RECORD NOS. 08-5223(L), 09-5342

ORAL ARGUMENT HAS BEEN SCHEDULED FOR JANUARY 27, 2010

In The
United States Court of Appeals
For The District of Columbia Circuit

SPEECHNOW.ORG; DAVID KEATING; FRED M. YOUNG, JR.; EDWARD H. CRANE, III; BRAD RUSSO; SCOTT BURKHARDT,

Plaintiffs - Appellants,

v.

FEDERAL ELECTION COMMISSION,

Defendant - Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ADDENDUM TO BRIEF OF APPELLANTS

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November 16, 2009

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*** CURRENT THROUGH PL 111-90, APPROVED 11/03/2009 WITH A GAP OF 111-84 ***

TITLE 2. THE CONGRESS
CHAPTER 14. FEDERAL ELECTION CAMPAIGNS
DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

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2 USCS § 431

§ 431. Definitions

When used in this Act:

(1) The term "election" means--

(A) a general, special, primary, or runoff election;

(B) a convention or caucus of a political party which has authority to nominate a candidate;

(C) a primary election held for the selection of delegates to a national nominating convention of a political party; and

(D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

(2) The term "candidate" means an individual who seeks nomination for election, or election, to Federal office, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election--

(A) if such individual has received contributions aggregating in excess of $ 5,000 or has made expenditures aggregating in excess of $ 5,000; or

(B) if such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of $ 5,000 or has made such expenditures aggregating in excess of $ 5,000.

(3) The term "Federal office" means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

(4) The term "political committee" means--

(A) 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; or

(B) any separate segregated fund established under the provisions of section 316(b) [*2 USCS § 441b(b)*]; or

(C) any local committee of a political party which receives contributions aggregating in excess of $ 5,000 during a calendar year, or makes payments exempted from the definition of contribution or expenditure as defined in section 301 (8) and (9) aggregating in excess of $ 5,000 during a calendar year, or makes contributions aggregating in excess of $ 1,000 during a calendar year or makes expenditures aggregating in excess of $ 1,000 during a calendar year.

(5) The term "principal campaign committee" means a political committee designated and authorized by a candidate

under section 302(e)(1) [*2 USCS § 432(e)(1)*].

(6) The term "authorized committee" means the principal campaign committee or any other political committee authorized by a candidate under section 302(e)(1) [*2 USCS § 432(e)(1)*] to receive contributions or make expenditures on behalf of such candidate.

(7) The term "connected organization" means any organization which is not a political committee but which directly or indirectly establishes, administers, or financially supports a political committee.

(8) (A) The term "contribution" includes--

(i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; or

(ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.

(B) The term "contribution" does not include--

(i) the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee;

(ii) the use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, and the cost of invitations, food, and beverages, voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities, to the extent that the cumulative value of such invitations, food, and beverages provided by such individual on behalf of any single candidate does not exceed $ 1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $ 2,000 in any calendar year;

(iii) the sale of any food or beverage by a vendor for use in any candidate's campaign or for use by or on behalf of any political committee of a political party at a charge less than the normal comparable charge, if such charge is at least equal to the cost of such food or beverage to the vendor, to the extent that the cumulative value of such activity by such vendor on behalf of any single candidate does not exceed $ 1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $ 2,000 in any calendar year;

(iv) any unreimbursed payment for travel expenses made by any individual on behalf of any candidate or any political committee of a political party, to the extent that the cumulative value of such activity by such individual on behalf of any single candidate does not exceed $ 1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $ 2,000 in any calendar year;

(v) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply to any cost incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising;

(vi) any payment made or obligation incurred by a corporation or a labor organization which, under section 316(b) [*2 USCS § 441b(b)*], would not constitute an expenditure by such corporation or labor organization;

(vii) any loan of money by a State bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, other than any overdraft made with respect to a checking or savings account, made in accordance with applicable law and in the ordinary course of business, but such loan--

(I) shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors;

(II) shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and

(III) shall bear the usual and customary interest rate of the lending institution;

(viii) any legal or accounting services rendered to or on behalf of--

(I) any political committee of a political party if the person paying for such services is the regular employer of

the person rendering such services and if such services are not attributable to activities which directly further the election of any designated candidate to Federal office; or

(II) an authorized committee of a candidate or any other political committee, if the person paying for such services is the regular employer of the individual rendering such services and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.].

but amounts paid or incurred by the regular employer for such legal or accounting services shall be reported in accordance with section 304(b) [*2 USCS § 434(b)*] by the committee receiving such services;

(ix) the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: *Provided,* That--

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(x) the payment by a candidate, for nomination or election to any public office (including State or local office), or authorized committee of a candidate, of the costs of campaign materials which include information on or reference to any other candidate and which are used in connection with volunteer activities (including pins, bumper stickers, handbills, brochures, posters, and yard signs, but not including the use of broadcasting, newspapers, magazines, billboards, direct mail, or similar types of general public communication or political advertising): *Provided,* That such payments are made from contributions subject to the limitations and prohibitions of this Act;

(xi) the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: *Provided,* That--

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or candidates;

(xii) payments made by a candidate or the authorized committee of a candidate as a condition of ballot access and payments received by any political party committee as a condition of ballot access;

(xiii) any honorarium (within the meaning of section 323 of this Act [*2 USCS § 441i*]); and

(xiv) any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, if such loan is made in accordance with applicable law and under commercially reasonable terms and if the person making such loan makes loans derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit in the normal course of the person's business.

(9) (A) The term "expenditure" includes--

(i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office; and

(ii) a written contract, promise, or agreement to make an expenditure.

(B) The term "expenditure" does not include--

(i) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) nonpartisan activity designed to encourage individuals to vote or to register to vote;

(iii) any communication by any membership organization or corporation to its members, stockholders, or

executive or administrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office, except that the costs incurred by a membership organization (including a labor organization) or by a corporation directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate), shall, if such costs exceed $ 2,000 for any election, be reported to the Commission in accordance with section 304(a)(4)(A)(i) [*2 USCS § 434(a)(4)(A)(i)*], and in accordance with section 304(a)(4)(A)(ii) [*2 USCS § 434(a)(4)(A)(ii)*] with respect to any general election;

(iv) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed state card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply to costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising;

(v) any payment made or obligation incurred by a corporation or a labor organization which, under section 316(b) [*2 USCS § 441b(b)*], would not constitute an expenditure by such corporation or labor organization;

(vi) any costs incurred by an authorized committee or candidate in connection with the solicitation of contributions on behalf of such candidate, except that this clause shall not apply with respect to costs incurred by an authorized committee of a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under section 315(b) [*2 USCS § 441a(b)*], but all such costs shall be reported in accordance with section 304(b) [*2 USCS § 434(b)*];

(vii) the payment of compensation for legal or accounting services--

(I) rendered to or on behalf of any political committee of a political party if the person paying for such services is the regular employer of the individual rendering such services, and if such services are not attributable to activities which directly further the election of any designated candidate to Federal office; or

(II) rendered to or on behalf of a candidate or political committee if the person paying for such services is the regular employer of the individual rendering such services, and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.]

but amounts paid or incurred by the regular employer for such legal or accounting services shall be reported in accordance with section 304(b) [*2 USCS § 434(b)*] by the committee receiving such services;

(viii) the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: *Provided,* That--

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(ix) the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: *Provided,* That--

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or candidates; and

(x) payments received by a political party committee as a condition of ballot access which are transferred to

another political party committee or the appropriate State official.

(10) The term "Commission" means the Federal Election Commission.

(11) The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.

(12) The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(13) The term "identification" means--

(A) in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and

(B) in the case of any other person, the full name and address of such person.

(14) The term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission.

(15) The term "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission.

(16) The term "political party" means an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee or organization.

(17) Independent expenditure. The term "independent expenditure" means an expenditure by a person--

(A) expressly advocating the election or defeat of a clearly identified candidate; and

(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.

(18) The term "clearly identified" means that--

(A) the name of the candidate involved appears;

(B) a photograph or drawing of the candidate appears; or

(C) the identity of the candidate is apparent by unambiguous reference.

(19) The term "Act" means the Federal Election Campaign Act of 1971 as amended.

(20) Federal election activity.

(A) In general. The term "Federal election activity" means--

(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;

(ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);

(iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

(iv) services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

(B) Excluded activity. The term "Federal election activity" does not include an amount expended or disbursed by a State, district, or local committee of a political party for--

(i) a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) or (ii);

(ii) a contribution to a candidate for State or local office, provided the contribution is not designated to pay for a Federal election activity described in subparagraph (A);

(iii) the costs of a State, district, or local political convention; and

(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs, that name or depict only a candidate for State or local office.

(21) Generic campaign activity. The term "generic campaign activity" means a campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate.

(22) Public communication. The term "public communication" means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.

(23) Mass mailing. The term "mass mailing" means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

(24) Telephone bank. The term "telephone bank" means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period.

(25) Election cycle. For purposes of sections 315(i) and 315A [*2 USCS §§ 441a(i), 441a-1*] and paragraph (26), the term "election cycle" means the period beginning on the day after the date of the most recent election for the specific office or seat that a candidate is seeking and ending on the date of the next election for that office or seat. For purposes of the preceding sentence, a primary election and a general election shall be considered to be separate elections.

(26) Personal funds. The term "personal funds" means an amount that is derived from--

(A) any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had--

(i) legal and rightful title; or

(ii) an equitable interest;

(B) income received during the current election cycle of the candidate, including--

(i) a salary and other earned income from bona fide employment;

(ii) dividends and proceeds from the sale of the candidate's stocks or other investments;

(iii) bequests to the candidate;

(iv) income from trusts established before the beginning of the election cycle;

(v) income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;

(vi) gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and

(vii) proceeds from lotteries and similar legal games of chance; and

(C) a portion of assets that are jointly owned by the candidate and the candidate's spouse equal to the candidate's share of the asset under the instrument of conveyance or ownership, but if no specific share is indicated by an instrument of conveyance or ownership, the value of 1/2 of the property.

HISTORY:

(Feb. 7, 1972, P.L. 92-225, Title III, § 301, 86 Stat. 11; Oct. 15, 1974, P.L. 93-443, Title II, §§ 201(a), 208(c)(1), 88 Stat. 1272, 1286; May 11, 1976, P.L. 94-283, Title I, §§ 102, 115(d), (h), 90 Stat. 478, 495, 496; Jan. 8, 1980, P.L. 96-187, Title I, § 101, 93 Stat. 1339; Oct. 22, 1986, P.L. 99-514, § 2, 100 Stat. 2095; Oct. 23, 2000, P.L. 106-346, § 101(a), 114 Stat. 1356; March 27, 2002, P.L. 107-155, Title I, §§ 101(b), 103(b)(1), Title II, Subtitle B, § 211, Title III, § 304(c), 116 Stat. 85, 87, 92, 100.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Feb. 7, 1972, P.L. 92-225, 86 Stat. 3, popularly known as the Federal Election Campaign Act of 1971, which appears generally as *2 USCS §§ 431* et seq. For full classification of such Act, consult USCS Tables volumes.

The "Federal Election Campaign Act of 1971", referred to in para. (19), is Act Feb. 7, 1972, P.L. 92-225, 86 Stat. 3, which appears generally as *2 USCS §§ 431* et seq. For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

"1986" has been inserted in brackets in paras. (8)(B)(viii) and (9)(B)(vii) pursuant to § 2 of Act Oct. 22, 1986, P.L. 99-514, which redesignated the Internal Revenue Code of 1954 (Act Aug. 16, 1954, ch 736) as the Internal Revenue Code of 1986. In redesignating the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, Congress provided, in Act Oct. 22, 1986, P.L. 99-514, § 2(b), 100 Stat. 2095, for construction of references to the Internal Revenue Code as follows: except when inappropriate, any reference in any law, Executive Order, or other document to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

The 2000 amendments are based upon H. Res. 5394 of Oct. 5, 2000, Title V, § 502(b), as incorporated in Act Oct. 23, 2000, P.L. 106-346.

Effective date of section:

This section became effective 60 days after enactment, pursuant to § 408 of Act Feb. 7, 1972, P.L. 92-225, which appears as a note to this section.

Amendments:

1974. Act Oct. 15, 1974, in the introductory matter, inserted "and title IV of this Act"; in subsec. (a), inserted "and" preceding "(4)", and deleted ", and (5) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States"; substituted subsecs. (d)-(g) for ones which read:

"(d) 'political committee' means any committee, association, or organization which accepts contributions or makes expenditures during a calendar year in an aggregate amount exceeding $ 1,000;

"(e) 'contribution' means--

"(1) a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to Federal office or as a presidential or vice-presidential elector, or for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

"(2) a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;

"(3) a transfer of funds between political committees;

"(4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee without charge for any such purpose; and

"(5) notwithstanding the foregoing meanings of 'contribution', the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee;

"(f) 'expenditure' means--

"(1) a purchase, payment, distribution, loan advance, deposit, or gift of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to Federal office, or as a presidential and vice-presidential elector, or for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

"(2) a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure, and

"(3) a transfer of funds between political committees;

"(g) 'supervisory officer' means the Secretary of the Senate with respect to candidates for Senator; the Clerk of the House of Representatives with respect to candidates for Representative in, or Delegate or Resident Commissioner to, the Congress of the United States; and the Comptroller General of the United States in any other case;";

in subsec. (h), deleted "and" following "persons;"; in subsec. (i), substituted the concluding semicolon for a period; and added subsecs. (j)-(n).

1976. Act May 11, 1976, in subsec. (a)(2), substituted "which has authority to" for "held to"; in subsec. (e), in para. (2), inserted "written", and deleted "express or implied," following "or agreement,", in para. (4), inserted ", except that this paragraph shall not apply in the case of legal or accounting services rendered to or on behalf of the national committee of a political party (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), other than services attributable to activities which directly further the election of a designated candidate or candidates to Federal office, nor shall this paragraph apply in the case of legal or accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of insuring compliance with the provisions of this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954 (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), but amounts paid or incurred for such legal or accounting services shall be reported in accordance with the requirements of section 304(b)", in para. (5), in cl. (E), deleted "or" at the end thereof, in cl. (F), substituted "section 321(b)" for "the last paragraph of *section 610 of title 18, United States Code*", added cls. (G)-(I), and, in the concluding matter, substituted "person" for "individual"; in subsec. (f)(4), in cl. (C), inserted ", except that the costs incurred by a membership organization, including a labor organization, or by a corporation, directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed $ 2,000 per election, be reported to the Commission", in cl. (F), deleted "or" at the end thereof; in cl. (G), deleted "or" at the end thereof; in cl. (H), substituted "section 321(b)" for "the last paragraph of *section 610 of title 18, United States Code*", added cls. (I)-(K); in subsec. (m), deleted "and" following "organization;"; in subsec. (n), substituted "302(e)(1)" for "302(f)(1)", substituted a semicolon for s concluding period at the end thereof; and added subsecs (o)-(q).

1980. Act Jan. 8, 1980, substituted the text of this section for text which read:

"When used in this title and title IV of this Act--

"(a) 'election' means (1) a general, special, primary, or runoff election, (2) a convention or caucus of a political party which has authority to nominate a candidate, (3) a primary election held for the selection of delegates to a national nominating convention of a political party, and (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President;

"(b) 'candidate' means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for elections, or election, to Federal office, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

"(c) 'Federal office' means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

"(d) 'political committee' means any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $ 1,000;

"(e) 'contribution'--

"(1) means a gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of--

"(A) influencing the nomination for election, or election, of any person to Federal office or for the purpose of

influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party, or

"(B) influencing the result of an election held for the expression of a preference for the nomination of persons for election to the office of President of the United States;

"(2) means a written contract, promise, or agreement, whether or not legally enforceable, to make a contribution for such purposes;

"(3) means funds received by a political committee which are transferred to such committee from another political committee or other source;

"(4) means the payment, by any person other than a candidate or a political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose, except that this paragraph shall not apply in the case of legal or accounting services rendered to or on behalf of the national committee of a political party (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), other than services attributable to activities which directly further the election of a designated candidate or candidates to Federal office, nor shall this paragraph apply in the case of legal or accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of insuring compliance with the provisions of this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954 (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), but amounts paid or incurred for such legal or accounting services shall be reported in accordance with the requirements of section 304(b); but

"(5) does not include--

"(A) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

"(B) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities;

"(C) the sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor;

"(D) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate;

"(E) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising;

"(F) any payment made or obligation incurred by a corporation or a labor organization which, under the provisions of section 321(b), would not constitute an expenditure by such corporation or labor organization;

"(G) a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business, but such loans--

"(i) shall be reported in accordance with the requirements of section 304(b); and

"(ii) shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance thereof that each endorser or guarantor bears to the total number of endorsers or guarantors; or

"(H) a gift, subscription, loan, advance, or deposit of money or anything of value to a national committee of a political party or a State committee of a political party which is specifically designated for the purpose of defraying any cost incurred with respect to the construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office, except that any such gift, subscription, loan, advance, or deposit of money or anything of value, and any such cost, shall be reported in accordance with section 304(b); or

"(I) any honorarium (within the meaning of section 328); to the extent that the cumulative value of activities by

any person on behalf of any candidate under each of clauses (B), (C), and (D) does not exceed $ 500 with respect to any election;

"(f) 'expenditure'--

"(1) means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of--

"(A) influencing the nomination for election, or the election, of any person to Federal office, or to the office of presidential and vice-presidential elector; or

"(B) influencing the results of a primary election held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States;

"(2) means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure;

"(3) means the transfer of funds by a political committee to another political committee; but

"(4) does not include--

"(A) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

"(B) nonpartisan activity designed to encourage individuals to register to vote or to vote;

"(C) any communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to Federal office except that the costs incurred by a membership organization, including a labor organization, or by a corporation, directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed $ 2,000 per election, be reported to the Commission;

"(D) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities if the cumulative value of such activities by such individual on behalf of any candidate do not exceed $ 500 with respect to any election;

"(E) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate if the cumulative amount for such individual incurred with respect to such candidate does not exceed $ 500 with respect to any election;

"(F) any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to Federal office;

"(G) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising;

"(H) any payment made or obligation incurred by a corporation or a labor organization which, under the provisions of section 321(b), would not constitute an expenditure by such corporation or labor organization;

"(I) any costs incurred by a candidate in connection with the solicitation of contributions by such candidate, except that this clause shall not apply with respect to costs incurred by a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under section 320(b), but all such costs shall be reported in accordance with section 304(b);

"(J) the payment, by any person other than a candidate or political committee, of compensation for legal or accounting services rendered to or on behalf of the national committee of a political party (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), other than services attributable to activities which directly further the election of a designated candidate or candidates to Federal office, or

the payment for legal or accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of insuring compliance with the provisions of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), but amounts paid or incurred for such legal or accounting services shall be reported under section 304(b); or

"(K) a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business, but such loan shall be reported in accordance with section 304(b)

"(g) 'Commission' means the Federal election commission;

"(h) 'person' means an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons;

"(i) 'State' means each State of the United States, the District of Columbia, and Commonwealth of Puerto Rico, and any territory or possession of the United States;

"(j) 'identification' means--

"(1) in the case of an individual, his full name and the full address of his principal place of residence; and

"(2) in the case of any other person, the full name and address of such person;

"(k) 'national committee' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission;

"(l) 'State committee' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission;

"(m) 'political party' means an association, committee, or organization which nominates a candidate for election to any Federal office, whose name appears on the election ballot as the candidate of such association, committee, or organization;

"(n) 'principal campaign committee' means the principal campaign committee designated by a candidate under section 302(e)(1).

"(o) 'Act' means the Federal Election Campaign Act of 1971 as amended by the Federal Election Campaign Act Amendments of 1974 and the Federal Election Federal Election Campaign Act Amendments of 1976;

"(p) 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate or any authorized committee or agent of such candidate and which is not made in concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

"(q) 'clearly identified' means that (1) the name of the candidate appears; (2) a photograph or drawing of the candidate appears; or (3) the identity of the candidate is apparent by unambiguous reference.".

2000. Act Oct. 23, 2000 (applicable with respect to elections occurring after 1/2001 as provided by § 502(d) of H.R. 5394, as enacted into law by such Act, which appears as a note to this section), in para. (8)(B), in cl. (xiii), deleted "and" following the concluding semicolon, in cl. (xiv), substituted "; and" for a concluding period, and added cl. (xv).

2002. Act March 27, 2002 (effective 11/6/2002, as provided by § 402 of such Act, which appears as a note to this section), in para. (8)(B), deleted cl. (viii), which read: "(viii) any gift, subscription, loan, advance, or deposit of money or anything of value to a national or a State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office;", and redesignated cls. (ix)-(xv) as cls. (viii)-(xiv), respectively, and added paras. (20)-(24).

Such Act further (effective 11/6/2002, but not applicable with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date, as provided by § 402(a)(4) of such Act, which appears as a note to this section), substituted para. (17) for one which read: "(17) The term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and

which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.", and added paras. (25) and (26).

Short titles:

Act Feb. 7, 1972, P.L. 92-225, § 1, 86 Stat. 3, provides: "This Act [*2 USCS §§ 431* et seq. generally; for full classification of such Act, consult USCS Tables volumes] may be cited as the 'Federal Election Campaign Act of 1971'.".

Act Oct. 15, 1974, P.L. 93-443, § 1, 88 Stat. 1263, provides: "This Act may be cited as the 'Federal Election Campaign Act Amendments of 1974'.". For full classification of such Act, consult USCS Tables volumes.

Act May 11, 1976, P.L. 94-283, § 1, 90 Stat. 475, provides: "This Act may be cited as the 'Federal Election Campaign Act Amendments of 1976'.". For full classification of such Act, consult USCS Tables volumes.

Act Jan. 8, 1980, P.L. 96-187, § 1, 93 Stat. 1339, provides: "This Act may be cited as the 'Federal Election Campaign Act Amendments of 1979'.". For full classification of such Act, consult USCS Tables volumes.

Act March 27, 2002, P.L. 107-155, § 1(a), 116 Stat. 81, provides: "This Act may be cited as the 'Bipartisan Campaign Reform Act of 2002'.". For full classification of such Act, consult USCS Tables volumes.

Other provisions:

Effective date of Act Feb. 7, 1972. Act Feb. 7, 1972, P.L. 92-225, Title IV, § 408 [406], 86 Stat. 20; Oct. 15, 1974, P.L. 93-443, Title III, § 302, 88 Stat. 1289, provides: "Except as provided in § 401 of this Act [*2 USCS § 451*], the provisions of this Act [*2 USCS §§ 431* et seq. generally; for full classification, consult USCS Tables volumes] shall become effective on December 31, 1971, or sixty days after the date of enactment of this Act, whichever is later.".

Applicability of 1974 amendments. Act Oct. 15, 1974, P.L. 93-443, Title IV, § 410, 88 Stat. 1304, provided:

"(a) Except as provided by subsection (b) and subsection (c), the foregoing provisions of this Act [amending this section, among other things; for full classification, consult USCS Tables Volumes] shall become effective January 1, 1975.

"(b) Section 104 [*18 USCS § 591* note] and the amendment made by section 301 [amendment to *2 USCS § 453*] shall become effective on the date of the enactment of this Act.

"(c)

(1) The amendments made by sections 403(a) [amending *26 USCS § 9006*], *404* [amending *26 USCS §§ 9002-9007, 9009-9012*], *405* [amending *26 USCS §§ 9003, 9005*], *406* [amending *26 USCS § 276, prec. §§ 9001, 9008, 9009, 9012*], *408* [*26 USCS §§ 9031-9042*, amending *26 USCS prec. § 1, prec. § 9001*, repealing *26 USCS § 9021*], and *409* [amending *26 USCS § 9009*] shall apply with respect to taxable years beginning after December 31, 1974.

"(2) The amendment made by section 407 [amending *26 USCS § 6012*] shall apply with respect to taxable years beginning after December 31, 1971.".

Effective date of Jan. 8, 1980 amendments. Act Jan. 8, 1980, P.L. 96-187, Title III, § 301, 93 Stat. 1368, provides:

"(a) Except as provided in subsection (b), the amendments made by this Act are effective upon enactment.

"(b) For authorized committees of candidates for President and Vice President, section 304(b) of the Federal Election Campaign Act of 1971 [*2 USCS § 434(b)*] shall be effective for elections occurring after January 1, 1981.".

Voting System Study. Act Jan. 8, 1980, P.L. 96-187, Title III, § 302, 93 Stat. 1368, as amended by Act Aug. 23, 1988, P.L. 100-418, Title V, § 5115(c), 102 Stat. 1433, provides: "The Federal Election Commission, with the cooperation and assistance of the National Bureau of Standards, shall conduct a preliminary study with respect to the future development of voluntary engineering and procedural performance standards for voting systems used in the United States. The Commission shall report to the Congress the results of the study, and such report shall include recommendations, if any, for the implementation of a program of such standards (including estimates of the costs and time requirements of implementing such a program). The cost of the study shall be paid out of any funds otherwise available to defray the expenses of the Commission.".

Transition provisions. Act Jan. 8, 1980, P.L. 96-187, Title III, § 303, 93 Stat. 1368, provides:

"(a) The Federal Election Commission shall transmit to the Congress proposed rules and regulations necessary for the purpose of implementing the provisions of this Act, and the amendments made by this Act, prior to February 29, 1980.

"(b) The provisions of section 311(d) of the Federal Election Campaign Act of 1971 [*2 USCS § 438(d)*] allowing disapproval of rules and regulations by either House of Congress within 30 legislative days after receipt shall, with respect to rules and regulations required to be proposed under subsection (a) of this section, be deemed to allow such disapproval within 15 legislative days after receipt.".

Abolition and transfer of functions of Federal Savings and Loan Insurance Corporation. For abolition and transfer of functions of the Federal Savings and Loan Insurance Corporation, see Act Aug. 9, 1989, P.L. 101-73, Title IV, §§ 401-406, which appears as *12 USCS § 1437* note.

Applicability of Oct. 23, 2000 amendments. Act Oct. 23, 2000, P.L. 106-346, § 101(a), 114 Stat. 1356 (enacting into law § 502(d) of Title V of H.R. 5394 (114 Stat. 1356A-49), as introduced on Oct. 5, 2000), provides: "The amendments made by this section [amending *2 USCS §§ 431* and *434*] shall apply with respect to elections occurring after January 2001.".

Study and report on clean money clean elections laws. Act March 27, 2002, P.L. 107-155, Title III, § 310, 116 Stat. 104 (effective on 11/6/2002, as provided by § 402 of such Act, which appears as a note to this section), provides:

"(a) Clean money clean elections defined. In this section, the term 'clean money clean elections' means funds received under State laws that provide in whole or in part for the public financing of election campaigns.

"(b) Study.

(1) In general. The Comptroller General shall conduct a study of the clean money clean elections of Arizona and Maine.

"(2) Matters studied.

(A) Statistics on clean money clean elections candidates. The Comptroller General shall determine--

"(i) the number of candidates who have chosen to run for public office with clean money clean elections including--

"(I) the office for which they were candidates;

"(II) whether the candidate was an incumbent or a challenger; and

"(III) whether the candidate was successful in the candidate's bid for public office; and

"(ii) the number of races in which at least one candidate ran an election with clean money clean elections.

"(B) Effects of clean money clean elections. The Comptroller General of the United States shall describe the effects of public financing under the clean money clean elections laws on the 2000 elections in Arizona and Maine.

"(c) Report. Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress detailing the results of the study conducted under subsection (b).".

Bipartisan Campaign Reform Act of 2002; effective dates and regulations. Act March 27, 2002, P.L. 107-155, Title IV, § 402, 116 Stat. 112, provides:

"(a) General effective date.

(1) In general. Except as provided in the succeeding provisions of this section, the effective date of this Act, and the amendments made by this Act [for full classification, consult USCS Tables volumes], is November 6, 2002.

"(2) Modification of contribution limits. The amendments made by--

"(A) section 102 [amending *2 USCS § 441a(a)(1)*] shall apply with respect to contributions made on or after January 1, 2003; and

"(B) section 307 [amending *2 USCS § 441(a)(1)*] shall take effect as provided in subsection (e) of such section [*2 USCS § 441a* note].

"(3) Severability; effective dates and regulations; judicial review. Title IV [*2 USCS §§ 431* note, 437h note, and 454 note] shall take effect on the date of enactment of this Act.

"(4) Provisions not to apply to runoff elections. Section 323(b) of the Federal Election Campaign Act of 1971 [*2 USCS § 441i(b)*] (as added by section 101(a)), section 103(a) [adding *2 USCS § 434(e)*], title II [amending *2 USCS §§ 431, 434, 441a*, and *441b*, appearing in part as *2 USCS §§ 434* note and 441a note, and unclassified in part], sections 304 [amending *2 USCS §§ 431, 434(a)(6)*, and *441a*] (including section 315(j) of Federal Election Campaign Act of 1971 [*2 USCS § 441a(j)*], as added by section 304(a)(2)), 305 [amending *47 USCS § 315(b)*] (notwithstanding subsection (c) of such section [*47 USCS § 315* note]), 311 [amending *47 USCS § 441d], 316* [amending *2 USCS §*

441a(i)(I)], 318 [adding *2 USCS § 441k*], and 319 [adding *2 USCS § 441a-1* and amending 441a(a)(1)], and title V [amending *2 USCS §§ 434(a)* and *47 USCS § 315* and classified in part to *2 USCS § 438a*] (and the amendments made by such sections and titles) shall take effect on November 6, 2002, but shall not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date.

"(b) Soft money of national political parties.

(1) In general. Except for subsection (b) of such section, section 323 of the Federal Election Campaign Act of 1971 [*2 USCS § 441i*] (as added by section 101(a)) shall take effect on November 6, 2002.

"(2) Transitional rules for the spending of soft money of national political parties.

(A) In general. Notwithstanding section 323(a) of the Federal Election Campaign Act of 1971 [*2 USCS § 441i(a)*] (as added by section 101(a)), if a national committee of a political party described in such section (including any person who is subject to such section under paragraph (2) of such section), has received funds described in such section prior to November 6, 2002, the rules described in subparagraph (B) shall apply with respect to the spending of the amount of such funds in the possession of such committee as of such date.

"(B) Use of excess soft money funds.

(i) In general. Subject to clauses (ii) and (iii), the national committee of a political party may use the amount described in subparagraph (A) prior to January 1, 2003, solely for the purpose of--

"(I) retiring outstanding debts or obligations that were incurred solely in connection with an election held prior to November 6, 2002; or

"(II) paying expenses or retiring outstanding debts or paying for obligations that were incurred solely in connection with any runoff election, recount, or election contest resulting from an election held prior to November 6, 2002.

"(ii) Prohibition on using soft money for hard money expenses, debts, and obligations. A national committee of a political party may not use the amount described in subparagraph (A) for any expenditure (as defined in section 301(9) of the Federal Election Campaign Act of 1971 (*2 U.S.C. 431(9)*)) or for retiring outstanding debts or obligations that were incurred for such an expenditure.

"(iii) Prohibition of building fund uses. A national committee of a political party may not use the amount described in subparagraph (A) for activities to defray the costs of the construction or purchase of any office building or facility.

"(c) Regulations.

(1) In general. Except as provided in paragraph (2), the Federal Election Commission shall promulgate regulations to carry out this Act and the amendments made by this Act [for full classification, consult USCS Tables volumes] that are under the Commission's jurisdiction not later than 270 days after the date of enactment of this Act.

"(2) Soft money of political parties. Not later than 90 days after the date of enactment of this Act, the Federal Election Commission shall promulgate regulations to carry out title I of this Act and the amendments made by such title [amending *2 USCS §§ 431*, *434*, *441a*, and *453*, and adding *2 USCS § 441i*].".

