

# Record

April 2004

Federal Election Commission

Volume 30, Number 4

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## Regulations

### Notice of Proposed Rulemaking on the Definition of Political Committee

On March 4, 2004, the Commission approved a Notice of Proposed Rulemaking (NPRM) seeking comments on whether to amend the definition of “political committee” applicable to nonconnected committees. As part of that proposal, the Commission is considering revising its regulations to address whether and when disbursements for certain election activity should be treated as expenditures. The NPRM includes proposed rules to implement both of these changes, as well as related amendments to the allocation regulations for nonconnected committees and separate segregated funds.

The full text of the NPRM was published in the March 11, 2004, *Federal Register* (69 FR 11736), and is available on the FEC web site at <http://www.fec.gov/register.htm>. The Commission will hold a public hearing on these proposed rules April 14 and 15, 2004, beginning at 10:00 a.m.

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## Reports

### April Reporting Reminder

Committees filing on a quarterly basis must file their first quarterly report by April 15. The report covers financial activity from January 1 (or the day after the closing date of the last report) through March 31.

In addition to filing quarterly reports, committees of House and Senate candidates active in the 2004 primary and runoff elections must file pre-election reports and may have to file 48-hour notices of last-minute contributions of \$1,000 or more. Political action committees (PACs) and party committees filing on a quarterly basis may also have to file pre-election reports and 48- or 24-hour reports of independent expenditures, depending on the timing of their activities.

National party committees, PACs following a monthly filing schedule and state, district and local party committees that engage in reportable federal election activity must file a monthly report by April 20. (See the April 2003 *Record*, page 5, for more information on monthly filing for state, district and local party committees.)

Under the Commission’s mandatory electronic filing regulations,

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## Reports

(continued from page 1)

individuals and organizations<sup>1</sup> that receive contributions or make expenditures in excess of \$50,000 in a calendar year—or expect to do so—must file all reports and statements with the FEC electronically. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program will be considered nonfilers and may be subject to enforcement actions, including administrative fines.

Senate committees and other committees that file with the Secretary of the Senate are not subject to the mandatory electronic

<sup>1</sup> The regulation covers individuals and organizations required to file reports with the Commission, including any person making an independent expenditure. However, disbursements for electioneering communications do not count toward the \$50,000 threshold.

**Federal Election Commission**  
**999 E Street, NW**  
**Washington, DC 20463**

800/424-9530  
 202/694-1100  
 202/501-3413 (FEC Faxline)  
 202/219-3336 (TDD for the  
 hearing impaired)

**Bradley A. Smith**, Chairman  
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**Greg J. Scott**, Assistant Staff  
 Director

**Amy Kort**, Editor

<http://www.fec.gov>

filing rules, but may file an unofficial electronic copy of their reports with the FEC in order to speed disclosure.

The Commission's electronic filing software, FECFile 5, can be downloaded from the FEC's web site, [www.fec.gov](http://www.fec.gov) (click on the Electronic Filing icon). Filers may also use commercial or privately-developed software as long as the software meets the Commission's format specifications, which are available on the Commission's web site.

For those filers who are not required to file their reports electronically, paper forms are available on the FEC's web site (<http://www.fec.gov/reporting.html>) and from FEC Faxline, the agency's automated fax system (202/501-3413).

### Additional Information

For more information on 2004 reporting dates:

- See the reporting table in the January 2004 *Record*;
- Call and request the reporting tables from the FEC at 800/424-9530 (press 1, then 3) or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or
- Visit the FEC's web site at [www.fec.gov/pages/charts.htm](http://www.fec.gov/pages/charts.htm) to view the reporting tables online. ♦

—Elizabeth Kurland

## Regulations

(continued from page 1)

### Background

Currently, the Federal Election Campaign Act (the Act) and Commission regulations define a "political committee," in part, as "any committee, club, association, or other group of persons" that receives contributions or makes expenditures in excess of \$1,000 during a calendar year. 2 U.S.C.

§431(4)(A); 11 CFR 100.5(a).<sup>1</sup> An expenditure is defined as "any purchase, payment, distribution, loan advance, deposit, or gift of money or anything of value" made by any person for the purpose of influencing a federal election, or a written contract or agreement to do so. 2 U.S.C. §431(9)(A). Organizations whose expenditures (or contributions) exceed the \$1,000 threshold must register and file reports with the FEC.

In *McConnell v. FEC*, the Supreme Court upheld most of the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA categorized certain election-related activities undertaken by party committees as "federal election activity" (FEA), including:

- Voter registration activity during the 120 days before a regularly scheduled federal election;
- Voter identification, get-out-the-vote (GOTV) and generic campaign activity in connection with an election in which a candidate for federal office appears on the ballot; and
- A public communication that refers to a clearly identified federal candidate and that promotes, attacks, supports or opposes a candidate for that office. 11 CFR 100.24.

The Court found that the first two types of FEA listed above "confer substantial benefits on federal candidates," and that any "public communication that promotes or attacks a clearly identified federal candidate directly affects the election in which he is participating."

The Court also upheld the regulation of "electioneering communications" (which include television and radio ads that refer to

<sup>1</sup> See also 2 U.S.C. §431(4)(B) and (C) and 11 CFR 100.5(b) and (c).

a clearly identified federal candidate and are distributed in close proximity to an election) even though the communications do not contain express advocacy. See 2 U.S.C. §434(f)(3); 11 CFR 100.29. The Court found some of these ads to be “the functional equivalent of express advocacy.”

The Commission seeks comments on whether the Supreme Court’s treatment of FEA and electioneering communications requires or permits it to change its regulations defining “expenditure” and “contribution” to include these concepts, and to what extent these activities should count toward the \$1,000 political committee registration threshold. In the alternative, the Commission asks whether it can expand the regulatory definitions of contribution and expenditure in the absence of new legislation, and, if it may permissibly do so, whether it should redefine such fundamental and statutory terms without further Congressional guidance. Finally, the Commission seeks comments on whether it should delay the effective date of any of the proposed rules described below, or any other changes to the regulatory definition of political committee, if it adopts revisions to its regulations during the current election cycle.

### Proposed Rules

The Commission is considering amending the current definition of

political committee at 11 CFR 100.5 to:

- Include a test to determine whether a committee’s “major purpose”<sup>2</sup> is the nomination or election of one or more federal candidates; and/or
- Count payments for electioneering communications and the three types of FEA listed above toward the \$1,000 expenditure thresholds.

*Major purpose test.* The Commission asks whether any “major purpose test” included in the definition of “political committee” should require that the election or nomination of a candidate be the predominate purpose of the organization or whether the major purpose standard is satisfied when these activities are only one of the committee’s major purposes. The proposed rules contain a series of tests for determining whether a committee has the election or nomination of a candidate as a major purpose, such as whether the committee:

- Makes statements demonstrating that this is its major purpose *and* spends more than \$10,000 during the year (or in any of the previous four years) on any combination of contributions, expenditures, FEA or electioneering communications.
- Makes more than 50 percent of its annual disbursements during the year (or in any of the previous four years) for any combination of contributions, expenditures, FEA or electioneering communications.
- Makes more than \$50,000 in total disbursements during the year (or in any of the previous four years)

<sup>2</sup> In *Buckley v. Valeo*, the Supreme Court found that the definition of political committee “need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate” and does not “reach groups engaged purely in issue discussion.” *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).

for any combination of contributions, expenditures, FEA or electioneering communications.

The proposed rules contain two alternatives for a fourth test that addresses entities organized under section 527 of the tax code. The first alternative would consider all 527 organizations to have the nomination or election of candidates as a major purpose, with five exceptions. Under the second alternative proposed test, any 527 organization would automatically have the election or nomination of a candidate as a major purpose, without any exceptions.

*Expenditures.* The Commission is considering amending its general definition of “expenditure” to include payments for the three types of FEA listed above and for electioneering communications. The NPRM also outlines a narrower approach, which would incorporate the concepts of FEA but would also re-examine those activities to determine whether they are the functional equivalent of the same activities carried out by a party committee when they are undertaken by another type of entity. The proposed rules would distinguish between partisan and nonpartisan FEA by, for example, stating that voter registration or GOTV activities that promote, attack, support or oppose a political party or a federal or nonfederal candidate are partisan. Similarly, if information concerning likely party or candidate preference was used to determine which voters to encourage to register or to vote, then the activity is partisan. Partisan voter drives would, with some exceptions, be considered expenditures. Other activities that might be considered expenditures under the proposed rules include public communications that refer to a clearly identified federal candidate and promote, support, attack or

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## Federal Register

Federal Register notices are available from the FEC’s Public Records Office, on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline, 202/501-3413.

### Notice 2004-6

Political Committee Status;  
Notice of Proposed Rulemaking  
(69 FR 11736, March 11, 2004)

## Regulations

(continued from page 3)

oppose any candidate for that office or that promote or oppose a political party.

