

# Record

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## Regulations

### Final Rules on Reorganization of National Voter Registration Act Regulations

The Federal Election Commission and the Election Assistance Commission (EAC) are jointly taking action to transfer regulations that implement the National Voter Registration Act of 1993 (NVRA) from the FEC to the EAC. The Help America Vote Act of 2002 (HAVA) transferred the FEC's former statutory authority regarding the NVRA regulations to the EAC.

The NVRA required the FEC, in consultation with chief state election officers, to develop a mail voter registration application for elections to federal office and to submit a report assessing the impact of the NVRA to Congress no later than June 30 of each odd-numbered year, beginning June 30, 1995. The NVRA also assigned the FEC the responsibility of prescribing, in consultation with chief state election officers, the regulations necessary to carry out these functions. The FEC issued such regulations in 1994, and they are currently codified in Part 8 of Title 11, Chapter 1 of the Code of Federal Regulations.

HAVA transferred these responsibilities from the FEC to the EAC.

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## Advisory Opinions

### AO 2009-15

### Candidate Committee May Accept Contributions for Potential Special Election

An authorized committee of a candidate may accept contributions that may be used for a special or emergency election or runoff in 2009 or 2010, even though an election has not been scheduled and may not occur.

#### Background

Bill White is the current mayor of Houston, Texas, and also a candidate for election to the U.S. Senate from Texas in 2012. Bill White for Texas (White Committee) is Mayor White's Senatorial campaign committee registered with the FEC. Currently, Senator Kay Bailey Hutchison holds the Senate seat that will be contested in the 2012 primary and general elections. However, Senator Hutchison has indicated that she will not be a candidate for reelection in 2012, and she has formed a committee under Texas law to raise funds in order to run for Governor of Texas in 2010. Senator Hutchison has publicly discussed the possibility of resigning from her Senatorial seat

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## Regulations

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The EAC is an independent federal agency created by HAVA and charged with various tasks related to the administration of federal elections. Accordingly, in order to facilitate the EAC's exercise of its statutory authority, the Commission is transferring the regulations implementing the NVRA to the EAC.

The regulations in 11 CFR Part 8 are being removed and simultaneously recodified in Chapter II of Title 11, where the regulations created and administered by the EAC are located. The final rule that will accomplish this was published in

the July 30, 2009, *Federal Register* (74FR 37519) and is available on the FEC website at [http://www.fec.gov/law/cfr/ej\\_compilation/2009/notice\\_2009-17.pdf](http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-17.pdf). The rule became effective August 28, 2009.

—Isaac J. Baker

## Commission Announces Disposition of Petitions for Rulemakings Regarding Candidate Debates

The Federal Election Commission has dismissed two petitions for rulemaking related to the Commission's regulations on candidate debates at 11 CFR 110.13.

The first petition, filed in May, 1999, called on the Commission to amend its rules so that the objective criteria for inclusion in Presidential and Vice Presidential debates would be established by the FEC itself and not left to the judgment of the organizations staging the debates. The second petition for rulemaking, filed by several news organizations in April, 2002, urged the FEC to amend its rules to state explicitly that the sponsorship by a news organization (or related trade association) of a candidate debate does not constitute an illegal corporate contribution in violation of the Federal Election Campaign Act and that the Commission would have no jurisdiction over such sponsorship.

The Commission has decided not to initiate a rulemaking in response to these petitions. The petitions can be viewed online at [http://www.fec.gov/law/law\\_rulemakings.shtml#CandidateDebates](http://www.fec.gov/law/law_rulemakings.shtml#CandidateDebates). The Notice of Disposition of Petitions for Rulemaking was published in the July 28, 2009, *Federal Register* (74FR 37179) and is available on the FEC website at [http://www.fec.gov/law/cfr/ej\\_compilation/2009/notice\\_2009-16.pdf](http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-16.pdf).

—Isaac J. Baker

## Advisory Opinions

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during the course of the gubernatorial campaign.

Under Texas law, if Senator Hutchison were to resign from the Senate before her term expires, a special election to fill that seat may be scheduled for November 3, 2009, May 8, 2010, or November 2, 2010, depending on the timing of her resignation. However, the Governor of Texas may schedule an "emergency election" on another date to fill the vacancy if the Governor determines that an emergency exists. The Governor has considerable discretion in deciding whether to call an emergency election.

