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Regulations

[Commission Seeks Comments on Internet Disclaimer Notices](#)

On October 18, 2016, the Commission published an Advance Notice of Proposed Rulemaking (ANPRM) on Internet Communication Disclaimers. The Commission will hold a hearing on these issues on February 1, 2017. Comments and/or requests to testify at the hearing must be received on or before December 19, 2016.

Under the Federal Election Campaign Act (the Act) and Commission regulations, a disclaimer is a statement that must appear on certain communications in order to identify who paid for the communication and, where applicable, whether the communication was authorized by a candidate. With some exceptions, the Act and Commission regulations require disclaimers to accompany public communications that are made by a political committee, expressly advocate the election or defeat of a clearly identified federal candidate, or solicit contributions. 52 U.S.C. § 30120(a); 11 CFR 110.11(a). Political committees must also include a disclaimer on email sent to more than 500 recipients, as well as on their internet websites.

While the term "public communication" does not usually include Internet communications, it does encompass communications placed for a fee on another person's website. 11 CFR 100.26. Therefore, such communications are subject to disclaimer requirements as well. For those communications requiring disclaimers, each disclaimer "must be presented in a clear and conspicuous manner, to give the reader, observer or, listener adequate notice of the identity" of the communication's sponsor. 11 CFR 110.11(c)(1).

On October 13, 2011, the Commission [published an ANPRM](#) seeking comment on whether and how to revise 11 CFR 110.11 concerning disclaimers on certain internet communications. The Commission is reopening the comment period in light of legal and technological developments since the notice was published. Specifically, the Commission seeks additional comments addressing

disclaimers on character-limited internet communications discussed since publication of the ANPRM in [Advisory Opinion Request 2013-18](#) (Revolution Messaging) (asking whether "banner ads" viewed on mobile phones required disclaimers) and MUR 6911 (Frankel) (considering whether candidates' and parties' Twitter profiles and tweets required disclaimers).

The Commission also notes that at least two states have disclaimer regulations that address small internet advertisements and seeks comments on experiences complying with these and other disclosure regimes. In addition, the Commission seeks comments that address the ways that campaigns, political committees, voters and others are using, or may begin to use, the internet and other technologies to disseminate and receive campaign and other election-related material. The Commission is interested in comments that address possible modifications of the disclaimer requirements, including technological alternatives, and seeks comments addressing advertisements on internet-enabled applications and devices. Finally, the Commission seeks comments that address possible regulatory approaches that could minimize the need for serial revisions of Commission regulations.

All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at <http://www.fec.gov/fosers>, reference REG 2011-02, or by email to InternetDisclaimers@fec.gov. Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn: Neven F. Stipanovic, Acting Assistant General Counsel, 999 E Street, N.W., Washington, DC 20463. All comments must include the full name, city, state, and zip code of each commenter or they will not be considered. The Commission will post all comments to its website at the conclusion of the comment period.

(Posted 10/18/2016; By: Zainab Smith)

Resources:

- [Federal Register Notice](#) (October 18, 2016) [PDF]

[Commission Seeks Comment on Petition for Rulemaking on Activities of State, District and Local Political Party Committees](#)

On October 7, 2016, the Commission published a [Notice of Availability](#) seeking comment on whether it should revise existing rules that require state, district and local party committees to use federal funds to pay for certain activities. Comments must be submitted on or before January 30, 2017.

Petition Information

On June 15, 2016, the Commission received a Petition for Rulemaking from the Minnesota Democratic-Farmer-Labor Party and its Chair, Ken Martin, requesting the Commission amend its regulations applicable to certain activities conducted by state, district and local party committees.

The Federal Election Campaign Act (the Act) and Commission regulations require that state, district and local party committees pay for certain "Federal election activity" (FEA) with either federal funds or, in certain instances, a combination of federal funds and "Levin funds." 52 U.S.C. § 30125(b) and 11 CFR 300.32. FEA includes certain

activities that urge, encourage, or assist individuals to register to vote or to vote. 11 CFR 100.24. The petitioners request in their petition that the Commission narrow the definition of FEA.