*Other issues.* In addition, the NPRM proposes rules to identify more specifically the funds that a nonfederal committee may convert to federal funds when it becomes a federal committee and to amend the allocation regulations governing separate segregated funds and nonconnected committees with federal and nonfederal accounts. The proposed allocation rules would address a committee's payments for activities that might be included in the definition of "expenditure," as described above, and also propose a minimum federal percentage for certain expenses. Finally, the NPRM proposes revisions to the regulations that bar corporations and labor organizations from making disbursements for certain "partisan" communications outside of their restricted class.

### Public Comments

The deadline for public comments on this NPRM is April 5 for those who wish to testify at the public hearing and April 9 for all other commenters. Comments must be submitted, in either written or electronic form, to Mai T. Dinh, Acting Assistant General Counsel, and may be sent by:

- E-mail to politicalcommitteestatus@fec.gov (e-mailed comments must include the commenter's full name, e-mail address and postal address);
- Fax to 202/219-3923 (send a printed copy follow-up to ensure legibility); or
- Overnight mail to the Federal Election Commission, 999 E Street NW, Washington DC, 20436.♦

—Amy Kort

## Advisory Opinions

### AO 2003-37

#### Nonconnected PAC's Use of Nonfederal Funds for Campaign Activities

Americans for a Better Country (ABC), a nonconnected political committee with federal and nonfederal accounts, must use funds from its federal account to pay for communications that meet the criteria for an electioneering communication and for public communications that promote, attack, support or oppose a clearly identified federal candidate, even if those communications do not expressly advocate the election or defeat of a federal candidate.<sup>1</sup> In addition, ABC's planned voter drive activities are entirely or in part for the purpose of influencing a federal election and must be paid for entirely with federal funds or allocated between federal and nonfederal funds under Commission regulations. Finally, with respect to fundraising, federal candidates and officeholders may speak at ABC's federal and nonfederal fundraising events and may solicit contributions to ABC's federal and nonfederal accounts so long as they only solicit contributions and donations that are within the limits and prohibitions of the Federal Election Campaign Act (the Act).

<sup>1</sup> In this opinion, the Commission did not address the legal status of organizations that are not political committees under the Act, including organizations operating under section 501(c)(3) and section 501(c)(4) of the Internal Revenue Code. The Commission will address the definition of "political committee" in a rulemaking. See related article on political committee status, page 1.

### Coordination

Under the Act and Commission regulations, expenditures that are coordinated with a candidate or political party committee are in-kind contributions to that candidate or party committee, or they may be coordinated party expenditures on behalf of a candidate. See 11 CFR 109.20(a) and (b), 109.21 and 109.37. The Commission's determinations in this opinion are based on the assumption that ABC's activities are *not* coordinated with a federal candidate, authorized committee, political party committee or the agents of any of these.<sup>2</sup>

Neither the Act nor Commission regulations expressly address coordination with other political committees or with 527 political organizations or section 501(c)(3) organizations. See 2 U.S.C. §441a(a)(7)(B) and 11 CFR Part 109. Thus, ABC is not categorically prohibited from consulting with, or acting in concert with, these other organizations. However, depending on the particular circumstances, such cooperation could be a factor leading to a conclusion that ABC controls or is otherwise affiliated with such a group, that the group is acting as ABC's agent or that the group has made an in-kind contribution to ABC.

### Communications

Under the Bipartisan Campaign Reform Act of 2002 (BCRA), an electioneering communication is a "broadcast, cable, or satellite" communication that refers to a clearly identified federal candidate, is publicly distributed for a fee within 60 days before a general election or 30 days before a primary election and, in the case of a communication that refers to a Congressional candidate, is "targeted to the

<sup>2</sup> The Commission also concluded that a prior contribution by ABC to a candidate, in and of itself, does not establish that ABC's GOTV activities are coordinated with the candidate.

relevant electorate.” 2 U.S.C. §434(f)(3)(A)(i) and 11 CFR 100.29. However, when a political committee makes a communication that would otherwise meet the definition of “electioneering communication,” that communication is treated as an expenditure and must be reported as such.<sup>3</sup> Thus, ABC must use federal funds to pay for these communications.

Moreover, if ABC funds a communication that does not have all the characteristics of an electioneering communication but refers to a clearly identified federal candidate and promotes, attacks, supports or opposes that candidate, it still must treat the costs of the communication as an expenditure and pay those costs entirely from its federal account. For example, a communication by ABC that identifies federal candidates and states that those candidates have “led the fight in Congress for a stronger defense and stronger economy” would promote, support, attack or oppose those clearly identified federal candidates. If made by a political committee, this communication would be for the purpose of influencing a federal election and thus, as explained above, must be reported as an “expenditure” even though it does not contain express advocacy. 2 U.S.C. §431(9).<sup>4</sup>

### **Voter Registration, GOTV and Voter Identification Activities**

ABC proposes to fund certain activity that may be paid for with a mix of federal and nonfederal funds.

<sup>3</sup> See Electioneering Communications; Final Rules, 67 FR 65190, 65197 (October 23, 2002).

<sup>4</sup> Moreover, there is no basis under Commission regulations for allocating the costs of this communication between ABC’s federal and nonfederal accounts, because the communication refers only to federal candidates. See 11 CFR 106.1 and 106.6.

Commission regulations provide that a political committee with separate federal and nonfederal accounts must make all disbursements, contributions, expenditures and transfers in connection with any federal election from its federal account. 11 CFR 102.5(a)(1)(i).<sup>5</sup> For nonconnected political committees, expenditures such as in-kind contributions and independent expenditures made on behalf of more than one clearly identified federal candidate must be allocated to each such candidate according to the benefit reasonably expected to be derived, e.g. by the space or time devoted to each candidate in a communication as compared to the total space or time devoted to all the candidates. 11 CFR 106.1. This rule also applies to allocating payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified nonfederal candidates. 11 CFR 106.1(a).

For communications by a nonconnected political committee that are for voter identification, voter registration or get-out-the-vote purposes (GOTV) that are not coordinated with a candidate and that do not refer to any clearly identified federal candidate, Commission regulations require the use of at least some federal funds because these communications are in part for the purpose of influencing a federal election. 11 CFR 106.6 Nonconnected committees must allocate expenses for these activities between their federal and nonfederal accounts based on the ratio of federal expenditures to total federal and nonfederal disbursements made by the committee during the two-year federal election cycle.

*Voter registration and GOTV public communications that ex-*

<sup>5</sup> Allocation by state, district and local party committees is also governed by 11 CFR Part 300.

*pressly advocate the election or defeat of or otherwise promote, support, attack or oppose a clearly identified federal candidate. ABC intends to include in its voter registration and get-out-the-vote efforts messages that contain specific phrases such as “vote for George W. Bush for President” or “It’s your duty to register to vote so that you can support George Bush’s reelection as President of the United States.” These communications constitute express advocacy.<sup>6</sup> 11 CFR 100.22(a). Other messages refer directly to an explicit act of support for a clearly identified candidate, such as “If you care about keeping the strong defense President Bush has put in place, go out and vote November 2.” These messages promote, support, attack or oppose a clearly identified federal candidate. Still other planned messages promote, support, attack or oppose a clearly identified federal candidate in a different way, including messages such as “President*

*(continued on page 6)*

<sup>6</sup> Specifically, 11 CFR 100.22(a) provides that “expressly advocating” means any communication that “[u]ses phrases such as ‘vote for the President,’ ‘re-elect your Congressman,’ ‘support the Democratic nominee,’ ‘cast your ballot for the Republican challenger for U.S. Senate in Georgia,’ ‘Smith for Congress,’ ‘Bill McKay in ’94,’ ‘vote Pro-Life’ or ‘vote pro-Choice’ accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, ‘vote against Old Hickory,’ ‘defeat’ accompanied by a picture of one or more candidate(s), ‘reject the incumbent,’ or communications of campaign slogan(s) or individual word(s), which in context can have no other meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say ‘Nixon’s the One,’ ‘Carter ’76,’ ‘Reagan/Bush’ or ‘Mondale!’ . . .”

## Advisory Opinions

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Bush has led the fight in Congress for a stronger defense and economy. Call him and tell him to keep fighting for you.”

The messages that promote or support President Bush’s election must be paid for entirely with federal funds since he is the only candidate clearly identified. 11 CFR 106.1. Communications that clearly identify both federal and nonfederal candidates would require allocation among the candidates, with federal funds used to pay for the portion attributable to the federal candidates.