Regularly scheduled primary and general elections for the Senate seat will be held in 2012. In those elections, if no candidate receives a majority in the party primary elections, a runoff will be held. In that case, it is possible that Mayor White could be a candidate in up to five elections for the same U.S. Senate seat between now and November 2012: a special election in 2009 or 2010; a runoff for that election; the 2012 Democratic party primary; a primary runoff for that election; and a general election in November 2012. The White Committee requests guidance concerning how it may raise funds for these potential and future elections.

### Analysis

*Undesignated contributions.* Commission regulations permit the White Committee to use undesignated contributions for a Senate special election that is called after the contribution is made. The Federal Election Campaign Act (the Act) and Commission regulations permit individuals to contribute up to \$2,400 "with respect to any election." Under Commission regulations, "with respect to any election" means: (1) in the case of a contribution desig-

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nated in writing by the contributor for a particular election, the election so designated; and (2) in the case of a contribution not designated in writing by the contributor, the next election for the federal office after the contribution is made. 11 CFR 110.1(b)(2).

Under the circumstances presented in the advisory opinion, a special election that has been called would be the next federal election after the undesignated contribution is made by the contributor. Therefore, the undesignated contribution may be used for that election, but subject to the reporting requirements described below under "Reporting."

*Contributions designated by the contributor.* Contributors may alternatively designate up to \$2,400 for a special Senate election if one is held,

or for the 2012 primary election if there is no special Senate election. Additionally, contributors may alternatively designate up to \$2,400 for either a runoff election following the special Senate election if a runoff is held, or to the 2012 general election if there is no such runoff.

Commission regulations allow designation of contributions by a contributor for "a particular election." 11 CFR 110.1(b)(2), (3) and (4). The Commission concludes that designations for the special election and for the runoff would qualify as being designated for "a particular election," because the Governor is required by law to call a special election and the likelihood of the occurrence of a special or election is sufficiently real in this situation. Although the designations present these particular elections in the alternative (*i.e.* (1) the special election if held before 2012 and, if a special election is not held, the 2012 primary; or (2) the special election runoff if held before 2012 and, if a special election and runoff are not held, the 2012 general election), the specific use of the contribution will be clear to both the White Committee and the contributor.

The White Committee should use an acceptable accounting method to distinguish between the contributions received for each of the two elections, for example, by designating accounts for each election or maintaining separate books and records for each election. 11 CFR 102.9(e)(1).

If Senator Hutchison were to announce her resignation and a special election was called, the designations that the White Committee had received for the special election would be treated as designations for the special election or runoff. At that point, the contributions designated for the special election could no longer be considered to be designated for the 2012 regularly scheduled elections. After the end of any pre-2012 elections (special or

runoff) in which Mayor White actually participates as a candidate, the White Committee may use surplus funds for the 2012 primary election. 11 CFR 110.3(c)(4).

*Redesignations.* With respect to a contribution to the White Committee that exceeds \$2,400 and that is made before a special election is called, the Committee may use a form that states that \$2,400 would be used for the first election and \$2,400 "for any subsequent election."

If at the time the contribution is made Senator Hutchison has not resigned (and therefore no special or runoff election is called), current contributors must conclude that the "first election" referenced in the form means the 2012 primary and that the second election would mean the 2012 general election. Accordingly, barring any further instruction from a contributor, the first \$2,400 contributed would be designated for the 2012 primary election and any remaining amount up to \$2,400 would be considered designated for the 2012 general election.

Contributions that are already designated must be redesignated by obtaining a written instruction from the contributor; simply issuing a notice to the contributor informing him or her of the redesignation will not suffice. Therefore, if the White Committee wishes to use contributions that have been designated for the 2012 primary and general elections for a 2009 or 2010 special election or runoff once the special election is called, the White Committee must first obtain written contributor redesignations for the special election or runoff in accordance with Commission regulations. See 11 CFR 110.1(b)(5)(ii)(A)(1) and (2).

*Contributions designated for a Special or Runoff Election that does not occur.* If the White Committee raises money for a special election and the special election does not occur, Commission regulations require those contributions to be refunded

### FECTube and E-Learning

As the Commission considers recommendations to improve its website and Internet communications (see August *Record*, page 1), the agency has added an E-Learning section to its Educational Outreach web page and has also launched its own YouTube channel: <http://www.youtube.com/FECTube>. The E-Learning page offers interactive presentations that allow users to test their knowledge of the information presented and video workshops. The workshops are actually hosted on YouTube and include presentations about the Commission and the law it administers, as well as highlights from the agency's workshop on lobbyist bundling. Additional content and other improvements will appear in the weeks and months ahead.