Commission regulations further provide that political parties must use 100 percent federal funds to pay for salaries, wages and fringe benefits of party employees who spend more than 25 percent of their compensated time on FEA or in activities "in connection with a Federal election." 11 CFR 106.7(d)(1)(i)-(ii). The petitioners ask the Commission to narrow this requirement by omitting FEA and solely covering activities "in connection with a Federal election."

Also, the petitioners request that the Commission consider amending several additional rules that would allow parties to discuss issue advertisements by the parties with candidates, expand a party's ability to engage in volunteer activities such phone banks, and permit political parties to conduct activities in connection with state and local elections and nonfederal candidates solely with nonfederal funds.

Comments must be submitted on or before January 30, 2017. Commenters are encouraged to submit comments electronically via the Commission's website at <http://www.fec.gov/fosers>, reference REG 2016-03, or by email to PoliticalPartyRules@fec.gov.

(Posted 10/07/2016; By: Myles Martin)

Resources:

- [Federal Register Notice of Availability \(October 7, 2016\)](#) [PDF]
- [Petition for Rulemaking](#) [PDF]

Petition for Rulemaking on Party Accounts and Convention Committees

On October 7, 2016, the Commission published a [Notice of Availability](#) seeking public comments on a petition for rulemaking on national party committee accounts and convention committees. The petition, filed by the Perkins Coie LLP Political Law Group, asks the Commission to implement amendments to the Federal Election Campaign Act (the Act) made by the Consolidated and Further Continuing Appropriations Act, 2015 ("2015 Appropriations Act"), and the Gabriella Miller Kids First Research Act.

Petition Information

Provisions of the 2015 Appropriations Act enable national party committees to establish three separate, additional accounts to defray certain expenses incurred with respect to presidential nominating conventions; headquarters buildings; and election recounts or contests and other legal proceedings. See 52 U.S.C. § 30116(a)(9). The contribution limits applicable to these accounts are 300% of the limits on contributions to national party committees. 52 U.S.C. § 30116(a)(1)(B) and (a)(2)(B). The petition asks the Commission to adopt a "new regulatory framework" for each type of account and to amend its regulations, or adopt new regulations, that would apply to all such accounts.

The petition also asks the Commission to adopt new regulations and to amend its current regulations regarding convention committees. Until recently, national party committees were entitled to receive public funds to defray the costs of their presidential nominating conventions. In 2014, the Gabriella Miller Kids First Research Act revised 26 U.S.C. § 9008 to eliminate public funding of political party conventions, while leaving in place

most of the statutory framework that had implemented that funding system. The Commission's regulations pertaining to the public funding of political party conventions have not been addressed in a rulemaking.* The petition asks the Commission to adopt new regulations and to amend its current regulations to address convention committees, as well as to remove related regulations that are now "obsolete."

Public comments on the petition are due by January 30, 2017. Commenters are encouraged to submit comments electronically via the Commission's website at <http://www.fec.gov/fosers>, reference REG 2014-10, or by email to NationalPartyAccounts@fec.gov.

**In [Advisory Opinion 2014-12](#), the Commission concluded that the Democratic National Committee and Republican National Committee could establish convention committees and raise funds under a separate contribution limit to pay for the same types of convention expenses for which public funds were previously used.*

(Posted 10/07/2016; By: Zainab Smith)

Resources:

- [Federal Register Notice of Availability \(October 7, 2016\)](#) [PDF]
- [Petition for Rulemaking](#) [PDF]
- [Consolidated and Further Continuing Appropriations Act, 2015](#)
- Record Article: [Gabriella Miller Kids First Research Act](#)

Advisory Opinions

[AOR 2016-13: Martins for Congress](#)

On October 11, 2016, the Commission concluded its consideration of Advisory Opinion Request (AOR) 2016-13, from Martins for Congress, without issuing an opinion. The Commission had previously concluded in [AO 2016-09](#) that Martins for Congress was entitled to a separate contribution limit for its new, court ordered primary election scheduled for October 6. After that opinion was issued, the U.S. Court of Appeals for the 2nd Circuit issued a ruling that canceled the October 6 election. The Martins committee's new AOR asked whether it could continue to raise contributions subject to the separate limit to retire debts incurred with respect to the canceled election. The Commission was unable to render an opinion by the required four affirmative votes.