Communications that clearly identify one federal candidate and expressly advocate his election while at the same time urging generic support for the entire party ticket (for instance, with a reference to “the entire Republican team”), may be paid for with a portion of nonfederal funds. In these communications, part of the message is attributable to the clearly identified candidate according to the benefit reasonably expected to be derived, and the remaining generic part of the message is allocable between ABC’s federal and nonfederal accounts. See 11 CFR 106.1(a) and 106.6. ABC’s generic voter drives that do not mention a specific candidate must be paid with entirely federal funds or allocated.<sup>7</sup> 11 CFR 106.6.

*Voter registration and GOTV public communications that do not mention a clearly identified federal candidate.* ABC also plans to make public communications that do not

<sup>7</sup> The Commission accepts the representation that ABC is not established, financed, maintained or controlled by a national, state, district or local party committee. Therefore, the provisions of 2 U.S.C. §441i that turn on those types of federal election activity by party committees do not apply to ABC as if it were a party committee.

mention specific candidates but encourage the support of candidates associated with particular issues. 11 CFR 106.6(b)(2)(iii). For example, a communication might state that “From the war on terror, to cutting taxes, to improving education—we all have a duty to elect leaders who put America first and not the liberal special interest groups.”

In other cases, the communication might simply involve an individual calling on behalf of ABC and asking the recipient to vote on November 2, without words encouraging support for candidates of any party or associated with any position on any issue.

In either case, the communication does not mention a clearly identified federal candidate and, thus, may be paid for with entirely federal funds or allocated between ABC’s federal and nonfederal accounts. 11 CFR 106.6.<sup>8</sup>

*Fundraising for voter registration and GOTV.* ABC plans to fund voter registration and GOTV activities with money that was raised through solicitations that mention a specific federal candidate, even though the eventual voter registration or GOTV communication does not. For example, the solicitation may say “Give money to an effort that will help President Bush and Republican candidates,” while the subsequent GOTV communication states “Go out and vote. The election is important. It’s your civic duty.”

Under the Act, a contribution includes “any gift, subscription, loan advance, or deposit of money or anything of value for the purpose of influencing any election for Federal office.” 2 U.S.C. §431(8). The

<sup>8</sup> The Commission’s analysis of these types of communications is not dependent upon whether the communications are targeted to geographic areas or demographic voter groups that have been identified as Republican based on earlier voter identification efforts.

solicitations described above indicate that the funds will be used to promote or support a clearly identified federal candidate and do not identify any other federal or nonfederal candidates or elections. Based on these facts, these funds are being raised to influence a federal election. Therefore, the contributions raised will be subject to the contribution limits and source prohibitions of the Act, and ABC may not raise nonfederal funds using those fundraising messages.<sup>9</sup> To avoid the receipt of contributions in violation of the Act, ABC should indicate in its solicitations that it may accept only contributions within the limitations and prohibitions of the Act. See 11 CFR 102.5(a)(2)(iii).

The subsequent voter registration or GOTV messages described above will not refer to a federal candidate, a political party or generically to candidates supporting positions on specific issues. They do not have to be funded entirely with federal funds. However, these subsequent messages must be funded as allocable generic voter drive expenses. 11 CFR 106.6(c).<sup>10</sup>

<sup>9</sup> These communications are not a mixed federal/nonfederal fundraising activity and therefore are not subject to 11 CFR 106.6(d).

<sup>10</sup> The Commission notes that the definition of “generic voter drives” in 11 CFR 106.6(b)(2)(iii) includes “voter identification, voter registration, and get-out-the-vote-drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.” A plain reading of this language indicates that the phrase “candidates of a particular party or associated with a particular issue” applies to the word “support” but does not apply to the other activities mentioned in the regulation.

*Voter identification communications that clearly identify a federal candidate and ask questions in a manner that promotes his candidacy.* ABC plans to fund mass mailings and telephone banks to identify voters, which candidates they support and which issues motivate them. The message will contain several questions, such as:

- “Do you believe your taxes are too high?”
- “Are you in favor of improving education?”
- “Are you in favor of President Bush’s efforts to lower taxes?”

The communication will finish with a question as to whether the reader or listener intends to vote on November 2. No other candidate is mentioned. This communication promotes and supports President Bush by referencing his “efforts to lower taxes,” and thus, it must be paid for entirely with federal funds.

### **Fundraising**

*Fundraising by federal candidates and officeholders.* A federal candidate or officeholder may solicit funds for ABC’s federal account so long as he or she only asks for federally permissible funds, and may solicit funds for ABC’s nonfederal account so long as he or she only asks for funds that are within the Act’s contribution limits and source prohibitions. See AOs 2003-36, 2003-5 and 2003-3.

Under Commission regulations, contributions may be deposited in ABC’s federal account if they:

- Were designated for ABC’s federal account;
- Result from a solicitation that expressly states that the contribution will be used in connection with a federal election; or
- Are from contributors who have been informed that all contributions are subject to the prohibitions and limitations of the Act. See AO 2000-25.

*Appearance at nonfederal fundraisers.* Federal candidates/officeholders may attend and speak at fundraising events for ABC’s nonfederal account that raise funds outside the Act’s contribution limits and source prohibitions, but they may not solicit funds that are outside the limits and prohibitions of the Act.<sup>11</sup> AOs 2003-36 and 2003-03.

If a federal candidate or officeholder, or an agent of either, makes a solicitation, that solicitation must include or be accompanied by a clear and conspicuous message indicating that the individual is only asking for funds that comply with the limits and prohibitions of the Act. He or she may also give a speech soliciting funds generally, without mentioning specific amounts, sources or limitations, so long as written notices are clearly and conspicuously displayed at the event indicating that the federal candidate/officeholder is soliciting only federally permissible funds or if a public oral disclaimer is made. See AOs 2003-36 and 2003-03.

*Federal candidates/officeholders as featured speakers, or as hosts, for fundraising events for ABC’s nonfederal account.* The Act’s and regulation’s restrictions apply to an invitation to a nonfederal fundraiser when:

- The invitation constitutes a solicitation for funds; and
- A federal candidate/officeholder agreed to be featured or named in the invitation.

The mere mention of a federal candidate/officeholder in the text of

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<sup>11</sup> Commission regulations establish that a federal officeholder or candidate will not be held liable for soliciting funds in violation of section 441i(e)(1)(B) or section 300.62 merely by virtue of attending or participating in any manner in connection with a fundraising event at which nonfederal funds are raised.

a written invitation does not, without more, constitute a solicitation or direction of nonfederal funds by that person. However, if the invitation is a solicitation, a candidate’s agreement to be mentioned in the invitation as an honored guest, featured speaker or host constitutes a solicitation by the candidate. Thus, if a candidate agrees to be named in a fundraising solicitation as an honored guest, featured speaker or host, or if the invitation constitutes a solicitation for any other reason, then the solicitation must contain a clear and conspicuous statement that the entire solicitation is limited to funds that comply with the Act’s limits and prohibitions.<sup>12</sup> See AOs 2003-36 and 2003-03.

*Written solicitations for ABC’s nonfederal account.* Federal candidates/officeholders may not sign written solicitations for ABC’s nonfederal account that raise funds outside the Act’s contribution limits and source prohibitions. 2 U.S.C. §441i(e)(1)(B); 11 CFR 300.62; AO 2003-03.

*Solicitations using federal candidates’ names.* ABC may use the names of specific federal candidates in its solicitations for federal funds, stating, for example, “ABC supports President Bush’s tax cuts to stimulate the economy. Give to ABC so that we can support President Bush’s agenda.” ABC may make such statements so long as it does not coordinate the communications with any candidates and the candidates will not solicit, receive, direct, transfer, spend or disburse funds outside of the limits,

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<sup>12</sup> Even if the invitation includes a disclaimer, a federal candidate or officeholder must still comply with the disclaimer requirements described above if he or she solicits funds at the actual event.

## Advisory Opinions

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prohibitions or reporting requirements of the Act.

However, ABC may not solicit nonfederal funds in this way. If ABC uses the names of specific federal candidates in a manner that conveys its plan to use those funds to support or oppose specific federal candidates, then the funds raised will be contributions subject to the Act's contribution limits and source prohibitions. See 2 U.S.C. §431(8).

*Invitations to issues forum and nonfederal fundraiser.* ABC may sponsor an issues forum at which federal officeholders or candidates speak, but no funds are raised, and then adjourn later in the same day to a different location for a nonfederal fundraiser. However, if the invitation to the issues forum and the fundraiser are included in the same mailing, then the entire mailing must comply, as appropriate, with the disclaimer requirements for federal candidates/officeholders who are named in invitations as featured speakers or hosts for a nonfederal fundraising event.

*Donations from foreign nationals.* ABC may not raise and spend funds from its nonfederal accounts from foreign nationals or from foreign corporations or labor organizations for voter registration and voter mobilization activities. The Act, as amended by the BCRA, prohibits foreign nationals from, among other things, directly or indirectly making a contribution or donation of money or other thing of value in connection with a federal, state or local election.<sup>13</sup> 2 U.S.C. §441e(a)(1)(A); 11 CFR 110.20. Also, it is unlawful for a person to solicit, accept or receive a contribution or donation from a foreign national. 2 U.S.C. §441e(a)(2). See also 11 CFR 110.20(g) and (h).