NOTES:

Code of Federal Regulations:

Federal Election Commission--Scope and definitions (*2 U.S.C. 431*), *11 CFR 100.1* et seq.

Federal Election Commission--Reports by political committees and other persons (*2 U.S.C. 434*), *11 CFR 104.1* et seq.

Federal Election Commission--Coordinated and independent expenditures (*2 U.S.C. 431(17)*, *441a(a)* and (d), and Pub. L. 107-155 Sec. 214(c)), *11 CFR 109.1* et seq.

Federal Election Commission--Contribution and expenditure limitations and prohibitions, *11 CFR 110.1* et seq.

Federal Election Commission--Corporate and labor organization activity, *11 CFR 114.1* et seq.

Federal Election Commission--Increased limits for candidates opposing self-financed candidates, *11 CFR 400.1* et seq.

Related Statutes & Rules:

This section is referred to in *2 USCS §§ 58, 59e, 61a-9, 61f-13, 130l, 433, 434, 437c, 441b, 441i; 5 USCS Appx § 101; 6 USCS § 331; 18 USCS §§ 602, 603, 607; 20 USCS § 1094; 22 USCS § 3944; 42 USCS §§ 1973gg-1, 5043; 47 USCS § 315; 50 USCS Appx § 595.*

Research Guide:

Federal Procedure:

22 Moore's Federal Practice (Matthew Bender 3d ed.), ch 404, Authorization for Three-Judge Courts and Direct Appeals to the Supreme Court § 404.04.

10B Fed Proc L Ed, Elections and Elective Franchise §§ 28:256, 257, 262, 300, 305.

Am Jur:

26 Am Jur 2d, Elections §§ 352, 354, 449.

45A Am Jur 2d, Job Discrimination §§ 27-35.

Criminal Law and Practice:

2 Business Crime (Matthew Bender), ch 6A, Preventing Corporate Criminal Liability P 6A.01.

Annotations:

Governmental regulation of financing of political campaign as violating freedom of speech, press, or association under *Federal Constitution's First Amendment--Supreme* Court cases. *150 L Ed 2d 865.*

Validity, Construction, and Application of Campaign Finance Laws--Supreme Court Cases. *19 ALR Fed 2d 1.*

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (*2 USCS §§ 431-454*) pertaining to disclosure of campaign funds. *18 ALR Fed 949.*

Actionability, under *42 USCS § 1983*, of claim arising out of maladministration of election. *66 ALR Fed 750.*

Validity and construction of state statute prohibiting anonymous political advertising. *4 ALR4th 741.*

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. *22 ALR4th 237.*

Election campaign activities as ground for disciplining attorney. *26 ALR4th 170.*

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. *55 ALR2d 1137.*

Texts:

1 Banking Law (Matthew Bender), ch 14, Banks and Political Activities §§ 14.02, 14.04.

1 The Law of Advertising (Matthew Bender), ch 7, Access to the Media § 7.05.

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Hansen. Anything But Typical. *89 ABA J 22, 24,* September 2003.

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Emerging Issues Analysis

The Supreme Court's Latest Pronouncement On Federal Campaign Financing: Leveling the Playing Field for Self-Financed Candidates and Non-Self-Financed Candidates - Davis v. Federal Election Commission, 128 S. Ct. 2759, 2008 U.S. LEXIS 5267 (2008).

The Supreme Court examines the constitutionality of a provision of the BIPARTISAN CAMPAIGN REFORM ACT of 2002 (BCRA) called the Millionaires' Amendment which Congress passed to level the playing field between the wealthy self-financed candidate for public office, and non-self-financed candidates for the same federal position in Davis v. Federal Election Commission.

Interpretive Notes and Decisions:
.1. US Supreme Court Alert 1. Generally; purpose 2. Constitutionality 3.--Standing 4. Construction and application, generally 5. Communications; speech 6. Membership organizations 7. Political committees 8.--Particular committees 9. Contributions and expenditures 10. Relationship with other laws 11. Enforcement, generally 12.--Powers and duties of Attorney General

.1. US Supreme Court Alert

US Supreme Court Case Alert--On November 17, 2008, Court noted probable jurisdiction and agreed to review decision by U.S. District Court for District of Columbia on questions of whether (1) all as-applied challenges to disclosure requirements (reporting and disclaimers) imposed on "electioneering communications" by Bipartisan Campaign Reform Act of 2002 (BCRA) (*2 USCS §§ 431* et seq.) were resolved by statement in *McConnell v. FEC (2003) 540 U.S. 93, 124 S. Ct. 619, 157 L. Ed. 2d 491,* upholding disclosure requirements against facial challenge for entire range of electioneering communications set forth in statute; (2) BCRA's disclosure requirements impose unconstitutional burden when applied to electioneering communications allegedly protected from prohibition by appeal-to-vote test of *FEC v. Wis. Right to Life, Inc. (2007, US) 127 S. Ct. 2652, 168 L. Ed. 2d 329,* (WRTL II), on theories that (a) under *Buckley v. Valeo (1976) 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659,* such communications are protected political speech, not regulable campaign speech, in that they are not unambiguously related to campaign of particular federal candidate, or (b) disclosure requirements fail strict scrutiny when so applied; (3) WRTL II's appeal-to-vote test requires clear plea for action to vote for or against candidate, so that communication lacking such clear plea for action is not subject to electioneering-communication prohibition under *2 USCS § 441b*; and (4) broadcast feature-length documentary movie that allegedly is sold on DVD, shown in theaters, and accompanied by compendium book (a) is to be treated as broadcast "ads" at issue in McConnell, or (b) is not subject to regulation as electioneering communication. *Citizens United v FEC (2008, DC Dist Col) 530 F Supp 2d 274,* later proceeding (US) *128 S Ct 1471,*

170 L Ed 2d 294, app dismd (US) *128 S Ct 1732, 170 L Ed 2d 511* and motions ruled upon (DC Dist Col) *2008 US Dist LEXIS 54767*, jur noted (US) *77 USLW 3295*.

1. Generally; purpose

Primary purpose of Federal Election Campaign Act of 1971 which imposes limitations upon giving and spending of money in political campaigns for federal offices, is to limit actuality and appearance of corruption resulting from large individual financial contributions. *Buckley v Valeo (1976) 424 US 1, 96 S Ct 612, 46 L Ed 2d 659, 76-1 USTC P 9189* (criticized in *Homans v City of Albuquerque (2002, DC NM) 217 F Supp 2d 1197)* and (criticized in *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13)* and (criticized in *Ctr. for Individual Freedom, Inc. v Ireland (2008, SD W Va) 2008 US Dist LEXIS 83856)*.

Principal congressional concern in enacting Federal Election Campaign Act of 1971 (*2 USCS §§ 431* et seq.) was reform of political campaign financing. *United States v National Committee for Impeachment (1972, CA2 NY) 469 F2d 1135, 18 ALR Fed 925*.

Federal Election Commission's revised campaign finance regulations defining get-out-the-vote activity and voter registration activity were rejected as being arbitrary and capricious under Administrative Procedures Act, *5 USCS § 706(2)(A)*, and Chevron standard because they permitted campaign contributors to circumvent purpose of McCain-Feingold Act, formally known as Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81, which was to control corrupting influence of large, unregulated soft money donations to federal political candidates. *Shays v FEC (2008, App DC) 528 F3d 914*.

Federal Election Campaign Act of 1971 (*2 USCS §§ 431-454*) represents complete revision of prior law and Congress revised old law because it considered reporting requirements pertaining to general elections to be inadequate for purpose of keeping electorate informed as to sources of political campaign money. *Pichler v Jennings (1972, SD NY) 347 F Supp 1061*.

2. Constitutionality

Reporting and disclosure provisions of Federal Election Campaign Act were not overbroad, in violation of First Amendment speech and association rights, insofar as they applied to contributions to minor parties and independent candidates since any serious infringement of First Amendment rights was highly speculative and harm generally alleged was outweighed by substantial government interest in informing public as to source of campaign moneys, deterring corruption, and gathering data to detect violation of act's contributions limitations (*18 USCS § 608*); blanket exemption for minor parties from reporting and disclosure provisions was not required to protect their right of freedom of association, but minor parties could show act's requirements could not be constitutionally applied to them, and evidence offered needed to show only reasonable probability that compelled disclosure of contributors' names would subject them to threats, harassment or reprisals from government officials or private parties; monetary thresholds set in reporting and disclosure provisions of act, in *2 USCS §§ 431* et seq., did not violate First Amendment speech and association rights as being overbroad in their extension to contributions as small as $ 10 to $ 100 since act did authorize disclosure outside commission of contributions between $ 10 and $ 100; threshold was within reasonable latitude given legislature since Supreme Court could not require Congress to establish highest possible threshold, and limits were not wholly without rationality in relation to purposes of act. *Buckley v Valeo (1976) 424 US 1, 96 S Ct 612, 46 L Ed 2d 659, 76-1 USTC P 9189* (criticized in *Homans v City of Albuquerque (2002, DC NM) 217 F Supp 2d 1197)* and (criticized in *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13)* and (criticized in *Ctr. for Individual Freedom, Inc. v Ireland (2008, SD W Va) 2008 US Dist LEXIS 83856)*.

With respect to political expenditures that are coordinated with candidate, limits imposed under provisions of Federal Election Campaign Act of 1971 (*2 USCS §§ 431* et seq.) on such expenditures by political activists, media executives, and political action committees are valid for purposes of *Federal Constitution's First Amendment*. *FEC v*

Colo. Republican Fed. Campaign Comm. (2001) 533 US 431, 150 L Ed 2d 461, 121 S Ct 2351, 2001 CDOS 5225, 2001 Daily Journal DAR 6447, 2001 Colo J C A R 3296, 14 FLW Fed S 389.

For purposes of *Federal Constitution's First Amendment*, § 301(20)(A)(iii) of Federal Election Campaign Act (FECA) (*2 USCS § 431(20)(A)(iii)*)--which defines term "Federal election activity" to include "a public communication that refers to clearly identified candidate for Federal office (regardless of whether candidate for State or local office is also mentioned or identified) and that promotes or supports candidate for that office, or attacks or opposes candidate for that office (regardless of whether communication expressly advocates vote for or against candidate)"--is not unconstitutionally vague. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Title I of Bipartisan Campaign Reform Act of 2002 (codified at locations including *2 USCS §§ 431* et seq.)--regulating use of "soft money" by political parties, officeholders, and candidates--does not exceed Congress' authority under Federal Constitution's elections clause to make or alter rules governing federal elections. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Title I of Bipartisan Campaign Reform Act of 2002 (BCRA) (codified at locations including *2 USCS §§ 431* et seq.)--regulating use of "soft money" by political parties, officeholders, and candidates--does not impair authority of states to regulate their own elections and thus does not violate federal constitutional principles of federalism. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Title I of Bipartisan Campaign Reform Act of 2002 (BCRA) (codified at locations including *2 USCS §§ 431* et seq.) does not violate equal protection component of due process clause of *Federal Constitution's Fifth Amendment* as allegedly discriminating against political parties in favor of special interest groups. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Application of proscription under § 203 of Bipartisan Campaign Reform Act of 2002, *2 USCS § 441b(b)(2)*)--which made it federal crime for corporation to use its general treasury funds to pay for any "electioneering communication," which Act, in *2 USCS § 434(f)(3)(A)*, defined as any broadcast that referred to candidate for federal office and was aired within 30 days of federal primary election or 60 days of federal general election in jurisdiction where that candidate was running--to bar political organization's advertisements that protested filibuster to delay voting on federal judicial nominees violated free-speech guarantee of *First Amendment. FEC v Wis. Right to Life, Inc. (2007, US) 127 S Ct 2652, 168 L Ed 2d 329, 182 BNA LRRM 2097, 20 FLW Fed S 399.*

Provisions of Federal Election Campaign Act (*2 USCS §§ 431-442, 441-455*) were designed to protect integrity of political process and to insure that political debate and political speech are effective, and in this regard Congress acted to vindicate First Amendment interests, not to derogate them; thus, provisions in Act are constitutional. *California Medical Asso. v Federal Election Com. (1980, CA9 Cal) 641 F2d 619,* affd *(1981) 453 US 182, 69 L Ed 2d 567, 101 S Ct 2712.*

Because audit provisions neither explicitly nor implicitly authorize disclosure by Federal Election Commission of contribution records, confidential status of those records precludes any claim of real or threatened injury to First Amendment interests arising from public disclosure. *Buckley v Valeo (1975, App DC) 171 US App DC 172, 519 F2d 821, 75-2 USTC P 9750,* mod on other grounds (1976, App DC) *174 US App DC 300, 532 F2d 187,* affd in part and revd in part on other grounds *(1976) 424 US 1, 96 S Ct 612, 46 L Ed 2d 659, 76-1 USTC P 9189* (criticized in *Homans v City of Albuquerque (2002, DC NM) 217 F Supp 2d 1197)* and (criticized in *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13)* and (criticized in *Ctr. for Individual Freedom, Inc. v Ireland (2008, SD W Va) 2008 US Dist LEXIS 83856).*

Burroughs v United States (1934) 290 US 534, 78 L Ed 484, 54 S Ct 287, forecloses inquiry as to whether there is substantial connection between disclosure requirements of Federal Election Campaign Act of 1971 (*2 USCS §§ 431-454*), and compelling governmental interest, and therefore, Act could constitutionally override plaintiffs' asserted rights of privacy and of freedom of association since Congress possessed power to pass appropriate legislation to safeguard elections from improper use of money to influence result, and Congress' conclusion that public disclosure of political contributions, together with names of contributors and other details, would tend to prevent corrupt use of money to affect elections, was reasonable conclusion; attack by Conservative Party on Federal Election Campaign Act of 1971, challenging constitutionality of provisions which in effect serve to place ceiling on amounts which candidates may spend for election campaigns, were so insubstantial that three-judge court would not be convened and complaint would be dismissed. *Pichler v Jennings (1972, SD NY) 347 F Supp 1061.*

2 USCS § 431(b)(2) [now *2 USCS § 431(2)*] is constitutional since Congress has authority to regulate campaign of "private citizen" who is not officially candidate, but is "unofficial candidate" within terms of § 431(b) (2) [now § 431(2)]; if Act did not include unofficial candidates within in purview, obvious and enormous loophole would exist. *Gifford v Congress (1978, ED Cal) 452 F Supp 802.*

Federal Election Campaign Act of 1971 (FECA) (*2 USCS §§ 431* et seq.) does not violate First or Fifth Amendments as overbroad and does not deprive candidates of Ninth Amendment rights. *Republican Nat'l Committee v Federal Election Com. (1980, SD NY) 487 F Supp 280,* affd *(1980) 445 US 955, 64 L Ed 2d 231, 100 S Ct 1639.*

While provisions of Federal Election Campaign Act of 1971, *2 USCS §§ 431* et seq., could infringe on some First Amendment freedoms, such infringement was minimal and reasonable to keep electorate fully informed about source of campaign funds and to deter or expose corruption. *FEC v Adams (2008, CD Cal) 558 F Supp 2d 982.*

3.--Standing

Third-party candidate and voter lacked standing to challenge constitutionality of Act on grounds that, by "authorizing" out-of-state contributions, Act violates their rights to free association, equal protection, and republican form of government, since Act neither authorizes nor prohibits such contributions and causal connection with plaintiffs' alleged injuries is therefore lacking, and claim is frivolous as well since plaintiffs sought unprecedented limitation on constitutionally protected freedom of political expression. *Whitmore v Federal Election Comm'n (1995, CA9 Alaska) 68 F3d 1212, 95 CDOS 8334, 95* Daily Journal DAR 14399, amd on other grounds, motion den (1995, CA9 Alaska) *68 F3d 1212, 96 CDOS 249, 96* Daily Journal DAR 353 and cert den *(1996) 517 US 1155, 134 L Ed 2d 646, 116 S Ct 1543.*

Potential candidate, who chose not to seek election because he believed he could not raise funds necessary to mount effective campaign, and his potential supporters lack standing to challenge constitutionality of Federal Election Campaign Act (FECA) (*2 USCS §§ 431* et seq.) insofar as it allows for use of private moneys in federal elections, because alleged harm is, at this stage, abstract and conjectural, candidate opted not to participate in election process, and, in light of goal of eliminating contribution of private funds to politicians and leveling electoral playing field, declaring FECA, which limits such contributions, unconstitutional would not redress candidate's and supporters' injury. *Alsanese v Federal Election Comm'n (1995, ED NY) 884 F Supp 685,* affd (1996, CA2 NY) *78 F3d 66,* cert den *(1996) 519 US 819, 136 L Ed 2d 33, 117 S Ct 73.*

Public interest groups challenging alleged illegal campaign contribution through distribution and sale of mailing list did not establish that they sustained informational injury, and therefore did not satisfy injury-in-fact requirement of standing under U.S. Const., art. III; no informational injury was sustained because information regarding mailing list required to be disclosed by Federal Election Campaigns Act, *2 USCS §§ 431* et seq., had already been disclosed on Federal Election Commission's website. *Alliance for Democracy v FEC (2005, DC Dist Col) 362 F Supp 2d 138.*

4. Construction and application, generally

Federal Election Commission's (FEC) revised campaign finance coordinated communication regulation, known as "firewall safe harbor," *11 CFR § 109.21(h)*, was upheld as valid under Administrative Procedures Act, *5 USCS § 706(2)(A)* and Chevron standard; even though it was somewhat vague as to what constituted acceptable firewall, it was valid rule-making because McCain-Feingold Act, formally known as Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81, did not preclude FEC from permitting organizations that contributed to campaigns from setting their own conduct standards. *Shays v FEC (2008, App DC) 528 F3d 914.*

Every phase of nominating process, preference primaries, conventions, primaries, run-offs, special and general elections, even election of delegates to constitutional conventions, is brought within specific coverage of *2 USCS §§ 431-454*, and every candidate for nomination or election to federal elective office and political committees, whether national or local, so long as committees individually accept contributions or make expenditures of aggregate amount exceeding $ 1,000 during calendar year. *Pichler v Jennings (1972, SD NY) 347 F Supp 1061.*

Plaintiff political action committee's vagueness claims as to words "support," "oppose," and it and "indicate," as used in *11 CFR § 100.57*, Federal Election Campaign Act of 1971 (FECA), Pub. L. No. 92-255, 86 Stat. 3, as amended by Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, failed because they provided explicit standards for those who applied them and gave person of ordinary intelligence reasonable opportunity to know what was prohibited; moreover, if plaintiffs felt that they needed further guidance, they were able to seek advisory opinions for clarification, *2 USCS § 437f(a)(1)*, and thereby remove any doubt there may have been as to meaning of law. *EMILY'S List v FEC (2008, DC Dist Col) 569 F Supp 2d 18.*

5. Communications; speech

Assuming that regular newsletter of nonprofit corporation formed to support "pro-life" causes is exempt as periodical publication from prohibition against corporate campaign expenditures under Federal Election Campaign Act provision (*2 USCS § 441b*), such exemption does not apply to special edition of newsletter urging readers to vote pro-life and identifying pro-life candidates in upcoming state election where special edition newsletter cannot be considered comparable to any single issue of regular newsletter since it was prepared by staff not connected with regular newsletter, it was not distributed to newsletter's regular audience, it did not bear corporation's masthead, and contained no volume or issue number identifying it as continuing series of issues. *Fed. Election Com. v Mass. Citizens for Life, Inc. (1986) 479 US 238, 93 L Ed 2d 539, 107 S Ct 616.*

In determining whether speech is "expressed advocacy" for purposes of Federal Election Campaign Act, speech must be susceptible of no other reasonable interpretation than exhortation to vote for or against specific candidate where speech is read as whole and with limited reference to external events; speeches are "express" for determining what are independent expenditures that must be disclosed, if message is unmistakable, unambiguous, and suggestive of only one plausible meaning; speech may only be termed "advocacy" when it presents clear plea for action. *FEC v Furgatch (1987, CA9 Cal) 807 F2d 857,* cert den *(1987) 484 US 850, 98 L Ed 2d 106, 108 S Ct 151* and (criticized in *Virginia Soc'y for Human Life, Inc. v FEC (2000, ED Va) 83 F Supp 2d 668)* and (criticized in *League of Women Voters of State v Davidson (2001, App) 23 P3d 1266, 30 Colo J C A R 159, 2001 Colo J C A R 1795)* and (criticized in *Chamber of Commerce of the United States v Moore (2002, CA5 Miss) 288 F3d 187)* and (criticized in *Governor Gray Davis Com. v American Taxpayers Alliance (2002, 1st Dist) 102 Cal App 4th 449, 125 Cal Rptr 2d 534, 2002 CDOS 9916, 2002 Daily Journal DAR 11177, 31 Media L R 1161)* and (criticized in *McConnell v FEC (2003, DC Dist Col) 251 F Supp 2d 176)* and (criticized in *N.C. Right to Life, Inc. v Leake (2003, CA4 NC) 344 F3d 418).*

In order to trigger reporting requirement of *2 USCS § 431(f)(4)(C)* [now *2 USCS § 431(9)(B)(ii)*], material must come within statutory definition of communication expressly advocating election or defeat of clearly identified candidate, and at same time it must not be primarily devoted to subjects other than express advocacy of election or defeat or candidate; poster was type of political speech which is protected from regulation under *2 USCS §§ 431* et seq. where (1) poster depicted then-President Gerald Ford, wearing button reading "Pardon Me" and embracing former President Richard Nixon, but (2) although poster included clearly identified candidate and may have tended to influence

voting, it contained communication on public issue widely debated during campaign. *Federal Election Com. v American Federation of State, County & Municipal Employees (1979, DC Dist Col) 471 F Supp 315, 101 BNA LRRM 2574.*

To extent that *11 C.F.R. § 100.29(b)(3)(i)*, in implementing *2 USCS § 431(20)(A)(iii)*, defines "electioneering communication" to exempt from regulation all communications, regardless of their content, provided that fee is not paid for their broadcast, regulation is invalid as contrary to statutory requirement that public communications that promote or oppose candidate for office be regulated. *Shays v FEC (2004, DC Dist Col) 337 F Supp 2d 28,* dismd, in part (2004, App DC) *2004 US App LEXIS 24896* and affd (2005, App DC) *367 US App DC 185, 414 F3d 76.*

Where *11 C.F.R. § 100.26* excludes communications over Internet from definition of public communications set out in *2 USCS § 431(22)*, regulation unduly compromises purposes of Federal Election Campaign Act of 1971 and creates potential for gross abuse; Internet communications are clearly capable of general public political advertising and thus wholesale exclusion of Internet communications improperly permits evasion of campaign finance laws. *Shays v FEC (2004, DC Dist Col) 337 F Supp 2d 28,* dismd, in part (2004, App DC) *2004 US App LEXIS 24896* and affd (2005, App DC) *367 US App DC 185, 414 F3d 76.*

To extent that *11 C.F.R. § 100.25* implements *2 USCS § 431(20)(A)(ii)* by defining "generic campaign activity" as limited to activities involving public communication as defined in *2 USCS § 431(22)*, regulation was invalid since it excluded range of campaign activity, including most Internet communications and mailing and phone banks directed to fewer than 500 people, and exclusions were not shown to be de minimis exemptions from statutory requirements. *Shays v FEC (2004, DC Dist Col) 337 F Supp 2d 28,* dismd, in part (2004, App DC) *2004 US App LEXIS 24896* and affd (2005, App DC) *367 US App DC 185, 414 F3d 76.*

Plaintiff received summary judgment on its as-applied challenge to Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 203, 116 Stat. 81, because its 2004 anti-filibuster ads were neither express advocacy nor functional equivalent and government did not articulate sufficiently compelling interest to justify burden placed on First Amendment rights since government interests that justified regulating express advocacy and its functional equivalent did not apply to regulation of genuine issue ads. *Wis. Right to Life, Inc. v FEC (2006, DC Dist Col) 466 F Supp 2d 195,* affd (2007, US) *127 S Ct 2652, 168 L Ed 2d 329, 182 BNA LRRM 2097, 20 FLW Fed S 399.*

Federal Election Commission's conclusion that political organization was political committee under *2 USCS § 431(4)(A)* did not violate First Amendment because organization's major purpose was to influence federal election by spending money to enable ballot access for candidates for federal office who were certain to be clearly identifiable. *Unity08 v FEC (2008, DC Dist Col) 583 F Supp 2d 50.*

6. Membership organizations

State medical association could not be embraced by phrase "membership organization" thus falling within exemption for unlimited administrative support under *2 USCS § 431(e)(5)(F)* [now *2 USCS § 431(8)(B)(vi)*] and *2 USCS § 441b(b)(2)(C)* as "membership organization" language was only intended to rescue organizations that would otherwise fall within § 441b's blanket prohibition of any election activity. *California Medical Asso. v Federal Election Com. (1980, CA9 Cal) 641 F2d 619,* affd *(1981) 453 US 182, 69 L Ed 2d 567, 101 S Ct 2712.*

FECA's rule limiting "members"--to whom membership organization can convey political messages and solicitations--to individuals having right to vote for at least one member of organization's highest governing body is not reasonable interpretation of FECA; interpretation presents First Amendment difficulties and explicitly but inexplicably excludes certain labor unions that would otherwise be covered as well as federated farm and rural electric cooperatives. *Chamber of Commerce v FEC (1995, App DC) 314 US App DC 436, 69 F3d 600,* reh, en banc, den (1996, App DC) *1996 US App LEXIS 3954.*

Where *11 C.F.R. § 109.3* defines "agent" for purposes of *2 USCS § 431(17)* as one having express or implied

authority, but does not include one acting with apparent authority, regulatory construction is permissible under statute, but regulation is nonetheless invalid; there is no indication that Federal Election Commission considered how their decision to exclude apparent authority might facilitate circumvention of campaign finance laws or perpetuate appearance of corruption, and thus Commission failed to consider important aspect of problem which rendered rule arbitrary and capricious. *Shays v FEC (2004, DC Dist Col) 337 F Supp 2d 28,* dismd, in part (2004, App DC) *2004 US App LEXIS 24896* and affd (2005, App DC) *367 US App DC 185, 414 F3d 76.*

7. Political committees

Federal Election Campaign Act of 1971, *2 USCS §§ 431-455*, neither grants Federal Election Commission exclusive jurisdiction to enforce criminal provisions of Act nor limits, in any way, Attorney General's plenary power to enforce criminal provisions of Act. *Fieger v United States AG (2008, CA6 Mich) 542 F3d 1111, 2008 FED App 346P.*

District court properly dismissed action by attorney and his law firm seeking declaration that U.S. Attorney General (AG) acted contrary to Federal Election Campaign Act, *2 USCS §§ 431-455*, in conducting ongoing grand jury investigation into their alleged violations of federal campaign finance laws; Act did not bar AG from investigating alleged violations of Act without referral from *Federal Election Commission. Fieger v United States AG (2008, CA6 Mich) 542 F3d 1111, 2008 FED App 346P.*

2 USCS § 431 is applicable only to committees soliciting contributions or making expenditures nature or purpose of which is nomination or election of candidates. *American Civil Liberties Union, Inc. v Jennings (1973, DC Dist Col) 366 F Supp 1041,* vacated on other grounds *(1975) 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.*

Under *2 USCS § 431(h)* [now *2 USCS § 431(11)*], if two or more political action committees (multi-candidate political committees under *2 USCS § 441(a)(4)*) are controlled by one person or one group of persons, then committees should be treated as one committee for purpose of controlling political contributions; § 431 provides no exception based on special relationship between union and organization like AFL-CIO. *Walther v Federal Election Com. (1979, DC Dist Col) 468 F Supp 1235, 101 BNA LRRM 2198.*

Federal Election Commission's (FEC's) decision to determine status of *26 USCS § 527* political organizations on case-by-case basis rather than through rulemaking was not per se abuse of discretion as Bipartisan Campaign Reform Act did not impose statutory mandate on FEC, but decision was remanded because FEC failed to provide reasoned explanation for that decision. *Shays v FEC (2006, DC Dist Col) 424 F Supp 2d 100.*

8.--Particular committees

Appearance in large metropolitan newspaper of advertisement headed "Resolution To Impeach Richard M. Nixon as President of United States", paid for by National Committee for Impeachment, did not bring such committee within purview of Federal Election Campaign Act of 1971 (*2 USCS §§ 431-454*) since Act applies only to committees soliciting contributions or making expenditure major purpose of which is nomination or election of candidates and National Committee did not attempt to influence outcome of congressional or presidential primary or general elections; Act did not apply to national committee organized to promote impeachment of President on ground of his Vietnam war policy. *United States v National Committee for Impeachment (1972, CA2 NY) 469 F2d 1135, 18 ALR Fed 925.*

Because reporting, disclosure and registration provisions of Act apply only to political committees soliciting contributions or making expenditures for major purpose of nominating or electing candidates or to expenditures by political committees made with authorization, consent or control of candidates, district court erred in granting preliminary injunction at request of government against "National Committee for Impeachment," which had no connection with any candidate for office. *United States v National Committee for Impeachment (1972, CA2 NY) 469 F2d 1135, 18 ALR Fed 925.*

"Draft" groups which aim to produce someday candidate acceptable to them, but have not yet succeeded, are not

promoting specific candidate for office, and do not fall within limited definition of political committees. *Federal Election Com. v Machinists Non-Partisan Political League (1981, App DC) 210 US App DC 267, 655 F2d 380,* cert den *(1981) 454 US 897, 70 L Ed 2d 213, 102 S Ct 397.*

Organization which lobbied Congress and executive branch for military and economic aid for Israel and generally encouraged close relations with Israel was political committee subject to Federal Election Campaign Act's limitations on contributions or coordinated expenditures, even if organization's campaign-related activities were only small portion of its overall activities, since, in light of statute's unambiguous language, Supreme Court opinions using major purpose test to limit construction of "political committee" to one whose major purpose is influencing federal elections occurred in cases which focused on constitutional concerns raised by independent expenditures not coordinated with or made in consultation with any candidate. *Akins v FEC (1996, App DC) 322 US App DC 58, 101 F3d 731,* vacated on other grounds, remanded *(1998) 524 US 11, 141 L Ed 2d 10, 118 S Ct 1777, 98 CDOS 4092, 98 Daily Journal DAR 5637, 1998 Colo J C A R 2743,* remanded (1998, App DC) *331 US App DC 108, 146 F3d 1049.*

Although Commission on Presidential Debates (CPD) may have over-reacted by excluding all third-party candidates from debate based on fear that one of them would disrupt debate, that possibility hardly required Federal Election Commission to find that CPD's actions amounted to opposing political candidates in violation of *11 CFR § 110.13(a)(1)*; therefore, contrary to third-party candidates' contentions, CPD was not rendered ineligible to stage debates and its receipt of corporate donations were not rendered illegal under *2 USCS § 431(9)(B)(ii). Hagelin v FEC (2005, App DC) 366 US App DC 261, 411 F3d 237,* reh den (2005, App DC) *2005 US App LEXIS 16620.*

Organization, on basis of its newspaper advertisement that criticized Nixon administration on issue of school busing, and praised certain congressmen, could not be classified on that ground alone as a "political committee." *American Civil Liberties Union, Inc. v Jennings (1973, DC Dist Col) 366 F Supp 1041,* vacated on other grounds *(1975) 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.*

Federal Election Commission's complaint against GOPAC, Inc., may proceed, where complaint alleges that GOPAC violated *2 USCS §§ 433(a)* and *434(a)* during distribution of its "Campaign For Fair Elections" communication between June 1989 and August 1990, which advocated breaking Democrats' 35-year stranglehold on power in Congress, because complaint can fairly be construed to contend that GOPAC was acting as "political committee" within meaning of *2 USCS § 431(4). Federal Election Comm'n v GOPAC (1994, DC Dist Col) 871 F Supp 1466,* injunction den (1995, DC Dist Col) *897 F Supp 615, 33 FR Serv 3d 794.*