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## Advisory Opinions

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to the contributor within 60 days of the last date that a special election may be scheduled under Texas law, unless the White Committee receives a written redesignation or combined redesignation and reattribution from the contributor. 11 CFR 110.1(b)(3)(i)(C). Likewise, although the Committee may accept contributions designated for the runoff once it is apparent that a special election will occur, it may not use those contributions unless Mayor White participates in the runoff as a candidate. Contributions that are designated for an election that does not occur, or in which a person is not a candidate, must be refunded, redesignated or reattributed accordingly.

**Reporting.** If a contributor designates a contribution to be made with respect to a particular special or runoff election and a particular 2012 election, the White Committee should indicate on Schedule A either a “Primary” contribution or a “General” contribution for the 2012 elections and include a memo text stating either (1) “Designated for special or emergency election if scheduled before 2012” or (2) “Designated for special or emergency election runoff if scheduled before 2012.” Such reporting reflects the use of the contributions as they are intended by the contributor at the time the contribution is made.

If Senator Hutchison announces her resignation, and Mayor White becomes a candidate in a special election called by the Governor, the White Committee must inform the Commission that the contributions are considered to be designated for the special election or the runoff election. Under the current circumstances, where the White Committee is attempting to deal with uncertainty as to the proper way to designate contributions in an unusual electoral situation, the Commission considers it to be sufficient for the White Committee to file amended reports,

simply indicating the proper designations of the contributions. The Commission recommends that to avoid any confusion, the White Committee include a memo text specifically referencing this advisory opinion.

In the case of undesignated contributions, in the event that a special election is called, the White Committee should similarly file amended reports for these contributions.

Date Issued: July 29, 2009;

Length: 9 pages.

—Myles Martin

### AO 2009-16

#### Libertarian Party of Ohio Qualifies as State Party Committee

The Libertarian Party of Ohio (the LPO) qualifies as a state party committee under the Federal Election Campaign Act (the Act) because the LPO: (1) qualifies as a political party; (2) is part of the official Libertarian Party structure; and (3) is responsible for the day-to-day operations of the Libertarian Party at the state level.

#### Background

The Act defines a “state committee” as an organization that, by virtue of the bylaws of a “political party,” is part of the official party structure and is responsible for the day-to-day operations of the political party at the state level, as determined by the Commission. 2 U.S.C. §431(15); 11 CFR 100.14(a). A “political party” is an “association, committee, or organization that nominates a candidate for election to any federal office whose name appears on the election ballot as the candidate of such association, committee, or organization.” 2 U.S.C. §431(16); 11 CFR 100.15.

The determination as to whether a state party organization qualifies as a state committee of a national political party hinges on three elements. First, the national party that the state

party organization is part of must itself be a “political party.” Second, the state party organization must be part of the official structure of the national party. Third, the state party organization must be responsible for the day-to-day operations of the national party at the state level. See, e.g., AOs 2008-16, 2008-13, 2007-06 and 2007-02.

#### Analysis

The Commission must first assess whether the national party qualifies as a “political party” under the Act and Commission regulations. 2 U.S.C. §§431(15) and (16); 11 CFR 100.14 and 100.15. In previous advisory opinions the Commission has determined that the Libertarian Party qualifies as a political party, and the Commission has recognized the Libertarian National Committee (the LNC) as a national committee of a political party since 1975. The Commission is not aware of any factual changes that would alter that conclusion.

The LPO must also qualify as part of the official party structure of the national party, pursuant to 11 CFR 100.14. In previous advisory opinions, the Commission has looked to supporting documentation indicating that the state party is part of the official party structure. The Acting Executive Director and Director of Operations for the LNC provided documentation that suffices to establish the LPO is part of the Libertarian Party’s official party structure.

Third, the LPO must maintain responsibility for the day-to-day operations of the Libertarian Party at the state level. 2 U.S.C. §431(15); 11 CFR 100.14. In previous advisory opinions, the Commission has evaluated this third element by considering two criteria:

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- Whether the organization has placed a candidate on the ballot (thereby qualifying as a “political party”); and
- Whether the bylaws or other governing documents of the state party organization indicate activity commensurate with the day-to-day functions and operations of a political party at the state level.