<sup>13</sup> This prohibition is not limited to elections for political office.

Accordingly, ABC must not deposit such funds into its federal or nonfederal account. Nothing in the Act or Commission regulations creates an exception on the basis of the political committee's intended use for the foreign national funds.

Date Issued: February 18, 2004;  
Length: 21 pages. ♦

—Amy Kort

### AO 2004-2

#### Contributions from Testamentary Trusts

The National Committee for an Effective Congress (NCEC), a registered nonconnected committee, may accept contributions from testamentary trusts established by individuals for the purpose of making contributions to NCEC.

#### Background

NCEC plans to accept contributions from testamentary trusts. The terms of the trusts would limit the trusts to making the maximum annual contribution permitted under the Federal Election Campaign Act (the Act). The aggregated contributions from all trusts created by the testator would not exceed the aggregate biennial limit on contributions from individuals.

A contributing testamentary trust will set as a condition of its contribution that NCEC may not pledge, assign or otherwise obligate anticipated contributions in order to realize in whole or in part the present value of future contributions. NCEC will not knowingly accept contributions from any testamentary trust where the trustee exercises any discretion over whether a contribution is made or over the amount of a contribution. NCEC will have no involvement in the administration of the testamentary trust, and trusts from which NCEC would accept contributions would be created and funded only through the estates of individuals who were legally qualified at the

time of their deaths to make contributions under the Act.

#### Analysis

In past advisory opinions, the Commission concluded that the testamentary estate of a decedent is the successor legal entity to the testator and qualifies as a "person" under the Act, subject to the same limitations and prohibitions applicable to the decedent in the his or her lifetime. Thus, a political committee may accept contributions from an individual's estate made through a testamentary trust, which in aggregate do not exceed \$5,000 per calendar year. AOs 1999-14 and 1988-8; see also AO 1983-13.

In AO 1999-14, the Commission overturned its previous determination that a political committee may receive a lump sum testamentary gift in excess of \$5,000. In that opinion, the Commission concluded that such a testamentary gift would amount to a contribution for the entire bequest at the time the funds were distributed from the estate and into the political committee's escrow account, and therefore would constitute an excessive contribution in the amount that exceeded \$5,000.<sup>1</sup> Under the Commission's regulations, a contribution is "made" when the contributor delivers the contribution to the political committee. 11 CFR 110.1(b)(6). The Commission's determination that a testamentary gift in the form of a lump sum bequest is unlawful under the Act hinged on the fact that the political committee would control the entire

<sup>1</sup> AO 1999-14 superseded AO 1988-8 and AO 1983-13 to the extent that those advisory opinions permitted acceptance of excessive contributions into an escrow account, but left intact portions of those advisory opinions permitting a testamentary trust to make, and a political committee to accept, a contribution not exceeding the contribution limits in 2 USC §441a(a)(1).



amount of the testamentary gift, even when placed in escrow.

In this case, NCEC may accept contributions under the facts and circumstances described above because the testamentary trust, unlike an escrow account, is beyond NCEC's control. However, NCEC may accept contributions only from trusts for which neither NCEC nor an officer, director, employee, member, agent or affiliated organization of NCEC serves as trustee. This condition will ensure that NCEC does not exercise any control over the undistributed trust funds or interest amounts. NCEC must report contributions accepted from testamentary trusts at the time of receipt and disclose the name of both the trust and the decedent. AO 1988-8.

Date Issued: February 26, 2004; Length: 4 pages. ♦

—Amy Pike

## Alternative Disposition of Advisory Opinion Request

### [AOR 2004-5](#)

On February 27, 2004, the requesters withdrew Advisory Opinion Request 2004-5, which had posed questions concerning the voter mobilization and fundraising activities of a nonconnected political committee with federal and nonfederal accounts. ♦

—Amy Kort

## Advisory Opinion Requests

### [AOR 2004-8](#)

Severance package provided by corporation to employee who resigns to run for Congress (American Sugar Cane League, February 11, 2004)

### [AOR 2004-9](#)

Political committee's status as state party committee (The Green Rainbow Party, February 23, 2004) ♦

## Court Cases

### Wilkinson v FEC

On February 3, 2004, the U.S. District Court for the District of Utah, Central Division, granted the FEC and Clark Wilkinson's joint motion to dismiss this case. Mr. Wilkinson had asked the court to set aside the Commission's final determination that, as treasurer of the Friends of Bob Gross Committee, he failed to file the Committee's July and October 2002 quarterly reports. Mr. Wilkinson had also asked the court to set aside the Commission's assessment of \$5,400 in civil money penalties under its administrative fines regulations. 11 CFR 111.30-111.45. See the November 2003 [Record](#), page 8.

U.S. District Court for the District of Utah, Central Division, 2:03-CV-00734. ♦

—Amy Kort

### FEC v. California Democratic Party, et al.

On February 13, 2004, the U.S. District Court for the Eastern District of California granted the Commission's motion for summary judgment in this case, finding that the defendants violated the Federal Election Campaign Act (the Act) by:

- Using nonfederal funds to pay for mass mailings and radio advertisements that constituted express advocacy of a clearly identified federal candidate;
- Failing to include the required disclaimers; and
- Failing to report the ads as independent expenditures.

### Background

Under the Act, political party committees may only spend funds that are consistent with the limits and prohibitions of the Act to influence a federal election. Among

other restrictions, the Act prohibits corporations and labor unions from making any contributions in connection with a federal election, and also prohibits a political committee from receiving such contributions. 2 U.S.C. §441b. See also 2 U.S.C. §§431(8), 441a, 441(b), 441(c), 441(e), 441(f) and 441(g); 11 CFR parts 100, 110, 114 and 115. A party committee that maintains both federal and nonfederal accounts may pay for some mixed federal/nonfederal activities with a combination of federal and nonfederal funds using the allocation rules set forth in Commission regulations.<sup>1</sup> However, any expenditure made by a political party committee for activities that expressly advocate the election or defeat of a clearly identified federal candidate must be made with federally permissible funds.

In the 22<sup>nd</sup> Congressional District of California, a special general election was held on March 10, 1998, to fill a House seat left vacant after the death of Walter Capps. This federal office was the only office on the ballot for the special election, and Lois Capps was the only Democratic candidate on the ballot. The California Democratic Party (CDP) paid \$99,097 for direct mailings and radio advertisements that contained statements such as "Continue the Walter Capps Tradition" and "Vote Democratic" in the "Special Election, Tuesday, March 10." In its FEC disclosure reports, the CDP reported the expenditures for these communications as mixed federal/nonfederal activity, and it paid for the costs of these communications with funds from both its

(continued on page 10)

<sup>1</sup> The defendants' activities described in this case occurred before the Bipartisan Campaign Reform Act of 2002 took effect. Thus, the court considered the statutory and regulatory provisions in effect at that time.

## Court Cases

(continued from page 9)

federal and nonfederal accounts. Of the \$99,097 spent on the communications, \$77,281 came from the CDP's nonfederal funds. The ads included disclaimers stating that they were paid for by CDP, but did not state whether the ads were authorized by any candidate or candidate's committee. See the May 2003 *Record*, page 5.

### Court Decision

The only contested issue before the court was whether Lois Capps was "clearly identified" in the defendants' ads. The court found that Ms. Capps was clearly identified in the ads under *Buckley v. Valeo*, 424 U.S. 1 (1976) and *FEC v. Furgatch*, 807 F.2d 875 (9th Cir. 1987).<sup>2</sup> In *FEC v. Furgatch*, the appeals court held that a communication is "express advocacy" under the Act if, "when read as a whole, and with limited reference to external events," it is "susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate." In this case, the court found that when the language of the ads was taken as a whole, "including the fact that the March 10<sup>th</sup> special election was a single-office, federal-only election with one Democratic candidate," the ads "clearly identify a candidate under *Buckley* and *Furgatch*." The court reasoned that because the ads' directive to "vote Democratic" in the "March 10<sup>th</sup> special election" left only one action for the public to take to follow the ads' instructions, "reasonable minds could not dispute that the subject Advertisements urged readers to vote for Lois Capps in the March 10 special election."

<sup>2</sup> The *FEC* moved for summary judgment only as to whether CDP violated the Act and not as to any civil penalty or other remedy the court may order as a result.