Federal Election Commission's civil action against GOPAC, Inc., alleging that in 1989 and 1990 GOPAC was "political committee" which had failed to register and report as required by *2 USCS §§ 433(a)* and *434(a)*, must fail, where GOPAC avoided directly supporting federal candidates although its ultimate major purpose was to influence election of Republican candidates for House of Representatives, because bright-line test is necessary in this First Amendment arena and GOPAC's activities did not clearly cross line to make it § 431 "political committee" during years in question. *Federal Election Comm'n v GOPAC, Inc. (1996, DC Dist Col) 917 F Supp 851.*

Two organizations were "political committees" under Federal Election Campaign Act of 1971, *2 USCS §§ 431* et seq., because organizations' major purpose was nomination or election of specific candidates and organizations received contributions aggregating more than $ 1,000 in calendar year. *FEC v Malenick (2004, DC Dist Col) 310 F Supp 2d 230.*

9. Contributions and expenditures

Words "made for purpose of influencing" various election processes, as used in Federal Election Campaign Act of 1971's provision defining words "contribution" (*2 USCS § 431(e)*) [now *2 USCS § 431(8)*] and "expenditure" (*2 USCS § 431(f)*) [now *2 USCS § 431(9)*], mean expenditure made with authorization or consent, express or implied, or under control, direct or indirect, of candidate or his agents. *United States v National Committee for Impeachment (1972, CA2 NY) 469 F2d 1135, 18 ALR Fed 925.*

Postelection loan guarantees of at least $ 5,000 to retire political candidate's campaign costs violated Federal Election Campaign Act limitations on campaign contributions by individual donors by exceeding $ 1,000 limit on contributions made for purpose of influencing any election for federal office, since Federal Election Committee's interpretation of phrase "for the purpose of influencing any election for Federal office" in its regulations and advisory opinions included postelection loan guarantees for retiring campaign costs; FEC's construction of FECA is entitled to strong deference since Congress failed to affirmatively define what it intended by phrase regarding influencing election for federal office, and further failed to state whether postelection contributions were subject to § 431; Congress' acquiescence to FEC's interpretation of postelection contributions indicates Congress does not disapprove of interpretation, where Congress failed to disapprove regulation including postelection contributions made to retire campaign debts has not created exception for postelection contributions. *Federal Election Com. v Ted Haley Congressional Committee (1988, CA9 Wash) 852 F2d 1111.*

FEC's content-based standard for coordinated communication, which implemented Bipartisan Campaign Finance Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, was arbitrary and capricious because, contrary to Administrative Procedure Act, FEC offered no persuasive justification for 120-day time-frame under *11 CFR § 109.21* and weak restraints applying outside of it; rather, notwithstanding its obligation to attempt to avoid unnecessarily infringing on First Amendment interests, FEC failed to establish that rule rationally separated election-related advocacy from other activity falling outside expenditure definition in Federal Election Campaign Act of 1971, Pub. L. 92-225, 86 Stat. 3, and did not permit substantial coordinated expenditures. *Shays v FEC (2005, App DC) 367 US App DC 185, 414 F3d 76.*

Congressional concern was with political campaign financing, not with funding of movements dealing with national policy, and expenditures "made for the purpose of influencing" include expenditures "made with the authorization or consent, express or implied, under the control, direct or indirect, of a candidate or his agents." *American Civil Liberties Union, Inc. v Jennings (1973, DC Dist Col) 366 F Supp 1041,* vacated on other grounds *(1975) 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.*

Federal Election Commission (FEC) must submit concise reports at 90-day intervals on its progress toward rules regulating soft money expenditures that influence federal elections, where current regulations leave too much discretion to state and local committees allowed to allocate percentage of funding used for federal as opposed to state and local elections, because *2 USCS § 431* requires that only hard money--contributed within special federal election limits--be used for volunteer, voter registration and "get-out-the vote" activities with regard to federal elections, and both petition of voter organization and recommendations of FEC's general counsel indicate need for tighter regulation of hard money/soft money allocation. *Common Cause v Federal Election Com. (1988, DC Dist Col) 692 F Supp 1397.*

Where *11 C.F.R. § 100.24(a)(2)* implemented *2 USCS § 431(20)(A)(i)* by defining "voter registration activity" to include requirement that activity assist in registration of voters, regulation was invalid under *5 USCS § 553(b)(3)* since final rule was not logical outgrowth of proposed rule as set out in notice of proposed rulemaking; there was no notice of proposed limitation to voter registration activity nor any solicitation of comments concerning possible exceptions to limitation; also, to extent that *11 C.F.R. § 100.24(a)(4)* implements *2 USCS § 431(20)(A)(ii)* by defining "voter identification" to exclude purchase of voter lists, regulation is invalid, regardless of whether purchaser's intent in obtaining voter list is unrelated to federal elections as acquiring list necessarily involved voter identification. *Shays v FEC (2004, DC Dist Col) 337 F Supp 2d 28,* dismd, in part (2004, App DC) *2004 US App LEXIS 24896* and affd (2005, App DC) *367 US App DC 185, 414 F3d 76.*

To extent that *11 C.F.R. § 300.33(c)(2)* implements *2 USCS § 431(20)(A)(iv)* by providing that political committee employees spending 25 percent or less of their time on federal election activity are not subject to fund allocation rules with regard to their wages, regulation is invalid as unduly compromising purpose of federal campaign laws to prevent circumvention of restrictions on use of nonfederal funds. *Shays v FEC (2004, DC Dist Col) 337 F Supp 2d 28,* dismd, in part (2004, App DC) *2004 US App LEXIS 24896* and affd (2005, App DC) *367 US App DC 185, 414 F3d 76.*

Absent justification for defendant Federal Election Commission (FEC) writing off evidence that candidates ran advertisements to influence federal elections outside pre-election windows of *11 C.F.R. § 109.21(c)*'s content standards, it was not reasoned decisionmaking and § 109.21(c), upon plaintiff U.S. House of Representatives member's challenge, was remanded; *2 USCS § 441a(a)(7)(B)(i)* provided that expenditures that were coordinated with candidate constituted campaign contributions, and, *5 USCS § 431(9)(A)(i)*, in turn, defined "expenditure" as any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for purpose of influencing any election for Federal office, but FEC's Explanation and Justification failed to provide any assurance that its revised content standards actually "captured universe" of communications made for purpose of influencing federal election. *Shays v United States FEC (2007, DC Dist Col) 508 F Supp 2d 10,* affd in part and revd in part on other grounds, remanded (2008, App DC) *381 US App DC 296, 528 F3d 914.*

Federal Elections Commission's explanation as to why it chose not to issue regulations concerning applicability of campaign finance laws to *26 USCS § 527* groups erroneously concluded that there was express advocacy requirement for expenditures on communications made independently of candidate which applied to all organizations regardless of whether they satisfied major purpose test; case law actually narrowed term "expenditure," as used in *2 USCS § 431(4)(A)*, to reach only funds used from communications that expressly advocated election or defeat of clearly identified candidate. *Shays v FEC (2007, DC Dist Col) 511 F Supp 2d 19.*

10. Relationship with other laws

Default statute of limitations (*28 USCS § 2462*) applies to Federal Election Commission's actions for assessment or imposition of civil penalties under Federal Election Campaign Act, and limitations period begins to run at time alleged offense was committed; doctrine of equitable tolling does not apply where party has complied with FECA's campaign finance reporting requirements since they are, as matter of law, sufficient to give FEC notice of facts that, if investigated, would indicate elements of cause of action. *FEC v Williams (1996, CA9 Cal) 104 F3d 237, 96 CDOS 9422, 96* Daily Journal DAR 15496 (criticized in *United States v Banks (1997, CA11 Fla) 115 F3d 916, 45 Envt Rep Cas 1281, 37 FR Serv 3d 1108, 28 ELR 20060, 11 FLW Fed C 86)* and cert den *(1997) 522 US 1015, 139 L Ed 2d 488, 118 S Ct 600* and (criticized in *United States v Telluride Co. (1998, CA10 Colo) 146 F3d 1241, 46 Envt Rep Cas 1897, 1998 Colo J C A R 3602, 28 ELR 21334).*

Specific provisions of Hatch Act (*5 USCS § 7324*) control over more general provisions of Federal Election Campaign Act (*2 USCS §§ 431* et seq.) in dispute over extent of political activities of labor unions representing federal employees. *American Fed'n of Government Employees v O'Connor (1984, DC Dist Col) 589 F Supp 1551,* vacated on other grounds, remanded (1984, App DC) *241 US App DC 311, 747 F2d 748,* cert den *(1985) 474 US 909, 88 L Ed 2d 243, 106 S Ct 279.*

Alleged illegal campaign contributor is denied dismissal of counts charging him with violations of general conspiracy, mail and wire fraud, and false statements statutes, even though he asserts all charges stem from alleged violations of specific criminal provisions of Federal Election Campaign Act (FECA) (*2 USCS §§ 431* et seq.), which should preempt more general criminal statutes, because Congress did not express intent that misdemeanor sanctions of FECA be substitute for all other possible criminal sanctions. *United States v Trie (1998, DC Dist Col) 21 F Supp 2d 7.*

Where *11 C.F.R. § 100.24(a)(3)* implements *2 USCS § 431(20)(A)(ii)* by defining "get-out-the-vote activity" to exempt associations or similar groups of candidates for state or local office or of individuals holding state or local office, regulation was contrary to clearly expressed congressional intent and is thus invalid. *Shays v FEC (2004, DC Dist Col) 337 F Supp 2d 28,* dismd, in part (2004, App DC) *2004 US App LEXIS 24896* and affd (2005, App DC) *367 US App DC 185, 414 F3d 76.*

11. Enforcement, generally

Federal Election Campaign Act does not confer private right of action on political party to sue for opposing party's

alleged excessive expenditures for issue ads; there is no authority supporting Congress's intention to have anyone other than government enforce Act, and in light of Act's remedial scheme, it would be inappropriate for court to find implied cause of action. *National Comm. of the Reform Party v Democratic Nat'l Comm. (1999, CA9 Cal) 168 F3d 360, 99 CDOS 1065, 99* Daily Journal DAR 1337.

Although there are certain specific time limits established in various sections of FEC Act, there is no relevant 6 month time limit for enforcement of FEC subpoena, particularly where any significant delays are attributable to campaign committee's actions, and not to any malice on part of FEC. *Federal Election Com. v Citizens for Freeman (1985, DC Md) 602 F Supp 1250,* dismd without op (1985, CA4 Md) *767 F2d 911.*

12.--Powers and duties of Attorney General

Concurrent criminal jurisdiction between U.S. Attorney General and Federal Election Commission (FEC) to investigate criminal violations of campaign finance laws did not conflict with FEC's power to render advisory opinions pursuant to *2 USCS § 437d(a)(7)*; there was no reason to believe that courts would not give weight to FEC's interpretation of its governing statute, as reflected in advisory opinion, even in criminal case initiated by Attorney General; and regardless of whether case was civil or criminal, there was only one final arbiter of interpretation of Federal Election Campaign Act, *2 USCS §§ 431-455*: federal courts; so, even if interpretive disagreements arose between FEC and Attorney General, they would be resolved in normal course of litigation. *Bialek v Mukasey (2008, CA10 Colo) 529 F3d 1267.*

Concurrent criminal jurisdiction between U.S. Attorney General and Federal Election Commission (FEC) to investigate criminal violations of campaign finance laws did not undermine purposes of Federal Election Campaign Act, *2 USCS §§ 431-455*; individuals would not exercise their Fifth Amendment privilege in FEC proceedings more frequently because feared independent U.S. Department of Justice (DOJ) prosecutions; there was no reason to believe that individual's decision to invoke privilege in civil FEC proceeding would turn on whether threat of eventual criminal prosecution came from DOJ rather than FEC itself; individual's decision to invoke privilege was always one of personal choice no matter which agency took investigatory lead, and effect of concurrent jurisdiction on that decision would be speculative and likely inconsequential. *Bialek v Mukasey (2008, CA10 Colo) 529 F3d 1267.*

Action by private citizens for mandamus to force attorney general of United States and United States attorney for District of Columbia to enforce Federal Corrupt Practices Act did not state claim on which court could grant relief; apart from fact that Act on which suit was based has since been repealed and replaced by Federal Election Campaign Act of 1971 and apart from fact that plaintiff admitted attorney general did investigate and refused prosecution of certain persons suggested as violators by plaintiff, the judiciary had no power to compel discretionary action by members of executive branch of government. *Nader v Kleindienst (1973, DC Dist Col) 375 F Supp 1138.*

At no place in Federal Election Campaigns Act (*2 USCS §§ 431* et seq.) is specific provision made prohibiting Attorney General from going forward with criminal investigation without referral by Federal Election Commission; in absence of such specific provision, general authority of Attorney General cannot be limited. *United States v Tonry (1977, ED La) 433 F Supp 620.*

TAB 2

LexisNexis

LEXSTAT 2 U.S.C. Â§ 432

*** CURRENT THROUGH PL 111-90, APPROVED 11/03/2009 WITH A GAP OF 111-84 ***

TITLE 2. THE CONGRESS
CHAPTER 14. FEDERAL ELECTION CAMPAIGNS
DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

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2 USCS § 432

§ 432. Organization of political committees

(a) Treasurer vacancy; official authorization. Every political committee shall have a treasurer. No contribution or expenditure shall be accepted or made by or on behalf of a political committee during any period in which the office of treasurer is vacant. No expenditure shall be made for or on behalf of a political committee without the authorization of the treasurer or his or her designated agent.

(b) Account of contributions; segregated funds.
(1) Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receiving such contribution, forward to the treasurer such contribution, and if the amount of the contribution is in excess of $ 50 the name and address of the person making the contribution and the date of receipt.
(2) Every person who receives a contribution for a political committee which is not an authorized committee shall--
(A) if the amount of the contribution is $ 50 or less, forward to the treasurer such contribution no later than 30 days after receiving the contribution; and
(B) if the amount of the contribution is in excess of $ 50, forward to the treasurer such contribution, the name and address of the person making the contribution, and the date of receipt of the contribution, no later than 10 days after receiving the contribution.
(3) All funds of a political committee shall be segregated from, and may not be commingled with, the personal funds of any individual.

(c) Recordkeeping. The treasurer of a political committee shall keep an account of--
(1) all contributions received by or on behalf of such political committee;
(2) the name and address of any person who makes any contribution in excess of $ 50, together with the date and amount of such contribution by any person;
(3) the identification of any person who makes a contribution or contributions aggregating more than $ 200 during a calendar year, together with the date and amount of any such contribution;
(4) the identification of any political committee which makes a contribution, together with the date and amount of any such contribution; and
(5) the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the

disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or canceled check for each disbursement in excess of $ 200.

(d) Preservation of records and copies of reports. The treasurer shall preserve all records required to be kept by this section and copies of all reports required to be filed by this title for 3 years after the reports is filed. For any report filed in electronic format under section 304(a)(11), the treasurer shall retain a machine-readable copy of the report as the copy preserved under the preceding sentence.

(e) Principal and additional campaign committees; designations, status of candidate, authorized committees, etc.

(1) Each candidate for Federal office (other than the nominee for the office of Vice President) shall designate in writing a political committee in accordance with paragraph (3) to serve as the principal campaign committee of such candidate. Such designation shall be made no later than 15 days after becoming a candidate. A candidate may designate additional political committees in accordance with paragraph (3) to serve as authorized committees of such candidate. Such designation shall be in writing and filed with the principal campaign committee of such candidate in accordance with subsection (f)(1).

(2) Any candidate described in paragraph (1) who receives a contribution, or any loan for use in connection with the campaign of such candidate for election, or makes a disbursement in connection with such campaign, shall be considered, for purposes of this Act, as having received the contribution or loan, or as having made the disbursement, as the case may be, as an agent of the authorized committee or committees of such candidate.

(3) (A) No political committee which supports or has supported more than one candidate may be designated as an authorized committee, except that--

(i) the candidate for the office of President nominated by a political party may designate the national committee of such political party as a principal campaign committee, but only if that national committee maintains separate books of account with respect to its function as a principal campaign committee; and

(ii) candidates may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee.

(B) As used in this section, the term "support" does not include a contribution by any authorized committee in amounts of $ 2,000 or less to an authorized committee of any other candidate.

(4) The name of each authorized committee shall include the name of the candidate who authorized such committee under paragraph (1). In the case of any political committee which is not an authorized committee, such political committee shall not include the name of any candidate in its name.

(5) The name of any separate segregated fund established pursuant to section 316(b) [*2 USCS § 441b(b)*] shall include the name of its connected organization.

(f) Filing with and receipt of designations, statements, and reports by principal campaign committee.

(1) Notwithstanding any other provision of this Act, each designation, statement, or report of receipts or disbursements made by an authorized committee of a candidate shall be filed with the candidate's principal campaign committee.

(2) Each principal campaign committee shall receive all designations, statements, and reports required to be filed with it under paragraph (1) and shall compile and file such designations, statements, and reports in accordance with this Act.

(g) Filing with and receipt of designations, statements, and reports by Secretary of the Senate; forwarding to Commission; filing requirements with Commission; public inspection and preservation of designations, etc.

(1) Designations, statements, and reports required to be filed under this Act by a candidate for the office of Senator, by the principal campaign committee of such candidate, and by the Republican and Democratic Senatorial Campaign Committees shall be filed with the Secretary of the Senate, who shall receive such designations, statements, and reports, as custodian for the Commission.

(2) The Secretary of the Senate shall forward a copy of any designation, statement, or report filed with the Secretary under this subsection to the Commission as soon as possible (but no later than 2 working days) after receiving such designation, statement, or report.

(3) All designations, statements, and reports required to be filed under this Act, except designations, statements, and reports filed in accordance with paragraph (1), shall be filed with the Commission.

(4) The Secretary of the Senate shall make the designations, statements, and reports received under this subsection available for public inspection and copying in the same manner as the Commission under section 311(a)(4) [*2 USCS § 438(a)(4)*], and shall preserve such designations, statements, and reports in the same manner as the Commission under section 311(a)(5) [*2 USCS § 438(a)(5)*].

(h) Campaign depositories; designations, maintenance of accounts, etc.; petty cash fund for disbursements; record of disbursements.

(1) Each political committee shall designate one or more State banks, federally chartered depository institutions, or depository institutions the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories. Each political committee shall maintain at least one checking account and such other accounts as the committee determines at a depository designated by such committee. All receipts received by such committee shall be deposited in such accounts. No disbursements may be made (other than petty cash disbursements under paragraph (2)) by such committee except by check drawn on such accounts in accordance with this section.

(2) A political committee may maintain a petty cash fund for disbursements not in excess of S 100 to any person in connection with a single purchase or transaction. A record of all petty cash disbursements shall be maintained in accordance with subsection (c)(5).

(i) Reports and records, compliance with requirements based on best efforts. When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] *[2 USCS §§ 9001* et seq. or 9031 et seq.].

HISTORY:

(Feb. 7, 1972, P.L. 92-225, Title III, § 302, 86 Stat. 12; Oct. 15, 1974, P.L. 93-443, Title II, §§ 202, 208(c)(2), 88 Stat. 1275, 1286; May 11, 1976, P.L. 94-283, Title I, § 103, 90 Stat. 480; Jan. 8, 1980, P.L. 96-187, Title I, § 102, 93 Stat. 1345; Dec. 28, 1995, P.L. 104-79, §§ 1(b), 3(a), 109 Stat. 791, 792; Oct. 10, 1997, P.L. 105-61, Title VI, § 637, 111 Stat. 1316; Dec. 8, 2004, P.L. 108-447, Div H, Title V, § 525, 118 Stat. 3271.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Feb. 7, 1972, P.L. 92-225, 86 Stat. 3, popularly known as the Federal Election Campaign Act of 1971, which appears generally as *2 USCS §§ 431* et seq. For full classification of the Act, consult USCS Tables volumes.

"This title", referred to in subsec. (d), is Title III of Act Feb. 7, 1972, P.L. 92-225, 86 Stat. 3, which appears generally as *2 USCS §§ 431* et seq. For full classification, consult USCS Tables volumes.

Explanatory notes:

"1986" has been inserted in brackets in subsec. (i) pursuant to § 2 of Act Oct. 22, 1986, P.L. 99-514, which redesignated the Internal Revenue Code of 1954 (Act Aug. 16, 1954, ch 736) as the Internal Revenue Code of 1986. In redesignating the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, Congress provided, in Act Oct. 22, 1986, P.L. 99-514, § 2(b), 100 Stat. 2095, for construction of references to the Internal Revenue Code as follows: except when inappropriate, any reference in any law, Executive Order, or other document to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code

of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

Effective date of section:

This section took effect 60 days after enactment, pursuant to § 408 of Act Feb. 7, 1972, P.L. 92-225, which appears as *2 USCS § 431* note.

Amendments:

1974. Act Oct. 15, 1974 (effective 1/1/75 as provided by § 410(a) of such Act; see *2 USCS § 431* note), in subsec. (b), substituted "of the contribution and the identification" for ", the name and address (occupation and the principal place of business, if any)"; in subsec. (c), in para. (2), substituted "identification" for "full name and mailing address (occupation and principal place of business, if any)", and inserted "and, if a person's contributions aggregate more than S 100, the account shall include occupation, and the principal place of business (if any)"; and in para. (4), substituted "identification" for "full name and mailing address (occupation and principal place of business, if any)"; in subsec. (d), substituted "Commission" for "supervisory officer"; substituted subec. (f) for one which read:

"(f)

(1) Any political committee shall include on the face or front page of all literature and advertisements soliciting funds the following notice:

" 'A copy of our report filed with the appropriate supervisory officer is (or will be) available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.'.

"(2)

(A) The supervisory officer shall compile and furnish to the Public Printer, not later than the last day of March of each year, an annual report for each political committee which has filed a report with him under this title during the period from March 10 of the preceding calendar year through January 31 of the year in which such annual report is made available to the Public Printer. Each such annual report shall contain--

"(i) a copy of the statement of organization of the political committee required under section 303, together with any amendments thereto; and

"(ii) a copy of each report filed by such committee under section 304 from March 10 of the preceding year through January 31 of the year in which the annual report is so furnished to the Public Printer.

"(B) The Public Printer shall make copies of such annual reports available for sale to the public by the Superintendent of Documents as soon as practicable after they are received from the supervisory officer.".

1976. Act May 11, 1976, in subsec. (b), substituted "S 50" for "S 10"; in subsec. (c)(2), substituted "S 50" for "S 10"; deleted subsec. (e), which read; "Any political committee which solicits or receives contributions or makes expenditures on behalf of any candidate that is not authorized in writing by such candidate to do so shall include a notice on the face or front page of all literature and advertisements published in connection with such candidate's campaign by such committee or on its behalf stating that the committee is not authorized by such candidate and that such candidate is not responsible for the activities of such committee."; redesignated former subsec. (f) as subsec. (e); and, in para. (1) of subsec. (e) as redesignated, added a new last sentence, beginning "Any occasional, isolated, . . .".

1980. Act Jan. 8, 1980 (effective 1/8/80 as provided by § 301(a) of such Act; see *2 USCS § 431* note), substituted this section for former one which read:

"(a) Every political committee shall have a chairman and a treasurer. No contribution and no expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of chairman or

treasurer thereof. No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.

"(b) Every person who receives a contribution in excess of $ 50 for a political committee shall, on demand of the treasurer, and in any event within five days after receipt of such contribution, render to the treasurer a detailed account thereof, including the amount of the contribution and the identification of the person making such contribution, and the date on which received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

"(c) It shall be the duty of the treasurer of a political committee to keep a detailed and exact account of--

"(1) all contributions made to or for such committee;

"(2) identification of every person making a contribution in excess of $ 50, and the date and amount thereof and, if a person's contributions aggregate more than $ 100, the account shall include occupation, and the principal place of business (if any);

"(3) all expenditures made by or on behalf of such committee; and

"(4) identification of every person to whom any expenditure is made, the date and amount thereof and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.

"(d) It shall be the duty of the treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure made by or on behalf of a political committee in excess of $ 100 in amount, and for any such expenditure in a lesser amount, if the aggregate amount of such expenditures to the same person during a calendar year exceeds $ 100. The treasurer shall preserve all receipted bills and accounts required to be kept by this section for periods of time to be determined by the Commission.

"(e)

(1) Each individual who is a candidate for Federal office (other than the office of Vice President of the United States) shall designate a political committee to serve as his principal campaign committee. No political committee may be designated as the principal campaign committee of more than one candidate, except that the candidate for the office of President of the United States nominated by a political party may designate the national committee of such political party as his principal campaign committee. Except as provided in the preceding sentence, no political committee which supports more than one candidate may be designated as a principal campaign committee. Any occasional, isolated, or incidental support of a candidate shall not be construed as support of such candidate for purposes of the preceding sentence.

"(2) Notwithstanding any other provision of this title, each report or statement of contributions received or expenditures made by a political committee (other than a principal campaign committee) which is required to be filed with the Commission under this title shall be filed instead with the principal campaign committee for the candidate on whose behalf such contributions are accepted or such expenditures are made.

"(3) It shall be the duty of each principal campaign committee to receive all reports and statements required to be filed with it under paragraph (2) of this subsection and to compile and file such reports and statements, together with its own reports and statements, with the Commission in accordance with the provisions of this title.".

1995. Act Dec. 28, 1995 (applicable with respect to reports for periods beginning after 12/31/96, as provided by § 1(c) of such Act, which appears as a note to this section), in subsec. (d), added "For any report filed in electronic format under section 304(a)(11), the treasurer shall retain a machine-readable copy of the report as the copy preserved under the preceding sentence.".

Such Act further (applicable with respect to reports, designations, and statements required to be filed after 12/31/95, as provided by § 3(d) of such Act, which appears as a note to this section), in subsec. (g), deleted para. (1), which read: "Designations, statements, and reports required to be filed under this Act by a candidate or by an authorized committee of a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, and by the principal campaign committee of such a candidate, shall be filed with the Clerk of the House of Representatives, who shall receive such designations, statements, and reports as custodian for the Commission.", redesignated paras. (2)-(5) as paras. (1)-(4), respectively, in para. (2) as redesignated, deleted "Clerk of the House of Representatives and the" following "The" and substituted "the Secretary" for "them", in para. (3) as redesignated, substituted "paragraph (1)" for

"paragraphs (1) and (2)" and, in para. (4) as redesignated, deleted "Clerk of the House of Representatives and the" following "The".

1997. Act Oct. 10, 1997, in subsec. (g)(1), deleted "and" following "Senator,", and inserted "and by the Republican and Democratic Senatorial Campaign Committees".

2004. Act Dec. 8, 2004, in subsec. (e)(3)(B), substituted "$ 2,000" for "$ 1,000".

Other provisions:

Abolition and transfer of functions of Federal Savings and Loan Insurance Corporation. For abolition and transfer of functions of the Federal Savings and Loan Insurance Corporation, see Act Aug. 9, 1989, P.L. 101-73, Title IV, §§ 401-406, which appears as *12 USCS § 1437* note.

Application of amendments made by § 1 of Act Dec. 28, 1995. Act Dec. 28, 1995, P.L. 104-79, § 1(c), 109 Stat. 791, provides: "The amendments made by subsection (a) and subsection (b) [amending subsec. (d) of this section and adding *2 USCS § 434(a)(11)*] shall apply with respect to reports for periods beginning after December 31, 1996.".

Application of amendments made by § 3 of Act Dec. 28, 1995. Act Dec. 28, 1995, P.L. 104-79, § 3(d), 109 Stat. 792, provides: "The amendments made by this section [amending subsec. (g) of this section and *2 USCS §§ 434(a)(6)*, (c)(2), and 438(a)(4)] shall apply with respect to reports, designations, and statements required to be filed after December 31, 1995.".

NOTES:

Code of Federal Regulations:

Federal Election Commission--Candidate status and designations (*2 U.S.C. 432(e)*), *11 CFR 101.1* et seq.

Federal Election Commission--Registration, organization, and recordkeeping by political committees (*2 U.S.C 433*), *11 CFR 102.1* et seq.

Federal Election Commission--Campaign depositories (*2 U.S.C. 432(h)*), *11 CFR 103.1* et seq.

Federal Election Commission--Reports by political committees and other persons (*2 U.S.C. 434*), *11 CFR 104.1* et seq.

Federal Election Commission--Document filing (*2 U.S.C. 432(g)*), *11 CFR 105.1* et seq.

Federal Election Commission--Contribution and expenditure limitations and prohibitions, *11 CFR 110.1* et seq.

Federal Election Commission--Use of campaign accounts for non-campaign purposes, *11 CFR 113.1* et seq.

Federal Election Commission--Corporate and labor organization activity, *11 CFR 114.1* et seq.

Related Statutes & Rules:

This section is referred to in *2 USCS §§ 431*, *433*; *18 USCS §§ 603*, *607*; *26 USCS § 527*.

Research Guide:

Annotations:

Validity, Construction, and Application of Campaign Finance Laws--Supreme Court Cases. *19 ALR Fed 2d 1.*

Actionability, under *42 USCS § 1983*, of claim arising out of maladministration of election. *66 ALR Fed 750.*

Validity and construction of state statute prohibiting anonymous political advertising. *4 ALR4th 741.*

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. *22 ALR4th 237.*

Election campaign activities as ground for disciplining attorney. *26 ALR4th 170.*

Law Review Articles:

Adamany. Political Finance and the American Political Parties. *10 Hastings Const LQ 497,* Spring 1983.

Interpretive Notes and Decisions:

1. Generally 2. Construction, generally 3. Relationship with other laws 4. Safe harbor provision

1. Generally

Party chairman was properly held to have violated *2 USCS § 432(b)(1)* where Federal Election Commission presented competent evidence that party chairman concealed campaign contribution and used it for his own purposes, and party chairman admitted to same. *FEC v Toledano (2002, CA9 Cal) 317 F3d 939, 2002 CDOS 10993, 2002* Daily Journal DAR 12755, amd on other grounds, reh den, reh, en banc, den (2003, CA9 Cal) *2003 CDOS 929, 2003* Daily Journal DAR 1179.

