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Reporting

[Pennsylvania Special Election Reporting: 2nd District](#)

Pennsylvania will hold a special general election to fill the U.S. House seat in Pennsylvania's 2nd Congressional District vacated by Representative Chaka Fattah. The Special General will be held November 8, 2016. Candidate committees involved in this election must



follow the reporting schedule posted at [http://www.fec.gov/pages/report\\_notices/2016/pa02.shtml](http://www.fec.gov/pages/report_notices/2016/pa02.shtml).

That schedule also applies to PACs and party committees that file on a quarterly basis in 2016 and participate in this election. PACs and party committees that file monthly should continue to file according to their regular filing schedule. Please note that the FEC does not have authority to extend filing deadlines, even when they fall on weekends.

**Filing Electronically**

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the applicable filing deadline. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines.

**Timely Filing for Paper Filers**

*Registered and Certified Mail.* Reports sent by registered or certified mail are considered to be filed on the date of their postmark. See 52 U.S.C. § 30104(a)(2)(A)(i), (a)(4)(A)(i) and (a)(5); 11 CFR 104.5(e). Accordingly, pre-election reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed; other reports must be postmarked by the filing deadline. 11 CFR 100.19(b). A committee sending its reports by certified or registered mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of

mailing because the USPS does not keep complete records of items sent by certified or registered mail. 11 CFR 104.5(i).

*Overnight Mail.* Reports filed via overnight mail [FN1] will be considered timely filed if the report is received by the delivery service on or before the mailing/filing deadline. A committee sending its reports by Priority Mail or Priority Express Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports. 52 U.S.C. § 30104(a)(5) and 11 CFR 100.19 and 104.5(e).

*Other Means of Filing.* Reports sent by other means—including first class mail and courier—must be received by the FEC before the Commission’s close of business on the filing deadline. 11 CFR 100.19 and 104.5(e). (If the deadline falls on a weekend or federal holiday, such filers should plan accordingly and file reports by the close of business on the last business day before the filing deadline.)

Forms are available for downloading and printing at the FEC’s website (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency’s automated fax system (202/501-3413).

#### **48-Hour Contribution Notices**

A participating candidate’s principal campaign committee must file a 48-hour notice each time it receives a contribution of \$1,000 or more between October 20 and November 5, 2016, for the Special General Election.

#### **24- and 48-Hour Reports of Independent Expenditures**

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate \$1,000 or more between October 20 and November 6, 2016, for the Special General. This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more up to and including the 20th day before an election. The 48-hour reporting requirement applies to independent expenditures that aggregate at or above \$10,000 prior to October 20, 2016, for the Special General.

#### **Electioneering Communications**

The 60-day electioneering communications period for the Special General Election runs from September 9 through November 8, 2016.

#### **Disclosure of Lobbyist Bundling Activity**

Campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from any lobbyist/registrant or lobbyist/registrant PAC that aggregate in excess of \$17,600 during the special election reporting periods. 11 CFR 104.22(a)(5)(v) and (b).

*(Posted 07/19/2016; By: Katherine Carothers)*

#### **Resources:**

- [Pennsylvania 2nd District Special Election Prior Notice](#)
- [2016 Reporting Dates](#)
- [Pennsylvania 2nd District Special Election Compliance Page](#)
- [Federal Register Notice](#) [PDF]

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<sup>1</sup> “Overnight mail” includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service’s online tracking system.

# Compliance

## New Disclosure Policy for Closed Enforcement Matters and Other Agency Documents

On August 2, 2016, the Commission published a statement of policy that expands the range of publicly available records on the agency's enforcement and administrative functions. [81 Fed. Reg. 50,702](#).

### **Background**

As the federal agency charged with enforcement of federal campaign finance laws, the Commission may generate enforcement actions (called Matters Under Review, or MURs) in the course of reviewing the reports filed by committees. In addition, individuals and groups outside the agency may initiate MURs by filing complaints. Other government agencies may also refer enforcement matters to the FEC. [Most cases are handled by the Commission's Office of General Counsel](#) (OGC). In some cases, however, investigations may be referred to the [Alternative Dispute Resolution Office](#) (ADRO) or the [Administrative Fine Program](#) (AFP).