Because these ads expressly advocated the election of a clearly identified federal candidate and were not coordinated with any candidate, the court concluded that they were independent expenditures. Thus, CDP was required to pay for them with federal funds and include a disclaimer stating who paid for the communication and that it was not authorized by any candidate. CDP was also required to report the payments as independent expenditures on its FEC disclosure reports. The court granted the FEC's request for partial summary judgment, declaring that the defendants violated the Act by paying for the ads in part with funds from CDP's nonfederal account and failing to include a complete disclaimer and properly report the ads. The court denied the defendants' motion for summary judgment.

U.S. District Court for the Eastern District of California, S-03-0547 FCD DAD. ♦

—Amy Kort

### New Litigation

#### Akins et al. v. FEC

On November 25, 2003, James E. Akins and several other individuals filed a complaint with the U.S. District Court for the District Columbia requesting that the court find that the Commission acted contrary to law when it dismissed the plaintiff's administrative complaint dated May 20, 2002 (MUR 5272). The administrative complaint alleged that the American Israel Public Affairs Committee (AIPAC) failed to disclose its candidate-coordinated express advocacy communications as required by the Federal Election Campaign Act (the Act). 2 U.S.C. §431(9)(B)(iii). In their complaint filed with the District Court, the plaintiffs allege that the FEC's dismissal of the complaint against AIPAC has harmed the electoral process by not enforcing the provisions of federal

law that require public disclosure of such communications. The plaintiffs allege that they also have been harmed by being denied their legal right to access such information and use it to inform policymakers and the general public about the activities and influence of AIPAC.

*Background.* The Act requires incorporated membership organizations to report disbursements for express advocacy communications to their members when the cost of such communications aggregates over \$2,000 for all candidates running in the same election. 2 U.S.C. §431(9)(B)(iii).

In its investigation MUR 2084, which resulted from a previous complaint filed by the plaintiffs against AIPAC, the Commission found that:

- AIPAC was a membership organization under federal law; and
- AIPAC's meetings with candidates and its sharing of campaign information with its members demonstrated a serious interest in influencing federal elections.

However, in MUR 2804, the Commission made no determination regarding whether the cost of AIPAC's communications exceeded \$2,000 in connection with any election.

On May 20, 2002, the plaintiffs filed an additional complaint, MUR 5272, alleging that the facts found in MUR 2804 indicated that AIPAC failed to disclose the cost of having members travel to and attend meetings with candidates to discuss their campaigns and issues once those costs exceeded \$2,000. In MUR 5272, the plaintiffs asked that the Commission:

- Find through investigation that AIPAC's costs for advocacy communications to its members exceeded \$2,000 during an election; and,
- Order AIPAC to disclose the cost of such communications with the

## Enforcement Query System Now Available on FEC Web Site

The FEC recently launched its Enforcement Query System (EQS), a web-based search tool that allows users to find and examine public documents regarding closed Commission enforcement matters. Using current scanning, optical character recognition and text search technologies, the system permits intuitive and flexible searches of case documents and other materials.

Users of the system can search for specific words or phrases from the text of all public case documents. They can also identify single matters under review (MURs) or groups of cases by searching additional identifying information about cases prepared as part of the Case Management System. Included among these criteria are case names and numbers, complainants and respondents, timeframes, dispositions, legal issues and penalty amounts. The Enforcement Query System may be accessed on the Commission's web site at [www.fec.gov](http://www.fec.gov).

Currently, the EQS contains complete public case files for all MURs closed since January 1, 2002. In addition to adding all cases closed subsequently, staff is working to add cases closed prior to 2002. All MURs closed in 2001 will be included in the system by July 2004, and cases closed in 2000 will be available by the end of 2004. Other FEC compliance actions (Alternative Dispute Resolution cases and Administrative Fines) will also be included in the system at a later date.

Commission in accord with federal law.

The Commission dismissed MUR 5272 as a matter of prosecutorial discretion. The Commission noted that the plaintiffs' complaint did not cite any specific instances of communications containing express advocacy made by AIPAC and that they could not substantiate the claim that AIPAC had engaged in membership communications subject to the reporting requirements of the Act.

*Court Complaint.* The plaintiffs contend that the Commission's dismissal of MUR 5272 was arbitrary, capricious and contrary to law. Plaintiffs claim that the evidence gathered in the investigation of MUR 2804 is sufficient to prove that AIPAC made communications to its members in excess of \$2,000 for an election.

The plaintiffs ask the court to:

- Assume jurisdiction of this case;
- Declare the Commission's dismissal of the plaintiff's administrative complaint to be arbitrary, capricious and contrary to law;
- Remand the matter to the Commission and order the agency to decide on the basis of the evidence presented in MUR 2804 whether AIPAC has made unreported membership communications;
- Award plaintiffs costs and attorneys' fees; and
- Afford plaintiffs such additional relief as the court deems just.

U.S. District Court for the District of Columbia,  
1:03CV02431.♦

—Gary Mullen

### **John Hagelin, et. al. v. FEC**

On February 11, 2004, John Hagelin, Ralph Nader, Patrick Buchanan, Howard Phillips, Winona LaDuke, the Natural Law Party, the Green Party of the United States and the Constitution Party asked the U.S. District Court for the District

of Columbia to find that the Commission failed to act expeditiously on an administrative complaint dated June 17, 2003. The administrative complaint alleged that the Commission on Presidential Debates, Inc. (CPD) violated the Federal Election Campaign Act (the Act) in 2000, that it continues to violate the Act and that its actions have a direct impact on the 2004 Presidential election cycle currently underway. Specifically, the judicial complaint alleged that CPD:

- Has a *de facto* monopoly on the nationally televised Presidential and Vice-Presidential debates;
- Is unlawfully raising corporate monies that advance and stage those debates to the benefit of the two major parties; and
- Exercises unlawfully partisan control over the national candidate debates and undermines the plaintiffs' rights.

The judicial complaint noted the need for expeditious action as the first of the three Presidential debates and one Vice-Presidential debate for the 2004 elections have been scheduled by the CPD and will be held beginning September 30, 2004.

*Background.* The CPD, a nonprofit, 501(c)(3) corporation, sponsored four nationally televised debates between the Presidential and Vice-Presidential candidates of the Republican and Democratic Parties in the 2000 elections. The Act exempts nonpartisan activity designed to encourage individuals to vote or to register to vote from the definition of regulated expenditures. 2 U.S.C. §431(9)(B)(ii). The Commission has interpreted this statute to permit nonprofit 501(c)(3) or (c)(4) organizations that do not endorse, support or oppose political candidates or parties to stage candidate debates per 11 CFR 110.13(a); see 11 CFR 114.4 (f). Additionally, such a qualifying

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## Court Cases

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nonprofit organization may use its own funds and accept funds donated by corporations or labor organizations to defray costs incurred in staging candidate debates. 11 CFR 114.4(f)(1).

*Administrative Complaint.* The plaintiffs alleged that the CPD was founded and controlled by the Republican and Democratic Parties and their representatives. They argued that the CPD raised significant monies and obtained numerous corporate co-sponsors of its debates in 2000, including Philip Morris, Anheuser-Busch, AT&T and 3Com. According to the administrative complaint, because the CPD does not meet the criteria for a qualifying organization under 11 CFR 110.13 and 114.4(f)(1), the corporate monies raised and expended were illegal contributions and expenditures. Furthermore, the plaintiffs claim that CPD meets the definition of political committee under the Act<sup>1</sup> and is required to register and report with the FEC.

*Court Complaint.* The administrative complaint, along with corroborating exhibits, was filed on June 17, 2003. As of February 11, 2004, the FEC had taken no final action on the complaint. The plaintiffs allege that the FEC's inaction causes them direct harm in that they cannot fully assess their prospects of running a successful campaign in a lawful election process without knowing whether the CPD will sponsor the major debates in 2004 to their exclusion. Additionally, the plaintiffs allege

<sup>1</sup> The term "political committee" means any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.

that they have been denied disclosure information that will assist them in competing against, and educating the public about, the major party candidates in the 2004 elections, including their receipt of corporate monies through the CPD. The complaint notes that the FEC has the authority to obtain the following remedies through the conciliation process or through pursuit of a civil enforcement action:

- Cause the CPD to cease and desist all activities as a Presidential and Vice-Presidential debate staging organization;
- Cause the CPD to file disclosure reports for the 2000 and 2004 elections; and
- Impose lawful sanctions and other remedies that may be appropriate.

*Relief.* The plaintiffs ask the court to declare that the FEC's failure to act on the administrative complaint is contrary to law and direct the FEC to act on the complaint within 30 days. 2 U.S.C. §437(g)(a)(8)(A) and (C). ♦

—Meredith Trimble

### Jim Sykes v. FEC, et al.

On February 24, 2004, Jim Sykes, the Green Party's presumptive 27 year old nominee in Alaska's November 2 Senate election, filed a complaint in the U.S. District Court for the District of Columbia. The plaintiff asks the court to find unconstitutional provisions of the Federal Election Campaign Act (the Act) that allow non-Alaska residents to make contributions to a Senate candidate in Alaska's 2004 general election, either personally or through political committees. The plaintiff alleges that these non-resident contributions unconstitutionally burden his First and Fifth Amendment rights to associate politically, both as a candidate and a voter, with other Alaska voters.