2 USCS § 432 forbids political action committee from using candidate's name in its title without authorization; in view of pendency of proceedings before Federal Election Commission, court refuses to consider whether "independent project" of political action committee may use candidate's name without authorization. Friends of Phil Gramm v Americans for Phil Gramm in '84 (1984, ED Va) *587 F Supp 769.*

2. Construction, generally

Deference is appropriate to Federal Election Commission's interpretation of *2 USCS § 432* as prohibiting use of political candidate's name in name of any unauthorized political committee, but as not prohibiting use of candidate's name in name of any fund-raising projects that committee sponsors, since plain language and legislative history of § 432 is ambiguous to such use of candidate names and FEC's interpretation is permissible; thus, District Court's order that § 432 applies to all projects sponsored by political committee is reversed; § 432(e)(4) and § 432(e)(5) are not to be construed together under in pari materia, since these subsections serve distinctively different purposes. *Common Cause v FEC (1988, App DC) 268 US App DC 440, 842 F2d 436* (criticized in *Common Cause v FEC (1997, App DC) 323 US App DC 359, 108 F3d 413).*

3. Relationship with other laws

Postal Service may not (while enforcing proscriptions against fraudulent representations in mail solicitations under *39 USCS § 3005*) impose constraints upon use of names or disclaimers of organizations that mail solicitations for political contributions beyond those restraints imposed by Federal Election Campaign Act, in particular *2 USCS §§ 432* and *441*; solicitations for political contributions are not entirely immune from postal service scrutiny, since certain statements may constitute false representation under § 3005 and no standards exist under FECA for such representations. *Galliano v United States Postal Service (1988, App DC) 267 US App DC 14, 836 F2d 1362.*

4. Safe harbor provision

Prosecution for making false statements to Federal Election Commission of defendant who funneled money to

various campaigns via straw contributors was not precluded by safe harbor provision of FECA since its allowance of safe harbor only when treasurer shows use of best efforts suggests that provision only applies to proceeding against committee itself or one in position to make such efforts on committee's behalf; it would make no sense for Congress to allow treasurers to rely on provision of information by others while giving others virtual carte blanche to provide inaccurate information. *United States v Hsia (1999, App DC) 336 US App DC 91, 176 F3d 517,* cert den *(2000) 528 US 1136, 145 L Ed 2d 929, 120 S Ct 978.*

Federal Election Commission fine imposed on campaign treasurer and campaign committee for late-filed Congressional campaign year end report was vacated and remanded because Commission failed to issue opinion and, in particular, failed to address argument that best efforts absolved defendants of liability. *Lovely v FEC (2004, DC Mass) 307 F Supp 2d 294.*

TAB 3

LexisNexis

LEXSTAT 2 U.S.C. Â§ 433

*** CURRENT THROUGH PL 111-90, APPROVED 11/03/2009 WITH A GAP OF 111-84 ***

TITLE 2. THE CONGRESS
CHAPTER 14. FEDERAL ELECTION CAMPAIGNS
DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

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2 USCS § 433

§ 433. Registration of political committees

(a) Statement of organizations. Each authorized campaign committee shall file a statement of organization no later than 10 days after designation pursuant to section 302(e)(1) [*2 USCS § 432(e)(1)*]. Each separate segregated fund established under the provisions of section 316(b) [*2 USCS § 441b(b)*] shall file a statement of organization no later than 10 days after establishment. All other committees shall file a statement of organization within 10 days after becoming a political committee within the meaning of section 301(4) [*2 USCS § 431(4)*].

(b) Contents of statements. The statement of organization of a political committee shall include--
(1) the name, address, and type of committee;
(2) the name, address, relationship, and type of any connected organization or affiliated committee;
(3) the name, address, and position of the custodian of books and accounts of the committee;
(4) the name and address of the treasurer of the committee;
(5) if the committee is authorized by a candidate, the name, address, office sought, and party affiliation of the candidate; and
(6) a listing of all banks, safety deposit boxes, or other depositories used by the committee.

(c) Change of information in statements. Any change in information previously submitted in a statement of organization shall be reported in accordance with section 302(g) [*2 USCS § 432(g)*] no later than 10 days after the date of the change.

(d) Termination, etc., requirements and authorities.
(1) A political committee may terminate only when such a committee files a written statement, in accordance with section 302(g) [*2 USCS § 432(g)*], that it will no longer receive any contributions or make any disbursements and that such committee has no outstanding debts or obligations.
(2) Nothing contained in this subsection may be construed to eliminate or limit the authority of the Commission to establish procedures for--
(A) the determination of insolvency with respect to any political committee;
(B) the orderly liquidation of an insolvent political committee, and the orderly application of its assets for the

reduction of outstanding debts; and

(C) the termination of an insolvent political committee after such liquidation and application of assets.

HISTORY:

(Feb. 7, 1972, P.L. 92-225, Title III, § 303, 86 Stat. 14; Oct. 15, 1974, P.L. 93-443, Title II, §§ 203, 208(c)(3), 88 Stat. 1276, 1286; Jan. 8, 1980, P.L. 96-187, Title I, § 103, 93 Stat. 1347.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

This section took effect 60 days after enactment, pursuant to § 408 of Act Feb. 7, 1972, P.L. 92-225, which appears as *2 USCS § 431* note.

Amendments:

1974. Act Oct. 15, 1974 (effective 1/1/75, as provided by § 410(a) of such Act; see *2 USCS § 431* note) substituted "Commission" for "supervisory officer" each time it appeared; in subsec. (a), in the second sentence, substituted "it" for "he"; and added subsec. (e).

1980. Act Jan. 8, 1980 (effective 1/8/80, as provided by § 301(a) of such Act; see *2 USCS § 431* note), substituted this section for former one which read: "(a) Each political committee which anticipates receiving contributions or making expenditures during the calendar year in an aggregate amount exceeding S 1,000 shall file with the Commission a statement of organization, within ten days after its organization or, if later, ten days after the date on which it has information which causes the committee to anticipate it will receive contributions or make expenditures in excess of S 1,000. Each such committee in existence at the date of enactment of this Act shall file a statement of organization with the Commission at such time as it prescribes.

"(b) The statement of organization shall include--

"(1) the name and address of the committee;

"(2) the names, addresses, and relationships of affiliated or connected organizations;

"(3) the area, scope, or jurisdiction of the committee;

"(4) the name, address, and position of the custodian of books and accounts;

"(5) the name, address, and position of other principal officers, including officers and members of the finance committee, if any;

"(6) the name, address, office sought, and party affiliation of (A) each candidate whom the committee is supporting, and (B) any other individual, if any, whom the committee is supporting for nomination for election, or election, to any public office whatever; or, if the committee is supporting the entire ticket of any party, the name of the party;

"(7) a statement whether the committee is a continuing one;

"(8) the disposition of residual funds which will be made in the event of dissolution;

"(9) a listing of all banks, safety deposit boxes, or other repositories used;

"(10) a statement of the reports required to be filed by the committee with State or local officers, and, if so, the names, addresses, and positions of such persons; and

"(11) such other information as shall be required by the Commission.

"(c) Any change in information previously submitted in a statement of organization shall be reported to the Commission within a ten-day period following the change.

"(d) Any committee which, after having filed one or more statements of organization, disbands or determines it will

no longer receive contributions or make expenditures during the calendar year in an aggregate amount exceeding S 1,000 shall so notify the Commission.

"(e) In the case of a political committee which is not a principal campaign committee, reports and notifications required under this section to be filed with the Commission shall be filed instead with the appropriate principal campaign committee.".

NOTES:

Code of Federal Regulations:

Federal Election Commission--Registration, organization, and recordkeeping by political committees (*2 U.S.C 433*), *11 CFR 102.1* et seq.

Federal Election Commission--Debts owed by candidates and political committees, *11 CFR 116.1* et seq.

Related Statutes & Rules:

This section is referred to in *2 USCS § 441a; 26 USCS § 9008.*

Research Guide:

Federal Procedure:

10B Fed Proc L Ed, Elections and Elective Franchise § 28:280.

Annotations:

Validity, Construction, and Application of Campaign Finance Laws--Supreme Court Cases. *19 ALR Fed 2d 1.*

Actionability, under *42 USCS § 1983*, of claim arising out of maladministration of election. *66 ALR Fed 750.*

Validity and construction of state statute prohibiting anonymous political advertising. *4 ALR4th 741.*

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. *22 ALR4th 237.*

Election campaign activities as ground for disciplining attorney. *26 ALR4th 170.*

Texts:

1 Banking Law (Matthew Bender), ch 14, Banks and Political Activities § 14.05.

Law Review Articles:

Adamany. Political Finance and the American Political Parties. *10 Hastings Const LQ 497,* Spring 1983.

Interpretive Notes and Decisions:

Group organized for sole purpose of encouraging Senator Edward M. Kennedy to seek party nomination for president is not affiliated political committee within meaning of *2 USCS § 433*, therefore, Federal Election Commission has no jurisdiction to investigate activities of such group on behalf of non-candidate. *Federal Election Com. v Florida for Kennedy Committee (1982, CA11 Fla) 681 F2d 1281.*

Two organizations were "political committees" under Federal Election Campaign Act of 1971, *2 USCS §§ 431* et seq., because organizations' major purpose was nomination or election of specific candidates; organizations violated Act by failing to register as political committees. *FEC v Malenick (2004, DC Dist Col) 310 F Supp 2d 230.*

TAB 4

LexisNexis®

LEXSTAT 2 U.S.C. Â§ 434

*** CURRENT THROUGH PL 111-90, APPROVED 11/03/2009 WITH A GAP OF 111-84 ***

TITLE 2. THE CONGRESS
CHAPTER 14. FEDERAL ELECTION CAMPAIGNS
DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

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2 USCS § 434

§ 434. Reporting requirements

(a) Receipts and disbursements by treasurers of political committee; filing requirements.

(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.

(2) If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate--

(A) in any calendar year during which there is[a] regularly scheduled election for which such candidate is seeking election, or nomination for election, the treasurer shall file the following reports:

(i) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before) any election in which such candidate is seeking election, or nomination for election, and which shall be complete as of the 20th day before such election;

(ii) a post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election; and

(iii) additional quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year; and

(B) in any other calendar year the treasurer shall file quarterly reports, which shall be filed not later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter, except that the report for the quarter ending December 31 shall be filed not later than January 31 of the following calendar year.

(3) If the committee is the principal campaign committee of a candidate for the office of President--

(A) in any calendar year during which a general election is held to fill such office--

(i) the treasurer shall file monthly reports if such committee has on January 1 of such year, received contributions aggregating $ 100,000 or made expenditures aggregating $ 100,000 or anticipates receiving contributions aggregating $ 100,000 or more or making expenditures aggregating $ 100,000 or more during such year: such monthly reports shall be

filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month, except that, in lieu of filing the report otherwise due in November and December, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year;

(ii) the treasurer of the other principal campaign committees of a candidate for the office of President shall file a preelection report or reports in accordance with paragraph (2)(A)(i), a post-general election report in accordance with paragraph (2)(A)(ii), and quarterly reports in accordance with paragraph (2)(A)(iii); and

(iii) if at any time during the election year a committee filing under paragraph (3)(A)(ii) receives contributions in excess of $ 100,000 or makes expenditures in excess of $ 100,000, the treasurer shall begin filing monthly reports under paragraph (3)(A)(i) at the next reporting period; and

(B) in any other calendar year, the treasurer shall file either--

(i) monthly reports, which shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month; or

(ii) quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter and which shall be complete as of the last day of each calendar quarter.

(4) All political committees other than authorized committees of a candidate shall file either--

(A) (i) quarterly reports, in a calendar year in which a regularly scheduled general election is held, which shall be filed no later than the 15th day after the last day of each calendar quarter: except that the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31 of the following calendar year;

(ii) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before) any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election;

(iii) a post-general election report, which shall be filed no later than the 30th day after the general election and which shall be complete as of the 20th day after such general election; and

(iv) in any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year; or

(B) monthly reports in all calendar years which shall be filed no later than the 20th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.

Notwithstanding the preceding sentence, a national committee of a political party shall file the reports required under subparagraph (B).

(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii) or subsection (g)(1)) is sent by registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, the United States postmark shall be considered the date of filing the designation, report or statement. If a designation, report or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii), or subsection (g)(1)) is sent by an overnight delivery service with an on-line tracking system, the date on the proof of delivery to the delivery service shall be considered the date of filing of the designation, report, or statement.

(6) (A) The principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $ 1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

(B) Notification of expenditure from personal funds.

(i) Definition of expenditure from personal funds. In this subparagraph, the term "expenditure from personal funds" means--

(I) an expenditure made by a candidate using personal funds; and

(II) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

(ii) Declaration of intent. Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Senator, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed the State-by-State competitive and fair campaign formula with--

(I) the Commission; and

(II) each candidate in the same election.

(iii) Initial notification. Not later than 24 hours after a candidate described in clause (ii) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of 2 times the threshold amount in connection with any election, the candidate shall file a notification with--

(I) the Commission; and

(II) each candidate in the same election.

(iv) Additional notification. After a candidate files an initial notification under clause (iii), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceed [exceeds] $ 10,000 with--

(I) the Commission; and

(II) each candidate in the same election.

Such notification shall be filed not later than 24 hours after the expenditure is made.

(v) Contents. A notification under clause (iii) or (iv) shall include--

(I) the name of the candidate and the office sought by the candidate;

(II) the date and amount of each expenditure; and

(III) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

(C) Notification of disposal of excess contributions. In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under paragraph (1) of section 315(i) [*2 USCS § 441a(i)*]) and the manner in which the candidate or the candidate's authorized committee used such funds.

(D) Enforcement. For provisions providing for the enforcement of the reporting requirements under this paragraph, see section 309 [*2 USCS § 437g*].

(E) The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

(7) The reports required to be filed by this subsection shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward.

(8) The requirement for a political committee to file a quarterly report under paragraph (2)(A)(iii) or paragraph (4)(A)(i) shall be waived if such committee is required to file a pre-election report under paragraph (2)(A)(i), or paragraph (4)(A)(ii) during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(9) The Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and political committees filing under paragraph (4)(A) which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall require no more than one pre-election report for each election and one post-election report for the election which fills the vacancy. The Commission may waive any reporting obligation of committees required to file for special elections if any report required by paragraph (2) or (4) is required to be filed within 10 days of a report required under this subsection. The Commission shall establish the reporting dates within 5 days of the setting of such election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.

(10) The treasurer of a committee supporting a candidate for the office of Vice President (other than the nominee of a political party) shall file reports in accordance with paragraph (3).

(11) (A) The Commission shall promulgate a regulation under which a person required to file a designation, statement, or report under this Act--

(i) is required to maintain and file a designation, statement, or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission; and

(ii) may maintain and file a designation, statement, or report in electronic form or an alternative form if not required to do so under the regulation promulgated under clause (i).

(B) The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public in the offices of the Commission and accessible to the public on the Internet not later than 48 hours (or not later than 24 hours in the case of a designation, statement, report, or notification filed electronically) after receipt by the Commission.

(C) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying designations, statements, and reports covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(D) As used in this paragraph, the term "report" means, with respect to the Commission, a report, designation, or statement required by this Act to be filed with the Commission.

(12) Software for filing of reports.

(A) In general. The Commission shall--

(i) promulgate standards to be used by vendors to develop software that--

(I) permits candidates to easily record information concerning receipts and disbursements required to be reported under this Act at the time of the receipt or disbursement;

(II) allows the information recorded under subclause (I) to be transmitted immediately to the Commission; and

(III) allows the Commission to post the information on the Internet immediately upon receipt; and

(ii) make a copy of software that meets the standards promulgated under clause (i) available to each person required to file a designation, statement, or report in electronic form under this Act.

(B) Additional information. To the extent feasible, the Commission shall require vendors to include in the software developed under the standards under subparagraph (A) the ability for any person to file any designation, statement, or report required under this Act in electronic form.

(C) Required use. Notwithstanding any provision of this Act relating to times for filing reports, each candidate for Federal office (or that candidate's authorized committee) shall use software that meets the standards promulgated under this paragraph once such software is made available to such candidate.

(D) Required posting. The Commission shall, as soon as practicable, post on the Internet any information received under this paragraph.

(b) Contents of report. Each report under this section shall disclose--

(1) the amount of cash on hand at the beginning of the reporting period;

(2) for the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all receipts, and the total amount of all receipts in the following categories:

(A) contributions from persons other than political committees;

(B) for an authorized committee, contributions from the candidate;

(C) contributions from political party committees;

(D) contributions from other political committees;

(E) for an authorized committee, transfers from other authorized committees of the same candidate;

(F) transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other political party committees, regardless of whether such committees are affiliated;

(G) for an authorized committee, loans made by or guaranteed by the candidate;

(H) all other loans;

(I) rebates, refunds, and other offsets to operating expenditures;

(J) dividends, interest, and other forms of receipts; and

(K) for an authorized committee of a candidate for the office of President, Federal funds received under chapter 95 and chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. and *9031* et seq.]

(3) the identification of each--

(A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $ 200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution;

(B) political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution;

(C) authorized committee which makes a transfer to the reporting committee;

(D) affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(E) person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loan;

(F) person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $ 200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of such receipt; and

(G) person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of $ 200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such receipt;

(4) for the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all disbursements, and all disbursements in the following categories:

(A) expenditures made to meet candidate or committee operating expenses;

(B) for authorized committees, transfers to other committees authorized by the same candidate;

(C) transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated;

(D) for an authorized committee, repayment of loans made by or guaranteed by the candidate;

(E) repayment of all other loans;

(F) contribution refunds and other offsets to contributions;

(G) for an authorized committee, any other disbursements;

(H) for any political committee other than an authorized committee--

(i) contributions made to other political committees;

(ii) loans made by the reporting committees;

(iii) independent expenditures;

(iv) expenditures made under section 315(d) of this Act [*2 USCS § 441a(d)*]; and

(v) any other disbursements; and

(I) for an authorized committee of a candidate for the office of President, disbursements not subject to the limitation of section 315(b) [*2 USCS § 441a(b)*];

(5) the name and address of each--

(A) person to whom an expenditure in an aggregate amount or value in excess of $ 200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure;

(B) authorized committee to which a transfer is made by the reporting committee;

(C) affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to

another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers;

(D) person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment; and

(E) person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement;

(6) (A) for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess of $ 200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such disbursement;

(B) for any other political committee, the name and address of each--

(i) political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution;

(ii) person who has received a loan from the reporting committee during the reporting period, together with the date and amount of such loan;

(iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $ 200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office) in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee;

(iv) person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under section 315(d) in the Act [*2 USCS § 441a(d)*], together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made; and

(v) person who has received any disbursement not otherwise disclosed in this paragraph or paragraph (5) in an aggregate amount or value in excess of $ 200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office) from the reporting committee within the reporting period, together with the date, amount, and purpose of any such disbursement;

(7) the total sum of all contributions to such political committee, together with the total contributions less offsets to contributions and the total sum of all operating expenditures made by such political committee, together with total operating expenditures less offsets to operating expenditures, for both the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office); and

(8) the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.

(c) Statements by other than political committees; filing; contents; indices of expenditures.

(1) Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $ 250 during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) for all contributions received by such person.

(2) Statements required to be filed by this subsection shall be filed in accordance with subsection (a)(2), and shall include--

(A) the information required by subsection (b)(6)(B)(iii), indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(B) under penalty of perjury, a certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(C) the identification of each person who made a contribution in excess of $ 200 to the person filing such statement which was made for the purpose of furthering an independent expenditure.

(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all independent expenditures separately, including those reported under subsection (b)(6)(B)(iii), made by or for each candidate, as reported under this subsection, and for periodically publishing such indices on a timely pre-election basis.

(d) Filing by facsimile device or electronic mail.

(1) Any person who is required to file a statement under subsection (c) or (g) of this section, except statements required to be filed electronically pursuant to subsection (a)(11)(A)(i) may file the statement by facsimile device or electronic mail, in accordance with such regulations as the Commission may promulgate.

(2) The Commission shall make a document which is filed electronically with the Commission pursuant to this paragraph accessible to the public on the Internet not later than 24 hours after the document is received by the Commission.

(3) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying the documents covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(e) Political committees.

(1) National and congressional political committees. The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

(2) Other political committees to which section 323 [*2 USCS § 441i*] applies.

(A) In general. In addition to any other reporting requirements applicable under this Act, a political committee (not described in paragraph (1)) to which section 323(b)(1) [*2 USCS § 441i(b)(1)*] applies shall report all receipts and disbursements made for activities described in section 301(20)(A) [*2 USCS § 431(20)(A)*], unless the aggregate amount of such receipts and disbursements during the calendar year is less than $ 5,000.

(B) Specific disclosure by State and local parties of certain non-Federal amounts permitted to be spent on Federal election activity. Each report by a political committee under subparagraph (A) of receipts and disbursements made for activities described in section 301(20)(A) [*2 USCS § 431(20)(A)*] shall include a disclosure of all receipts and disbursements described in section 323(b)(2)(A) and (B) [*2 USCS § 441i(b)(2)(A)* and (B)].

(3) Itemization. If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $ 200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3)(A), (5), and (6) of subsection (b).

(4) Reporting periods. Reports required to be filed under this subsection shall be filed for the same time periods required for political committees under subsection (a)(4)(B).

(f) Disclosure of electioneering communications.

(1) Statement required. Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $ 10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

(2) Contents of statement. Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

(A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

(B) The principal place of business of the person making the disbursement, if not an individual.

(C) The amount of each disbursement of more than $ 200 during the period covered by the statement and the

identification of the person to whom the disbursement was made.

(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.

(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (*8 U.S.C. 1101(a)(20)*)) directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $ 1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of $ 1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(3) Electioneering communication. For purposes of this subsection--

(A) In general.

(i) The term "electioneering communication" means any broadcast, cable, or satellite communication which--

(I) refers to a clearly identified candidate for Federal office;

(II) is made within--

(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term "electioneering communication" means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of *section 100.22(b) of title 11, Code of Federal Regulations*.

(B) Exceptions. The term "electioneering communication" does not include--

(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;

(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section 301(20)(A)(iii) [*2 USCS § 431(20)(A)(iii)*].

(C) Targeting to relevant electorate. For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is "targeted to the relevant electorate" if the communication can be received by 50,000 or more persons--

(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.

(4) Disclosure date. For purposes of this subsection, the term "disclosure date" means--

(A) the first date during any calendar year by which a person has made disbursements for the direct costs of

producing or airing electioneering communications aggregating in excess of $ 10,000; and

(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $ 10,000 since the most recent disclosure date for such calendar year.

(5) Contracts to disburse. For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(6) Coordination with other requirements. Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

(7) Coordination with Internal Revenue Code. Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political campaign on behalf of or in opposition to any candidate for public office) for purposes of the Internal Revenue Code of 1986 [*26 USCS §§ 1* et seq.].

(g) Time for reporting certain expenditures.

(1) Expenditures aggregating $ 1,000.

(A) Initial report. A person (including a political committee) that makes or contracts to make independent expenditures aggregating $ 1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

(B) Additional reports. After a person files a report under subparagraph (A), the person shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $ 1,000 with respect to the same election as that to which the initial report relates.

(2) Expenditures aggregating $ 10,000.

(A) Initial report. A person (including a political committee) that makes or contracts to make independent expenditures aggregating $ 10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours.

(B) Additional reports. After a person files a report under subparagraph (A), the person shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $ 10,000 with respect to the same election as that to which the initial report relates.

(3) Place of filing; contents. A report under this subsection--

(A) shall be filed with the Commission; and

(B) shall contain the information required by subsection (b)(6)(B)(iii), including the name of each candidate whom an expenditure is intended to support or oppose.

(4) Time of filing for expenditures aggregating $ 1,000. Notwithstanding subsection (a)(5), the time at which the statement under paragraph (1) is received by the Commission or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient.

(h) Reports from Inaugural Committees. The Federal Election Commission shall make any report filed by an Inaugural Committee under *section 510 of title 36, United States Code*, accessible to the public at the offices of the Commission and on the Internet not later than 48 hours after the report is received by the Commission.

(i) Disclosure of bundled contributions.

(1) Required disclosure. Each committee described in paragraph (6) shall include in the first report required to be filed under this section after each covered period (as defined in paragraph (2)) a separate schedule setting forth the name, address, and employer of each person reasonably known by the committee to be a person described in paragraph (7) who provided 2 or more bundled contributions to the committee in an aggregate amount greater than the applicable threshold (as defined in paragraph (3)) during the covered period, and the aggregate amount of the bundled contributions provided by each such person during the covered period.

(2) Covered period. In this subsection, a "covered period" means, with respect to a committee--

(A) the period beginning January 1 and ending June 30 of each year;

(B) the period beginning July 1 and ending December 31 of each year; and

(C) any reporting period applicable to the committee under this section during which any person described in paragraph (7) provided 2 or more bundled contributions to the committee in an aggregate amount greater than the applicable threshold.

(3) Applicable threshold.

(A) In general. In this subsection, the "applicable threshold" is $ 15,000, except that in determining whether the amount of bundled contributions provided to a committee by a person described in paragraph (7) exceeds the applicable threshold, there shall be excluded any contribution made to the committee by the person or the person's spouse.

(B) Indexing. In any calendar year after 2007, section 315(c)(1)(B) [*2 USCS § 441a(c)(1)(B)*] shall apply to the amount applicable under subparagraph (A) in the same manner as such section applies to the limitations established under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h) of such section, except that for purposes of applying such section to the amount applicable under subparagraph (A), the "base period" shall be 2006.

(4) Public availability. The Commission shall ensure that, to the greatest extent practicable--

(A) information required to be disclosed under this subsection is publicly available through the Commission website in a manner that is searchable, sortable, and downloadable; and

(B) the Commission's public database containing information disclosed under this subsection is linked electronically to the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995.

(5) Regulations. Not later than 6 months after the date of enactment of the Honest Leadership and Open Government Act of 2007 [enacted Sept. 14, 2007], the Commission shall promulgate regulations to implement this subsection. Under such regulations, the Commission--

(A) may, notwithstanding paragraphs (1) and (2), provide for quarterly filing of the schedule described in paragraph (1) by a committee which files reports under this section more frequently than on a quarterly basis;

(B) shall provide guidance to committees with respect to whether a person is reasonably known by a committee to be a person described in paragraph (7), which shall include a requirement that committees consult the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995;

(C) may not exempt the activity of a person described in paragraph (7) from disclosure under this subsection on the grounds that the person is authorized to engage in fundraising for the committee or any other similar grounds; and

(D) shall provide for the broadest possible disclosure of activities described in this subsection by persons described in paragraph (7) that is consistent with this subsection.

(6) Committees described. A committee described in this paragraph is an authorized committee of a candidate, a leadership PAC, or a political party committee.

(7) Persons described. A person described in this paragraph is any person, who, at the time a contribution is forwarded to a committee as described in paragraph (8)(A)(i) or is received by a committee as described in paragraph (8)(A)(ii), is--

(A) a current registrant under section 4(a) of the Lobbying Disclosure Act of 1995 [*2 USCS § 1603(a)*];

(B) an individual who is listed on a current registration filed under section 4(b)(6) of such Act [*2 USCS § 1603(b)(6)*] or a current report under section 5(b)(2)(C) of such Act [*2 USCS § 1604(b)(2)(C)*]; or

(C) a political committee established or controlled by such a registrant or individual.

(8) Definitions. For purposes of this subsection, the following definitions apply:

(A) Bundled contribution. The term "bundled contribution" means, with respect to a committee described in paragraph (6) and a person described in paragraph (7), a contribution (subject to the applicable threshold) which is--

(i) forwarded from the contributor or contributors to the committee by the person; or

(ii) received by the committee from a contributor or contributors, but credited by the committee or candidate involved (or, in the case of a leadership PAC, by the individual referred to in subparagraph (B) involved) to the person through records, designations, or other means of recognizing that a certain amount of money has been raised by the person.

(B) Leadership PAC. The term "leadership PAC" means, with respect to a candidate for election to Federal office or an individual holding Federal office, a political committee that is directly or indirectly established, financed, maintained or controlled by the candidate or the individual but which is not an authorized committee of the candidate or individual

and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party.

HISTORY:

(Feb. 7, 1972, P.L. 92-225, Title III, § 304, 86 Stat. 14, 15; Oct. 15, 1974, P.L. 93-443, Title II, §§ 204(a)-(d), 208(c)(4), 88 Stat. 1276, 1286; May 11, 1976, P.L. 94-283, Title I, § 104, 90 Stat. 480; Jan. 8, 1980, P.L. 96-187, Title I, § 104, 93 Stat. 1348; Dec. 28, 1995, P.L. 104-79, §§ 1(a), 3(b), 109 Stat. 791, 792; Sept. 29, 1999, P.L. 106-58, Title VI, §§ 639(a), 641(a), 113 Stat. 476, 477; Oct. 23, 2000, P.L. 106-346, § 101(a), 114 Stat. 1356; March 27, 2002, P.L. 107-155, Title I, § 103(a), Title II, Subtitle A, § 201(a), Subtitle B, § 212, Title III, §§ 304(b), 306, 308(b), Title V, §§ 501, 503, 116 Stat. 87, 88, 93, 99, 102, 104, 114, 115; Jan. 23, 2004, P.L. 108-199, Div F, Title VI, § 641, 118 Stat. 359; Sept. 14, 2007, P.L. 110-81, Title II, § 204(a), 121 Stat. 744.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Feb. 7, 1972, P.L. 92-225, popularly known as the Federal Election Campaign Act of 1971, which is generally classified to *2 USCS §§ 431* et seq. For full classification of such Act, consult USCS Tables volumes.

The "Lobbying Disclosure Act of 1995", referred to in this section, is Act Dec. 19, 1995, P.L. 104-65, which appears generally as *2 USCS §§ 1601* et seq. For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

The article "a" has been inserted in brackets in subsec. (a)(2)(A) to indicate the probable intent of Congress to include it.

The word "exceeds" has been inserted in brackets in subsec. (a)(6)(B)(iv) to indicate the word probably intended by Congress.

"1986" has been inserted in brackets in subsec. (b)(2)(K) pursuant to § 2 of Act Oct. 22, 1986, P.L. 99-514, which redesignated the Internal Revenue Code of 1954 (Act Aug. 16, 1954, ch 736) as the Internal Revenue Code of 1986. In redesignating the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, Congress provided, in Act Oct. 22, 1986, P.L. 99-514, § 2(b), 100 Stat. 2095, for construction of references to the Internal Revenue Code as follows: except when inappropriate, any reference in any law, Executive Order, or other document to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

The amendments made by § 101(a) of Act Oct. 23, 2000, P.L. 106-346, are based on § 502(a) and (c) of Title V of H.R. 5394 (114 Stat. 1356A-49), as introduced on Oct. 5, 2000, which was enacted into law by such § 101(a).

Effective date of section:

This section took effect 60 days after enactment, pursuant to § 408 of Act Feb. 7, 1972, P.L. 225, which appears as *2 USCS § 431* note.

Amendments:

1974. Act Oct. 15, 1974 (effective 1/1/75 as provided by § 410(a) of such Act, which appears as *2 USCS § 431* note), in

subsec. (a), substituted "(1) Except as provided by paragraph (2), each" for "Each"; substituted "The reports referred to in the preceding sentence shall be filed as follows:" and added cls. (A)-(D) for "Such reports shall be filed on the tenth day of March, June, and September, in each year, and on the fifteenth and fifth days next preceding the date on which an election is held, and also by the thirty-first day of January. Such reports shall be complete as of such date as the supervisory officer may prescribe, which shall not be less than five days before the date of filing, except that any contribution of $ 5,000 or more received after the last report is filed prior to the election shall be reported within forty-eight hours after its receipt.", and added paras. (2) and (3); in subsec. (b), substituted "lenders, endorsers, and guarantors" for "lenders and endorsers"; in para. (8), inserted ", together with total receipts less transfers between political committees which support the same candidate and which do not support more than one candidate", in paras. (9) and (10), substituted "identification" for "full name and mailing address (occupation and the principal place of business, if any)", in para. (11), inserted ", together with total expenditures less transfers between political committees which support the same candidate and which do not support more than one candidate", in para. (12), inserted ", together with a statement as to the circumstances and conditions under which any such debt or obligation is extinguished and the consideration therefor", in para. (13), substituted "Commission" for "supervisory officer"; and added subsecs. (d) and (e).

1976. Act May 11, 1976, in subsec. (a), in para. (1)(C), added the sentence beginning "In any year . . .", substituted para. (2) for one which read: "(2) Each treasurer of a political committee which is not a principal campaign committee shall file the reports required under this section with the appropriate principal campaign committee."; in subsec. (b), in para. (12), deleted "and" following "therefor;", redesignated para. (13) as para. (14), inserted new para. (13), and added the concluding matter; and substituted subsec. (e) for one which read: "(e) Every person (other than a political committee or candidate) who makes contributions or expenditures, other than by contribution to a political committee or candidate, in an aggregate amount in excess of $ 100 within a calendar year shall file with the Commission a statement containing the information required by this section. Statements required by this subsection shall be filed on the dates on which reports by political committees are filed but need not be cumulative.".