Ballot placement on behalf of a “candidate” is required because the requesting organization’s existence as a “political party” is necessary for state committee status. A state party organization must actually obtain ballot access for one or more “candidates,” as defined by the Act. See 2 U.S.C. §§431(2), (15), and (16); 11 CFR 100.3(a); 100.14(a); 100.15. Former Representative Bob Barr qualified as a “candidate” under the Act, and Barr’s name was listed on the 2008 Ohio ballot as the LPO’s candidate for President, satisfying the first criterion.

The Commission also determined that the state party’s constitution and bylaws delineate activity commensurate with the day-to-day functions and operations of a political party on the state level, thereby satisfying the second criterion.

Because all three elements of the definition of “state committee” are satisfied, the Commission determined that the LPO qualifies as a state committee of a political party under the Act and Commission regulations.

Date Issued: July 29, 2009;

Length: 5 pages.

—Isaac J. Baker

## AO 2009-18

### Disaffiliation of SSFs After Restated Agreement

Penske Truck Leasing Co., L.P. Political Action Committee (Penske PAC), the separate segregated fund (SSF) of Penske Truck Leasing Co., L.P. (Joint Venture) may disaffiliate from the General Electric Company PAC (GEPAC), the SSF of the General Electric Company (GE) principally because the GE limited partners have divested themselves of majority ownership status and relinquished majority control of the Joint Venture’s Advisory Committee to the Penske affiliates.

#### Background

In 1988, Penske Truck Leasing Corporation (“Penske”) formed a limited partnership in which affiliates of General Electric Capital Corporation (GE Capital Corporation) became limited partners one month later. At that time, affiliates of Penske owned 69 percent of the Joint Venture and affiliates of GE Capital Corporation owned 31 percent. In 2002, the GE companies’ ownership increased to 79 percent of the Joint Venture. Since then, the ownership level of the GE companies has steadily decreased, though remaining above 50 percent, until the execution of the Joint Venture’s Third Amended and Restated Agreement of Limited Partnership of Penske Truck Leasing Co., L.P. (Third Restated Agreement) on March 26, 2009. Following the Third Restated Agreement, GE companies’ ownership level of the Joint Venture fell to 49.90 percent bringing the combined ownership of Penske companies to 50.10 percent.

Additional changes under the Third Restated Agreement charged Penske, the general partner, with performing all management and operational functions relating to the business of the Joint Venture. Furthermore, the limited partners, such as GE companies, will not participate in the control of the business of

the Joint Venture and have no power to act or bind the Joint Venture. However, the limited partners do retain the right to approve certain actions, as well as certain voting rights.

The Joint Venture has an Advisory Committee which consists of five members, three appointed by Penske and two appointed by GE companies. Under the Third Restated Agreement, the Advisory Committee cannot possess or apply any power that could amount to participation in the control of the business. The financing of the Joint Venture also changed under the Third Restated Agreement. Even though the Joint Venture has received financing from a line of credit from GE Capital Corporation in previous years and continues to do so, now the nature of the contractual agreement is closer to agreements with third party lenders, with affirmative and negative covenants, events of default and reporting obligations.

In 2002, the Joint Venture’s SSF, Penske PAC, was formed. Since 2002, Penske PAC has identified GE Credit Corporation of Tennessee as a connected organization on its FEC Form 1, due to the ownership level of the GE companies to the Joint Venture, and has identified GEPAC as an affiliated committee.

Penske asked the Commission if, after the Third Restated Agreement, Penske PAC and GEPAC are no longer affiliated with each other under the Federal Election Campaign Act (the Act) and Commission regulations.

#### Legal Analysis and Conclusions

The Act and Commission regulations provide that political committees, including SSFs, that are established, financed, maintained or controlled by the same corporation, labor organization, person or group of persons, including any parent, subsidiary, branch, division,

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## Advisory Opinions

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department or local unit thereof, are affiliated. 11 CFR 100.5(g)(2) and 110.3(a)(1)(ii). Contributions made to or by such political committees are considered to have been made to or by a single political committee. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2) and 110.3(a)(1).

In the absence of *per se* affiliation, Commission regulations provide for an examination of various circumstantial, non-exhaustive factors in the context of the overall relationship to determine whether one sponsoring organization has established, financed, maintained or controlled the other sponsoring organization or committee, and hence, whether their respective SSFs are affiliated. 11 CFR 100.5(g)(4)(i) and (ii); and 110.3(a)(3)(i) and (ii); See AOs 2007-13 and 2004-41. The Commission considered a number of circumstantial factors in determining that Penske PAC and GEPAC are no longer affiliated.