To protect the interests of those involved in an enforcement matter, the Federal Election Campaign Act (the Act) requires that any Commission action on those matters be kept strictly confidential until the case is resolved. 52 U.S.C. § 30109(a)(12)(A). Prior to 2001, the Commission released to the public all documentation of an enforcement matter once the case was resolved. However, in *AFL-CIO v. FEC*, 333 F.3d 168 (D.C. Cir. 2003), the Court of Appeals for the D. C. Circuit warned that, in releasing enforcement information to the public, the Commission must "attempt to avoid unnecessarily infringing on First Amendment interests" in privacy of association and belief. The court suggested that in forming a disclosure policy the Commission must balance its own interests in deterring future violations and promoting its own accountability with these First Amendment interests. Following the decision, the Commission issued an interim statement of policy which listed several categories of documents integral to its decision-making process that the agency would continue to disclose upon termination of an enforcement matter. See [Statement of Policy Regarding Disclosure of Closed Enforcement or Related Files](#), 68 Fed. Reg. 70,423 (Dec. 20, 2003).

### **New Statement of Policy**

The new policy statement replaces the interim policy adopted in 2003, and applies regardless of an enforcement matter's outcome. As of September 1, 2016, documents placed on the public record will include not only those identified in the interim policy, but also a broader range of General Counsel's reports and memoranda in the case, as well as administrative exchanges with respondents regarding cases, and various documents and letters prepared in conjunction with the resolution of a case.

With respect to administrative fine cases and ADR cases, the new policy continues to disclose the same broad categories of documents as the prior policy. In administrative fine cases, the Commission will continue to place the entire administrative file on the public record, which includes documents such as recommendations and accompanying responses and memoranda to the Commission, the final determination recommendation, and various documents prepared in conjunction with the resolution of a case.

For ADR cases, documentation that the Commission will place on the public record will continue to include original complaints or internal FEC referrals that initiate enforcement actions, along with reports and briefs from OGC and responses to those reports and briefs by respondents, administrative exchanges with respondents, the ADRO recommendation, and various documents prepared in conjunction with the resolution of a case.

The Commission has also decided to make public a number of documents integral to its administrative functions, including statistics and documents related to [public funding](#), [enforcement case management](#), [debt settlement plans with terminating committees and proposed administrative terminations of political committees](#). The Commission will also place on the public record various reports required under other federal statutes on topics such as [contracting](#), travel and gifts received by Commissioners and employees, and the agency's [equal employment opportunity](#) and [privacy management programs](#).

For additional details, please consult the [policy statement](#). The Commission plans to place the documents listed in the notice on public record in all matters it closes after September 1, 2016, no matter the outcome.

*(Posted 08/02/2016; By: Dorothy Yeager)*

**Resources:**

- [Commission consideration of proposed draft policy](#) 
- [Enforcement Matters](#)
- [About the FEC](#)

### **[FEC Cites Tennessee Campaigns for Failure to File Required Report](#)**

The Federal Election Commission has cited two campaign committees for failing to file the 12-Day Pre-Primary Report required by the Federal Election Campaign Act of 1971, as amended (the Act), for Tennessee's primary election that is being held on August 4, 2016.

As of August 1, 2016, the required 12-Day Pre-Primary disclosure report had not been received from:

- Maldonado for Congress, Inc (TN-08)
- Persley for Congress (TN-04)

The pre-primary report for Tennessee was due on July 23, 2016, and should have included financial activity for the period July 1, 2016, through July 15, 2016. If sent by certified or registered mail, the report should have been postmarked by July 20, 2016. The Commission notified committees involved in Tennessee's primary election of their potential filing requirements on June 29, 2016. Those committees that did not file by the due date were sent notification on July 25, 2016, that their reports had not been received and that their names would be published if they did not respond within four business days.

Some individuals and their committees have no obligation to file reports under federal campaign finance law, even though their names may appear on state ballots. If an individual raises or spends \$5,000 or less, he or she is not considered a "candidate" subject to reporting under the Act.

Other political committees that support Senate and House candidates in elections, but are not authorized units of a candidate's campaign, are also required to file quarterly reports, unless they report monthly. Those committee names are not published by the FEC. Further Commission action against non-filers and late filers is decided on a case-by-case basis. Federal law gives the FEC broad authority to initiate enforcement actions, and the FEC has implemented an Administrative Fine program with provisions for assessing monetary penalties.