1980. Act Jan. 8, 1980, substituted the text of this section for text which read:

"(a)

(1) Except as provided in paragraph (2), each treasurer of a political committee supporting a candidate or candidates for election to Federal office, and each candidate for election to such office, shall file with the Commission reports of receipts and expenditures on forms to be prescribed or approved by it. The reports referred to in the preceding sentence shall be filed as follows:

"(A)

(i) In any calendar year in which an individual is a candidate for Federal office and an election for such Federal office is held in such year, such reports shall be filed not later than the tenth day before the date on which such election is held and shall be complete as of the fifteenth day before the date of such election; except that any such report filed by registered or certified mail must be postmarked not later than the close of the twelfth day before the date of such election.

"(ii) Such reports shall be filed not later than the thirtieth day after the date of such election and shall be complete as of the twentieth day after the date of such election.

"(B) In any other calendar year in which an individual is a candidate for Federal office, such reports shall be filed after December 31 of such calendar year, but not later than January 31 of the following calendar year and shall be complete as of the close of the calendar year with respect to which the report is filed.

"(C) Such reports shall be filed not later than the tenth day following the close of any calendar quarter in which the candidate or political committee concerned received contributions in excess of $ 1,000, or made expenditures in excess of $ 1,000, and shall be complete as of the close of such calendar quarter: except that any such report required to be filed after December 31 of any calendar year with respect to which a report is required to be filed under subparagraph (B) shall be filed as provided in such subparagraph. In any year in which a candidate is not on the ballot for election to

Federal office, such candidate and his authorized committees shall only be required to file such reports not later than the tenth day following the close of any calendar quarter in which the candidate and his authorized committees received contributions or made expenditures, or both, the total amount of which, taken together, exceed $ 5,000, and such reports shall be complete as of the close of such calendar quarter; except that any such report required to be filed after December 31 of any calendar year with respect to which a report is required to be filed under subparagraph (B) shall be filed as provided in such subparagraph.

"(D) When the last day for filing any quarterly report required by subparagraph (C) occurs within 10 days of an election, the filing of such quarterly report shall be waived and superseded by the report required by subparagraph (A)(i).

Any contribution of $ 1,000 or more received after the fifteenth day, but more than 48 hours, before any election shall be reported within 48 hours after its receipt.

"(2) Each treasurer of a political committee authorized by a candidate to raise contributions or make expenditures on his behalf, other than the candidate's principal campaign committee, shall file the reports required under this section with the candidate's principal campaign committee.

"(3) Upon a request made by a presidential candidate or a political committee which operates in more than one State, or upon its own motion, the Commission may waive the reporting dates set forth in paragraph (1) (other than the reporting date set forth in paragraph (1)(B)), and require instead that such candidate or political committee file reports not less frequently than monthly. The Commission may not require a presidential candidate or a political committee operating in more than one State to file more than 12 reports (not counting any report referred to in paragraph (1)(B)) during any calendar year. If the Commission acts on its own motion under this paragraph with respect to a candidate or a political committee, such candidate or committee may obtain judicial review in accordance with the provisions of chapter 7 of title 5, United States Code.

"(b) Each report under this section shall disclose--

"(1) the amount of cash on hand at the beginning of the reporting period;

"(2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made one or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggregate amount or value in excess of $ 100, together with the amount and date of such contributions;

"(3) the total sum of individual contributions made to or for such committee or candidate during the reporting period and not reported under paragraph (2);

"(4) the name and address of each political committee or candidate from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers;

"(5) each loan to or from any person within the calendar year in an aggregate amount or value in excess of $ 100, together with the full names and mailing addresses (occupations and the principal places of business, if any) of the lender, endorsers, guarantors, if any, and the date and amount of such loans;

"(6) the total amount of proceeds from (A) the sale of tickets to each dinner, luncheon, rally, and other fundraising event; (B) mass collections made at such events; and (C) sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

"(7) each contribution, rebate, refund, or other receipt in excess of $ 100 not otherwise listed under paragraphs (2) through (6);

"(8) the total sum of all receipts by or for such committee or candidate during the reporting period, together with total receipts less transfers between political committees which support the same candidate and which do not support more than one candidate;

"(9) identification of each person to whom expenditures have been made by such committee or on behalf of such committee or candidate within the calendar year in an aggregate amount or value in excess of $ 100, the amount, date, and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made;

"(10) identification of each person to whom an expenditure for personal services, salaries, and reimbursed expenses in excess of $ 100 has been made, and which is not otherwise reported, including the amount, date, and purpose of such

expenditure;

"(11) the total sum of expenditures made by such committee or candidate during the calendar year, together with total expenditures less transfers between political committees which support the same candidate and which do not support more than one candidate;

"(12) the amount and nature of debts and obligations owed by or to the committee, in such form as the Commission may prescribe and a continuous reporting of their debts and obligations after the election at such periods as the Commission may require until such debts and obligations are extinguished, together with a statement as to the circumstances and conditions under which any such debt or obligation is extinguished and the consideration therefor;

"(13) in the case of an independent expenditure in excess of $ 100 by a political committee, other than an authorized committee of a candidate, expressly advocating the election or defeat of a clearly identified candidate, through a separate schedule (A) any information required by paragraph (9) stated in a manner which indicates whether the independent expenditure involved is in support of, or in opposition to, a candidate; and (B) under penalty of perjury, a certification whether such independent expenditure is made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

"(14) such other information as shall be required by the Commission.

When committee treasurers and candidates show that best efforts have been used to obtain and submit the information required by this subsection, they shall be deemed to be in compliance with this subsection.

"(c) The reports required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward. If no contributions or expenditures have been accepted or expended during a calendar year, the treasurer of the political committee or candidate shall file a statement to that effect.

"(d) This section does not require a Member of the Congress to report, as contributions received or as expenditures made, the value of photographic, matting, or recording services furnished to him by the Senate Recording Studio, the House Recording Studio, or by an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives and who furnishes such services as his primary duty as an employee of the Senate or House of Representatives, or if such services were paid for by the Republican or Democratic Senatorial Campaign Committee, the Democratic National Congressional Committee, or the National Republican Congressional Committee. This subsection does not apply to such recording services furnished during the calendar year before the year in which the Member's term expires.

"(e)

(1) Every person (other than a political committee or candidate) who makes contributions or independent expenditures expressly advocating the election or defeat of a clearly identified candidate, other than by contribution to a political committee or candidate, in an aggregate amount in excess of $ 100 during a calendar year shall file with the Commission, on a form prepared by the Commission, a statement containing the information required of a person who makes a contribution in excess of $ 100 to a candidate or political committee and the information required of a candidate or political committee receiving such a contribution.

"(2) Statements required by this subsection shall be filed on the dates on which reports by political committees are filed. Such statements shall include (A) the information required by subsection (b)(9), stated in a manner indicating whether the contribution or independent expenditure is in support of, or opposition to, the candidate; and (B) under penalty of perjury, a certification whether such independent expenditure is made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate. Any independent expenditure, including those described in subsection (b)(13), of $ 1,000 or more made after the fifteenth day, but more than 24 hours, before any election shall be reported within 24 hours of such independent expenditure.

"(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all expenditures separately, including those reported under subsection (b)(13), made with respect to each candidate, as reported under this subsection, and for periodically issuing such indices on a timely preelection basis.".

1995. Act Dec. 28, 1995 (applicable with respect to reports for periods beginning after 12/31/96, as provided by § 1(c)

of such Act, which appears as *2 USCS § 432* note), in subsec. (a), added para. (11).

Such Act further (applicable with respect to reports, designations, and statements required to be filed after 12/31/95, as provided by § 3(d) of such Act, which appears as *2 USCS § 432* note), in subsec. (a)(6)(A), substituted "Secretary" for "Clerk, the Secretary," following "notify"; and, in subsec. (c)(2), in the concluding matter, substituted "Secretary" for "Clerk, the Secretary," following "filed with the".

1999. Act Sept. 29, 1999, § 639(a) (effective for reporting periods beginning after 12/31/00 as provided by § 639(b) of such Act, which appears as a note for this section), in subsec. (a), substituted para. (11) for one which read:

"(11)

(A) The Commission shall permit reports required by this Act to be filed and preserved by means of computer disk or any other appropriate electronic format or method, as determined by the Commission.

"(B) In carrying out subparagraph (A) with respect to filing of reports, the Commission shall provide for one or more methods (other than requiring a signature on the report being filed) for verifying reports filed by means of computer disk or other electronic format or method. Any verification under the preceding sentence shall be treated for all purposes (including penalties for perjury) in the same manner as a verification by signature.

"(C) As used in this paragraph, the term "report' means, with respect to the Commission, a report, designation, or statement required by this Act to be filed with the Commission.

Section 641(a) of such Act (effective with respect to reporting periods beginning after 12/31/00 as provided by § 641(b) of such Act, which appears as a note to this section), in subsec. (b), in paras. (2), (3), (4), (6), and (7), substituted "calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office)" for "calendar year", wherever appearing.

2000. Act Oct. 23, 2000 (applicable with respect to elections occurring after 1/01 as provided by § 502(d) of H.R. 5394, as enacted into law by such Act, which appears as *2 USCS § 431* note), in subsec. (a)(5), substituted "or (4)(A)(ii), or the second sentence of subsection (c)(2)" for "or (4)(A)(ii)"; in subsec. (c)(2), in the concluding matter, substituted "shall be filed" for "shall be reported", and added the sentence beginning "Notwithstanding subsection (a)(5) . . ."; and added subsec. (d).

2002. Act March 27, 2002 (effective on 11/6/2002, as provided by § 402 of such Act, which appears as *2 USCS § 431* note), in subsec. (a), added para. (12); and added subsec. (h).

Such Act further (effective on 11/6/2002 but not applicable with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date, as provided by § 402(a)(4) of such Act, which appears as *2 USCS § 431* note), in subsec. (a), in para. (2)(B), substituted "the treasurer shall file quarterly reports, which shall be filed not later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter, except that the report for the quarter ending December 31 shall be filed not later than January 31 of the following calendar year." for "the following reports shall be filed:

"(i) a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31; and

"(ii) a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year.",

in para. (4), added the concluding matter, in para. (5), substituted "subsection (g)(1)" for "the second sentence of subsection (c)(2)", in para. (6), redesignated subpara. (B) as subpara. (E), and inserted new subparas. (B)-(D), and, in para. (11), substituted subpara. (B) for one which read: "(B) The Commission shall make a designation, statement, report, or notification that is filed electronically with the Commission accessible to the public on the Internet not later than 24 hours after the designation, statement, report, or notification is received by the Commission."; in subsec. (c)(2), deleted the concluding matter, which read: "Any independent expenditure (including those described in subsection (b)(6)(B)(iii)) aggregating $ 1,000 or more made after the 20th day, but more than 24 hours, before any election shall be

filed within 24 hours after such independent expenditure is made. Such statement shall be filed with the Secretary or the Commission and the Secretary of State and shall contain the information required by subsection (b)(6)(B)(iii) indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved. Notwithstanding subsection (a)(5), the time at which the statement under this subsection is received by the Secretary, the Commission, or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient."; in subsec. (d)(1), inserted "or (g)"; and added subsecs. (e)-(g).

2004. Act Jan. 23, 2004, in subsec. (a), in paras. (2)(A)(i) and (4)(A)(ii), substituted "(or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before)" for "(or posted by registered or certified mail no later than the 15th day before)", and substituted para. (5) for one which read: "(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii), or subsection (g)(1)) is sent by registered or certified mail, the United States postmark shall be considered the date of filing of the designation, report, or statement.".

2007. Act Sept. 14, 2007 (applicable as provided by § 204(b) of such Act, which appears as a note to this section), added subsec. (i).

Other provisions:

Report required to be filed by January 31, 1975. Act Oct. 15, 1974, P.L. 93-443, Title II, 204(e), 88 Stat. 1278, provided that notwithstanding the amendment to this section as to the time to file reports, nothing in such Act Oct. 15, 1974 [for full classification, consult USCS Tables volumes] was to be construed as waiving the report required to be filed by Jan. 31, 1975 under the provisions of this section as in effect on Oct. 15, 1974.

Effective date of Jan. 8, 1980 amendments. Act Jan. 8, 1980, P.L. 96-187, Title III, § 301(b), 93 Stat. 1368, provided: "For authorized committees of candidates for President and Vice President, section 304(b) of the Federal Election Campaign Act of 1971 [*2 USCS § 434(b)*] shall be effective for elections occurring after January 1, 1981.".

Effective date of amendment made by § 639 of Act Sept. 29, 1999. Act Sept. 29, 1999, P.L. 106-58, Title VI, § 639(b), 113 Stat. 476, provides: "The amendments made by this section [amending subsec. (a)(11) of this section] shall be effective for reporting periods beginning after December 31, 2000.".

Effective date of amendment made by § 641 of Act Sept. 29, 1999. Act Sept. 29, 1999, P.L. 106-58, Title VI, § 641(b), 113 Stat. 477, provides: "The amendment made by this section [amending subsec. (b) this section] shall become effective with respect to reporting periods beginning after December 31, 2000.".

Responsibilities of Federal Communications Commission. Act March 27, 2002, P.L. 107-155, Title II, Subtitle A, § 201(b), 116 Stat. 90 (effective on 11/6/2002 but not applicable with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date, as provided by § 402(a)(4) of such Act, which appears as *2 USCS § 431* note), provides: "The Federal Communications Commission shall compile and maintain any information the Federal Election Commission may require to carry out section 304(f) of the Federal Election Campaign Act of 1971 [subsec. (f) of this section] (as added by subsection (a)), and shall make such information available to the public on the Federal Communication Commission's website.".

Application of amendments made by § 204(a) of Act Sept. 14, 2007. Act Sept. 14, 2007, P.L. 110-81, Title II, § 204(b), 121 Stat. 746, provides: "The amendment made by subsection (a) [adding subsec. (i) of this section] shall apply with respect to reports filed under section 304 of the Federal Election Campaign Act [this section] after the expiration of the 3-month period which begins on the date that the regulations required to be promulgated by the Federal Election Commission under section 304(i)(5) of such Act [subsec. (i)(5) of this section] (as added by subsection (a)) become final.".

[Final regulations pursuant to § 204 of Act Sept. 14, 2007, P.L. 110-81 were published on February 17, 2009. See 74 Fed. Reg. 7285.]

Effective date of amendments made by §§ 201, 202, 205, 207-210 of Act Sept. 14, 2007. Act Sept. 14, 2007, P.L. 110-81, Title II, § 215, 121 Stat. 751, provides: "Except as otherwise provided in sections 203, 204, 206, 211, 212, and 213 [for full classification, consult USCS Tables volumes], the amendments made by this title [for full classification, consult USCS Tables volumes] shall apply with respect to registrations under the Lobbying Disclosure Act of 1995 [*2 USCS §§ 1601* et seq. generally; for full classification, consult USCS Tables volumes] having an effective date of January 1, 2008, or later and with respect to quarterly reports under that Act covering calendar quarters beginning on or after January 1, 2008.".

NOTES:

Code of Federal Regulations:

Federal Election Commission--Scope and definitions (*2 U.S.C. 431*), *11 CFR 100.1* et seq.

Federal Election Commission--Candidate status and designations (*2 U.S.C. 432(e)*), *11 CFR 101.1* et seq.

Federal Election Commission--Registration, organization, and recordkeeping by political committees (*2 U.S.C 433*), *11 CFR 102.1* et seq.

Federal Election Commission--Reports by political committees and other persons (*2 U.S.C. 434*), *11 CFR 104.1* et seq.

Federal Election Commission--Filing copies of reports and statements with State officers (*2 U.S.C. 439*), *11 CFR 108.1* et seq.

Federal Election Commission--Coordinated and independent expenditures (*2 U.S.C. 431(17)*, *441a(a)* and (d), and Pub. L. 107-155 Sec. 214(c)), *11 CFR 109.1* et seq.

Federal Election Commission--Corporate and labor organization activity, *11 CFR 114.1* et seq.

Federal Election Commission--Debts owed by candidates and political committees, *11 CFR 116.1* et seq.

Federal Election Commission--Non-Federal funds, *11 CFR 300.1* et seq.

Federal Election Commission--Increased limits for candidates opposing self-financed candidates, *11 CFR 400.1* et seq.

Federal Election Commission--Reports and recordkeeping, *11 CFR 9006.1* et seq.

Related Statutes & Rules:

This section is referred to in *2 USCS §§ 431*, *432*, *437g*, *438*, *439a*, *441a*, *441b*, *441d*, *441e*, *1604*; *5 USCS Appx § 109*.

Research Guide:

Am Jur:

26 Am Jur 2d, Elections §§ 354, *468*.

Criminal Law and Practice:

2 Business Crime (Matthew Bender), ch 6A, Preventing Corporate Criminal Liability P 6A.01.

Annotations:

Validity, Construction, and Application of Campaign Finance Laws--Supreme Court Cases. *19 ALR Fed 2d 1*.

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Validity and construction of state statute prohibiting anonymous political advertising. *4 ALR4th 741.*

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. *22 ALR4th 237.*

Election campaign activities as ground for disciplining attorney. *26 ALR4th 170.*

Texts:

1 Banking Law (Matthew Bender), ch 14, Banks and Political Activities §§ 14.02, 14.05.

1 The Law of Advertising (Matthew Bender), ch 7, Access to the Media § 7.05.

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Goldberg. Federal and State Campaign Finance Reform: Lessons for the New Millennium. *34 Ariz St LJ 1143,* Winter 2002.

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Hansen. Anything But Typical. *89 ABA J 22, 24,* September 2003.

Bopp; Coleson. Distinguishing "Genuine" from "Sham" in Grassroots Lobbying: Protecting the Right to Petition During Elections. *29 Campbell L Rev 353,* Spring 2007.

Bungard. You Can't Touch This: A Lesson to Legislators on Political Speech. *1 First Amend L Rev 13,* Spring 2003.

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Simmons. An Essay on Federal Income Taxation and Campaign Finance Reform. *54 Fla L Rev 1,* January 2002.

Tobin. Anonymous Speech and *Section 527 of the Internal Revenue Code. 37 Ga L Rev 611,* Winter 2003.

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Adamany. Political Finance and the American Political Parties. *10 Hastings Const L Q 497,* Spring 1983.

Hasen. Beyond Incoherence: The Roberts Court's Deregulatory Turn in FEC v. Wisconsin Right to Life. *92 Minn L Rev 1064,* April 2008.

Holman. The Bipartisan Campaign Reform Act: Limits and Opportunities for Non-Profit Groups in Federal Elections. *31 N Ky L Rev 243, 2004.*

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Clark; Lichtman. The Finger in the Dike: Campaign Finance Regulation After McConnell. *39 Suffolk U L Rev 629, 2006.*

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Overton. Restraint and Responsibility: Judicial Review of Campaign Reform. *61 Wash & Lee L Rev 663,* Spring 2004.

Feingold. Campaign Finance Reform. 22 Yale Law & Pol'y Rev 339, Spring 2004.

Interpretive Notes and Decisions:

1. Generally; purpose 2. Constitutional issues 3.--First amendment rights 4. FEC regulations 5. Filing requirements 6.

Judicial review

1. Generally; purpose

Purpose of requirements of provisions of *2 USCS § 434(e)* [now *2 USCS § 434(c)*] was to achieve full disclosure so as to inform voters and to achieve through publicity maximum deterrence to corruption and undue influence; to avoid unconstitutionality on grounds of overbreadth and vagueness, provisions in § 434(e) [now § 434(c)] must be construed as imposing independent reporting requirements only when specified individuals and groups make contributions earmarked for political purposes or authorized or requested by candidate or his agent to some person other than candidate or political committee, and they make expenditures for communication expressly advocating election or defeat of clearly identified candidate; independent contributions and expenditures by individuals or groups in support of candidates of parties that have been found to be exempt from general disclosure requirements of act (*2 USCS §§ 431* et seq.) because of possibility of violation of First Amendment speech and association rights were exempt from provisions in § 434(e) [now § 434(c)]. *Buckley v Valeo (1976) 424 US 1, 96 S Ct 612, 46 L Ed 2d 659, 76-1 USTC P 9189* (criticized in *Homans v City of Albuquerque (2002, DC NM) 217 F Supp 2d 1197)* and (criticized in *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13)* and (criticized in *Ctr. for Individual Freedom, Inc. v Ireland (2008, SD W Va) 2008 US Dist LEXIS 83856).*

Minority party striving to avoid disclosure provisions of Federal Election Campaign Act (*2 USCS §§ 431* et seq.) does not carry burden of demonstrating that harassment will certainly follow compelled disclosure of contributors' names. *Federal Election Com. v Hall-Tyner Election Campaign Committee (1982, CA2 NY) 678 F2d 416,* cert den *(1983) 459 US 1145, 74 L Ed 2d 992, 103 S Ct 785.*

2. Constitutional issues

Title I of Bipartisan Campaign Reform Act of 2002 (codified at locations including *2 USCS §§ 431* et seq.)--regulating use of "soft money" by political parties, officeholders, and candidates--does not exceed Congress' authority under Federal Constitution's elections clause to make or alter rules governing federal elections. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Title I of Bipartisan Campaign Reform Act of 2002 (BCRA) (codified at locations including *2 USCS §§ 431* et seq.)--regulating use of "soft money" by political parties, officeholders, and candidates--does not impair authority of states to regulate their own elections and thus does not violate federal constitutional principles of federalism. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Title I of Bipartisan Campaign Reform Act of 2002 (BCRA) (codified at locations including *2 USCS §§ 431* et seq.) does not violate equal protection component of due process clause of *Federal Constitution's Fifth Amendment* as allegedly discriminating against political parties in favor of special interest groups. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Where organization asserted that application of *2 USCS § 434(f)(3)* to its grassroots lobbying advertisements was unconstitutional, previous U.S. Supreme Court holding that definition of electioneering communications under § 434(f)(3) was facially valid did not preclude organization's challenge to definition as applied to its advertisements; in upholding *2 USCS § 434(f)(3)* against facial challenge, U.S. Supreme Court does not purport to resolve future as-applied challenges. *Wis. Right to Life, Inc. v FEC (2006) 546 US 410, 126 S Ct 1016, 163 L Ed 2d 990,* on remand, injunction den (2006, DC Dist Col) *2006 US Dist LEXIS 65661.*

3.--First amendment rights

Provision of Federal Election Campaign Act of 1971 (*2 USCS § 434(b)(9)*) is constitutional on its face, insofar as it requires identification to Federal Election Commission of independent expenditures in support of candidate, even though such mandatory reporting impedes activity protected under *First Amendment. McIntyre v Ohio Elections Comm'n (1995) 514 US 334, 131 L Ed 2d 426, 115 S Ct 1511, 95 CDOS 2853, 95 Daily Journal DAR 4972, 23 Media L R 1577, 8 FLW Fed S 721.*

On its face, § 304 of Federal Election Campaign Act of 1971 (FECA) (*2 USCS § 434*), as amended by Title II of Bipartisan Campaign Reform Act of 2002, does not violate free speech guarantee of *Federal Constitution's First Amendment* by providing disclosure and expenditure requirements with respect to funding of electioneering communications. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

On its face, § 304 of Federal Election Campaign Act of 1971 (FECA) (*2 USCS § 434*), as amended by Title II of Bipartisan Campaign Reform Act of 2002 (BCRA), does not violate *Federal Constitution's First Amendment* by requiring disclosure of (1) names of persons who contributed $ 1,000 or more to individual or group that paid for electioneering communication, and (2) executory contracts for communications that have not yet aired. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

U.S. Supreme Court's rejection of facial challenge, under *Federal Constitution's First Amendment*, to requirement--in § 304 of Federal Election Campaign Act of 1971 (*2 USCS § 434*)--to disclose individual donors who paid for electioneering communication does not foreclose possible future challenges to particular applications of that requirement. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Because audit provisions neither explicitly nor implicitly authorize disclosure by Federal Election Commission of contribution records, confidential status of those records precludes any claim of real or threatened injury to First Amendment interests arising from public disclosure. *Buckley v Valeo (1975, App DC) 171 US App DC 172, 519 F2d 821, 75-2 USTC P 9750,* mod on other grounds (1976, App DC) *174 US App DC 300, 532 F2d 187,* affd in part and revd in part on other grounds *(1976) 424 US 1, 96 S Ct 612, 46 L Ed 2d 659, 76-1 USTC P 9189* (criticized in *Homans v City of Albuquerque (2002, DC NM) 217 F Supp 2d 1197)* and (criticized in *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13)* and (criticized in *Ctr. for Individual Freedom, Inc. v Ireland (2008, SD W Va) 2008 US Dist LEXIS 83856).*

Federal Election Commission mailing of questionnaires to Lyndon LaRouche 1984 presidential campaign contributors as part of investigation into unauthorized credit card transactions which violated Federal Election Campaign Act (*2 USCS §§ 434(b)(2)* and (3)) did not infringe LaRouche campaign volunteers' first amendment rights, where volunteers alleged fear of federal scrutiny of their political activities chilled their participation in electoral process and hurt campaign, because investigation was required, questionnaire technique was not intrusive, and "chill" experienced by volunteers was no more than natural response anyone would have if questioned by federal agent about campaign contributions. *Spannaus v Federal Election Com. (1986, SD NY) 641 F Supp 1520,* affd without op (1987, CA2 NY) *816 F2d 670.*

Citizens group's proposed advertisements for movie produced by group to advocate against political candidate fell within safe harbor of prohibitions of Federal Election Commission because advertisements merely proposed commercial transaction, to buy movie; however, there was no violation of First Amendment to require group's advertisements to comply with disclosure and disclaimer requirements of *2 USCS §§ 434(f)* and *441d* because advertisements were within entire range of electioneering communications and group presented no evidence to show that disclosure of information would yield reprisals. *Citizens United v FEC (2008, DC Dist Col) 530 F Supp 2d 274,* motions ruled upon (2008, DC Dist Col) *2008 US Dist LEXIS 54767.*

4. FEC regulations

FEC regulation requiring political committees to send follow-up request to donors who fail to supply personally identifying information in response to original solicitation is consistent with statute's language that committees demonstrate their "best efforts" to encourage donors to disclose such information, but language of regulation stating that federal law requires political committees to report such information for each donor contributing more than $ 200 per year is inaccurate and misleading since statute does not require committees to report information for each donor, only that they use best efforts to gather and report information, nor does Act require donors to supply such information. *Republican Nat'l Comm. v Federal Election Comm'n (1996, App DC) 316 US App DC 139, 76 F3d 400,* cert den *(1997) 519 US 1055, 136 L Ed 2d 607, 117 S Ct 682.*

Federal Election Commission's regulation, *11 C.F.R. § 100.29(a)(2)*, (b)(3)(i), contradicted plain text of Bipartisan Campaign Finance Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81, and unambiguous congressional intent because it interpreted "electioneering communication" in *2 USCS § 434(f)(3)* as purchased transmissions that were "made" for fee and such rule permitted broadcasters to run ads up to election day provided that it sacrificed its bottom line for its beliefs. *Shays v FEC (2005, App DC) 367 US App DC 185, 414 F3d 76.*

To extent that *11 C.F.R. § 100.29(c)(6)*, in implementing *2 USCS § 434(f)(3)(B)*, defined "electioneering communication" to exclude communications by tax exempt organizations, regulation was invalid; there was no reasoned analysis supporting exclusion in absence of consideration of whether prohibition of tax laws against such organizations' intervention in political campaigns was co-extensive with federal campaign laws, and thus exclusion was arbitrary and capricious within meaning of *5 USCS § 706(2)(A). Shays v FEC (2004, DC Dist Col) 337 F Supp 2d 28,* dismd, in part (2004, App DC) *2004 US App LEXIS 24896* and affd (2005, App DC) *367 US App DC 185, 414 F3d 76.*

To extent that *11 C.F.R. § 100.29(b)(3)(i)*, in implementing *2 USCS § 434(f)(3)(B)*, defines "electioneering communication" to exempt from regulation all communications, regardless of their content, provided that fee is not paid for their broadcast, regulation is invalid as contrary to statutory requirement that public communications that promote or oppose candidate for office be regulated. *Shays v FEC (2004, DC Dist Col) 337 F Supp 2d 28,* dismd, in part (2004, App DC) *2004 US App LEXIS 24896* and affd (2005, App DC) *367 US App DC 185, 414 F3d 76.*

5. Filing requirements

Filing requirements of *2 USCS § 434(e)* [now *2 USCS § 434(c)*] need not be complied with where nothing contained in published pamphlet can rationally be termed express advocacy of election or defeat of clearly identified candidate. *Federal Election Com. v Central Long Island Tax Reform Immediately Committee (1980, CA2 NY) 616 F2d 45* (criticized in *Chamber of Commerce of the United States v Moore (2000, SD Miss) 191 F Supp 2d 747)* and (criticized in *Cal. Pro-Life Council, Inc. v Getman (2003, CA9 Cal) 328 F3d 1088, 2003* Daily Journal DAR 4990).

Individual who paid for newspaper advertisement stating "don't let him do it" in reference to federal presidential candidate, was obligated to file statement and disclosure of amount paid as independent political expenditure under *2 USCS § 434* since advertisement expressly advocated for defeat of candidate notwithstanding that there was no express indication of what action reader should take where (1) advertisement focused on what reader's should do to prevent candidate from alleged campaign abuses and poor performance in office, (2) only action available for readers was to vote against candidate in upcoming election and (3) advertisement's timing, less than one week before election, left no doubt of action proposed. *FEC v Furgatch (1987, CA9 Cal) 807 F2d 857,* cert den *(1987) 484 US 850, 98 L Ed 2d 106, 108 S Ct 151* and (criticized in *Virginia Soc'y for Human Life, Inc. v FEC (2000, ED Va) 83 F Supp 2d 668)* and (criticized in *League of Women Voters of State v Davidson (2001, App) 23 P3d 1266, 30 Colo J C A R 159, 2001 Colo J C A R 1795)* and (criticized in *Chamber of Commerce of the United States v Moore (2002, CA5 Miss) 288 F3d 187)* and (criticized in *Governor Gray Davis Com. v American Taxpayers Alliance (2002, 1st Dist) 102 Cal App 4th 449, 125 Cal Rptr 2d 534, 2002 CDOS 9916, 2002 Daily Journal DAR 11177, 31 Media L R 1161)* and (criticized in *McConnell v FEC (2003, DC Dist Col) 251 F Supp 2d 176)* and (criticized in *N.C. Right to Life, Inc. v Leake (2003, CA4 NC) 344*

F3d 418).