*Organization owns a controlling interest in the voting stock or securities.* One affiliation factor considers whether a sponsoring organization owns a controlling interest in the voting stock or securities of another sponsoring organization. 11 CFR 100.5(g)(4)(ii)(A) and 110.3(a)(3)(ii)(A). Prior to the Third Restated Agreement, GE companies owned a 79 percent interest in the Joint Venture; however, after the Third Restated Agreement, GE companies now have a minority interest of 49.90 percent in the Joint Venture. In addition, no GE company owns any voting interest in Penske Corporation or any Penske affiliate. Under the facts presented, the GE companies no longer have a majority interest in the Joint Venture. Thus, the Commission noted the application of this factor to these facts does not suggest that the entities are affiliated.

*Authority or ability to direct or participate in governance or to control officers.* Other factors which indicate the affiliation of organizations include the authority or ability of one corporate sponsor to participate in the governance of another corporate sponsor or to hire, appoint, demote or otherwise control the officers, or other decision-making employees, of another sponsoring organization. 11 CFR 100.5(g)(4)(ii)(B); 110.3(a)(3)(ii)(B); 11 CFR 100.5(g)(4)(ii)(C) and 110.3(a)(3)(ii)(C).

The general partner, Penske, has broad management control of the affairs of the Joint Venture including, among others, paying expenses, debts and obligations to the Joint Venture and entering into and terminating contracts with third parties. The general partner is fully in charge of all affairs of the Joint Venture, and the management and control of the Joint Venture's business rests exclusively with the general partner. The Third Restated Agreement does include the requirement for a supermajority of four out of the five members of the Advisory Committee to approve certain actions, such as changing business conduct policies, making acquisitions in excess of \$10 million or changing the character of the Joint Venture which was established in the Third Restated Agreement. However, even with the requirement of a supermajority in these matters, the GE companies do not control the day-to-day affairs of the Joint Venture. Furthermore, the Commission noted that it has in the past concluded that limited partners in a joint venture were not affiliated with the joint venture, despite the existence of supermajority voting rights. See AO 2001-07.

In regards to the ability to control officers, the general partner has the authority to appoint officers to the Joint Venture with the approval of only three members of the Advisory Committee. Since the GE companies appoint only two members to

the Advisory Committee, they do not have the ability to veto the appointment of officers. Thus, the Commission concluded the application of these factors to these facts does not suggest that the entities are affiliated.

*Common or overlapping officers or employees indicating a formal or ongoing relationship or the creation of a successor entity.*<sup>1</sup> The law also considers whether a sponsoring organization has common or overlapping officers or employees with another sponsoring organization indicating a formal or ongoing relationship between the organizations. 11 CFR 100.5(g)(4)(ii)(E) and 110.3(a)(3)(ii)(E). An additional factor asks whether a sponsoring organization or committee has any members, officers, or employees who were members officers or employees of another sponsoring organization or committee indicating a formal or ongoing relationship or the creation of a successor entity. 11 CFR 100.5(g)(4)(ii)(F) and 110.3(a)(3)(ii)(F). The Joint Venture and the GE companies have one official overlapping decision-maker, namely Mr. Penske. Mr. Penske serves as chairman of the general partner, Penske, and sits on the Board of Directors of GE. Besides Mr. Penske there are the two appointed GE members to the Advisory Committee, and the CEO of the Joint Venture who holds an "honorific title" with GE Capital Corporation only as a holdover from when the

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<sup>1</sup> The Commission noted that the affiliation factor involving whether a sponsoring organization has common or overlapping membership with another sponsoring organization indicating a formal or ongoing relationship between the sponsoring organizations did not apply to this particular case because neither the Joint Venture nor the GE companies is a labor organization, membership organization, a cooperative or a trade association. 11 CFR 100.5(g)(4)(ii)(D) and 110.3(a)(3)(ii)(D).

## Advisory Opinions

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Joint Venture was majority owned by GE entities. Currently there are no other overlapping officers, directors or employees between the Joint Venture and the GE companies. There are also no former officers or employees of GE companies who may work for the Joint Venture or Penske companies other than what “might be expected in the normal employment market” as described by the requestors. Furthermore, there is no agreement for Penske companies or GE companies to hire former employees of the other entity. The Commission remarked that in past advisory opinions, previously affiliated SSFs were deemed no longer affiliated despite the fact that there was an overlap in officers in the parent organizations. See AOs 2007-13 and 1996-23. Thus, the Commission noted that the overlap of officers between the Joint Venture and GE companies is not by itself a strong indication of affiliation.