*(Posted 08/02/2016)*

**Resources:**

- [FEC Non-Filer Press Release](#) (August 2, 2016)
- [Compliance Map](#)
- [The Administrative Fine Program](#)
- [FEC Reporting Dates](#)
- [Late Filing and Other Enforcement Penalties](#) (Reports Analysis Division)

**[FEC Cites Florida and Washington Campaigns for Failure to File Required Reports](#)**

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

As of July 28, 2016, the required July Quarterly disclosure report had not been received from:

- Ernie Rivera for Florida (FL)
- Fatima for Congress (FL-10)

The July Quarterly report was due on July 15, 2016, and should have included financial activity for the period April 1, 2016 through June 30, 2016. The Commission notified committees of their potential filing requirements on June 21, 2016. Those committees that did not file by the due date were sent notification on July 22, 2016, that their reports had not been received and that their names would be published if they did not respond within four business days.

As of July 28, 2016, the required 12-Day Pre-Primary disclosure report for Washington's August 2 primary had not been received from:

- Angie for Congress (WA-03)
- Friends of Jennifer Gigi Ferguson (WA-10)

The pre-primary report for Washington was due on July 21, 2016, and should have included financial activity for the period July 1, 2016, through July 13, 2016. If sent by certified or registered mail, the report should have been postmarked by July 18, 2016. The Commission notified committees involved in Washington's primary election of their potential filing requirements on June 27, 2016. Those committees that did not file by the due date were sent notification on July 22, 2016, that their reports had not been received and that their names would be published if they did not respond within four business days.

Some individuals and their committees have no obligation to file reports under federal campaign finance law, even though their names may appear on state ballots. If an individual raises or spends \$5,000 or less, he or she is not considered a "candidate" subject to reporting under the Act.

Other political committees that support Senate and House candidates in elections, but are not authorized units of a candidate's campaign, are also required to file quarterly reports, unless they report monthly. Those committee names are not published by the FEC.

Further Commission action against non-filers and late filers is decided on a case-by-case basis. Federal law gives the FEC broad authority to initiate enforcement actions, and the FEC has implemented an Administrative Fine program with provisions for assessing monetary penalties.

*(Posted 07/29/2016)*

**Resources:**

- [FEC Non-Filer Press Release for July Quarterly](#) (July 29, 2016)
- [FEC Non-Filer Press Release for Washington Pre-Primary](#) (July 29, 2016)
- [Compliance Map](#)
- [The Administrative Fine Program](#)
- [FEC Reporting Dates](#)
- [Late Filing and Other Enforcement Penalties](#) (Reports Analysis Division)

## Advisory Opinions

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

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

- [AOR 2016-08](#) [PDF] Vendor collecting and forwarding contributions to political committees (eBundler.com received on June 29, 2016)

*(Posted 08/02/2016; By: Dorothy Yeager)*

**Resources:**

- [Advisory Opinion Search](#)

## [AO 2016-07: United National Committee Does Not Qualify as a National Party Committee](#)

The United National Committee, a political committee of the Unity Party of America, does not qualify as a national committee of a political party because, as a threshold matter, it has not placed a federal candidate on the ballot. Although a nominee of the Unity Party appeared on the ballot in Colorado for election to the United States Senate in 2014, the nominee did not meet the definition of a candidate under the Federal Election Campaign Act (the Act).

### **Background**

The United National Committee is the governing body of the Unity Party of America, which has nominated individuals for federal office. Bill Hammons was the Unity Party nominee in 2014 for U.S. Senate from Colorado and appeared on the 2014 general election ballot. However, neither Mr. Hammons, nor any other person nominated by the Unity Party, has raised or spent more than \$5,000 in connection with their campaign for election to federal office.

### **Legal Analysis**

The Act defines a national committee of a political party as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission." 52 U.S.C. § 30101(14).

The Act defines a political party as "an organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such...organization." 52 U.S.C. § 30101(16). Therefore, to be considered a "political party" for purposes of the Act, an organization must first place a federal candidate on a ballot under that organization's name. The Act defines a federal candidate as an individual who has received contributions or made expenditures in excess of \$5,000. 52 U.S.C. § 30101(2)(A).