The plaintiff asks the court, among other things, to:

- Certify this action as a class action against all individuals and political committees who are not Alaska residents and who have made or may make contributions to a Senate candidate in Alaska;
- Convene a three-judge panel, or certify the questions raised in this complaint to the U.S. Court of Appeals for the District of Columbia pursuant to 2 U.S.C. §437h;
- Enter a declaratory judgment that the Act severely burdens the plaintiff's exercise of his right to political association to the extent that it authorizes non-Alaska residents to contribute to Alaska's Senate candidates; and
- Preliminarily and permanently enjoin the individuals and political

## Public Appearances

March 31-April 3, 2004  
Center for Responsive Politics  
Los Angeles, CA  
Robert Biersack

April 2, 2004  
Institute of International  
Education  
Washington, DC  
Meredith Trimble

April 4-6, 2004  
Association of Private Enterprise  
Education  
Nassau, Bahamas  
Chairman Smith

April 23-24, 2004  
Amherst College/Committee for  
the American Founding  
Amherst, MA  
Chairman Smith

April 24, 2004  
University of St. Thomas Law  
School Federalist Society  
St. Paul, MN  
Allison Hayward

committees named in this action, and the members of the classes they represent, from contributing to Senate candidates in Alaska and direct these defendants to seek refunds of contributions they have already made.

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

—Amy Kort

## Nonfilers

### Congressional Committees Fail to File Pre-Primary Reports

The Byron for Congress and McPeck for Congress committees failed to file 12-Day Pre-Primary reports for the March 2 primary elections in California and Maryland, respectively, and Sam Texas and John Kelley for Congress failed to file these reports for the March 9 Texas primary.

Prior to the reporting deadlines, the Commission notified committees involved in these primaries of their potential filing requirements. Committees that failed to file the reports were subsequently notified that their reports had not been received and that their names would be published if they did not respond within four business days.

The Federal Election Campaign Act requires the Commission to publish the names of principal campaign committees if they fail to file 12 day pre-election reports or the quarterly report due before the candidate's election. 2 U.S.C. §437g(b). The agency may also pursue enforcement actions against nonfilers and late filers on a case-by-case basis.◆

—Amy Kort

## Compliance

### MUR 5197: Contributions from Congressionally Chartered Corporations

The Commission recently entered into conciliation agreements with the Republican National Committee (RNC), the National Republican Senatorial Committee (NRSC) and the Federal National Mortgage Association (Fannie Mae), resolving violations of the Federal Election Campaign Act (the Act). The conciliation agreements resulted in civil penalties totaling \$132,000. The FEC's investigation stemmed from a complaint filed by John Berthoud, President of the National Taxpayers Union.

#### Background

The Act prohibits Congressionally chartered corporations from making contributions or expenditures in connection with any federal or nonfederal election to political office. 2 U.S.C. §441b(a). However, the law in effect at the time provided for an exception for donations to national and state party committees if the donations were specifically designated to pay for the construction or purchase of an office facility that was not acquired for the purpose of influencing the election of any candidate in any particular federal election—the so-called “building fund” exemption. See former 2 U.S.C. §431(8)(B)(viii) and AOs 2001-12, 2001-1, 1998-8, 1997-14 and 1983-8.<sup>1</sup>

#### Conciliation Agreements

According to the conciliation agreements, from 1998 to 2000 Fannie Mae contributed \$51,470 to the Republican Governors' Associa-

tion, and these funds were deposited in the Republican National State Elections Committee account of the RNC, which was not a building fund account. The RNC also improperly deposited \$250,000 received from the Federal Home Loan Mortgage Corporation (Freddie Mac) in its general nonfederal account in 2001, even though the donation had been properly designated for the building fund.

Fannie Mae also made contributions of \$50,000 to the 1999 Senate-House Dinner Committee and \$100,000 to the 2000 House-Senate Dinner Committee that did not contain contemporaneous building fund designations. The Dinner Committees did, however, deposit these funds in building fund accounts.

The Commission additionally found that the NRSC improperly deposited three different donations it received from Freddie Mac (totaling \$130,250) into nonfederal accounts not designated as building funds. These donations were refunded in 2001 (\$130,000) and 2003 (\$250). The FEC voted to take no further action against Freddie Mac but sent it an admonishment letter regarding a \$3,000 contribution made to the National Republican Congressional Committee (NRCC) without a designation to a building fund. The \$3,000 was properly deposited by the NRCC.

In their conciliation agreements, the respondents agreed to cease and desist from further violations of section 441b of the Act. Fannie Mae agreed to pay a \$10,000 civil penalty, the NRSC agreed to pay a \$24,000 penalty and the RNC agreed to pay a \$98,000 penalty.

Documents from this matter are available through the Enforcement Query System on the Commission's web site at [www.fec.gov](http://www.fec.gov) by entering 5197 under case number.◆

—Amy Kort

<sup>1</sup> The Bipartisan Campaign Reform Act of 2002, which took effect November 6, 2002, removed the building fund exemption for national party committees.

## Administrative Fines

### Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 44 new Administrative Fine cases, bringing the total number of cases released to the public to 918, with \$1,211,163 in fines collected by the Commission.

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

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

The committees listed in the chart at right, along with their treasurers, were assessed civil money penalties under the administrative fines regulations.

Closed Administrative Fine case files are available through the FEC Press Office, at 800/424-9530 (press 2), and the Public Records Office, at 800/424-9530 (press 3). ♦

—Amy Kort

### Committees Fined and Penalties Assessed

|  |                        |
|--|------------------------|
| 1. ACA International PAC (ACPAC)<br>October Quarterly 2002   | \$3,000                |
| 2. ACA International PAC (ACPAC)<br>12 Day Pre-General 2002  | \$1,000                |
| 3. ACA International PAC (ACPAC)<br>30 Day Post-General 2002                                       | \$3,200                |
| 4. Barham for Congress   | \$0 <sup>1</sup>       |
| 5. Bexar County Democratic Party   | \$5,000 <sup>1</sup>   |
| 6. Bundgaard for Congress  | \$3,500 <sup>2</sup>   |
| 7. C. Patrick Meece for Congress   | \$900 <sup>2</sup>     |
| 8. Candice McElyea for Congress Committee  | \$1,800 <sup>2</sup>   |
| 9. Comite Jose Hernandez-Mayoral Comisionado<br>Residente, Inc.,                                   | \$1,000                |
| 10. Committee to Elect Clinton B. LeSueur  | <u>3</u>               |
| 11. Committee to Elect Kutsch  | \$1,800 <sup>2</sup>   |
| 12. Committee to Elect Madeleine Z. Bordallo 2002<br>30 Day Post General 2002                      | \$1,800 <sup>2</sup>   |
| 13. Committee to Elect Madeleine Z. Bordallo 2002<br>Year-End 2002                                 | \$1,125 <sup>2</sup>   |
| 14. Continental Airlines Inc. Employee Fund for a<br>Better America (FKA Continental Holdings PAC) | \$2,000                |
| 15. Day & Zimmerman, Inc., Federal PAC<br>(aka DAYPAC-Federal)                                     | \$1,000                |
| 16. Democratic Party of Orange County FED PAC  | \$1,125                |
| 17. Donzella J. James for Congress   | \$900                  |
| 18. Ed Tinsley for Congress  | \$0 <sup>1</sup>       |
| 19. Eva Clayton Committee for Congress   | \$1,800                |
| 20. Fitzgerald for Senate Inc.   | \$1,350                |
| 21. Friends of Heidi for Congress  | \$1,800 <sup>2</sup>   |
| 22. Friends of Israel PAC (FRIPAC)   | \$1,250                |
| 23. Friends of John Conyers  | \$2,100 <sup>2</sup>   |
| 24. Friends of Margaret Workman<br>2003 April Quarterly  | \$1,350 <sup>2</sup>   |
| 25. Friends of Margaret Workman<br>July Quarterly 2003   | \$1,350 <sup>1,2</sup> |
| 26. Greenwood for Congress   | <u>4</u>               |
| 27. Jeff Ballenger for Congress  | \$400 <sup>1,5</sup>   |
| 28. Jim Sullivan for Congress  | \$4,050                |

<sup>1</sup> This penalty was reduced due to the level of activity on the report.

<sup>2</sup> This penalty has not been collected.

<sup>3</sup> The Commission took no further action in this case.

<sup>4</sup> See Greenwood for Congress v. FEC, U.S. District Court for the Eastern District of Pennsylvania, 03-0307, summarized in the October 2003, Record, page 13.

<sup>5</sup> This penalty was reduced due to the Commission's intermittent server problems on the due date.