Under Federal Election Campaign Act, Finance Committee to Re-Elect the President was required to report contributions to General Accounting Office both at time of promise and at time of delivery rather than only at time of promise under Corrupt Practices Act of 1925; contribution promised prior to effective date of Federal Election Campaign Act of 1971 would still be reportable if delivered subsequent to effective date of Act. *United States v Finance Committee to Re--Elect President (1974, App DC) 165 US App DC 371, 507 F2d 1194.*

Federal Election Commission was required, under *2 USCS §§ 437g(a)(1)* and (8), to investigate each sworn complaint received concerning disputes over Lyndon LaRouche 1984 presidential campaign's "repayment of loans to contributors," where several complaints involved campaign's reporting as loans on contributions money allegedly given for other purposes or not given voluntarily, because, although Commission has indicated it will not resolve creditor disputes, it still has responsibilities under *2 USCS § 434(b)(8)* for ensuring that debts are correctly reported. *Spannaus v Federal Election Com. (1986, SD NY) 641 F Supp 1520,* affd without op (1987, CA2 NY) *816 F2d 670.*

Two organizations were "political committees" under Federal Election Campaign Act of 1971, *2 USCS §§ 431* et seq., because organizations' major purpose was nomination or election of specific candidates; organizations violated Act by failing to file periodic reports with *Federal Election Commission. FEC v Malenick (2004, DC Dist Col) 310 F Supp 2d 230.*

Since *2 USCS § 434* requires itemization of expenditures including dates, names, and purposes, expenditures must be set forth in detail and several items must not be lumped together under general heading. *Barnes v Durante (1973) 75 Misc 2d 881, 348 NYS2d 928.*

6. Judicial review

Federal Election Commission's denial of complaint concerning reporting of expenses of Ronald Reagan trip following 1984 Republican National Convention is remanded under *2 USCS § 437g*, both for explanation of legal standard actually applied and statement of reasons demonstrating how Commission applied such legal standard, because Commission apparently merely applied 2-prong test in deciding trip was not campaign-related, which was departure from previously used "totality of circumstances" test, and relied on its general counsel's report as support or explanation for dismissing complaint even though report found "reason to believe" violation of *2 USCS § 434(b)(4)* had occurred by campaign treasurer's failure to report trip expenses. *Common Cause v Federal Election Com. (1986, DC Dist Col) 676 F Supp 286.*

Federal Election Commission fine imposed on campaign treasurer and campaign committee for late-filed Congressional campaign year end report was vacated and remanded because Commission failed to issue opinion and, in particular, failed to address argument that best efforts absolved defendants of liability. *Lovely v FEC (2004, DC Mass) 307 F Supp 2d 294.*

TAB 5

LexisNexis

LEXSTAT 2 U.S.C. Â§ 437G

*** CURRENT THROUGH PL 111-90, APPROVED 11/03/2009 WITH A GAP OF 111-84 ***

TITLE 2. THE CONGRESS
CHAPTER 14. FEDERAL ELECTION CAMPAIGNS
DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

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2 USCS § 437g

§ 437g. Enforcement

(a) Administrative and judicial practice and procedure.

(1) Any person who believes a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.] has occurred, may file a complaint with the Commission. Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury and subject to the provisions of *section 1001 of title 18, United States Code*. Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation. Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint. The Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission.

(2) If the Commission, upon receiving a complaint under paragraph (1) or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.], the Commission shall, through its chairman or vice chairman, notify the person of the alleged violation. Such notification shall set forth the factual basis for such alleged violation. The Commission shall make an investigation of such alleged violation, which may include a field investigation or audit, in accordance with the provisions of this section.

(3) The general counsel of the Commission shall notify the respondent of any recommendation to the Commission by the general counsel to proceed to a vote on probable cause pursuant to paragraph (4)(A)(i). With such notification, the general counsel shall include a brief stating the position of the general counsel on the legal and factual issues of the case. Within 15 days of receipt of such brief, respondent may submit a brief stating the position of such respondent on the legal and factual issues of the case, and replying to the brief of general counsel. Such briefs shall be filed with the Secretary of the Commission and shall be considered by the Commission before proceeding under paragraph (4).

(4) (A) (i) Except as provided in clauses [clause] (ii) and subparagraph (C), if the Commission determines, by an affirmative vote of 4 of its members, that there is probable cause to believe that any person has committed, or is about to commit, a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§*

9001 et seq. or *9031* et seq.], the Commission shall attempt, for a period of at least 30 days, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved. Such attempt by the Commission to correct or prevent such violation may continue for a period of not more than 90 days. The Commission may not enter into a conciliation agreement under this clause except pursuant to an affirmative vote of 4 of its members. A conciliation agreement, unless violated, is a complete bar to any further action by the Commission, including the bringing of a civil proceeding under paragraph (6)(A).

(ii) If any determination of the Commission under clause (i) occurs during the 45-day period immediately preceding any election, then the Commission shall attempt, for a period of at least 15 days, to correct or prevent the violation involved by the methods specified in clause (i).

(B) (i) No action by the Commission or any person, and no information derived, in connection with any conciliation attempt by the Commission under subparagraph (A) may be made public by the Commission without the written consent of the respondent and the Commission.

(ii) If a conciliation agreement is agreed upon by the Commission and the respondent, the Commission shall make public any conciliation agreement signed by both the Commission and the respondent. If the Commission makes a determination that a person has not violated this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.], the Commission shall make public such determination.

(C) (i) Notwithstanding subparagraph (A), in the case of a violation of any requirement of section 304(a) of the Act (*2 U.S.C. 434(a)*), the Commission may--

(I) find that a person committed such a violation on the basis of information obtained pursuant to the procedures described in paragraphs (1) and (2); and

(II) based on such finding, require the person to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Commission and which takes into account the amount of the violation involved, the existence of previous violations by the person, and such other factors as the Commission considers appropriate.

(ii) The Commission may not make any determination adverse to a person under clause (i) until the person has been given written notice and an opportunity to be heard before the Commission.

(iii) Any person against whom an adverse determination is made under this subparagraph may obtain a review of such determination in the district court of the United States for the district in which the person resides, or transacts business, by filing in such court (prior to the expiration of the 30-day period which begins on the date the person receives notification of the determination) a written petition requesting that the determination be modified or set aside.

(iv) This subparagraph shall apply with respect to violations that relate to reporting periods that begin on or after January 1, 2000, and that end on or before December 31, 2013.

(5) (A) If the Commission believes that a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.] has been committed, a conciliation agreement entered into by the Commission under paragraphs (4)(A) may include a requirement that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of $ 5,000 or an amount equal to any contribution or expenditure involved in such violation.

(B) If the Commission believes that a knowing and willful violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.] has been committed, a conciliation agreement entered into by the Commission under paragraph (4)(A) may require that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of $ 10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation (or, in the case of a violation of section 320 [*2 USCS § 441f*], which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $ 50,000 or 1,000 percent of the amount involved in the violation).

(C) If the Commission by an affirmative vote of 4 of its members, determines that there is probable cause to believe that a knowing and willful violation of this Act which is subject to subsection (d), or a knowing and willful violation of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.], has occurred or is about to occur, it may refer such apparent violation to the Attorney General of the United States without regard to any limitations set forth in paragraph (4)(A).

(D) In any case in which a person has entered into a conciliation agreement with the Commission under paragraph

(4)(A), the Commission may institute a civil action for relief under paragraph (6)(A) if it believes that the person has violated any provision of such conciliation agreement. For the Commission to obtain relief in any civil action, the Commission need only establish that the person has violated, in whole or in part, any requirement of such conciliation agreement.

(6) (A) If the Commission is unable to correct or prevent any violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.], by the methods specified in paragraph (4), the Commission may, upon an affirmative vote of 4 of its members, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order (including an order for a civil penalty which does not exceed the greater of $ 5,000 or an amount equal to any contribution or expenditure involved in such violation) in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business.

(B) In any civil action instituted by the Commission under subparagraph (A), the court may grant a permanent or temporary injunction, restraining order, or other order, including a civil penalty which does not exceed the greater of $ 5,000 or an amount equal to any contribution or expenditure involved in such violation, upon a proper showing that the person involved has committed, or is about to commit (if the relief sought is a permanent or temporary injunction or a restraining order), a violation of this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.].

(C) In any civil action for relief instituted by the Commission under subparagraph (A), if the court determines that the Commission has established that the person involved in such civil action has committed a knowing a willful violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.], the court may impose a civil penalty which does not exceed the greater of $ 10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation (or, in the case of a violation of section 320 [*2 USCS § 441f*], which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $ 50,000 or 1,000 percent of the amount involved in the violation).

(7) In any action brought under paragraph (5) or (6), subpenas for witnesses who are required to attend a United States district court may run into any other district.

(8) (A) Any party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1), or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia.

(B) Any petition under subparagraph (A) shall be filed, in the case of a dismissal of a complaint by the Commission, within 60 days after the date of the dismissal.

(C) In any proceeding under this paragraph the court may declare that the dismissal of the complaint or the failure to act is contrary to law, and may direct the Commission to conform with such declaration within 30 days, failing which the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint.

(9) Any judgment of a district court under this subsection may be appealed to the court of appeals, and the judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in *section 1254 of title 28, United States Code.*

(10) [Repealed]

(11) If the Commission determines after an investigation that any person has violated an order of the court entered in a proceeding brought under paragraph (6), it may petition the court for an order to hold such person in civil contempt, but if it believes the violation to be knowing and willful it may petition the court for an order to hold such person in criminal contempt.

(12) (A) Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

(B) Any member or employee of the Commission, or any other person, who violates the provisions of subparagraph (A) shall be fined not more than $ 2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions of subparagraph (A) shall be fined not more than $ 5,000.

(b) Notice to persons not filing required reports prior to institutions of enforcement action; publication of identity of persons and unfiled reports. Before taking any action under subsection (a) against any person who has failed to file a report required under section 304(a)(2)(A)(iii) [*2 USCS § 434(a)(2)(A)(iii)*] for the calendar quarter immediately preceding the election involved, or in accordance with section 304(a)(2)(A)(i) [*2 USCS § 434(a)(2)(A)(i)*], the Commission shall notify the person of such failure to file the required reports. If a satisfactory response is not received within 4 business days after the date of notification, the Commission shall, pursuant to section 311(a)(7) [*2 USCS § 438(a)(7)*], publish before the election the name of the person and the report or reports such person has failed to file.

(c) Reports by the Attorney General of apparent violations. Whenever the Commission refers an apparent violation to the Attorney General, the Attorney General shall report to the Commission any action taken by the Attorney General regarding the apparent violation. Each report shall be transmitted within 60 days after the date the Commission refers an apparent violation, and every 30 days thereafter until the final disposition of the apparent violation.

(d) Penalties; defenses; mitigation of offenses.

(1) (A) Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure--

(i) aggregating $ 25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; or

(ii) aggregating $ 2,000 or more (but less than $ 25,000) during a calendar year shall be fined under such title, or imprisoned for not more than 1 year, or both.

(B) In the case of a knowing and willful violation of section 316(b)(3) [*2 USCS § 441b(b)(3)*], the penalties set forth in this subsection shall apply to a violation involving an amount aggregating $ 250 or more during a calendar year. Such violation of section 316(b)(3) [*2 USCS § 441b(b)(3)*] may incorporate a violation of section 317(b), 320, or 321 [*2 USCS § 441c(b)*, *441f*, or *441g*].

(C) In the case of a knowing and willful violation of section 322 [*2 USCS § 441h*], the penalties set forth in this subsection shall apply without regard to whether the making, receiving, or reporting of a contribution or expenditure of $ 1,000 or more is involved.

(D) Any person who knowingly and willfully commits a violation of section 320 [*2 USCS § 441f*] involving an amount aggregating more than $ 10,000 during a calendar year shall be--

(i) imprisoned for not more than 2 years if the amount is less than $ 25,000 (and subject to imprisonment under subparagraph (A) if the amount is $ 25,000 or more);

(ii) fined not less than 300 percent of the amount involved in the violation and not more than the greater of--

(I) $ 50,000; or

(II) 1,000 percent of the amount involved in the violation; or

(iii) both imprisoned under clause (i) and fined under clause (ii).

(2) In any criminal action brought for a violation of any provision of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.], any defendant may evidence their lack of knowledge or intent to commit the alleged violation by introducing as evidence a conciliation agreement entered into between the defendant and the Commission under subsection (a)(4)(A) which specifically deals with the act or failure to act constituting such violation and which is still in effect.

(3) In any criminal action brought for a violation of any provision of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.], the court before which such action is brought shall take into account, in weighing the seriousness of the violation and in considering the appropriateness of the penalty to be imposed if the defendant is found guilty, whether--

(A) the specific act or failure to act which constitutes the violation for which the action was brought is the subject of a conciliation agreement entered into between the defendant and the Commission under subparagraph (a)(4)(A);

(B) the conciliation agreement is in effect; and

(C) the defendant is, with respect to the violation involved, in compliance with the conciliation agreement.

HISTORY:

(Feb. 7, 1972, P.L. 92-225, Title III, § 309 [313] [314], as added Oct. 15, 1974, P.L. 93-443, Title II, § 208(a), 88 Stat. 1284; May 11, 1976, P.L. 94-283, Title I, §§ 105, 109, 90 Stat. 481, 483; Jan. 8, 1980, P.L. 96-187, Title I, §§ 105(4), 108, 93 Stat. 1354, 1358; Nov. 8, 1984, P.L. 98-620, Title IV, Subtitle A, § 402(1)(A), 98 Stat. 3357; Sept. 29, 1999, P.L. 106-58, Title VI, § 640(a), (b), 113 Stat. 476; March 27, 2002, P.L. 107-155, Title III, §§ 312(a), 315(a), (b), 116 Stat. 106, 108; Oct. 16, 2008, P.L. 110-433, § 1(a), 122 Stat. 4971.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Feb. 7, 1972, P.L. 92-225, popularly known as the Federal Election Campaign Act of 1971, which generally appears as *2 USCS §§ 431* et seq. For full classification of such Act, consult USCS Tables volumes.

The word "clause" has been inserted in brackets in subsec. (a)(4)(A)(i) to indicate the word probably intended by Congress.

Explanatory notes:

"1986" has been inserted in brackets in subsecs. (a) and (d) pursuant to § 2 of Act Oct. 22, 1986, P.L. 99-514, which redesignated the Internal Revenue Code of 1954 (Act Aug. 16, 1954, ch 736) as the Internal Revenue Code of 1986. In redesignating the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, Congress provided, in Act Oct. 22, 1986, P.L. 99-514, § 2(b), 100 Stat. 2095, for construction of references to the Internal Revenue Code as follows: except when inappropriate, any reference in any law, Executive Order, or other document to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

Provisions similar to those comprising subsec. (a) of this section were contained in Act Feb. 7, 1972, P.L. 92-225, Title III, § 308(d), 86 Stat. 18 (*2 USCS § 438(d)*), prior to amendment of § 308 by Act Oct. 15, 1974, P.L. 93-443, § 208(a), 88 Stat. 1280.

Effective date of section:

This section took effect Jan. 1, 1975, pursuant to § 410(a) of Act Oct. 15, 1974, which appears as *2 USCS § 431* note.

Amendments:

1976. Act May 11, 1976 substituted the text of this section for text which read:

"(a)

(1)

(A) Any person who believes a violation of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code, has occurred may file a complaint with the Commission.

"(B) In any case in which the Clerk of the House of Representatives or the Secretary of the Senate (who receive reports and statements as custodian for the Commission) has reason to believe a violation of this Act or section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code, has occurred, he shall refer such apparent violation to the Commission.

"(2) The Commission, upon receiving any complaint under paragraph (1)(A), or a referral under paragraph (1)(B),

or if it has reason to believe that any person has committed a violation of any such provision, shall notify the person involved of such apparent violation and shall--

"(A) report such apparent violation to the Attorney General; or

"(B) make an investigation of such apparent violation.

"(3) Any investigation under paragraph (2)(B) shall be conducted expeditiously and shall include an investigation of reports and statements filed by any complainant under this title, if such complainant is a candidate. Any notification or investigation made under paragraph (2) shall not be made public by the Commission or by any other person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

"(4) The Commission shall, at the request of any person who receives notice of an apparent violation under paragraph (2), conduct a hearing with respect to such apparent violation.

"(5) If the Commission determines, after investigation, that there is reason to believe that any person has engaged, or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, it may endeavor to correct such violation by informal methods of conference, conciliation, and persuasion. If the Commission fails to correct the violation through informal methods, it may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, the court shall grant a permanent or temporary injunction, restraining order, or other order.

"(6) The Commission shall refer apparent violations to the appropriate law enforcement authorities to the extent that violations of provisions of chapter 29 of title 18, United States Code, are involved, or if the Commission is unable to correct apparent violations of this Act under the authority given it by paragraph (5), or if the Commission determines that any such referral is appropriate.

"(7) Whenever in the judgment of the Commission, after affording due notice and an opportunity for a hearing, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code, upon request by the Commission the Attorney General on behalf of the United States shall institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the person is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond by such court.

"(8) In any action brought under paragraph (5) or (7) of this subsection, subpenas for witnesses who are required to attend a United States district court may run into any other district.

"(9) Any party aggrieved by an order granted under paragraph (5) or (7) of this subsection may, at any time within 60 days after the date of entry thereof, file a petition with the United States court of appeals for the circuit in which such order was issued for judicial review of such order.

"(10) The judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in *section 1254 of title 28, United States Code.*

"(11) Any action brought under this subsection shall be advanced on the docket of the court in which filed, and put ahead of all other actions (other than other actions brought under this subsection or under section 315).

"(b) In any case in which the Commission refers an apparent violation to the Attorney General, the Attorney General shall respond by report to the Commission with respect to any action taken by the Attorney General regarding such apparent violation. Each report shall be transmitted no later than 60 days after the date the Commission refers any apparent violation, and at the close of every 30-day period thereafter until there is final disposition of such apparent violation. The Commission may from time to time prepare and publish reports on the status of such referrals.".

1980. Act Jan. 8, 1980 (effective 1/8/80, as provided by Title III, § 301(a) of such Act, which appears as *2 USCS § 431* note), substituted the text of this section for text which read:

"(a)

(1) Any person who believes a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 has occurred may file a complaint with the Commission. Such complaint shall be in writing, shall be signed and sworn to by the person filing such complaint, and shall be notarized. Any person filing such a complaint shall be subject to the provisions of *section 1001 of title 18, United States Code*. The Commission may not conduct any investigation under this section, or take any other action under this section, solely on the basis of a complaint of a person whose identity is not disclosed to the Commission.

"(2) The Commission, upon receiving a complaint under paragraph (1), and if it has reason to believe that any person has committed a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954, or, if the Commission, on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, has reason to believe that such a violation has occurred, shall notify the person involved of such alleged violation and shall make an investigation of such alleged violation in accordance with the provisions of this section.

"(3)

(A) Any investigation under paragraph (2) shall be conducted expeditiously and shall include an investigation, conducted in accordance with the provisions of this section, of reports and statements filed by any complainant under this title, if such complainant is a candidate.

"(B) Any notification or investigation made under paragraph (2) shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

"(4) The Commission shall afford any person who receives notice of an alleged violation under paragraph (2) a reasonable opportunity to demonstrate that no action should be taken against such person by the Commission under this Act.

"(5)

(A) If the Commission determines that there is reasonable cause to believe that any person has committed or is about to commit a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954, the Commission shall make every endeavor for a period of not less than 30 days to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with the person involved, except that, if the Commission has reasonable cause to believe that--

"(i) any person has failed to file a report required to be filed under section 304(a)(1)(C) for the calendar quarter occurring immediately before the date of a general election;

"(ii) any person has failed to file a report required to be filed no later than 10 days before an election; or

"(iii) on the basis of a complaint filed less than 45 days but more than 10 days before an election, any person has committed a knowing and willful violation of this Act or of chapter 95 of chapter 96 of the Internal Revenue Code of 1954; the Commission shall make every effort, for a period of not less than one-half the number of days between the date upon which the Commission determines there is reasonable cause to believe such a violation has occurred and the date of the election involved, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with the person involved. A conciliation agreement, unless violated, shall constitute a complete bar to any further action by the Commission, including the bringing of a civil proceeding under subparagraph (B).

"(B) If the Commission is unable to correct or prevent any such violation by such informal methods, the Commission may, if the Commission determines there is probable cause to believe that a violation has occurred or is about to occur, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order, including a civil penalty which does not exceed the greater of $ 5,000 or an amount equal to the amount of any contribution or expenditure involved in such violation, in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business.

"(C) In any civil action instituted by the Commission under subparagraph (b), the court may grant a permanent or temporary injunction, restraining order, or other order, including a civil penalty which does not exceed the greater of $ 5,000 or an amount equal to the amount of any contribution or expenditure involved in such violation, upon a proper showing that the person involved has engaged or is about to engage in a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954.

"(D) If the Commission determines that there is probable cause to believe that a knowing and willful violation

subject to and as defined in section 329, or a knowing and willful violation of a provision of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 has occurred or is about to occur, it may refer such apparent violation to the Attorney General of the United States without regard to any limitations set forth in subparagraph (A).

"(6)

(A) If the Commission believes that there is clear and convincing proof that a knowing and willful violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954, has been committed, a conciliation agreement entered into by the Commission under paragraph (5)(A) may include a requirement that the person involved in such conciliation agreement shall pay a civil penalty which shall not exceed the greater of (i) $ 10,000; or (ii) an amount equal to 200 percent of the amount of any contribution or expenditure involved in such violation.

"(B) If the Commission believes that a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 has been committed, a conciliation agreement entered into by the Commission under paragraph (5)(A) may include a requirement that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of (i) $ 5,000; or (ii) an amount equal to the amount of the contribution or expenditure involved in such violation.

"(C) The Commission shall make available to the public (i) the results of any conciliation attempt, including any conciliation agreement entered into by the Commission; and (ii) any determination by the Commission that no violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 has occurred.

"(7) In any civil action for relief instituted by the Commission under paragraph (5), if the court determines that the Commission has established through clear and convincing proof that the person involved in such civil action has committed a knowing and willful violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954, the court may impose a civil penalty of not more than the greater of (A) $ 10,000; or (B) an amount equal to 200 percent of the contribution or expenditure involved in such violation. In any case in which such person has entered into a conciliation agreement with the Commission under paragraph (5)(A), the Commission may institute a civil action for relief under paragraph (5) if it believes that such person has violated any provision of such conciliation agreement. In order for the Commission to obtain relief in any such civil action, it shall be sufficient for the Commission to establish that such person has violated, in whole or in part, any requirement of such conciliation agreement.

"(8) In any action brought under paragraph (5) or paragraph (7), subpenas for witnesses who are required to attend a United States district court may run into any other district.

"(9)

(A) Any party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1), or by a failure on the part of the Commission to act on such complaint in accordance with the provisions of this section within 90 days after the filing of such complaint, may file a petition with the United States District Court for the District of Columbia.

"(B) The filing of any petition under subparagraph (A) shall be made--

"(i) in the case of the dismissal of a complaint by the Commission, no later than 60 days after such dismissal; or

"(ii) in the case of a failure on the part of the Commission to act on such complaint, no later than 60 days after the 90-day period specified in subparagraph (A).

"(C) In any proceeding under this paragraph the court may declare that the dismissal of the complaint or the action, or the failure to act, is contrary to law and may direct the Commission to proceed in conformity with such declaration within 30 days, failing which the complainant may bring in his own name a civil action to remedy the violation involved in the original complaint.

"(10) The judgment of the district court may be appealed to the court of appeals and the judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in *section 1254 of title 28, United States Code.*

"(11) Any action brought under this subsection shall be advanced on the docket of the court in which filed, and put ahead of all other actions (other than other actions brought under this subsection or under section 314).

"(12) If the Commission determines after an investigation that any person has violated an order of the court entered in a proceeding brought under paragraph (5) it may petition the court for an order to adjudicate such person in civil contempt, except that if it believes the violation to be knowing and willful it may petition the court for an order to

adjudicate such person in criminal contempt.

"(b) In any case in which the Commission refers an apparent violation to the Attorney General, the Attorney general shall respond by report to the Commission with respect to any action taken by the Attorney General regarding such apparent violation. Each report shall be transmitted no later than 60 days after the date the Commission refers any apparent violation, and at the close of every 30-day period thereafter until there is final disposition of such apparent violation. The Commission may from time to time prepare and publish reports on the status of such referrals.

"(c) Any member of the Commission, any employee of the Commission, or any other person who violates the provisions of subsection (a)(3)(B) shall be fined not more than $ 2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions of subsection (a)(3)(B) shall be fined not more than $ 5,000.".

1984. Act Nov. 8, 1984 (applicable as provided by § 403 of such Act, which appears as *28 USCS § 1657* note), deleted subsec. (a)(10), which read: "(10) Any action brought under this subsection shall be advanced on the docket of the court in which filed, and put ahead of all other actions (other than other actions brought under this subsection or under section 310 of this Act".

1999. Act Sept. 29, 1999, in subsec. (a), in para. (4), in subpara. (A)(i), substituted "clauses (ii) and subparagraph (C)" for "clause (ii)", and added subpara. (C), and, in para. (6)(A), substituted "paragraph (4)" for "paragraph (4)(A)".

2002. Act March 27, 2002 (effective on 11/6/2002, as provided by § 402 of such Act, which appears as *2 USCS § 431* note; and applicable to violations occurring on or after 11/6/2002, as provided by § 312(b) of such Act, which appears as a note to this section), in subsec. (d)(1), substituted subpara. (A) for one which read: "(A) Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution or expenditure aggregating $ 2,000 or more during a calendar year shall be fined, or imprisoned for not more than one year, or both. The amount of this fine shall not exceed the greater of $ 25,000 or 300 percent of any contribution or expenditure involved in such violation.".

Such Act further (effective on 11/6/2002, as provided by § 402 of such Act, which appears as *2 USCS § 431* note; and applicable with respect to violations occurring on or after 11/6/2002, as provided by § 315(c) of such Act, which appears as a note to this section), in subsec. (a), in para. (5)(B), inserted "(or, in the case of a violation of section 320, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $ 50,000 or 1,000 percent of the amount involved in the violation)", and, in para. (6)(C), inserted "(or, in the case of a violation of section 320, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $ 50,000 or 1,000 percent of the amount involved in the violation)"; and, in subsec. (d)(1), added subpara. (D).

2008. Act Oct. 16, 2008 (effective as if included in Act Sept. 29, 1999, as provided in § 1(c) of the 2008 Act, which appears as a note to this section), in subsec. (a)(4)(C), added cl. (iv).

Redesignation:

This section, enacted as § 314 of Act Feb. 7, 1972, P.L. 92-225, was redesignated § 313 of such Act by § 105 of Act May 11, 1976; it was further redesignated § 309 of Act Feb. 7, 1972, P.L. 92-225, by § 105(4) of Act Jan. 8, 1980.

Section 105 of Act May 11, 1976, redesignated § 309 of Act Feb. 7, 1972, P.L. 92-225, as § 308 of such Act.

Section 105(3) of Act Jan. 8, 1980, redesignated § 309 of Act Feb. 7, 1972, P.L. 92-225, as § 306 of such Act.

Other provisions:

Repeal of termination of Sept. 29, 1999 amendments of subsecs. (a)(4), (6)(A). Act Sept. 29, 1999, P.L. 106-58, Title VI, § 640(c), 113 Stat. 477; Nov. 12, 2001, P.L. 107-67, Title VI, § 642, 115 Stat. 555; Jan. 23, 2004, P.L. 108-199, Div F, Title VI, § 639, 118 Stat. 359; Nov. 30, 2005, P.L. 109-115, Div A, Title VII, § 721, 119 Stat. 2493, which formerly appeared as a note to this section, was repealed by Act Oct. 16, 2008, P.L. 110-433, § 1(b), 122 Stat. 4971 (effective as if included in Act Sept. 29, 1999, as provided by § 1(c) of the 2008 Act, which appears as a note to this section). Such note provided that the amendments made to subsec. (a)(4), (6)(A) of this section should apply with respect to violations that relate to reporting periods that begin on or after January 1, 2000, and that end on or before December 31, 2008.

Application of amendments made by § 312 of Act March 27, 2002. Act March 27, 2002, P.L. 107-155, Title III, § 312(b), 116 Stat. 106, provides: "The amendment made by this section [amending subsec. (d)(1)(A) of this section] shall apply to violations occurring on or after the effective date of this Act.".

Application of amendments made by § 315 of Act March 27, 2002. Act March 27, 2002, P.L. 107-155, Title III, § 315(c), 116 Stat. 108, provides: "The amendments made by this section [amending subsecs. (a) and (d) of this section] shall apply with respect to violations occurring on or after the effective date of this Act.".

Effective date of Oct. 16, 2008 amendments. Act Oct. 16, 2008, P.L. 110-433, § 1(c), 122 Stat. 4971, provides: "The amendments made by this section [amending this section and repealing a note to this section] shall take effect as if included in the enactment of the Treasury and General Government Appropriations Act, 2000 [Act Sept. 29, 1999, P.L. 106-58].".

NOTES:

Code of Federal Regulations:

Federal Election Commission--Access to Public Disclosure Division documents, *11 CFR 5.1* et seq.

Federal Election Commission--Compliance procedure (*2 U.S.C. 437g*, *2 U.S.C. 437d(a)*), *11 CFR 111.1* et seq.

Related Statutes & Rules:

Sentencing Guidelines for the United States Courts, *18 USCS Appx § 2C1.8*.

This section is referred to in *2 USCS § 437d*.

Research Guide:

Federal Procedure:

10B Fed Proc L Ed, Elections and Elective Franchise §§ 28:269-274, 277, 279-283, 289-299, 301, 303, 305-307.

12 Fed Proc L Ed, Evidence § 33:297.

Am Jur:

26 Am Jur 2d, Elections §§ 468, 471, 473, 474, 476, 478.

45C Am Jur 2d, Job Discrimination § 2803.

Forms:

8A Fed Procedural Forms L Ed, Elections and Elective Franchise (2009) §§ 25:63-65.

Criminal Law and Practice:
2 Business Crime (Matthew Bender), ch 6A, Preventing Corporate Criminal Liability P 6A.01.

Annotations:
Validity, Construction, and Application of Campaign Finance Laws--Supreme Court Cases. *19 ALR Fed 2d 1.*

Texts:
1 Banking Law (Matthew Bender), ch 14, Banks and Political Activities § 14.05.

Law Review Articles:
Schotland. Analyzing the Bipartisan Campaign Reform Act of 2002. 56 Adm Law Rev 867, Summer 2004.
Hansen. Anything But Typical. *89 ABA J 22, 24,* September 2003.
Curtis. Restrictions on Voluntary Compliance Under the Federal Election Campaign Act. *29 Case W Res L Rev 830,* Summer 1979.
Feingold. Campaign Finance Reform. 22 Yale Law & Pol'y Rev 339, Spring 2004.