(Date Posted: 10/13/2016; By: Dorothy Yeager)

Resources:

- [AOR 2016-13](#) [PDF]
- [Commission Close-Out Letter](#) [PDF]

[AO 2016-10: U.S. Citizen Residing Abroad May Solicit Contributions to State and Local Party Committees](#)

A U.S. citizen living in Canada may solicit contributions or donations to state and local political party committees so long as she does not knowingly solicit any foreign national. Her solicitations need not reference the ban on soliciting foreign nationals, and she is free to inform the state or local parties that she is soliciting contributions to those party committees.

Background

Caroline Goodson Parker is a United States citizen who currently lives in Canada. She plans to solicit friends and family by email and text message for contributions to state and local political party committees in the United States. She will also encourage these individuals to forward the solicitations to their friends and families. Some of the individuals whom Ms. Parker intends to solicit reside outside of the United States but had informed her some years ago that they were U.S. citizens. She also would like to solicit friends who she knows to have been Canadian citizens but who have lived in the U.S. for over five years. Ms. Parker asked if her proposed solicitations would be permissible and if she would be required to take any steps to ascertain the citizenship status of individuals whom she plans to solicit. Further, she asked if she would be required to inform individuals whom she solicits that they in turn are prohibited from soliciting foreign nationals. Finally, Ms. Parker asked whether she could inform the state and local party committees that she is soliciting contributions to those party committees.

Legal Analysis

The Federal Election Campaign Act (the Act) and Commission regulations prohibit any foreign national from making a contribution or donation to any committee of a political party. 52 U.S.C. § 30121(a)(1)(B) and [11 CFR 110.20\(c\)](#). Commission regulations further prohibit any person from knowingly soliciting a contribution or donation from a foreign national. [11 CFR 110.20\(g\)](#). The term "knowingly" is defined as 1) having actual knowledge that the person being solicited is a foreign national, 2) being aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the person being solicited is a foreign national, or 3) being aware of facts that would lead a reasonable person to inquire whether the person solicited is a foreign national, but failing to make such an inquiry. [11 CFR 110.20\(a\)\(4\)](#). U.S. citizens and non-citizens who are lawfully admitted for permanent residence to the United States (i.e., green card holders) are not foreign nationals for the purpose of the prohibition. 52 U.S.C. § 30121(b).

Commission regulations do not prohibit Ms. Parker from soliciting funds from other U.S. citizens, regardless of where they may live. However, Ms. Parker would be required to ascertain the citizenship status of some of the individuals whom she plans to solicit to avoid knowingly soliciting foreign nationals. Her responsibility to inquire into the citizenship status of a person she solicits depends on whether she is aware of facts that would lead a reasonable person to believe that the solicited person is a foreign national.

Since Ms. Parker wishes to solicit Canadian friends who have lived in the United States for more than five years, the Commission concludes that since she has actual knowledge that the individuals were foreign nationals in the past, she may not solicit them for contributions or donations unless she is able to determine through a reasonable inquiry that they are no longer foreign nationals. However, when soliciting friends and family who live in the U.S. and who, to her knowledge, have never lived abroad, she is

not required to conduct further inquiry into their citizenship status, unless she is aware of other facts that would indicate a substantial probability that the person to be solicited is a foreign national.