*Providing funds or goods in a significant amount or on an ongoing basis.* The affiliation factors also include whether a sponsoring organization provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization and whether a sponsoring organization causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization. 11 CFR 100.5(g)(4)(ii)(G) and (H) and 110.3(a)(3)(ii)(G) and (H). The Joint Venture’s primary source of financing is a revolving line of credit held by GE Capital Corporation which was established prior to the execution of the Third Restated Agreement. However, following the Third Restated Agreement, the terms of the line of credit were renegotiated to give GE Capital Corporation the right to reset the rates to market rates and to make the Joint Venture refinance the debt with third party lenders. These current terms are

similar to agreements with third-party lenders. The Commission has concluded in prior advisory opinions that disaffiliated companies may maintain some consumer-supplier relationships and that those transactions can be seen as part of the process to establish the independence and separation of an entity from its organizational parent. See AOs 2000-28, 2003-21, 2004-41, 2007-13 and 1996-41; see also AOs 2007-13 and 2008-28. Thus, the newly renegotiated line of credit between GE companies and the Joint Venture can be viewed as part of the process of separating the two and does not suggest that the entities are affiliated.

*Having an active or significant role in the formation of another sponsoring organization or committee.* The affiliation factors also include whether a sponsoring organization or committee had an active or significant role in the formation of another sponsoring organization. 11 CFR 100.5(g)(4)(ii)(I) and 110.3(a)(3)(ii)(I). In this case, the GE companies were not involved in the actual formation of the Joint Venture, but rather became involved shortly after its formation in 1988. Penske PAC was established in 2002 by the Joint Venture and its employees who administer it without the involvement of the GE companies. Additionally, there is no indication that the Joint Venture was involved in the formation of GEPAC. Therefore, the application of this factor to these facts does not suggest the entities are affiliated.

*Having similar patterns of contributions or contributors indicating a formal or ongoing relationship.* An additional affiliation factor includes whether the sponsoring organizations or committees have similar patterns of contributions or contributors indicating a formal or ongoing relationship between the sponsoring organizations or committees. 11 CFR 100.5(g)(4)(ii)(J) and 110.3(a)(3)(ii)(J). Penske PAC and GEPAC do not coordinate contribu-

tions except to the extent necessary to comply with the shared contribution limits applicable to affiliated committees. The two SSFs have no transfers between the two of them and the Joint Venture knows of no overlap between contributors to the two SSFs. Thus, this factor does not indicate the entities are affiliated.

### Conclusion

Based on the above analysis of affiliation factors the Commission concluded that the Joint Venture and the GE companies are no longer affiliated for purposes of the Act. Consequently, Penske PAC and GEPAC may disaffiliate.

Date Issued: July 29, 2009;

Length: 11 pages.

—Katherine Wurzbach

## Advisory Opinion Requests

### AOR 2009-22

Covered period for national party committee that wishes to file its Lobbyist Bundling Disclosure reports on a quarterly basis (Democratic Senatorial Campaign Committee, August 10, 2009)

### AOR 2009-23

Applicability of allocation rules to activities of 527 organizations that are not political committees (Virginia Chapter of the Sierra Club, July 8, 2009)

### AOR 2009-24

State party committee status for the Illinois Green Party (Illinois Green Party, August 11, 2009)

### AOR 2009-25

Federal committee’s proposal to donate to charity the fair market value of assets that had belonged to a now-defunct State committee (Jennifer Brunner Committee, June 11, 2009)

## Party Activities

### Party Financial Activity for 2009

During the first six months of 2009, Democratic and Republican party committees that filed disclosure reports with the Federal Election Commission (FEC) raised a combined \$214.6 million and spent \$164.9 million. Democratic party committees reported the receipt of \$109.8 million, representing a decrease in fundraising by 1.8 percent over 2007 totals between January 1 and June 30, but a 26.4 percent increase in receipts compared to the same period in 2005, the last non-Presidential cycle. Republican party committees raised \$104.8 million, representing a 3.8 percent and 26.6 percent decrease in receipts when

compared to the same period in 2007 and 2005, respectively.