Interpretive Notes and Decisions:
I.IN GENERAL 1. Generally 2. Constitutional issues 3. Relationship with other laws

II.PRACTICE AND PROCEDURE 4. Jurisdiction of Commission 5. Conciliation proceedings 6. Investigation of complaints 7. Confidentiality requirements 8. Discovery 9. Injunction 10. Civil penalties 11. Judicial review, generally 12.--Jurisdiction 13.--Standing 14.--Exhaustion of remedies; ripeness 15.--Timeliness of filing

I.IN GENERAL 1. Generally

Upon holding that Federal Election Commission, because of method of appointment of its members, could not properly exercise its rulemaking, adjudicatory, and enforcement powers under Federal Election Campaign Act of 1971 (*2 USCS §§ 431* et seq., *18 USCS §§ 591* et seq.) and provisions of Subtitle II of Internal Revenue Code of 1954 (*26 USCS §§ 9001* et seq.) for public financing of Presidential election campaigns, United States Supreme Court accorded de facto validity to Commission's past acts, and stayed for period not to exceed 30 days, Court's judgment insofar as it affected Commission's authority to exercise its statutory powers, thus affording Congress opportunity to take appropriate action and allowing Commission to function de facto in interim. *Buckley v Valeo (1976) 424 US 1, 96 S Ct 612, 46 L Ed 2d 659, 76-1 USTC P 9189* (criticized in *Homans v City of Albuquerque (2002, DC NM) 217 F Supp 2d 1197)* and (criticized in *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13)* and (criticized in *Ctr. for Individual Freedom, Inc. v Ireland (2008, SD W Va) 2008 US Dist LEXIS 83856).*

Nothing in language of *2 USCS § 437g(a)(5)(C)* addresses, much less restricts, authority of Attorney General (or grand jury) to investigate activities that might constitute criminal violations of Act; by its plain terms, *2 USCS § 437g(a)(5)(C)* concerns only scope of authority of Federal Election Commission (FEC); although FEC's decision to make such referral imposes upon Attorney General corollary duties of regular monthly reports to agency until final disposition of matter, Act contains no explicit language suggesting that this referral process is sole avenue through which Attorney General may initiate criminal prosecutions. *Fieger v United States AG (2008, CA6 Mich) 542 F3d 1111, 2008 FED App 346P.*

Incorrect administrative interpretation does not preclude either criminal or civil violation, and although agency's interpretation may be factor in assessing whether party acted knowingly, it cannot be used de facto to re-write statute; this is especially true when, under Federal Election Campaign Act, Congress granted private right of action capable of filling gaps in agency's enforcement policy (*2 USCS § 437g(a)(9)(C)*) [now *2 USCS § 437g(a)(8)(C)*] under which private parties could bring civil actions when Federal Election Commission failed to promptly comply with Court order to prosecute. *Walther v Federal Election Com. (1979, DC Dist Col) 468 F Supp 1235, 101 BNA LRRM 2198.*

2. Constitutional issues

2 USCS §§ 437c(a)(1) and 437g(a)(5), vesting in Federal Election Commission primary responsibility for conducting civil litigation in courts of United States for vindicating public rights, violate *USCS Const, Art 2, § 2, cl 2*, which requires that such functions may be discharged only by persons who are "Officers of the United States". *Buckley v Valeo (1976) 424 US 1, 96 S Ct 612, 46 L Ed 2d 659, 76-1 USTC P 9189* (criticized in *Homans v City of Albuquerque (2002, DC NM) 217 F Supp 2d 1197)* and (criticized in *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13)* and (criticized in *Ctr. for Individual Freedom, Inc. v Ireland (2008, SD W Va) 2008 US Dist LEXIS 83856).*

11 C.F.R. § 5.4(a)(4), though not contrary to plain language of *2 USCS § 437g*, is nevertheless impermissible because it fails to account for substantial First Amendment interests implicated in releasing political groups' strategic documents and other internal materials. *AFL-CIO v FEC (2003, App DC) 357 US App DC 47, 333 F3d 168,* reh, en banc, den (2003, App DC) *2003 US App LEXIS 18536* and reh den (2003, App DC) *2003 US App LEXIS 18537.*

Although court agreed that deterring future violations and promoting Federal Election Commission accountability might well justify releasing more information than minimum disclosures required by *2 USCS § 437g(a)*, Commission must attempt to avoid unnecessarily infringing on First Amendment interests where it regularly subpoenas materials of delicate nature representing very heart of organism which First Amendment was intended to nurture and protect; because *11 C.F.R. § 5.4(a)(4)* fails to undertake this tailoring, it creates "serious constitutional difficulties," and therefore, regulation is impermissible. *AFL-CIO v FEC (2003, App DC) 357 US App DC 47, 333 F3d 168,* reh, en banc, den (2003, App DC) *2003 US App LEXIS 18536* and reh den (2003, App DC) *2003 US App LEXIS 18537.*

Regulatory procedure enforcing spending limitations upon candidates for federal office imposed impermissible prior restraints in violation of First Amendment; regulations required prior certification of statements "in derogation" of any candidate and imposed criminal penalties for publishing advertisement not meeting certification requirements. *American Civil Liberties Union, Inc. v Jennings (1973, DC Dist Col) 366 F Supp 1041,* vacated on other grounds *(1975) 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.*

3. Relationship with other laws

Plaintiff's case requesting judgment declaring that Federal Election Campaign Act (FECA), *2 USCS §§ 431-455*, pursuant to *2 USCS § 437g(a)(5)(C)*, barred U.S. Attorney General from investigating or prosecuting criminal violations of campaign finance law absent referral from four Federal Election Commission (FEC) commissioners was properly dismissed as FEC and Attorney General clearly retained concurrent jurisdiction; U.S. Congress explicitly granted FEC only exclusive jurisdiction with respect to civil enforcement of FECA's provisions pursuant to *2 USCS § 437c(b)(1)*; thus, FECA did not limit Attorney General's authority under U.S. Const. art. II, § 2. *Bialek v Mukasey (2008, CA10 Colo) 529 F3d 1267.*

2 USCS § 437g which prohibits disclosure of information concerning proceedings thereunder does not apply to audit and repayment determination process set forth in Presidential Election Campaign Fund Act, *26 USCS §§ 9001* et seq. *Reagan Bush Committee v Federal Election Com. (1981, DC Dist Col) 525 F Supp 1330.*

Indictment against Buddhist, who allegedly solicited political contributions through conduits in violation of federal election campaign laws, may proceed, even though she argues that Federal Election Campaign Act (*2 USCS §§ 431* et

seq.) was carefully crafted by Congress as comprehensive enforcement scheme operating in area protected by First Amendment which should displace more general conspiracy and false statements statutes, because there is no indication in language or legislative history of Act to indicate intention to displace more general criminal provisions of *18 USCS §§ 2, 371*, and *1001. United States v Hsia (1998, DC Dist Col) 24 F Supp 2d 33.*

2 USCS § 437g applies to violations of *2 USCS § 434(a)*, section dealing with filing reports. *Lovely v FEC (2004, DC Mass) 307 F Supp 2d 294.*

II.PRACTICE AND PROCEDURE 4. Jurisdiction of Commission

Attorney/private investigator must provide answers to interrogatories propounded by Federal Election Commission regarding his client and possible unreported in-kind contribution to Senate campaign, where FEC investigation was prompted by complaint of Senate candidate allegedly being investigated by private investigator for links to drug users or traffickers, because FEC had subject-matter jurisdiction over complaint and properly provided private investigator with required notices under *2 USCS § 437g(a)* pending discovery of investigator's unknown client and his or her possible connection with Senate campaign. *Federal Election Com. v Franklin (1989, ED Va) 718 F Supp 1272.*

5. Conciliation proceedings

Conciliation proceedings are not required under *2 USCS § 437g(a)(5)(D)* [now *2 USCS § 437g(a)(5)(C)*] when Federal Election Commission determines that there is probable cause to believe that knowing and willful violation of Federal Election Campaigns Act (*2 USCS §§ 431* et seq.) has occurred or is about to occur; requirement of determination of probable cause by Federal Election Commission prior to directly referring matter without conciliation proceedings to Attorney General does not in any manner curtail power of Attorney General to investigate and prosecute criminal violations, and at no place in *2 USCS § 437g* is specific provision made prohibiting Attorney General from going forward with criminal investigation without referral by Federal Election Commission. *United States v Tonry (1977, ED La) 433 F Supp 620.*

Federal Election Commission (FEC) complied with *2 USCS § 437g(a)(4)(A)(i)* where it engaged in 30-day conciliation process, which included meetings and submission of proposal by FEC, to attempt to resolve complaints alleging that corporation was acting as unregistered political organization; FEC was not required to continue conciliation process for 90 days, and fact that corporation was dissatisfied with FEC's offers of conciliation did not invalidate FEC's attempts; further, *2 USCS § 437g* does not require that Federal Election Commission engage in conciliation efforts as to all of its findings. *FEC v Club for Growth, Inc. (2006, DC Dist Col) 432 F Supp 2d 87.*

Although Federal Election Commission (FEC) violated *2 USCS § 437g(a)(4)(A)(i)* by authorizing filing of suit against corporation before conciliation process ended, any statutory defect was remedied when FEC reconsidered evidence and voted to ratify that decision after conciliation process concluded. *FEC v Club for Growth, Inc. (2006, DC Dist Col) 432 F Supp 2d 87.*

6. Investigation of complaints

Federal Election Commission, in deciding whether or not to investigate complaint pursuant to *2 USCS § 437g(a)(2)*, must take into consideration all available information concerning alleged wrongdoing and may not rely solely on facts presented by sworn complaint; Commission's decision not to investigate allegations of wrongdoing in complaints filed pursuant to § 437g(a)(1) was neither arbitrary or capricious where complaint referred Commission to wrong statute in describing alleged violation, failed to allege all elements necessary to constitute violation, and stated charges in most conclusory fashion, and where there was no showing that Commission had before it any evidence of wrongdoing apart from allegations in complaint. *In re Federal Election Campaign Act Litigation (1979, DC Dist Col) 474 F Supp 1044, 102 BNA LRRM 2308.*

Since audit process of Federal Election Commission is merely preliminary procedure which may lead to initial

determinations that repayments are due or cause Commission to initiate proceedings as to statutory violations, audit report does not constitute final determination for which due process would require opportunity to be heard. *Reagan Bush Committee v Federal Election Com. (1981, DC Dist Col) 525 F Supp 1330.*

Federal Election Commission properly commenced internally generated investigation into possible violation of Federal Election Campaign Act (*2 USCS §§ 431* et seq.), where investigation was opened based upon information in unsworn letter and "other information ascertained by Commission in normal course of carrying out its supervisory responsibilities," because, although *2 USCS § 437g(a)(1)* requires that complaint-generated matter be investigated only on basis of signed and sworn complaint, copy of which must be sent to accused, internally generated matter may be investigated on partial basis of unsworn letter, copy of which need not be forwarded to accused. *Spannaus v Federal Election Com. (1986, SD NY) 641 F Supp 1520,* affd without op (1987, CA2 NY) *816 F2d 670.*

Federal Election Commission was required, under *2 USCS § 437g(a)(1)* and (8), to investigate each sworn complaint received concerning disputes over Lyndon LaRouche 1984 presidential campaign's "repayment of loans to contributors," where several complaints involved campaign's reporting as loans on contributions money allegedly given for other purposes or not given voluntarily, because, although Commission has indicated it will not resolve creditor disputes, it still has responsibilities under *2 USCS § 434(b)(8)* for ensuring that debts are correctly reported. *Spannaus v Federal Election Com. (1986, SD NY) 641 F Supp 1520,* affd without op (1987, CA2 NY) *816 F2d 670.*

Federal Election Commission's audit of Lyndon LaRouche 1984 presidential campaign and review of matter concerning possible unauthorized credit card transactions were conducted properly--despite LaRouche campaign charges that (1) there was inordinate 3-month delay between completion of fieldwork and communication of interim audit report, (2) campaign never received factual specifics concerning matter noted during audit and later reviewed, (3) Commission began preparations to contact campaign contributors regarding matter noted during audit before matter was referred for review and did contact contributors before informing campaign of matter under review, and (4) Commission deposed third parties in connection with matter under review without notice to campaign--because actions charged are not violative of *2 USCS § 437g(a)(2),* requiring Commission merely to notify campaign of alleged violation and its factual basis after Commission has made "reason to believe" finding, which Commission did. *Spannaus v Federal Election Com. (1986, SD NY) 641 F Supp 1520,* affd without op (1987, CA2 NY) *816 F2d 670.*

Federal Election Commission (FEC) acted "contrary to law" under *2 USCS § 437g(a)(8)(C)* in dismissing complaint against National Republican Senatorial Committee (NRSC), where November 24 "second" election for 1992 U.S. Senate race in Georgia was clearly "runoff" and not "general" election, because FEC erred in not finding that NRSC violated Federal Election Campaign Act (*2 USCS §§ 431* et seq.) by expending funds beyond $ 535,608 allowed for general election. *Democratic Senatorial Campaign Comm. v Federal Election Comm'n (1994, DC Dist Col) 918 F Supp 1.*

Court dismissed plaintiffs' claims against Federal Election Commission (FEC) Chairman, U.S. Attorney General, and FBI agents, seeking relief under Administrative Procedures Act, *5 USCS §§ 702, 704, 706(1), 706(2),* or mandamus statute, *28 USCS § 1361,* based on allegations that FEC and Attorney General violated Federal Election Campaign Act (FECA) referral provision set forth in *2 USCS § 437g(a)(5)(C)* and that FEC disregarded investigation requirement contained in § 437g(a)(2), because (1) plain language of § 437g(a)(5)(C) vested FEC with exclusive jurisdiction over civil enforcement of FECA, so any arguments that Attorney General was without authority to investigate criminal violations lacked merit; (2) FECA specified no "discrete action" that FEC was "required" to take within any particular timeframe, such that it could be subject to judicial review under APA, and judiciary had no power to dictate timing or nature of FEC investigation, (3) only FECA provision empowering private parties to seek judicial review extended to administrative complainants, so it had to be assumed that Congress intended to deny anyone other than administrative complainant, including administrative respondents, such as plaintiffs, right to petition for judicial review; and (4) even if such suit were proper, FECA would require that it be brought in U.S. District Court for District of Columbia under *2 USCS § 437g(a)(8)(A),* which plainly precluded private litigant from maintaining cause of action in other district courts. *Beam v Gonzales (2008, ND Ill) 548 F Supp 2d 596.*

7. Confidentiality requirements

Federal Election Commission may not place information about ongoing investigation in public record when it seeks to enforce subpoena, unless subject consents or material is placed under seal, since by doing so it unquestionably violates Congress's mandate and its own regulations; plain language of statute and its overall structure create strong confidentiality interest analogous to that protected by *Federal Rule of Criminal Procedure 6(3)(6). In re Sealed Case 00-5116 (2001, App DC) 345 US App DC 19, 237 F3d 657, 49 FR Serv 3d 134.*

Federal Election Commission did not act in bad faith or as part of plan to harass Lyndon LaRouche where, although individual employee's breach of Federal Election Campaign Act confidentiality provisions by informing news media of Commission investigation of LaRouche 1984 presidential campaign credit card irregularities is reprehensible and punishable under *2 USCS § 437g(a)(12)(B)*, Commission never adopted policy of illegally publicizing LaRouche investigation nor violated statutory procedures ensuring decision to investigate and enforce Act against LaRouche was reached by due process and not on whim or bad faith motive of single employee. *Spannaus v Federal Election Com. (1986, SD NY) 641 F Supp 1520,* affd without op (1987, CA2 NY) *816 F2d 670.*

Major labor organization and political party successfully challenge Federal Election Commission's decision to release 6,000 pages from its investigation of plaintiffs for alleged violations of election laws, where investigation resulted in finding of "no probable cause," because disclosure decision violates plain meaning of *2 USCS § 437g(a)(12)(A)* confidentiality provision. *AFL-CIO v FEC (2001, DC Dist Col) 177 F Supp 2d 48.*

Although certain confidential documents disclosed under protective order in litigation challenging constitutionality of federal election reform statute constituted part of non-public administrative record in closed Federal Election Commission (FEC) enforcement proceeding, post-decision disclosure of documents in litigation was not precluded by *2 USCS § 437g(a)(12)(A)*; documents were deemed to have been produced by parties directly for litigation, and not by FEC from its investigative files, and parties chose to litigate with knowledge that confidential documents could become part of judicial record which was subject to strong tradition of public access. *McConnell v FEC (2003, DC Dist Col) 251 F Supp 2d 919,* stay gr, injunction den (2003, DC Dist Col) *2003 US Dist LEXIS 11006.*

8. Discovery

Depositions of third parties are not relevant in suits under *2 USCS § 437g(a)(9)* [now *2 USCS § 437g(a)(8)*]; plaintiff's motion for order compelling AFL-CIO to appear and be deposed is denied. *Walther v Federal Election Com. (1979, DC Dist Col) 82 FRD 200, 101 BNA LRRM 2360, 27 FR Serv 2d 594.*

Acts of third parties are neither relevant nor likely to lead to relevant information in enforcement proceedings brought by private citizen pursuant to *2 USCS § 437g(a)(9)* [now *2 USCS § 437g(a)(8)*] for ruling that Federal Election Commission has failed to act upon sworn complaint, and motion by plaintiff for depositions of unions who had allegedly donated illegal campaign contributions to members of Congress would be denied where (1) plaintiff's attempt to investigate political committees of AFL-CIO was really aimed at transforming action into full-blown investigation, (2) Federal Election Campaign Act of 1971 is clear that such investigations are exclusive domain of Federal Election Commission until Commission has refused to follow court order compelling investigation, (3) plaintiff would not be permitted to frustrate statutory scheme by engaging in premature investigative discovery, and (4) plaintiff's depositions of AFL-CIO would involve unwarranted intrusion into political activities of organization and such intrusion might well curb or otherwise interfere with organization's legitimate political activity. *Walther v Federal Election Com. (1979, DC Dist Col) 82 FRD 200, 101 BNA LRRM 2360, 27 FR Serv 2d 594.*

Confidentiality provision of *2 USCS § 437g* does not confer confidentiality status upon material by virtue of its having been surrendered in course of Federal Election Commission investigation. *Federal Election Com. v Illinois Medical Political Action Committee (IMPAC) (1980, ND Ill) 503 F Supp 45.*

2 USCS § 437g(a)(4)(B)(i) cannot plausibly be construed as protecting documents submitted during Federal

Election Commission investigation where information in question was obtained before conciliation process was even begun, and where, information was not obtained informally, but only after recourse to courts. *Federal Election Com. v Illinois Medical Political Action Committee (IMPAC) (1980, ND Ill) 503 F Supp 45.*

Although there are certain specific time limits established in various sections of FEC Act, there is no relevant 6 month time limit for enforcement of FEC subpoena, particularly where any significant delays are attributable to campaign committee's actions, and not to any malice on part of FEC. *Federal Election Com. v Citizens for Freeman (1985, DC Md) 602 F Supp 1250,* dismd without op (1985, CA4 Md) *767 F2d 911.*

9. Injunction

Although record would support finding that defendant is likely to commit future violations of Federal Election Campaign Act, it does not justify imposition of permanent injunction and District Court is instructed on remand to limit injunction to reasonable duration. *Federal Election Com. v Furgatch (1989, CA9 Cal) 869 F2d 1256, 13 FR Serv 3d 684.*

Motion of plaintiffs, as taxpayers and milk consumers, as well as class they would represent, for injunction against dairy political committees, allegedly collecting periodic contributions from dairy farmer members to make political contributions for purpose of influencing government decisions favorable to their economic interests, would not be granted where Federal Elections Campaign Act amendments of 1974 vested in Federal Election Commission primary jurisdiction with respect to civil enforcement of provisions of Federal Election Campaign Act of 1971, as amended. *Nader v Butz (1975, DC Dist Col) 398 F Supp 390.*

Propriety of injunctive relief authorized by *2 USCS § 437g* is governed by 3-part test; court must consider whether (1) defendants acted in good faith and with diligence to cure violation, (2) task faced by defendants in complying with statute was complex and whether statute was difficult to interpret, and (3) order would have any effect in ensuring better compliance in future. *Federal Election Com. v California Medical Asso. (1980, ND Cal) 502 F Supp 196.*

Federal district court's ad hoc method of fact-finding devised for case, consisting of ordering Federal Election Commission to compile factual record concerning alleged harassment of political party and not to use procedures and determinations of *2 USCS § 437g*, was not preliminary injunction, and United States Court of Appeals would have no jurisdiction to review it, where district court's order was in nature of instruction to master to prepare record and findings, and was unappealable. Socialist Workers 1974 Nat. *Socialist Workers 1974 Nat'l Campaign Committee v Jennings (1977, App DC) 186 US App DC 140, 567 F2d 1133.*

10. Civil penalties

No abuse of discretion by District Court's failure to assess civil penalties against campaign committee and several loan guarantors for violating contribution limitations of Federal Election Campaign Act, *2 USCS §§ 431* et seq., arising from post-election loans used to retire campaign debts which individuals guaranteed in sums exceeding $ 5,000, since assessment of civil penalties is discretionary, and no abuse of discretion was shown where District Court did not assess penalties on grounds that loan was rapidly repaid by candidate, and evidence indicated loan guarantors and committees did not have unlawful motives. *Federal Election Com. v Ted Haley Congressional Committee (1988, CA9 Wash) 852 F2d 1111.*

Imposition of civil penalty of equal to amount spent on newspaper ad held to be violation of Federal Election Campaign Act was not abuse of court's discretion, where defendant refused to comply with Commission's request for report on expenditures until District Court on remand ordered him to do so, filing report occurred over one year after appellate court rejected defendant's defenses to FEC's action against him so that District Court was free to conclude that absence of good faith efforts by defendant to undo or cure his violations was indicative of need for large penalty to deter future wrongdoing, importance of Act's reporting and disclosure provisions and difficulty of proving that violations of them actually deprived public of information justify rule allowing District Court to presume harm to public from

magnitude or seriousness of violation of these provisions, readers of newspaper with wide circulation deserved to know whether candidate authorized full-page pre-election ad, and defendant's expenditure was largest independent expenditure in opposition to presidential candidate by any individual in country in 1980 election. *Federal Election Com. v Furgatch (1989, CA9 Cal) 869 F2d 1256, 13 FR Serv 3d 684.*

Civil penalty under *2 USCS § 437g(a)(5)(C)* [now *2 USCS § 437g(a)(6)(A)*] is unwarranted where union's violation of *2 USCS § 441b(b)(3)(A)* by using reverse check-off system of collecting political contributions from members was not in nature of intentional disregard of rights of its dissenting members through coercion, threats and reprisals, but was rather indirect infringement of those rights through excessive zeal in trying to have more efficient collection system, and expense union would incur in making refunds would be sufficient penalty without adding fine to it. *Federal Election Com. v National Education Asso. (1978, DC Dist Col) 457 F Supp 1102, 99 BNA LRRM 2263.*

Penalties of $ 1,000 are imposed on political committees and treasurer for committees may be held personally liable as signatory to conciliation agreements settling committees' prior violations of federal election laws, where agreements set forth without equivocation obligations of parties to comply and treasurer executed agreements, because refusal to comply with conciliation agreements is admittedly willful and substantial penalty is appropriate under *2 USCS § 437g(a)* to deter use of conciliation process as ruse and use of courts as mechanism for delay. Federal Election Comm'n v Committee of 100 Democrats (1993, DC Dist Col) 844 F Supp 1.

11. Judicial review, generally

Petitioner may seek judicial review of dismissal of administrative complaint, which alleged national political committee's violation of expenditure limits in *2 USCS § 441a*, arising from deadlock vote by members of Federal Election Commission, where FEC's General Counsel recommends pursuit of complaint because of precedent set in prior FEC proceedings; when members of FEC do not act in conformity with General Counsel's reading of precedent set in prior FEC proceedings, it is incumbent upon commissioners to set forth their reasons. *Democratic Congressional Campaign Committee v Federal Election Com. (1987, App DC) 265 US App DC 372, 831 F2d 1131.*

Considering all of factors together, court found Federal Election Commission might well have been correct that *2 USCS § 437g(a)(12)(A)* was silent with regard to confidentiality of investigatory files in closed cases, and that Congress merely intended to prevent disclosure of fact that investigation was pending; but even if subjects of closed investigation could have convinced court that its alternate construction represented more natural reading of § 437g(a)(12)(A), fact that provision could support two plausible interpretations rendered it ambiguous for purposes of Chevron analysis. *AFL-CIO v FEC (2003, App DC) 357 US App DC 47, 333 F3d 168,* reh, en banc, den (2003, App DC) *2003 US App LEXIS 18536* and reh den (2003, App DC) *2003 US App LEXIS 18537.*

Judicial authority to adjudicate alleged violations does not come into play until after Federal Election Commission has had opportunity to act; accordingly, court does not have authority to enjoin "independent project" of political election committee from using candidate's name without candidate's permission. Friends of Phil Gramm v Americans for Phil Gramm in '84 (1984, ED Va) *587 F Supp 769.*

Federal Election Commission's dismissal of complaint is overturned as "contrary to law," where no rationale was given for Commission's action, and mailing complained of, paid for by National Republican Campaign Committee, accusing Rhode Island Representative of corruption, is "electioneering message" as defined by Commission's own Advisory Opinions and as interpreted by its general counsel. *Democratic Congressional Campaign Committee v Federal Election Com. (1986, DC Dist Col) 645 F Supp 169,* mod, remanded (1987, App DC) *265 US App DC 372, 831 F2d 1131.*

Federal Election Commission's dismissal of complaint filed under *2 USCS § 437g(a)* is judicially reviewable whether or not there are 4 affirmative votes necessary to amount to commission action; language of statute clearly states that dismissals are judicially reviewable and does not distinguish among dismissals on 3, 4, or any other number of

votes, and, additionally, language of statute clearly mandates review of all Commission actions or inactions and leaves no middle ground of nonjusticiability. *Democratic Congressional Campaign Committee v Federal Election Com. (1986, DC Dist Col) 645 F Supp 169,* mod, remanded (1987, App DC) *265 US App DC 372, 831 F2d 1131.*

Federal Election Commission's dismissal of investigation is arbitrary and capricious and is returned to FEC to supplement record where FEC vote opposing, without explanation, General Counsel's recommendation to investigate political action committee's alleged violations of Election Campaign Act *(2 USCS §§ 5431* et seq.) does not allow intelligent judicial review of FEC's determination of issue. *Common Cause v Federal Election Com. (1986, DC Dist Col) 655 F Supp 619,* revd in part on other grounds, vacated in part on other grounds (1988, App DC) *268 US App DC 440, 842 F2d 436* (criticized in *Common Cause v FEC (1997, App DC) 323 US App DC 359, 108 F3d 413).*

Federal Election Commission's denial of complaint concerning reporting of expenses of Ronald Reagan trip following 1984 Republican National Convention is remanded under *2 USCS § 437g*, both for explanation of legal standard actually applied and statement of reasons demonstrating how Commission applied such legal standard, because Commission apparently merely applied 2-prong test in deciding trip was not campaign-related, which was departure from previously used "totality of circumstances" test, and relied on its general counsel's report as support or explanation for dismissing complaint even though report found "reason to believe" violation of *2 USCS § 434(b)(4)* had occurred by campaign treasurer's failure to report trip expenses. *Common Cause v Federal Election Com. (1986, DC Dist Col) 676 F Supp 286.*

Third-party Presidential candidates' challenge to their exclusion from 2000 campaign debates must fail, where Federal Election Commission decided that Commission on Presidential Debates (1) was not partial to 2 major parties, and (2) used preestablished and objective criteria to determine debate participants, because they could not show FEC's interpretation of its own regulation was erroneous or that its explanation for decision was incoherent or unreasonable. *Buchanan v FEC (2000, DC Dist Col) 112 F Supp 2d 58.*

Conciliation agreement and closing of administrative file marked end of enforcement process under *2 USCS § 437g(a)* and foreclosed any possible relief under *2 USCS § 437g(a)(8)* based on Federal Election Commission's (FEC) failure to act, and capable of repetition yet evading review exception to mootness doctrine was not applicable because cases that were brought under *2 USCS § 437g(a)(8)* did not challenge activity that, by its very nature, was short in duration; therefore, organization's action against FEC for failure to act or delay in acting with regard to its investigation of two political action committees and their treasurer had to be dismissed as moot. *Alliance for Democracy v FEC (2004, DC Dist Col) 335 F Supp 2d 39.*

Federal Election Commission (FEC) complied with *2 USCS § 437g(a)(1)* by mailing notice of complaints to corporation's president, who also happened to be treasurer of political action committee that was affiliated with corporation; that notice was mailed to president in his capacity as treasurer was harmless because president, in such capacity, surely had coterminous notice, and further, FEC, upon learning of error, took immediate steps to remedy defect. *FEC v Club for Growth, Inc. (2006, DC Dist Col) 432 F Supp 2d 87.*

12.--Jurisdiction

District court lacked jurisdiction of claim by congressman and his campaign organizations that FEC unduly delayed its investigation of him and his campaign; congressman conceded that Campaign Act does not create cause of action for his claim, that there are no reported cases in which person under FEC investigation has brought unreasonable delay claim against FEC, and Act provides for judicial review of unreasonable delay claims only in *District of Columbia. Stockman v FEC (1998, CA5 Tex) 138 F3d 144.*

District court lacked jurisdiction to adjudicate validity of complaints filed with FEC or to order FEC to do so before scheduled Presidential and Vice-Presidential debates; statute explicitly gives FEC exclusive jurisdiction for civil enforcement of Act and court may not exercise any jurisdiction until FEC's initial investigation is completed or statutory

time limit for it has expired. *Perot v FEC (1996, App DC) 321 US App DC 96, 97 F3d 553,* cert den *(1997) 520 US 1210, 137 L Ed 2d 819, 117 S Ct 1692.*

Use of word "may" does not make provisions of *2 USCS § 437g(a)(9)* [now *2 USCS § 437g(a)(8)(A)*] permissive rather than mandatory, since statute states conditions under which action for enforcement of Fair Election Campaign Act may be brought by someone other than Federal Election Commission, and absent compliance with those conditions, District Court is without jurisdiction. *Walther v Baucus (1979, DC Mont) 467 F Supp 93.*

Federal district court is without subject matter jurisdiction to entertain complainant's attempt at direct enforcement of federal election laws, since primary enforcement of such laws is entrusted to Federal Election Commission under *2 USCS § 437c(b)(1)*, statutory scheme of *2 USCS § 437g* creates exclusive method for determining role which private individuals may play in civil enforcement of federal election laws, and complainant did not allege that he had complied with *2 USCS § 437g(a)(9)* [now *2 USCS § 437g(a)(8)*]. *In re Federal Election Campaign Act Litigation (1979, DC Dist Col) 474 F Supp 1051, 27 FR Serv 2d 1226.*

District Court is without subject matter jurisdiction to hear allegations raised against defendants by Federal Election Commission where allegations were not included either in notice to defendants or in General Counsel's brief, and defendants were denied opportunity to informally conciliate allegations; as to other allegations included in notice, court has subject matter jurisdiction where Commission's offers of conciliation on 2 different occasions were declined by defendants, since Commission acted in good faith, and initiation of suit with respect to allegations is reasonable response to position taken by defendants. *Federal Election Com. v National Rifle Asso. (1983, DC Dist Col) 553 F Supp 1331.*

Action under Federal Election Campaign Act (FECA) was dismissed for lack of subject matter jurisdiction because FECA required plaintiff to first file written complaint with Federal Election Commission (FEC); current inability of FEC to act today because it only had two member and need four to establish quorum, did not establish it would not or could not act within 120 days of plaintiff filing administrative complaint. *Gravel v Am. Leadership Project (2008, ND Ohio) 249 FRD 264.*

In case in which political party had sued Federal Election Commission (FEC) seeking declaratory and injunctive relief with respect to FEC's continuing inability and failure to act on administrative complaint filed by party, court lacked jurisdiction to review complaint; 120-day waiting period in *2 USCS § 437g(a)(8)(A)* had not expired, and that time period was jurisdictional and until that time period had elapsed, FEC had exclusive jurisdiction over political party's claim. *Democratic Nat'l Comm. v FEC (2008, DC Dist Col) 552 F Supp 2d 20.*

District court had subject matter jurisdiction because Federal Election Commission made at least three attempts to enter into conciliation agreement with individual prior to filing suit and Commission was entitled to deference as to substance of conciliation process. *FEC v Adams (2008, CD Cal) 558 F Supp 2d 982.*

13.--Standing

Group of voters whose views were often opposed to those of organization, and who had filed, with Federal Election Commission (FEC), complaint requesting FEC to compel organization, which lobbied elected officials and disseminated information about candidates for public office, to make disclosures regarding its membership, contributions, and expenditures had standing to challenge, in federal courts, FEC decision dismissing complaint--on grounds that organization was not "political committee" as defined by *2 USCS § 431(4)* and was therefore not required to make such disclosures under Federal Election Campaign Act of 1971 (FECA), *2 USCS §§ 431* et seq.--because (1) given language of FECA and nature of voters' injury, which consisted of failure to obtain relevant information, voters satisfied prudential standing requirements, (2) voters satisfied standing requirements of Federal Constitution's Article III, and (3) FECA explicitly indicated congressional intent to alter general principle that agency enforcement decisions were not subject to judicial review. *FEC v Akins (1998) 524 US 11, 141 L Ed 2d 10, 118 S Ct 1777, 98 CDOS 4092, 98*