## Committees Fined and Penalties Assessed, cont.

|  |                        |
|--|------------------------|
| 29. Kansas City Southern Employee PAC                          | \$1,000                |
| 30. Keyes 2000 Inc.  | \$1,350 <sup>2</sup>   |
| 31. Marvin Scott for U.S. Senate                               | \$3,275                |
| 32. McLane Company Inc. Federal PAC                            | \$1,000                |
| 33. Mike Greene For Congress Committee<br>2003 April Quarterly | \$6,750 <sup>2</sup>   |
| 34. Mike Greene for Congress Committee<br>July Quarterly 2003  | \$6,750 <sup>2</sup>   |
| 35. Lockheed Martin Employees PAC<br>February Monthly 2003     | \$4,500                |
| 36. Lockheed Martin Employees PAC<br>March Monthly 2003        | \$4,225                |
| 37. Maryland Association for Concerned Citizens PAC            | \$900                  |
| 38. Massachusetts Republican State Congressional Committee     | \$2,450                |
| 39. Philip Lowe for Congress April Quarterly 2003              | \$16,625 <sup>2</sup>  |
| 40. Philip Lowe for Congress July Quarterly 2003               | \$16,625 <sup>2</sup>  |
| 41. PAC of Focal Communications Corporation                    | \$1,800 <sup>2</sup>   |
| 42. Ross for Congress  | \$9,625 <sup>2</sup>   |
| 43. Swing States for a Conservative White House PAC, Inc.,     | \$1,500 <sup>2,6</sup> |
| 44. Women's Political Committee—Federal Fund                   | \$2,500                |

<sup>2</sup>This penalty has not been collected.

<sup>6</sup>This penalty was reduced due to the Commission's intermittent server problems and the failure of the Commission's software manual and web site to include the "one report per disk" policy.

## Alternative Dispute Resolution

### ADR Program Update

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

1. The Commission closed the case involving Friends of Nancy Kaszak, its treasurer Sharon Eiseman, Emily's List, its treasurer

Ellen R. Malcolm and Illinois Women Vote! regarding alleged excessive in-kind contributions. The ADR Office recommended the case be dismissed and the Commission agreed to close the file. (ADR 138/MUR 5249)

2. The Commission closed the case involving Friends of Margaret Workman, its treasurer Albert V. Mays, Jr., Emily's List and its treasurer Ellen R. Malcolm regarding alleged excessive in-kind contributions. The ADR Office recommended the case be dismissed and the Commission agreed to close the file. (ADR 139/MUR 5269)

3. The Commission reached agreement with Rehberg for Congress and Lorna Kuney, its trea-

sure, concerning the committee's failure to include the required disclaimer on a highway sign (the complaint was similar to one filed in 2000 by the same complainant.) The respondents acknowledged the omission of the disclaimer and agreed to pay a \$450 civil penalty. In order to avoid similar violations in the future, they agree to set up and maintain in the committee's offices guidelines governing federal election campaign activities, with particular emphasis on the regulations governing disclaimers. The committee will also identify one staff member to serve as FEC compliance officer. (ADR 140/MUR 5323)

4. The Commission reached agreement with the Washtenaw County Democratic Party and its treasurer, Barbara R. Fuller, regarding the committee's failure to register and report with the FEC. The respondents acknowledged violations of the Act and agreed to pay a \$750 civil penalty. In order to resolve this matter and avoid similar errors in the future, they agreed to file the appropriate registration forms with the FEC and to establish and maintain a resource file to provide guidance on the Act's requirements. Also, within the next year, the respondents will send an appropriate representative to attend an FEC seminar on federal election campaign reporting requirements. (ADR 130/MUR 5312)◆

—Amy Kort

## Public Funding

### Commission Certifies Matching Funds for Presidential Candidates

On March 1, 2004, the Commission certified \$3,421,597.65 in federal matching funds to six Presidential candidates for the 2004

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## Public Funding

(continued from page 15)

election. Thus far, the six eligible candidates have been certified \$23,859,087.20. By comparison, in 2000 matching fund payments during a comparable period went to eight candidates, totalling \$43,212,364.99.

### Presidential Matching Payment Account

Under the Presidential Primary Matching Payment Account Act, the federal government will match up to \$250 of an individual's total contributions to an eligible Presidential primary candidate. A candidate must establish eligibility to receive matching payments by raising in excess of \$5,000 in each of at least 20 states (i.e., over \$100,000). Although an individual may contribute up to \$2,000 to a primary candidate, only a maximum of \$250 per individual applies toward the \$5,000 threshold in each state. Candidates who receive matching payments must agree to limit their spending and submit to an audit by the Commission. 26 U.S.C. §9033(a) and (b); 11 CFR 9033.1 and 9033.3.

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

The chart at right lists the amount certified to each candidate in January, along with the cumulative amount that each candidate has been certified to date.

The Commission has also certified \$14,592,000 to each of the two major political parties, for their 2004 Presidential Nominating Conventions.

### General Election Funding

The Presidential nominee of each major party may become eligible for

a public grant of \$20 million (plus a cost of living adjustment) for campaigning in the general election. For the 2004 general election, the public grant amount will be \$74.62 million. To be eligible to receive public funding in the general election, the candidate must limit his spending to the amount of the grant and may not accept private contributions for the campaign. Private donations may, however, be accepted into a separate fund maintained exclusively to pay for legal and accounting expenses associated with complying with the campaign finance law. These legal and accounting expenses are not subject to the spending limit. ♦

—Amy Kort

## Sharpton Eligible for Matching Funds

On March 11, 2004, the Commission certified that Alfred C. Sharpton's Presidential primary committee, Sharpton 2004, is eligible to receive Presidential primary matching payments. 26 U.S.C. §9033(a) and (b); 11 CFR 9033.1 and 9033.3.

Under the Presidential Primary Matching Payment Account Act, the federal government will match up to \$250 of an individual's total contributions to an eligible Presidential primary candidate. A candidate must establish eligibility to receive matching payments by raising in excess of \$5,000 in each of at least 20 states (i.e., over \$100,000). Although an individual may contribute up to \$2,000 to a primary candidate, only a maximum of \$250 per individual applies toward the

### Matching Funds for 2004 Presidential Candidates: February Certification

| Candidate                                | Certification February 2004 | Cumulative Certifications |
|--|-----------------------------|---------------------------|
| Wesley K. Clark (D) <sup>1</sup>         | \$1,790,626.91              | \$6,938,619.76            |
| John R. Edwards (D) <sup>2</sup>         | \$807,731.99                | \$4,473,607.23            |
| Richard A. Gephardt (D) <sup>3</sup>     | \$303,099.88                | \$4,002,241.82            |
| Dennis J. Kucinich (D) <sup>4</sup>      | \$228,481.67                | \$3,075,300.72            |
| Lyndon H. LaRouche, Jr. (D) <sup>5</sup> | \$106,500.73                | \$1,190,099.97            |
| Joseph Lieberman (D) <sup>6</sup>        | \$185,156.47                | \$4,179,217.70            |

<sup>1</sup> General Clark publicly withdrew from the Presidential race on February 11, 2004.

<sup>2</sup> Senator Edwards publicly withdrew from the Presidential race on March 3, 2004.

<sup>3</sup> Congressman Gephardt publicly withdrew from the Presidential race on January 2, 2004.

<sup>4</sup> Congressman Kucinich became ineligible to receive matching funds on March 4, 2004.

<sup>5</sup> Mr. LaRouche became ineligible to receive matching funds on March 4, 2004.

<sup>6</sup> Senator Lieberman publicly withdrew from the Presidential race on February 3, 2004.



\$5,000 threshold in each state. Candidates who receive matching payments must agree to limit their spending and submit to an audit by the Commission. ♦

—Amy Kort

## Statistics

### Congressional Fundraising Increases in 2003

During the first year of fundraising under the Bipartisan Campaign Reform Act's increased contribution limits, Congressional campaign fundraising totaled \$390.1 million. The 2003 fundraising totals represent an increase of 32.2 percent when compared to totals from 2001, the last non-election year. One of the changes in the new law doubled the individual contribution limit to \$2,000 per candidate per election.

Much of the increase in fundraising was found in Senate campaigns, where candidates raised a total of \$166.7 million in 2003, up

72 percent from 2001 levels. Comparisons between election cycles are problematic, however, because different states hold Senate elections each cycle, and many small population states held Senate races in 2002. This year, by contrast, California, New York and Pennsylvania have Senate campaigns, and Illinois and Florida, among other states, have open seat Senate races. Also, some states have earlier Congressional primaries this year to correspond with Presidential primary elections, which may account for some of the increased financial activity in 2003.

House candidates raised \$223.4 million during 2003, an increase of 12.7 percent from 2001 levels.

