

August 17, 2010

Mr. Christopher A. Whyrick
Senior Campaign Finance Analyst
Reports Analysis Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: League of Conservation Voters, Inc.
Identification Number C90005786

Dear Mr. Whyrick:

This letter responds to your request for additional information dated July 13, 2010 regarding the April 2010 Quarterly Report filed by the League of Conservation Voters, Inc. ('LCV').

Specifically, you request that the LCV disclose contributions that were used to fund the independent expenditures reported on the above-referenced report. Your letter states that 'Commission regulations require that you disclose identification information for each individual who made a donation used to fund the independent expenditure.'

Contrary to your request, however, the statute and the regulations that you cite require the identification of any person who makes a contribution in excess of \$200 to the filer 'which was made for the purpose of furthering an independent expenditure.' See 2 USC 434(c)(2)(C) (emphasis added); see also 11 CFR 109.10(e)(1)(vi) ('which contribution was made for the purpose of furthering the reported independent expenditure'). LCV did not receive any contributions in the first quarter of 2010 that were made by a contributor 'for the purpose of furthering' an independent expenditure. Because LCV did not receive any contributions that meet the requirements under 11 CFR 109.10(e)(1)(vi), no amended reports accompany this response.

The Commission's own guidance and instructions support the statutory and regulatory language cited above. The Commission's Campaign Guide for Corporations and Labor Unions similarly provides that identification of contributors is required for 'each person who contributed more than \$200 for the purpose of making the independent expenditure.' Campaign Guide for Corporations and Labor Organizations at 36. The Commission's Instructions to Form 5 (Schedule 5-A) state that the filer should '[p]rovide the requested information for each contribution over \$200 that was made for the purpose of furthering the independent expenditure.'

As importantly, any requirement to disclose contributors other than those who contribute for the purpose of furthering an independent expenditure, is inconsistent with Supreme Court precedent that has, in this exact context, interpreted the phrase 'for the purpose of' to mean 'earmarked.' This narrowing interpretation has been necessary to preserve the constitutionality of the required disclosure.

In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Court examined, in part, 2 U.S.C. 434(e) (the predecessor statute to current 2 U.S.C. 434(c)(2)), which required every person other than a political committee who makes contributions or expenditures over \$100 in a calendar year (other than by a contribution to a political committee or candidate) to file a statement with the Commission. The Court noted that 'contributions' and 'expenditures' were 'defined in terms of the use of money or other valuable assets 'for the purpose of ... influencing' the nomination or election of candidates for federal office.' *Id.* at 77. The Court construed contributions made for the purposes of influencing an election to include 'contributions made to other organizations or individuals but earmarked for political purposes.' *Id.* at 78; see also 424 U.S. at 23, FN 24 ('dollars given to another person or organization that are earmarked for political purposes

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are contributions under the Act.') (emphasis added). The Court concluded:

In summary, 434(e), as construed, imposes independent reporting requirements on individuals and groups that are not candidates or political committees only in the following circumstances: (1) when they make contributions earmarked for political purposes or authorized or requested by a candidate or his agent, to some person other than a candidate or political committee; (2) when they make expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate. (emphasis added).

When Congress amended FECA in 1979, it eliminated the requirement that persons other than political committees disclose contributions, and instead shifted the burden to non-political committees making independent expenditures to report contributions of more than \$200 received. See 2 U.S.C. 434(C)(2)(C). In amending FECA, Congress did nothing to counter or modify the Supreme Court's interpretation that such contributions should mean those that have been earmarked to influence a federal election. And when the Commission promulgating regulations implementing this statutory change, the Commission narrowed the scope slightly (compare 'made for the purpose of furthering an independent expenditure' of 2 U.S.C. 434(c)(2)(C) with 'made for the purpose of furthering the reported independent expenditure'). See Final Rules and Regulations, 45 Fed. Reg. 15119 (March 7, 1980) (emphasis added).

The Supreme Court continued in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) to interpret contributions as it had in *Buckley*, citing the requirements under Section 434(c) to identify 'all persons making contributions over \$200 who request that the money be used for independent expenditures' (emphasis added); see also, 479 U.S. at 252 ('...identify any persons who make contributions over \$200 that are earmarked for the purpose of furthering independent expenditures, 43499(c)(2)(C)') (emphasis added).

The Commission seemed to understand this history in its 2003 Rulemaking on Coordinated and Independent Expenditure Reporting, when it stated that the 'reporting of independent expenditure contributors is limited to those who contributed specifically for independent expenditures.' Explanation and Justification, 68 Fed. Reg. 413 (January 3, 2003).

More recently, in its 2007 rulemaking on electioneering communications, the Commission took the opportunity to reiterate the requirements to disclose contributor information with respect to independent expenditures. In determining that a corporation (or union) is required to disclose the identity of specific contributors only if the contributions are made for the purpose of funding an electioneering communication, the Commission stated that '[t]he 'for the purpose of furthering' standard in 11 CFR 104.20(c)(9) is drawn from the reporting requirements that apply to independent expenditures made by persons other than political committees.' Explanation and Justification, 72 Fed. Reg. 72911 (Dec. 26, 2007). Donations made 'for the purpose of furthering' include funds that are 'received in response to solicitations specifically requesting funds to pay for ECs as well as funds specifically designated for ECs by the donor.' *Id.* A corporation is not required to identify 'everyone who provides them with funds for any reason.' *Id.*

A better understanding of LCV's legal status may help to provide context to the framework the Supreme Court has established. As a 501(c)(4) organization, LCV's primary activities are focused on public education and lobbying on environmental issues such as passage of clean energy and climate legislation, and LCV members and donors generally contribute to the organization in support of the organization's overall activities. In the rare situations when LCV has received contributions made for the purposes of furthering an independent expenditure, LCV has disclosed those contributors to the FEC. In contrast, LCV's separate segregated fund -- LCV Action Fund -- is exclusively dedicated to influencing federal elections and therefore, in accordance with federal law, discloses all contributions of more than \$200 to the FEC.

Finally, while this matter relates to the April Quarterly 2010 report, please note that in filing LCV's July Quarterly Report for 2010, LCV proactively included a memo entry stating that no contributions were received during the quarter that were made for the purpose of furthering an independent expenditure, with the hope that this would provide the

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Commission with the information it needed for that report relevant to the issue discussed herein.

If you have any questions, please contact me at (202) 454-4593.

Sincerely,

Patrick Collins,
Custodian of Records
Senior Vice President, Finance & Administration