Although Mr. Hammons appeared on the Colorado general election ballot in 2014 as the nominee of the Unity Party of Colorado for the U.S. Senate, he did not qualify as a "candidate" under the Act because he did not cross the \$5,000 threshold for either contributions received or expenditures made in connection with his campaign. Thus, the Commission concluded that since the Unity Party has not placed any individual who has qualified as a federal candidate under the Act on a ballot, the United National Committee does not qualify as a national committee of a political party. See [AO 1996-35](#) (Greens/Green Party USA) and [AO 2013-01](#) (1787 National Committee).

Date Issued: July 14, 2016; Length: 3 pages.

*(Posted: 07/18/2016; By: Myles Martin)*

### **Resources:**

- [AO 2016-07](#) [PDF]
- [Commission Discussion of AO 2016-07](#) 

# Litigation

## *Pillar of Law Institute, et al. v. FEC (District Court)*

On July 22, 2016, the U.S. District Court for the District of Wyoming entered a Consent Order and Judgment whereby the Commission agreed not to enforce the ban on corporate contributions against the Pillar of Law Institute ("Pillar") and two unnamed plaintiffs (collectively, "Plaintiffs") with respect to contributions to convention delegates.

### **Background**

The Federal Election Campaign Act (the Act), generally prohibits corporations from making contributions or expenditures in connection with "any primary election or political convention or caucus held to select candidates for presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress." 52 U.S.C. § 30118. The ban applies to any direct or indirect payment, distribution, loan, advance, deposit or gift of money or any services or anything of value to any candidate, campaign committee or political party or organization in connection with any election. See 52 U.S.C. §§ 30101(8)(A), 30118(b)(2); 11 CFR 114.1(a). "Anything of value" includes all in-kind contributions, such as the provision of goods or services without charge. See 52 U.S.C. § 30101(8)(A)(i); 11 CFR 100.52(a), (d).

Commission regulations define "election" to include a national nominating convention, as well as any primary election to select delegates to a convention. See 11 CFR 100.2(c)(3); Therefore, the Commission considers funds received and spent for delegate selection activities to be contributions and expenditures to influence a federal election that must come from permissible sources. 11 CFR 110.14(c)(1), (c)(2). However, since delegates do not qualify as candidates under the Act contributions to delegates are not subject to the amount limitations applicable to candidates. See 52 U.S.C. §§ 30101(2), (3), 30116(a)(1); 11 CFR 110.14(d)(1).

Pillar is a program of the Wyoming Liberty Group, a 501(c)(3) nonprofit corporation. The two unnamed plaintiffs were delegates to the 2016 Republican National Convention. Through its "delegate autonomy project" Pillar intended to provide convention delegates with free educational materials about the political parties, conventions and delegates. The educational materials would not contain express advocacy for or against a federal candidate. Pillar also planned to provide travel stipends to convention delegates and free legal representation for delegates facing threats of lawsuits or other forms of legal intimidation.

None of the Plaintiffs requested an advisory opinion (AO) from the Commission on their proposed activities.

### **Complaint**

On May 25, 2016, Plaintiffs filed suit in the U.S. District Court for the District of Wyoming. Plaintiffs sought a declaratory judgment that the bar on corporate contributions and expenditures in 52 U.S.C. § 30118 is an unconstitutional restriction of their First Amendment rights to speech and association. They also filed a Motion for Preliminary Injunctive Relief to enjoin the Commission from enforcing 52 U.S.C. § 30118 against them.

On June 17, 2016, the Commission filed its opposition to the Plaintiffs' motion and argued that the Plaintiffs were not entitled to a preliminary injunction because their proposed conduct would not violate the Act as it has been construed by the courts.

The Commission reasoned that the Act does not prohibit Pillar's proposal to provide educational materials and free legal services to delegates because they are neither contributions nor expenditures to influence a federal election. "[While the Act] effectively presumes that services provided to political committees without charge are election related. ...[i]n the context of discounted or free goods and services to delegates, however, no such rule applies." [Emphasis in original.] In fact, the Commission contended that it has repeatedly approved of corporate produced, non-advocacy educational materials (see AOs [1988-22](#), [2004-07](#)) and has allowed corporations to provide pro bono legal services under circumstances similar to this case (see AOs [1981-13](#), [1980-04](#)).