The charts below detail fundraising by national and state and local committees during the first six months of the election cycle. The chart on the left shows fundraising by the Democratic National Committee (DNC), the Democratic Senatorial Campaign Committee (DSCC), the Democratic Congressional Campaign Committee (DCCC) and the federal accounts of state and local Democratic party committees. The chart on the right shows fundraising by the Republican National Committee (RNC), the National Republican Senatorial Committee (NRSC), the National Republican Congressional Committee (NRCC) and the federal accounts of state and local Republican party committees.

Contributions from individuals constituted the bulk of the receipts

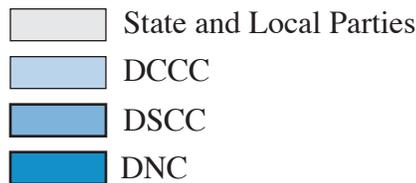
for both parties. Democrats reported receiving \$76.6 million from individuals and \$24.2 million from political action committees (PACs) and House and Senate members' campaign committees. Republicans reported receiving \$78.1 million from individuals and \$9.3 million from PACs and House and Senate members' campaign committees.

At the end of June, Democratic party committees had \$37.8 million cash on hand and debts of \$15.8 million, and Republican party committees had \$54.1 million in cash on hand and debts of \$6.9 million.

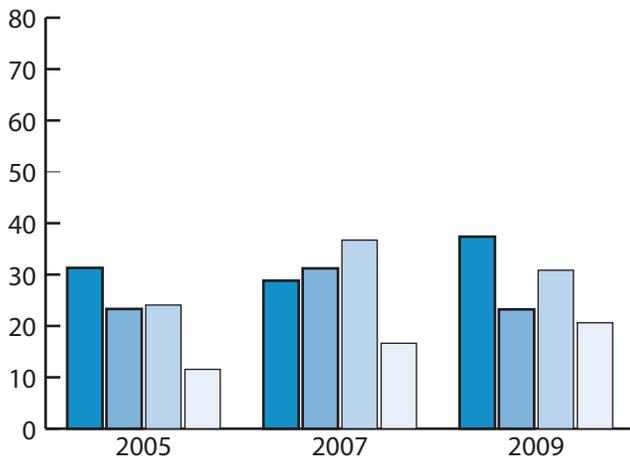
Additional information is available in a press release dated August 19, 2009. The release is available on the FEC website at [http://www.fec.gov/press/press2009/20090819\\_6monthParty.shtml](http://www.fec.gov/press/press2009/20090819_6monthParty.shtml).

—Myles Martin

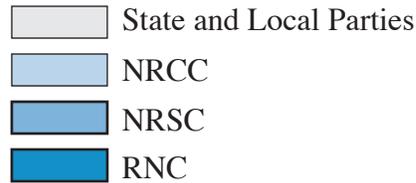
### National and State and Local Party Fundraising in First Six Months of Election Cycle—2005-2009



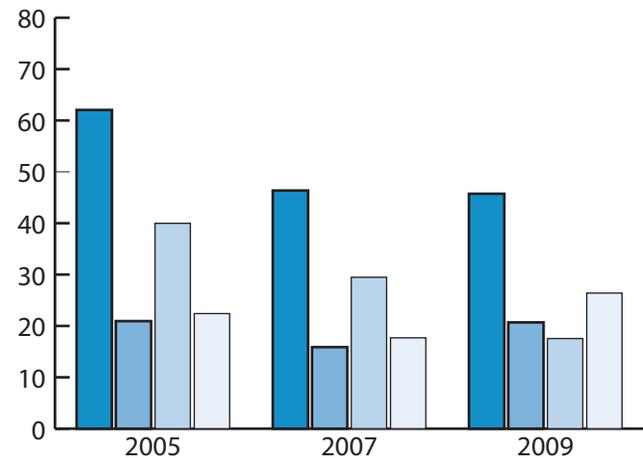
Millions of Dollars



Democratic Party Committees



Millions of Dollars



Republican Party Committees

## Enforcement

### Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters

The Commission has issued a new agency procedure to provide notification to respondents of enforcement proceedings based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities (*i.e.*, non-complaint generated matters). See 2 U.S.C. §437g.

Under the Federal Election Campaign Act (the Act), in matters generated by complaints, the Commission may take no action other than to dismiss the complaint until respondents have at least 15 days after notification of the complaint's allegations to answer those allegations. See 2 U.S.C. §437g(a)(1). However, the statute does not provide respondents the same opportunity to answer allegations in non-complaint generated matters.