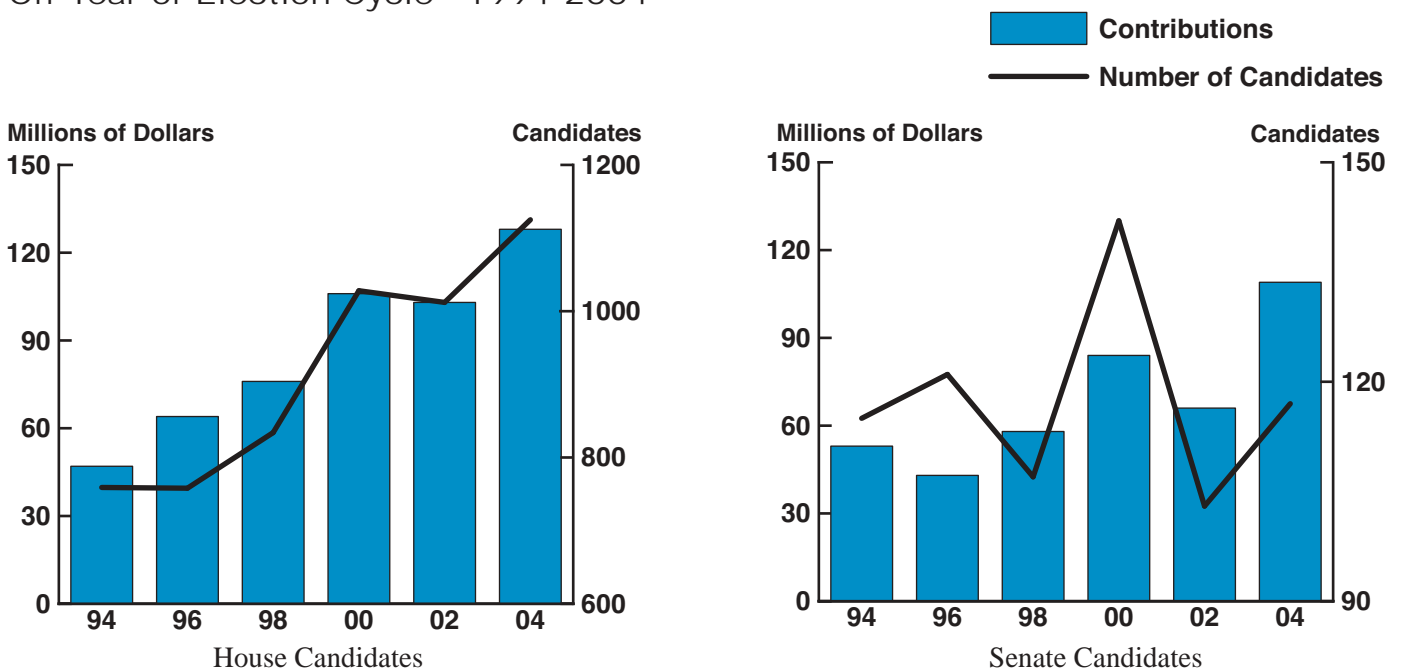
Contributions from individuals remain the largest source of funds for Congressional candidates. The \$237.6 million raised from individuals in 2003 was 40 percent more than in 2001, and it represented 61 percent of all fundraising during the year, up from 58 percent in 2001. The charts below show non-election year contributions from

individuals to House and Senate candidates over the past six election cycles. (Note that, although in some years fundraising totals may be similar between House and Senate races, House races involve significantly more candidates than do Senate races.)

Contributions from PACs and other candidate committees, whose limits were left largely unchanged under the BCRA, rose 11 percent to \$101.5 million. This amount represented 26 percent of all receipts, down from 31 percent in 2001. Funds from candidates themselves totaled \$33.1 million or eight percent of all fundraising. While campaigns showed more dependence on individuals in 2003, the breakdown of sources of receipts is very similar to that in 1999, suggesting that the new contribution limits have not significantly changed candidates' reliance on various types of donors in the first year of the new law's implementation.

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Contributions to House and Senate Candidates from Individuals During Off Year of Election Cycle—1994-2004



## Statistics

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### Additional Information

A press release dated March 3, 2004, contains:

- Summaries for 2004 cycle Congressional campaigns;
- Comparisons over the past six election cycles;
- A listing for each Senate candidate covering the full six-year cycle and each House candidate for 2003; and
- Top 50 lists for Senate and House campaigns for receipts, disbursements, cash-on-hand, debts and the major sources of receipts.

The press release is available on the FEC web site at <http://www.fec.gov/news.html> and from the FEC's Public Records Office (800/424-9530, press 3) and Press Office (800/424-9530, press 5). ♦

—Amy Kort

## Outreach

### Reporting Roundtables

On April 7, 2004, the Commission will host two roundtable sessions on election year reporting, including new disclosure requirements under the Bipartisan Cam-

paign Reform Act of 2002. See the chart below for details. Both sessions will be followed by a half-hour reception at which each attendee will have an opportunity to meet the campaign finance analyst who reviews his/her committee's reports. Representatives from the FEC's Electronic Filing Office will also be available to meet with attendees.

Attendance is limited to 30 people per session, and registration (\$25) will be accepted on a first-come, first-served basis. Please call the FEC before registering or sending money to ensure that openings remain. Prepayment is required. The registration form is available on the FEC's web site at <http://www.fec.gov/pages/infosvc.htm> and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call 800/424-9530 (press 1, then 3) or 202/694-1100. ♦

—Jim Wilson

### Campaign Finance Law Training Conferences

#### Corporations and their PACs

The FEC will hold a conference in Washington, DC, for corporations and their PACs April 22-23, 2004.

Commissioners and experienced FEC staff will explain the campaign finance law's requirements for these groups, including regulations concerning fundraising methods, corporate communications, the use of corporate facilities and reporting. An IRS representative will be available to answer election-related tax questions.

The conference will be held at the Loews L'Enfant Plaza Hotel in Washington, DC, near the National Mall and Smithsonian museums. The conference registration fee is \$360, which covers the cost of the conference, materials, meals and a \$10 late fee added for registrations received on or after March 23.

The Loews L'Enfant Plaza Hotel is located at 480 L'Enfant Plaza SW., Washington, DC. Parking is available at the hotel for a fee of \$15 per day and \$22 overnight. To make reservations, call toll free (800/635-5065) or locally (202/484-1000, ext. 5000).

#### Trade Associations, Membership Organizations and their PACs

The FEC will hold a conference in Boston, MA, May 25-26, 2004, for trade associations, membership organizations and their respective PACs. The conference will consist of a series of workshops conducted by Commissioners and experienced FEC staff who will explain how the federal campaign finance law applies to each of these groups. Workshops will specifically address rules for fundraising and reporting and will focus on aspects of the campaign finance law that are uniquely applicable to trade associations and membership organizations. A representative from the IRS will also be available to answer election-related tax questions.

The conference will be held at the Royal Sonesta Hotel Boston. The conference registration fee is \$335, which covers the cost of the conference, materials and meals. A \$10 late fee will be added as of April 28.

## Roundtable Schedule

| Date  | Subject   | Intended Audience   |
|---|---|---|
| April 7<br>9:30 - 11 a.m.<br>Reception<br>11-11:30 a.m. | Election Year Reporting for PACs and Party Committees, plus "Meet Your Analyst" reception<br>(Session number 0401A)       | Individuals responsible for filing FEC reports for PACs and Parties (Up to 30 may attend)     |
| April 7<br>1:30 - 3 p.m.<br>Reception<br>3-3:30 p.m.    | Election Year Reporting for Candidates and their Committees, plus "Meet Your Analyst" reception<br>(Session number 0401B) | Individuals responsible for filing FEC reports for Candidate Committees (Up to 30 may attend) |

The Royal Sonesta Hotel Boston is located just across the river from downtown Boston at Five Cambridge Parkway, Cambridge, MA. A room rate of \$179 single or double will be available for reservations made on or before April 27. To make reservations, call toll free (1-800-SONESTA) or locally (617-806-4200) and state that you are attending the FEC conference.

### Registration

Complete conference program and registration information is available online. Conference registrations will be accepted on a first-come, first-served basis, and registrations are limited to two representatives per organization. FEC conferences are selling out quickly, so please register early. For registration information concerning any FEC conference:

- Call Sylvester Management Corporation at 800/246-7277;
- Visit the FEC web site at <http://www.fec.gov/pages/infosvc.htm#Conferences>; or
- Send an e-mail to [lauren@sylvestermanagement.com](mailto:lauren@sylvestermanagement.com) ♦

—Amy Kort

### Conference Schedule for 2004

#### Conference for Corporations and their PACs

April 22-23, 2004  
Washington, DC

#### Conference for Trade Associations, Membership Organizations and their PACs

May 25-26, 2004  
Boston, MA

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