The Commission further argued that Plaintiffs' proposed activity, including the proposed travel stipend, is permissible under *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("*MCFL*"). In *MCFL*, the Supreme Court held that certain nonprofit advocacy corporations cannot constitutionally be barred from making independent expenditures. The *MCFL* exemption is available to corporations—like the Wyoming Liberty Group—that were formed for the express purpose of promoting political ideas and that do not engage in business activities; have "no shareholders or other persons affiliated so as to have a claim on its assets or earnings"; and are not established by a corporation or labor organization and do not accept contributions from such entities.

The Commission noted that neither the courts nor the Commission has ever enforced § 30118 to bar an *MCFL* corporation from making contributions or expenditures to a delegate to a national convention. "Although *MCFL* addressed only the independent expenditures of non-profit advocacy corporations... the Commission has never enforced the corporate contribution and expenditure bar against such an entity for providing funds or discounted goods or services to delegates. Nor would it in this case, because the conduct at issue is far closer to an independent expenditure directed at voters than a contribution to a candidate." The Commission reasoned that each of Pillar's proposals would not directly or indirectly provide anything of value to any particular candidate. The activities are also not designed to influence the outcome of any election in that they do not directly provide means for a candidate to fund his own campaign.

Relying on the FEC's argument that Commission and Court precedent would permit their proposed activity, Plaintiffs postponed their Motion for Preliminary Injunctive Relief on June 21, 2016.

### **Consent Order and Judgment**

On July 22, 2016, the U.S. District Court for the District of Wyoming entered a Consent Order and Judgment whereby the Commission agreed that it would not enforce 52 U.S.C. § 30118 and any implementing regulations against the Plaintiffs with regard to the monetary contributions made by *MCFL*-type corporations to delegates to a national nominating convention.

(Posted 08/02/2016; By: Zainab Smith)

### **Resources:**

- *Pillar Law Institute, et al. v. FEC (formerly Unnamed Plaintiff et al., v. FEC)* [Litigation Page](#)

## Public Funding

### Commission Certifies Additional Federal Matching Funds for Stein

The Federal Election Commission has certified a payment of \$213,181.77 in federal matching funds to Jill Stein for President. The certified amount was in response to the third regular submission for matching funds made by Stein, the Green Party's presidential candidate for 2016.

To become eligible for matching funds, candidates must raise a threshold amount of \$100,000 by collecting \$5,000 in 20 different states in amounts no greater than \$250 from any individual. Other requirements to be declared eligible include agreeing to an overall spending limit, abiding by spending limits in each state, using public funds only for legitimate campaign-related expenses, keeping financial records and permitting an extensive campaign audit.

Based on Commission certification of Jill Stein for President's initial threshold submission for matching funds in March and the Committee's two regular submissions in May and June, the United States Treasury made three payments totaling \$242,853.62 to the campaign. The Commission has requested that the U.S. Treasury make a fourth payment of \$213,181.77, bringing the total certified amount for Stein's committee to \$456,035.39.

Materials included with Jill Stein for President's submission may be viewed [here](#). Once declared eligible, campaigns may submit additional contributions for matching funds on the first business day of every month. The maximum amount a primary candidate could receive is currently estimated to be about \$48.01 million.

*(Posted 08/02/2016)*

#### **Resources:**

- [FEC Press Release](#) (August 2, 2016)
- [Press Office Backgrounder on Presidential Election Campaign Fund](#)
- [2016 Presidential Matching Fund Submissions](#)

# Outreach

## FEC to Host Webinar on Pre-Election Communications

On Wednesday, August 24, 2016, from 1:00 pm to 2:30 pm EDT, the Commission will host a webinar to review the rules and reporting requirements for specific types of pre-election communications, including:

- Electioneering communications;
- Independent expenditures; and
- Coordinated communications.



The presentation will also highlight recent court decisions, advisory opinions and rule-makings related to these types of communications.

*Webinar Information and Workshop Materials.* The 1.5 hour training session will be online only. An email containing a link to workshop materials, technical information and additional instructions will be sent to registered participants the day before the webinar.

*Registration Information.* The registration fee is \$25 to attend the webinar. A full refund will be made for all cancellations received on/before 5 p.m. EDT on Friday, August 19; no refunds will be made for cancellations received after that date. Complete registration information is available on the FEC's website at <http://www.fec.gov/info/outreach.shtml#roundtables>.

### **Registration Questions**

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

*(Posted 07/26/2016; By: Isaac Baker)*

### **Resources:**

- [FEC Educational Outreach Opportunities](#)