This agency procedure is intended to provide respondents in non-complaint generated enforcement matters with notice of the basis of the allegations and an opportunity to respond. Regarding matters arising from a referral from the Commission's Reports Analysis Division or Audit Division (internal referrals), respondents will be notified of the referral within five days of receipt of the referral by the FEC's Office of General Counsel (OGC). The notice will contain a copy of the referral document and a cover letter setting forth the basis of the referral and potential violations of the Act and/or Commission regulations that arise based upon the referral. The respondent will then be given an opportunity to demonstrate that no action should be taken based on the referral, by submitting, within 15 days from receipt of the referral document and cover letter, a written

explanation of why the Commission should take no action. The Commission will not take any action, or make any reason-to-believe (RTB) finding against a respondent based on an internal referral, unless it has considered such response or unless no such response has been served upon the Commission within 15 days.

Under current Commission practice, non-complaint generated matters based on referrals from the U.S. Department of Justice or any other law enforcement or governmental agency (external referrals) are also deemed to be matters based on information ascertained in the normal course of carrying out its supervisory responsibilities. Under the new procedures, if OGC intends to initiate an enforcement proceeding based on an external referral, notice of the referral will be provided to respondents in the same manner as an internal referral. However, where immediate notification to a respondent of an external referral is deemed inappropriate, OGC will notify the Commission of the referral within 5 days of receipt of the referral from the governmental agency. In cases where, due to law enforcement purposes, the referral document may not be provided to a respondent, OGC will provide the respondent with a letter containing sufficient information regarding the facts and allegations to afford the respondent an opportunity to demonstrate that no action should be taken. Absent exercise of the Commission's discretion (by the affirmative vote of four Commissioners), OGC will not proceed with an enforcement proceeding based on an external referral until the referral or substitute informational letter is provided to the respondent.

The new procedure took effect August 4, 2009. The complete notice of this procedure was published in the August 4, 2009, *Federal Register* (74 FR 38617).

—Myles Martin

## Outreach

### San Francisco Regional Conference for Campaigns, Party Committees and Corporate/Labor/Trade PACs

The Commission will hold a regional conference in San Francisco, California, on October 28-29, 2009, at the Sheraton Fisherman's Wharf Hotel. Commissioners and staff will conduct a variety of technical workshops on the federal campaign finance law. 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. For additional information, to view the conference agenda or to register for the conference, please visit the conference website at <http://www.fec.gov/info/conferences/2009/san-francisco09.shtml>.

**Hotel Information.** The Sheraton Fisherman's Wharf Hotel is in the heart of San Francisco's most celebrated neighborhood. A room rate of \$229 (single/double) plus a 14.1% tax is available to conference attendees who make reservations on or before September 25, 2009. To make your hotel reservations and reserve this group rate, please call 888-627-7024 or visit the hotel website (<http://www.starwood-meeting.com/StarGroupsWeb/res?id=0906250769&key=E3D1E>) and identify yourself as attending the Federal Election Commission conference. The FEC recommends waiting to make hotel and air reservations until you have received confirmation of your conference registration from Sylvester Management Corporation.

**Registration Information.** The registration fee for this conference is \$550, which covers the cost of the conference, materials and meals. A

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## Outreach

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\$50 late fee will be added to registrations received after 5 p.m. EDT, September 25, 2009. Complete registration information is available online at <http://www.fec.gov/info/conferences/2009/sanfrancisco09.shtml>.

### Chicago Regional Conference for House and Senate Campaigns, Political Party Committees and Corporate/Labor/Trade PACs

**REMINDER:** Registration continues for the FEC's conference in Chicago, IL, on September 15-16, 2009, at the Hyatt Regency Chicago. To view the conference agenda or register for the conference, please visit the conference web site at <http://www.fec.gov/info/conferences/2009/chicago09.shtml>.

### FEC Conference Questions

Please direct all questions about conference registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; e-mail: [rosalyn@sylvestermanagement.com](mailto:rosalyn@sylvestermanagement.com)). For questions about the conference workshop content in 2009, please call the FEC's Information Division at 1-800/424-1100 or send an e-mail to [Conferences@fec.gov](mailto:Conferences@fec.gov).

—Kathy Carothers

## FEC Conference Schedule for 2009

**Conference for Campaigns, Party Committees and Corporate/Labor/Trade PACs**  
September 15-16, 2009  
Hyatt Regency  
Chicago, IL

**Conference for Campaigns, Party Committees and Corporate/Labor/Trade PACs**  
October 28-29, 2009  
Sheraton at Fisherman's Wharf  
San Francisco, CA

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