee had one prior violation. However, the penalty was reduced after being recalculated with a prior-violation factor of zero.

Committees Fined for and Penalties Assessed, cont.

32. Owner-Operator Independent Drivers Association Inc. PAC (AKA OOIDA-PAC)		$720
33. Perkins for Senate		$3,200
34. Regence BluePAC		$140
35. Republicans for Phil Bradley		$1,350[1]
36. Skinner for Senate 2004		$500
37. Stace Williams for U.S. Congress	April Quarterly 2004	$0[1]
38. Stace Williams for U.S. Congress	Year End 2003	$5,625[2]
39. Sutton for Congress		$0[1]

[1] *This civil money penalty was reduced due to the level of activity on the report.*

[2] *This civil money penalty has not been collected.*

The committees listed in the charts at left and above, along with their treasurers, were assessed civil money penalties under the administrative fines regulations.

Closed Administrative Fine case files are available through the FEC Press Office and Public Records Office at 800/424-9530.

—Amy Kort

Publications

Updated List of Federal PACs

The Commission has published the 2004 edition of PACronyms, a list of the acronyms, abbreviations and common names of federal political action committees (PACs).

For each PAC listed, the index provides the full name of the PAC, its city, state, FEC identification number and, if not identifiable from the full name, its connected, sponsoring or affiliated organization.

The index is helpful in identifying PACs that are not readily identified in their reports and statements on file with the FEC.

PACronyms is posted on the FEC web site at http://www.fec.gov. Links to the document can be found by clicking the "Library" tab at the bottom of the home page. Two versions are available. One allows users to download and sort the date according to their preference: full committee name, city, state or FEC ID number.

To order a free paper copy of PACronyms, call the FEC's Public Records Office at 800/424-9530 or 202/694-1120. PACronyms is also available on diskette for $1.

Other PAC indexes, described below, may be ordered from the Public Records Office.

- An alphabetical list of all registered PACs showing each PAC's identification number, address, treasurer and connected organization ($13.25).
- A list of registered PACs arranged by state, providing the same information as above ($13.25).
- An alphabetical list of organizations that sponsor PACs, showing the PAC's name and identification number ($7.50).

The Public Records Office can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St., NW.

—Amy Kort

Public Funding

Commission Certifies Matching Funds for Presidential Candidates

On September 30, 2004, the Commission certified $102,321.33 in federal matching funds to Presidential candidate Ralph Nader. The U.S. Treasury Department made the payment on October 1, 2004. This certification raises to $27,923,226.54 the total amount of federal funds certified thus far to eight Presidential candidates under the Matching Payment Account Act.

Presidential Matching Payment Account

Under the Presidential Primary Matching Payment Account Act, the federal government will match up to $250 of an individual's total contributions to an eligible Presidential primary candidate. A candidate must establish eligibility to receive matching payments by raising in excess of $5,000 in each of at least 20 states

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Federal Register

Federal Register notices are available from the FEC's Public Records Office, on the web site at http://www.fec.gov/law/law_rulemakings.shtml and from the FEC faxline, 202/501-3413.

Notice 2004-13
Presidential Inaugural Committee Reporting and Prohibition on Accepting Donations from Foreign Nationals; Final Rules and Transmittal to Congress (69 FR 59775, October 6, 2004)

Public Funding

(continued from page 13)

(i.e., over $100,000). Although an individual may contribute up to $2,000 to a primary candidate, only a maximum of $250 per individual applies toward the $5,000 threshold in each state. Candidates who receive matching payments must agree to limit their committee's spending, limit their personal spending for the campaign to $50,000 and submit to an audit by the Commission. 26 U.S.C. §§9033(a) and (b) and 9035; 11 CFR 9033.1, 9033.2, 9035.1(a)(2) and 9035.2(a)(1).

Candidates may submit requests for matching funds once each month. The Commission will certify an amount to be paid by the U.S. Treasury the following month. 26 CFR 702.9037-2. Only contributions from individuals in amounts of $250 or less are matchable.

The chart below lists the amount most recently certified to each eligible candidate who has elected to participate in the matching fund program, along with the cumulative amount that each candidate has been certified to date.

—*Amy Kort*

Matching Funds for 2004 Presidential Primary Candidates: September Certification

Candidate	Certification September 2004	Cumulative Certifications
Wesley K. Clark (D)[1]	$0	$7,615,360.39
John R. Edwards (D)[2]	$0	$6,624,940.44
Richard A. Gephardt (D)[3]	$0	$4,104,319.82
Dennis J. Kucinich (D)[4]	$0	$2,955,962.59
Lyndon H. LaRouche, Jr. (D)[5]	$0	$1,456,019.13
Joseph Lieberman (D)[6]	$0	$4,267,796.85
Ralph Nader (I)[7]	$102,321.33	$798,827.32
Alfred C. Sharpton (D)	$0	$100,000.00[8]

[1] *General Clark publicly withdrew from the Presidential race on February 11, 2004.*

[2] *Senator Edwards publicly withdrew from the Presidential race on March 3, 2004.*

[3] *Congressman Gephardt publicly withdrew from the Presidential race on January 2, 2004.*

[4] *Congressman Kucinich became ineligible to receive matching funds on March 4, 2004.*

[5] *Mr. LaRouche became ineligible to receive matching funds on March 4, 2004.*

[6] *Senator Lieberman publicly withdrew from the Presidential race on February 3, 2004.*

[7] *Ralph Nader became ineligible to receive matching funds on September 2, 2004.*

[8] *On May 10, 2004, the Commission determined that Reverend Sharpton must repay this amount to the U.S. Treasury for matching funds he received in excess of his entitlement. See the July 2004* Record*, page 8.*

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The first number in each citation refers to the "number" (month) of the 2004 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "1:4" means that the article is in the January issue on page 4.

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