Ms. Parker is not required to inform individuals whom she solicits that they (the individuals being solicited) are in turn prohibited from soliciting foreign nationals. Commission regulations prohibit knowingly providing "substantial assistance" in the solicitation of a foreign national. [11 CFR 110.20\(h\)\(1\)](#). The Commission has interpreted "substantial assistance" to mean "active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction. [Contribution Limitations and Prohibitions at 67 FR 69928, 69945 \(November 19, 2002\)](#). However, in this circumstance, the Commission concludes that merely requesting individuals to pass along the solicitation to others does not constitute "active involvement" in their solicitation.

Finally, the Commission concluded that Ms. Parker may inform state and local party committees of her efforts to solicit contributions and donations to those committees.

With respect to the question of whether Ms. Parker is able to solicit persons who had informed her several years ago that they were U.S. citizens, but who reside abroad, the Commission could not approve a response by the required four affirmative votes.

Date Issued: 09/29/16; 6 pages.

(Posted 10/04/2016; By: Myles Martin)

Resources

- [AO 2016-10](#) [PDF]
- [Commission discussion of AOR 2016-10](#) 

[AO 2016-15: Joint Fundraising Committee May Hold Contributions in Escrow Pending State Party Status Determinations](#)

A joint fundraising committee may solicit, accept, and hold in escrow certain contributions designated for participating committees, pending their recognition as state party committees. If the Commission approves state party status for the committees, they would be able to accept twice as much from an individual contributor as they can accept currently—up to \$10,000 per calendar year, rather than \$5,000 per calendar year. However, if the Commission does not approve state party status, or if a participating committee does not submit a timely advisory opinion request (AOR) seeking recognition as a state party committee, then the joint fundraising committee must return any excessive contribution amounts from the escrow account to the original contributors.

Background

The Gary Johnson Victory Fund (GJVF) is a joint fundraising committee that is composed of Gary Johnson 2016, the principal campaign committee of Libertarian presidential nominee Gary Johnson, and 24 separate Libertarian committees. None of the participating Libertarian committees have been recognized by the Commission as a "state party committee," although 13 of the 24 have submitted pending AORs seeking such recognition. Eight of the remaining 11 committees have submitted letters regarding their status as state

party committees, but those submissions have not yet qualified as AORs. The remaining 3 Libertarian committees have not submitted requests to the Commission regarding their potential status as state party committees.

GJVF solicits contributions on behalf of all of its 25 participants and distributes the net proceeds according to the joint fundraising agreement signed by all participants. Currently, the contribution limit for Gary Johnson 2016 is \$2,700 per individual contributor, per election, and the contribution limit for each participating Libertarian committee is \$5,000 per calendar year from each contributor. As such, the maximum contribution that GJVF may accept from any single individual contributor is currently \$122,700.

GJVF wishes to solicit and accept contributions up to \$227,700, the maximum amount an individual could give if each participating Libertarian committee were recognized as a state party committee. Of the \$227,700 from each donor, GJVF would designate \$2,700 to Gary Johnson 2016, \$10,000 (the current calendar year limit for individual contributions to a state party committee) to each of the participating Libertarian Party committees, and \$5,000 (the current calendar year limit for individual contributions to a nonconnected political committee) to each of the other participating committees.

GJVF proposes to hold any funds in excess of the \$5,000 calendar year contribution limit for nonconnected committees (including party committees not recognized as state parties) in escrow pending Commission approval of any AOs that grant state party status to participating committees. GJVF will not disburse any contribution amounts in excess of \$5,000 to a participating committee unless the Commission expressly recognizes it as a state party committee. In the event that the Commission denies a pending request (or does not reach a determination by the required four affirmative votes) for state party committee status or if a pending committee were to withdraw its request before the Commission issues a response, GJVF will return any escrowed funds designated for such a committee directly to the original contributor(s).

If any participating committees do not submit an AOR to the Commission by November 8, 2016, GJVF proposes to return the funds held in escrow for those committees to the original contributor(s).

Analysis

As noted above, the Federal Election Campaign Act (the Act) and Commission regulations currently permit individuals to contribute up to \$2,700 per election to federal candidates. 52 U.S.C. § 30116(a)(1)(A) and 11 CFR 110.1(b). An individual may also contribute up to \$10,000 per calendar year to a state political party committee, and up to \$5,000 per calendar year to any other nonconnected political committee. 52 U.S.C. § 30116(a)(1)(C)-(D) and 11 CFR 110.1(c)(5) and (d).

The Act and Commission regulations permit federal candidates and committees to engage in joint fundraising by establishing a separate political committee to serve as a joint fundraising representative. 52 U.S.C. § 30102(e)(3)(ii) and 11 CFR 102.17(a). The joint fundraising representative is required to collect contributions, pay fundraising costs from gross proceeds and disburse net proceeds to each participant. 11 CFR 102.17(b)(1). A contributor may make a contribution to the joint fundraising representative that represents the total amount the contributor could contribute to all of the participants under the applicable contribution limits. 11 CFR 102.17(c)(5).

Commission regulations define a state committee of a political party as one that "by virtue of the bylaws of a political party or the operation of a State law is part of the official party structure and is responsible for the day-to-day operation of the political party at the State level, including an entity that is directly or indirectly established, financed, maintained, or controlled by that organization, as determined by the Commission." 11 CFR 100.14(a). A political committee is considered a state party committee (and thus eligible for the higher contribution limits) once the Commission makes such a determination through the [Advisory Opinion process](#). See, for example, [AO 2010-13](#) (Libertarian Party of Florida).

In several previous advisory opinions, the Commission has concluded that committees may solicit, accept and hold contributions that will be passed along to other committees upon the occurrence of certain conditions. For example, the Commission held in Advisory Opinion [2014-19](#) (ActBlue) that a committee could accept contributions that were designated by the contributors for an as-yet-unnamed "nominee" of a political party or for a specific individual who had not yet become a candidate. See also, [AOs 2006-30](#) (ActBlue), [2003-23](#) (WE LEAD) and [1982-23](#) (Westchester Citizens for Good Government). In each of these opinions, the contributors had ultimate control as to whom or which committee their contributions would be directed and the intermediary political committee would exercise no discretion with regard to the disposition of the conditional funds.

GJVF's proposal is analogous to these previous proposals approved by the Commission. GJVF will hold any potentially excessive contributions in escrow pending a participating committee's recognition as a state political party committee. GJVF will inform contributors of the conditions and potential disposition of funds if state party status is not met or if a committee does not ultimately submit an AOR to the Commission.

The Commission concluded that GJVF may solicit and accept contributions of up to \$227,700 per individual contributor (of which up to \$2,700 would be directed to Gary Johnson 2016, \$10,000 to each participating Libertarian state party committee, and \$5,000 to each nonconnected political committee), and that GJVF may hold any amounts in excess of \$5,000 per committee in escrow until the Commission approves its status as a state party committee. In the event that state party status is not requested by a committee or is not granted by the Commission, or in the event that the Commission does not reach a determination by the required four affirmative votes, GJVF must refund any amount over \$5,000 to the original contributor.

Date issued: October 13, 2016; 6 pages

Editor's Note: In AO 2016-14, approved on October 27, 2016, the Commission recognized 11 of the committees in this request as state party committees.

(Posted 10/28/2016; By: Myles Martin)

Resources:

- [Advisory Opinion 2016-15](#) [PDF]

Pending Advisory Opinion Requests as of October 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 2016-12](#) [PDF]
Application of coordination rules to activity of Super PAC and candidate (Citizens Super PAC; received on September 13, 2016)
- [AOR 2016-16](#) [PDF]
Funds a publicly financed committee may use to repay US Treasury and to pay civil penalty (Gary Johnson 2012; received on October 4, 2016)
- [AOR 2016-17](#) [PDF]
Status as state party committee of national party (Libertarian Party of Michigan Executive Committee; received on September 28, 2016)
- [AOR 2016-18](#) [PDF]
Status as state party committee of national party (Ohio Green Party; received on August 12, 2016)
- [AOR 2016-19](#) [PDF]
Status as state party committee of national party (Libertarian Party of Colorado; received on October 3, 2016)
- [AOR 2016-20](#) [PDF]
Contributions by sole member of federal contractor LLC (Christoph Mlinarchik; received September 29, 2016)
- [AOR 2016-21](#) [PDF]
Coordinated communications former employee conduct standard (Great America PAC; received September 26, 2016)

(Posted 11/02/2016; By: Dorothy Yeager)

Resources:

- [Advisory Opinion Search](#)

Compliance

FEC Cites Campaigns for Failure to File October Quarterly Report

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

As of October 27, 2016, the required disclosure report had not been received from:

- Committee to Elect Michael Cole District 14 (TX-14)
- Committee to Elect Timmy Westley (TX-15)
- Derickson K for Congress (NY-16)
- Friends of Lenny McAllister (PA-14)
- Scott L. Fenstermaker (NY-13)

- HEROJSLC2016 (AZ)
- Lily for US Senate (CO)
- Machat for Senate Campaign Committee (FL)

The October Quarterly report was due on October 15, 2016, and should have included financial activity through September 30. The Commission notified committees of their quarterly filing requirements on September 21, 2016. Those committees that did not file by the due date were sent notification on October 21, 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 10/28/2016)

Resources:

- [FEC Non-Filer Press Release](#) (October 28, 2016)
- [Compliance Map](#)
- [The Administrative Fine Program](#)
- [FEC Reporting Dates](#)
- [Late Filing and Other Enforcement Penalties](#) (Reports Analysis Division)

Litigation

[FEC Will Not Appeal District Court Decision in *CREW v. FEC* \(DDC 14-1419\)](#)

The Federal Election Commission will not appeal the recent decision of the U.S. District Court for the District of Columbia in *Citizens for Responsibility and Ethics in Washington et al. v FEC* (Case 1:14-cv-01419-CRC).

In August 2014, Citizens for Responsibility and Ethics in Washington (CREW) and CREW's then-executive director filed suit against the Commission, challenging its dismissal of their administrative complaints against the American Action Network (AAN) and Americans for Job Security (AJS).

On September 19, 2016, the Court issued an opinion concluding that the dismissals of CREW's administrative complaints against AJS and AAN were "contrary to law." The Court accordingly granted CREW's motion for summary judgment and remanded the matters to the Commission for further proceedings consistent with the Opinion of the Court. On September 29, 2016, the Commission was unable to reach agreement by the required four affirmative votes to appeal the Court's decision.

(Posted 10/06/2016)

Resources

- [Press Release](#) (October 4, 2016)
- *CREW v. FEC* (14-1419) [Litigation Page](#)

Outreach

[Winding Down the Campaign and Post-General Reporting Webinar](#)

On November 16, 2016, the Commission will host a webinar to help candidate committees prepare to wind down their campaigns and file their 30 Day Post-General (30G) Reports. The workshop will include information on filling out the Post-Election Detailed Summary Page, raising funds to retire campaign debt, settling outstanding debts and terminating a committee.



Webinar Information. 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 webinar registration fee is \$25. A full refund will be made for all cancellations received before 5 p.m. EST on Friday, November 11; no refund will be made for cancellations received after that time. Complete registration information is available on the FEC's website at <http://www.fec.gov/info/outreach.shtml#roundtables>.

Registration Questions

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

(Posted 10/11/2016; By: Isaac Baker)

Webinar Schedule:

November 16, 2016

Online Only

- Winding Down the Campaign & Post-General Reporting Webinar, 1:00 — 2:30 P.M. Eastern

Resources:

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