Daily Journal DAR 5637, 1998 Colo J C A R 2743, remanded (1998, App DC) *331 US App DC 108, 146 F3d 1049.*

Nonpartisan organization lacked standing to challenge Commission's decision not to prosecute two alleged violations of federal election campaign law since it did not suffer legally cognizable injury as result of decision; court would not find injury from allegation that Commission failed to process complaint in accordance with federal law since to do so would recognize justiciable interest in having Executive Branch act in lawful manner, which is not legally cognizable interest for standing purposes. *Common Cause v FEC (1997, App DC) 323 US App DC 359, 108 F3d 413.*

Organization's complaint that seats on foreign trade mission were sold in exchange for large campaign contributions did not make even nominal allegation of reporting violations and organization thus lacked standing to seek judicial review of dismissal of its administrative complaint. *Judicial Watch v FEC (1999, App DC) 336 US App DC 342, 180 F3d 277.*

In case brought pursuant to *2 USCS § 437g(a)(8)(A)*, district court's entry of summary judgment in favor of Federal Election Commission was affirmed because appellate court agreed with district court's determination that advocacy group lacked standing since it suffered no injury in fact; precise dollar value of activist list in question would not be useful either to voters generally or to group in particular. Citizens for Responsibility & Ethics in *Wash. v FEC (2007, App DC) 374 US App DC 328, 475 F3d 337,* costs/fees proceeding, request gr (2007, App DC) *2007 US App LEXIS 6349.*

Plaintiff, seeking judicial review under § 437g regarding Federal Election Commission's decision to dismiss his complaint alleging Arizona senator's re-election committee unlawfully accepted excessive cash contributions, lacked standing to pursue review since he lives, works and votes in Oklahoma and has no greater interest in election of Arizona senator then rest of populace and suffers no greater injury nor likely will he in future as result of Commission's failure to order refund for excessive cash contributions than any other U.S. citizen who does not reside or have franchise in Arizona. *Antosh v Federal Election Com. (1986, DC Dist Col) 631 F Supp 596.*

2 USCS § 437g(a)(8)(A) does not automatically confer standing, but confers right to sue on parties who otherwise already have standing. *Natural Law Party of the United States v FEC (2000, DC Dist Col) 111 F Supp 2d 33.*

Legal organization and individual lacked standing to bring suit alleging that Federal Election Commission violated *2 USCS § 437g(a)(8)(A)* by failing to act on administrative complaint which claimed that U.S. senator's campaign committee had not reported individual's contributions; organization lacked standing because it was not party to administrative complaint, and individual had not suffered "informational injury" or any other injury in fact. *Judicial Watch, Inc. v FEC (2003, DC Dist Col) 293 F Supp 2d 41.*

While Federal Election Commission's failure to act within 120-day period of *2 USCS § 437g(a)(8)(A)* confers right to sue, it does not also confer standing; it confers right to sue upon parties who otherwise already have standing. *Judicial Watch, Inc. v FEC (2003, DC Dist Col) 293 F Supp 2d 41.*

Non-profit watchdog group did not have standing to assert action in district court to challenge decision of Federal Election Commission (FEC) after FEC determined that alleged campaign transaction was in-kind contribution but that further prosecution of matter was not warranted; group had not established that FEC decision specifically impacted group's program activities. Citizens for Responsibility & Ethics in *Wash. v FEC (2005, DC Dist Col) 401 F Supp 2d 115,* affd (2007, App DC) *374 US App DC 328, 475 F3d 337,* costs/fees proceeding, request gr (2007, App DC) *2007 US App LEXIS 6349.*

Former candidate had no standing to challenge dismissal of his administrative complaint by Federal Election Commission challenging campaign spending by state political party committee under *2 USCS § 437g* because he failed to show present case or controversy or to explain future injury in that committee was not required to provide him financial support for his particular candidacy. *Tierney v FEC (2008, DC Dist Col) 538 F Supp 2d 99,* affd (2008, App DC) *2008 US App LEXIS 23639.*

14.--Exhaustion of remedies; ripeness

Exhaustion of administrative remedy by Attorney General before Federal Election Commission under *2 USCS § 437g* is not prerequisite to indictment for violations of Federal Election Campaign Act (*2 USCS §§ 431-456*). *United States v International Union of Operating Engineers (1979, CA9 Or) 638 F2d 1161*, cert den *(1980) 444 US 1077, 62 L Ed 2d 760, 100 S Ct 1026.*

Factual sufficiency undergirding Federal Election Commission's "reason to believe" findings that violations of Federal Election Campaign Act (*2 USCS §§ 431* et seq.) had occurred following review of matter discovered during audit of Lyndon LaRouche 1984 presidential campaign concerning debit adjustments to credit card transactions is not ripe for review by federal district court, where LaRouche campaign will not be unduly burdened by investigation of suspected violation in light of procedural safeguards under *2 USCS § 437*, because "reason to believe" finding is far from "final agency action" and premature judicial review would interfere with proper functioning of Commission. *Spannaus v Federal Election Com. (1986, SD NY) 641 F Supp 1520,* affd without op (1987, CA2 NY) *816 F2d 670.*

15.--Timeliness of filing

Judicial review of Federal Election Committee's denial of relief in third administrative complaint brought before it by National Rifle Association against certain organization, claiming that other organization illegally solicited funds in violation of *2 USCS § 441b* is untimely, since third complaint is substantially similar to second administrative complaint brought against same organization by NRA and NRA failed to bring petition for review of second complaint within period of limitations under *2 USCS § 437g. National Rifle Asso. v Federal Election Com. (1988, App DC) 272 US App DC 121, 854 F2d 1330.*

Sixty-day filing deadline runs from date of dismissal, not from date appellant receives Commission's letter notifying him of dismissal. *Spannaus v Federal Election Comm'n (1993, App DC) 300 App DC 398, 990 F2d 643.*

Petitioner's failure to meet 60-day deadline for filing his petition in district court deprived court of jurisdiction; pursuant to statutory language, period started running from date of dismissal of administrative complaint, not date of receipt of letter informing petitioner of *Commission's vote. Jordan v FEC (1995, App DC) 314 US App DC 308, 68 F3d 518.*

Commission has duty to conduct investigations expeditiously; standard for determining whether commission's failure to act on given complaint is contrary to law requires determination of credibility of allegation, nature of threat posed, resources available to agency, information available to agency, and novelty of issues involved; commission has only 120 days during which it is immune from challenge if its handling of matter is too slow, and after that period complainant is free to file suit in Federal District Court; remedial purposes would be wholly undermined if commission were to process complaints before without regard to possible reoccurrence of disputed practice and succeeding election without any resolution of practice's legality. *Rose v Federal Election Com. (1984, DC Dist Col) 608 F Supp 1.*

Judicial intervention requiring commission to make decision about probable cause or to explain why it cannot do so is not intrusion on prosecutorial discretion of commission where commission has had period of 2 years to investigate complaint. *Rose v Federal Election Com. (1984, DC Dist Col) 608 F Supp 1.*

Date from which 60 day period for review of decision dismissing administrative complaint is date of dismissal by commission which, in case of settlement, is date on which conciliation agreements became effective and were approved by Commission. *Antosh v Federal Election Com. (1985, DC Dist Col) 613 F Supp 729.*

Federal Election Commission's interpretation of federal election laws presumptively commands deference, however where Commission construes procedural provision regarding interpretation of date of dismissal of action for purposes of determining period within which aggrieved party must file petition for judicial review, Commission's construction should not restrain independent judicial evaluation of when complaint is dismissed. *Common Cause v Federal Election*

Com. (1985, DC Dist Col) 630 F Supp 508.

By statutorily allowing aggrieved parties to sue Federal Election Commission for dismissal of administrative complaints, Congress waived sovereign immunity but only for finite period of time. *Common Cause v Federal Election Com. (1985, DC Dist Col) 630 F Supp 508.*

Sixty-day period within which complainant must file under § 437g for judicial review of Federal Election Commission's dismissal of administrative complaint, commences on date of complaint's dismissal which is considered date complainant is actually notified of FEC's decision. *Common Cause v Federal Election Com. (1985, DC Dist Col) 630 F Supp 508.*

Petition for judicial review of Federal Elections Commission's decision to dismiss administrative complaint regarding election spending which was filed by public interest organization within 55 days of organization's notification of F. E. C. decision but not within 60 days of Commission's closed hearing in which decision to dismiss was made, was filed within statutory time period for review since date of dismissal under § 437g which commences running of review period is date complainant actually receives notice of F. E. C. decision. *Common Cause v Federal Election Com. (1985, DC Dist Col) 630 F Supp 508.*

Action against Christian Coalition for violating federal election laws is dismissed only to extent it seeks "any civil fine, penalty, or forfeiture" for events occurring prior to 5 years before filing of complaint in this matter, where Federal Election Commission has authority to seek injunctive relief wholly separate and apart from its authority to seek legal remedy under *2 USCS § 437g(a)(6)*, because *28 USCS § 2462* 5-year general statute of limitations provides no shield from declaratory or injunctive relief. *FEC v Christian Coalition (1997, DC Dist Col) 965 F Supp 66,* request gr (1998, DC Dist Col) *179 FRD 22, 41 FR Serv 3d 833.*

TAB 6

LexisNexis

LEXSTAT 2 U.S.C. Â§ 437H

*** CURRENT THROUGH PL 111-90, APPROVED 11/03/2009 WITH A GAP OF 111-84 ***

TITLE 2. THE CONGRESS
CHAPTER 14. FEDERAL ELECTION CAMPAIGNS
DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

Go to the United States Code Service Archive Directory

2 USCS § 437h

§ 437h. Judicial review

The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting enbanc.

HISTORY:

(Feb. 7, 1972, P.L. 92-225, Title III, § 310 [314] [315], as added Oct. 15, 1974, P.L. 93-443, Title II, § 208(a), 88 Stat. 1285; May 11, 1976, P.L. 94-283, Title I, §§ 105, 115(e), 90 Stat. 481, 496; Jan. 8, 1980, P.L. 96-187, Title I, §§ 105(4), 112(c), 93 Stat. 1354, 1366; Nov. 8, 1984, P.L. 98-620, Title IV, Subtitle A, § 402(1)(B), 98 Stat. 3357; June 27, 1988, P.L. 100-352, § 6(a), 102 Stat. 663.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Feb. 7, 1972, P.L. 92-225, 86 Stat. 3, popularly known as the Federal Election Campaign Act of 1971, which is generally classified to *2 USCS §§ 431* et seq. For full classification of such Act, consult USCS Tables volumes.

Effective date of section:

This section took effect on Jan. 1, 1975, pursuant to § 410(a) of Act Oct. 15, 1974 § 410(a), which appears as *2 USCS § 431* note.

Amendments:

1976. Act May 11, 1976, deleted "or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code" in the first and second sentences.

1980. Act Jan. 8, 1980, in subsec. (a), deleted "of the United States" following "President".

1984. Act Nov. 8, 1984 (applicable as provided by § 403 of such Act, which appears as *28 USCS § 1657* note), deleted subsec. (c) which read: "It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsection (a).".

1988. Act June 27, 1988 (effective 90 days after enactment except as provided by § 7 of such Act, which appears as *28 USCS § 1254* note) deleted the subsec. designator "(a)" preceding "The Commission"; and deleted subsec. (b) which read: "Notwithstanding any other provision of law, any decision on a matter certified under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought no later than 20 days after the decision of the court of appeals.".

Redesignation:

Section 105 of Act May 11, 1976, redesignated § 315 of Title III of Act Feb. 7, 1972, P.L. 92-225, as § 314 of such Title, and redesignated § 310 of Title III of Act Feb. 7, 1972, P.L. 92-255, as § 307 of such Title.

Section 105(4) of Act Jan. 8, 1980, redesignated § 314 of Title III of Act Feb. 7, 1972, P.L. 92-225, as § 310 of such Title.

Other provisions:

Bipartisan Campaign Reform Act of 2002; constitutional challenges. Act March 27, 2002, P.L. 107-155, Title III, § 403, 116 Stat. 113 (effective on enactment, as provided by § 402 of such Act, which appears as *2 USCS § 431* note), provides:

"(a) Special rules for actions brought on constitutional grounds. If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act [for full classification, consult USCS Tables volumes], the following rules shall apply:

"(1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to *section 2284 of title 28, United States Code.*

"(2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.

"(3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

"(4) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

"(b) Intervention by Members of Congress. In any action in which the constitutionality of any provision of this Act or any amendment made by this Act [for full classification, consult USCS Tables volumes] is raised (including but not

limited to an action described in subsection (a)), any member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or Senate shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment. To avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action may make such orders as it considers necessary, including orders to require intervenors taking similar positions to file joint papers or to be represented by a single attorney at oral argument.

"(c) Challenge by Members of Congress. Any Member of Congress may bring an action, subject to the special rules described in subsection (a), for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act [for full classification, consult USCS Tables volumes].

"(d) Applicability.

(1) Initial claims. With respect to any action initially filed on or before December 31, 2006, the provisions of subsection (a) shall apply with respect to each action described in such section.

"(2) Subsequent actions. With respect to any action initially filed after December 31, 2006, the provisions of subsection (a) shall not apply to any action described in such section unless the person filing such action elects such provisions to apply to the action.".

NOTES:

Research Guide:

Federal Procedure:

10B Fed Proc L Ed, Elections and Elective Franchise §§ 28:300-303.

Annotations:

Validity, Construction, and Application of Campaign Finance Laws--Supreme Court Cases. *19 ALR Fed 2d 1.*

Law Review Articles:

Curtis. Restrictions on Voluntary Compliance Under the Federal Election Campaign Act. *29 Case W Res L Rev 830,* Summer 1979.

Feingold. Campaign Finance Reform. 22 Yale Law & Pol'y Rev 339, Spring 2004.

Interpretive Notes and Decisions:

1. Generally 2. Purpose 3. Ripeness 4. Standing 5.--Candidates; voters 6.--Corporations 7.--Other entities 8. Certification by District Court

1. Generally

Upon holding that Federal Election Commission, because of method of appointment of its members, could not properly exercise its rulemaking, adjudicatory, and enforcement powers under Federal Election Campaign Act of 1971 (*2 USCS §§ 431* et seq., *18 USCS §§ 591* et seq.) and provisions of Subtitle H of the Internal Revenue Code of 1954 (*26 USCS §§ 9001* et seq.) for public financing of Presidential election campaigns, United States Supreme Court accorded de facto validity to Commission's past acts, and stayed, for period not to exceed 30 days, Court's judgment insofar as it affected Commission's authority to exercise its statutory powers, thus affording Congress opportunity to take

appropriate action and allowing Commission to function de facto in interim. *Buckley v Valeo (1976) 424 US 1, 96 S Ct 612, 46 L Ed 2d 659, 76-1 USTC P 9189* (criticized in *Homans v City of Albuquerque (2002, DC NM) 217 F Supp 2d 1197)* and (criticized in *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13)* and (criticized in *Ctr. for Individual Freedom, Inc. v Ireland (2008, SD W Va) 2008 US Dist LEXIS 83856).*

Proper mode of procedure for questions of constitutionality of Federal Election Campaign Act (*2 USCS § 441b*) arising in proceedings under *2 USCS § 437g* is removal of constitutional issues from action under § 437g and certification of them to Court of Appeals pursuant to *2 USCS § 437h. International Asso. of Machinists & Aerospace Workers v Federal Election Com. (1982, App DC) 220 US App DC 45, 678 F2d 1092,* affd *(1982) 459 US 983, 74 L Ed 2d 379, 103 S Ct 335.*

2. Purpose

Two sentences of *2 USCS § 437h(a)*, when read together, show express Congressional intent that § 437h apply to all questions of constitutionality of any provision of Federal Election Campaign Act (*2 USCS §§ 431* et seq.); purpose would be severely restricted if first sentence were to be read as exclusive grant of standing to three specified plaintiffs to obtain expedited review. *Bread Political Action Committee v Federal Election Com. (1979, CA7 Ill) 591 F2d 29.*

Overriding concern of Congress in enacting *2 USCS § 437h* was to provide swift judicial review of all constitutional questions engendered by passage of 1974 amendments to Federal Election Campaign Act of 1971, and to have all those questions, when properly framed in single complaint, decided together rather than in piecemeal fashion. *Buckley v Valeo (1975, DC Dist Col) 387 F Supp 135,* remanded (1975, App DC) *171 US App DC 168, 519 F2d 817, 75-2 USTC P 9687.*

2 USCS § 437h(a) had purpose and effect of expediting judicial review of questions raised in Congress about constitutionality of particular provisions of Federal Election Campaign Act (*2 USCS §§ 431* et seq.) so that these questions could be authoritatively resolved before Presidential Election of 1976. *Martin Tractor Co. v Federal Election Com. (1978, DC Dist Col) 460 F Supp 1017,* affd (1980, App DC) *200 US App DC 322, 627 F2d 375,* cert den *(1980) 449 US 954, 66 L Ed 2d 218, 101 S Ct 360.*

3. Ripeness

It was necessary for Supreme Court to consider all aspects of Federal Election Commission's authority which were presented to it by certified questions, irrespective of ripeness, where Congress was understandably concerned with obtaining final adjudication of as many issues as possible under provisions of *2 USCS § 437h*; *2 USCS § 437h* authorization of federal court actions by specific organizations or individuals for declaratory judgments regarding constitutionality of other provisions of act does not require federal courts to render advisory opinions in violation of "case or controversy" requirement of USCS Const, Art III, § 2, but rather provides judicial review to extent permitted by Art III. *Buckley v Valeo (1976) 424 US 1, 96 S Ct 612, 46 L Ed 2d 659, 76-1 USTC P 9189* (criticized in *Homans v City of Albuquerque (2002, DC NM) 217 F Supp 2d 1197)* and (criticized in *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13)* and (criticized in *Ctr. for Individual Freedom, Inc. v Ireland (2008, SD W Va) 2008 US Dist LEXIS 83856).*

No ripe injury or present "personal stake" existed in whether or how challenged rules and regulations of Federal Election Commission were reviewed by legislature since candidate failed to obtain nomination of political party, protested no specific veto action taken by Congress, and suggested no inhibition to political activities resulting from facial provisions of Federal Election Campaign Act of 1971. *Clark v Valeo (1977, App DC) 182 US App DC 21, 559 F2d 642,* affd *(1977) 431 US 950, 53 L Ed 2d 267, 97 S Ct 2667.*

4. Standing

Two sentences of *2 USCS § 437h(a)* [now *2 USCS § 437h*], when read together, show express congressional intent

that § 437h apply to all questions of constitutionality of any provision of Federal Election Campaign Act; purpose would be severely restricted if first sentence were read as exclusive grant of standing to three specified plaintiffs to obtain expedited review. *Bread Political Action Committee v Federal Election Com. (1979, CA7 Ill) 591 F2d 29.*

Access to court pursuant to *2 USCS § 437h(a)* [now *2 USCS § 437h*] was by its terms limited to Federal Election Commission, national committee of any political party, or any individual eligible to vote in any election for office of President of United States; neither corporate plaintiffs nor political action committees are in category of entities and individuals entitled to invoke court's jurisdiction under § 437h(a) [now *2 USCS § 437h*]. *Martin Tractor Co. v Federal Election Com. (1978, DC Dist Col) 460 F Supp 1017,* affd (1980, App DC) *200 US App DC 322, 627 F2d 375,* cert den *(1980) 449 US 954, 66 L Ed 2d 218, 101 S Ct 360.*

Both *2 USCS § 437h* and *26 USCS § 9011* grant standing to sue to individuals eligible to vote in any Presidential election; to construe either § 437h or § 9011 as granting non-profit, non-partisan membership corporation, organized to promote its members' interests in civic affairs, unconditional right to intervene would require court to permit every eligible voter in United States same right, and Congress could hardly have contemplated such result in statute designed for expedited judicial review. Republican Nat. *Republican Nat'l Committee v Federal Election Com. (1978, SD NY) 461 F Supp 570, 27 FR Serv 2d 1039,* affd *(1980) 445 US 955, 64 L Ed 2d 231, 100 S Ct 1639.*

5.--Candidates; voters

Campaign contributor had standing to bring civil suit challenging constitutionality of Federal Election Campaign Act despite fact that he secretly channeled his contributions through 56 different persons, since he had been indicted under Act so that his challenge was anything but hypothetical. *Goland v United States (1990, CA9 Cal) 903 F2d 1247.*

Third-party candidate and voter lacked standing to challenge constitutionality of Act on grounds that, by "authorizing" out-of-state contributions, Act violates their rights to free association, equal protection, and republican form of government, since Act neither authorizes nor prohibits such contributions and causal connection with plaintiffs' alleged injuries is therefore lacking, and claim is frivolous as well since plaintiffs sought unprecedented limitation on constitutionally protected freedom of political expression. *Whitmore v Federal Election Comm'n (1995, CA9 Alaska) 68 F3d 1212, 95 CDOS 8334, 95* Daily Journal DAR 14399, amd on other grounds, motion den (1995, CA9 Alaska) *68 F3d 1212, 96 CDOS 249, 96* Daily Journal DAR 353 and cert den *(1996) 517 US 1155, 134 L Ed 2d 646, 116 S Ct 1543.*

Voters' motion for certification of their complaint to en banc Fourth Circuit pursuant to *2 USCS § 437h* is denied, where voters plead that their rights are somehow being violated by fact that candidates running for U.S. Senate from Virginia are soliciting, accepting, and using contributions from individuals residing outside Virginia, but fail to show link between such contributions and any particularized injury to themselves, because party seeking to invoke § 437h must have standing to raise constitutional claim. *Froelich v Federal Election Comm'n (1994, ED Va) 855 F Supp 868,* affd without op (1995, CA4 Va) *57 F3d 1066,* reported in full (1995, CA4 Va) *1995 US App LEXIS 14606.*

Candidate claimed that out-of-state campaign contributions and "authorization" by Federal Election Campaign Act, *2 USCS §§ 431* et seq., of such contributions constituted particularized and ongoing injury to his legally cognizable interest in having fair opportunity to compete in 2004 Alaska U.S. Senate election; however, he cited no authority to support his claim of legally protected interest in either restricting spending of candidates for election or in preventing individuals or committees from contributing to candidates of their choice and no injury in fact was found. *Sykes v FEC (2004, DC Dist Col) 335 F Supp 2d 84,* affd (2005, App DC) *2005 US App LEXIS 6363.*

6.--Corporations

Individual in his capacity as voter and as corporate president has standing to invoke expedited review under *2 USCS § 437h* of constitutional challenge to § 441b(a) and to raise individual challenges as well as those of corporation, although corporation has no standing under § 437h to invoke expedited review, as corporate president, he will be

limited to making arguments as to corporations only, and may not represent challenges of banks or labor unions. *Athens Lumber Co. v Federal Election Com. (1982, CA11 Ga) 689 F2d 1006.*

Expedited procedures of *2 USCS § 437h* are not available to corporation since corporation is ineligible to vote and is not otherwise described as proper party; only available procedure for corporation, challenging rule governing political contributions, is nonexpedited declaratory judgment provision of *28 USCS § 2201. Athens Lumber Co. v Federal Election Com. (1982, MD Ga) 531 F Supp 756,* revd on other grounds (1982, CA11 Ga) *689 F2d 1006.*

7.--Other entities

Trade associations and their political action committees have standing to invoke *2 USCS § 437h. Bread Political Action Committee v Federal Elections Com. (1980, CA7 Ill) 635 F2d 621,* revd on other grounds, remanded *(1982) 455 US 577, 71 L Ed 2d 432, 102 S Ct 1235.*

Union lacks requisite statutory standing to bring action under *2 USCS § 437h. International Asso. of Machinists & Aerospace Workers v Federal Election Com. (1982, App DC) 220 US App DC 45, 678 F2d 1092,* affd *(1982) 459 US 983, 74 L Ed 2d 379, 103 S Ct 335.*

8. Certification by District Court

Certification of challenge to constitutionality of Act's limit on campaign contributions was premature where district court failed to determine whether limit as applied to petitioner had serious adverse effect on his candidacy such that his challenge was not frivolous; if district court decides challenge is not frivolous, it must then develop record and make fact findings sufficient to allow en banc court to decide constitutional issues. *Khachaturian v Federal Election Com. (1992, CA5 La) 980 F2d 330.*

Extraordinary procedure set up in *2 USCS § 437h* should not be utilized when constitutional claim is frivolous; without initial District Court screening of in forma pauperis constitutional attack under § 437h to determine whether claim is frivolous, extraordinary § 437h procedure would be subject to clear abuse by litigants. *Gifford v Congress (1978, ED Cal) 452 F Supp 802.*

Because candidate was unable to establish standing and his claim may well have been frivolous, court had proper jurisdiction to dismiss complaint and did not need to certify his questions to court of appeals. *Sykes v FEC (2004, DC Dist Col) 335 F Supp 2d 84,* affd (2005, App DC) *2005 US App LEXIS 6363.*

TAB 7

LEXSTAT 2 U.S.C. Â§ 441A

*** CURRENT THROUGH PL 111-90, APPROVED 11/03/2009 WITH A GAP OF 111-84 ***

TITLE 2. THE CONGRESS
CHAPTER 14. FEDERAL ELECTION CAMPAIGNS
DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

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2 USCS § 441a

§ 441a. Limitations on contributions and expenditures

(a) Dollar limits on contributions.

(1) Except as provided in subsection (i) and section 315A [*2 USCS § 441a-1*], no person shall make contributions--

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $ 2,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $ 25,000;

(C) to any other political committee (other than a committee described in subparagraph (D)) in any calendar year which, in the aggregate, exceed $ 5,000; or

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $ 10,000.

(2) No multicandidate political committee shall make contributions--

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $ 5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $ 15,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed $ 5,000.

(3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than--

(A) $ 37,500, in the case of contributions to candidates and the authorized committees of candidates;

(B) $ 57,500, in the case of any other contributions, of which not more than $ 37,500 may be attributable to contributions to political committees which are not political committees of national political parties.

(4) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party. For purposes of paragraph (2), the term "multicandidate political committee" means a political committee which has been registered under section 303 [*2 USCS § 433*] for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee, except that (A) nothing in this sentence shall limit transfers between political committees of funds raised through joint fund raising efforts; (B) for purposes of the limitations provided by paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not be considered to have been made by a single political committee; and (C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office if (i) such transfer is not made when the candidate is actively seeking nomination or election to both such offices; (ii) the limitations contained in this Act on contributions by persons are not exceeded by such transfer; and (iii) the candidate has not elected to receive any funds under chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 9001* et seq. or *9031* et seq.]. In any case in which a corporation and any of its subsidiaries, branches, divisions, departments, or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments, or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for purposes of the limitations provided by paragraph (1) and paragraph (2).

(6) The limitations on contributions to a candidate imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

(7) For purposes of this subsection--

(A) contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on his behalf shall be considered to be contributions made to such candidate;

(B) (i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate;

(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and

(iii) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for purposes of this paragraph; [and]

(C) if--

(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 304(f)(3) [*2 USCS § 434(f)(3)*]); and

(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party; and

(D) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

(b) Dollar limits on expenditures by candidates for office of President of the United States.

(1) No candidate for the office of President of the United States who is eligible under *section 9003 of the Internal Revenue Code of 1954* [1986] [*26 USCS § 9003*] (relating to condition for eligibility for payments) or under *section 9033 of the Internal Revenue Code of 1954* [1986] [*26 USCS § 9033*] (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of--

(A) $ 10,000,000, in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e)), or $ 200,000; or

(B) $ 20,000,000 in the case of a campaign for election to such office.

(2) For purposes of this subsection--

(A) expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States; and

(B) an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by--

(i) an authorized committee or any other agent of the candidate for purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

(c) Increases on limits based on increases in price index.

(1) (A) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period.

(B) Except as provided in subparagraph (C), in any calendar year after 2002--

(i) a limitation established by subsections (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

(ii) each amount so increased shall remain in effect for the calendar year; and

(iii) if any amount after adjustment under clause (i) is not a multiple of $ 100, such amount shall be rounded to the nearest multiple of $ 100.

(C) In the case of limitations under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), increases shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.

(2) For purposes of paragraph (1)--

(A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items--United States city average) published monthly by the Bureau of Labor Statistics; and

(B) the term "base period" means--

(i) for purposes of subsections (b) and (d), calendar year 1974; and

(ii) for purposes of subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), calendar year 2001.

(d) Expenditures by national committee, State committee, or subordinate committee of State committee in connection with general election campaign of candidates for Federal office.

(1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2), (3), and (4) of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e)). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party

serving as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds--

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of--

(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e)); or

(ii) $ 20,000; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $ 10,000.

(4) Independent versus coordinated expenditures by party.

(A) In general. On or after the date on which a political party nominates a candidate, no committee of the political party may make--

(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 301(17) [*2 USCS § 431(17)*]) with respect to the candidate during the election cycle; or

(ii) any independent expenditure (as defined in section 301(17) [*2 USCS § 431(17)*]) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

(B) Application. For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

(C) Transfers. A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.

(e) Certification and publication of estimated voting age population. During the first week of January 1975, and every subsequent year, the Secretary of Commerce shall certify to the Commission and publish in the Federal Register an estimate of the voting age population of the United States, of each State, and of each congressional district as of the first day of July next preceding the date of certification. The term "voting age population" means resident population, 18 years of age or older.

(f) Prohibited contributions and expenditures. No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

(g) Attribution of multi-State expenditures to candidate's expenditures limitation in each State. The commission shall prescribe rules under which any expenditure by a candidate for presidential nominations for use in 2 or more States shall be attributed to such candidate's expenditure limitation in each such State, based on the voting age population in such State which can reasonably be expected to be influenced by such expenditure.

(h) Senatorial candidates. Notwithstanding any other provision of this Act, amounts totaling not more than $ 35,000 may be contributed to a candidate for nomination for election, or for election, to the United States Senate during the year in which an election is held in which he is such a candidate, by the Republican or Democratic Senatorial Campaign Committee, or the national committee of a political party, or any combination of such committees.

(i) Increased limit to allow response to expenditures from personal funds.

(1) Increase.

(A) In general. Subject to paragraph (2), if the opposition personal funds amount with respect to a candidate for election to the office of Senator exceeds the threshold amount, the limit under subsection (a)(1)(A) (in this subsection referred to as the 'applicable limit') with respect to that candidate shall be the increased limit.

(B) Threshold amount.

(i) State-by-State competitive and fair campaign formula. In this subsection, the threshold amount with respect to an election cycle of a candidate described in subparagraph (A) is an amount equal to the sum of--

(I) $ 150,000; and

(II) $ 0.04 multiplied by the voting age population.

(ii) Voting age population. In this subparagraph, the term "voting age population" means in the case of a candidate for the office of Senator, the voting age population of the State of the candidate (as certified under section 315(e) [subsec. (e) of this section]).

(C) Increased limit. Except as provided in clause (ii), for purposes of subparagraph (A), if the opposition personal funds amount is over--

(i) 2 times the threshold amount, but not over 4 times that amount--

(I) the increased limit shall be 3 times the applicable limit; and

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution;

(ii) 4 times the threshold amount, but not over 10 times that amount--

(I) the increased limit shall be 6 times the applicable limit; and

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

(iii) 10 times the threshold amount--

(I) the increased limit shall be 6 times the applicable limit;

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

(III) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party shall not apply.

(D) Opposition personal funds amount. The opposition personal funds amount is an amount equal to the excess (if any) of--

(i) the greatest aggregate amount of expenditures from personal funds (as defined in section 304(a)(6)(B) [*2 USCS § 434(a)(6)(B)*]) that an opposing candidate in the same election makes; over

(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

(E) Special rule for candidate's campaign funds.

(i) In general. For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (D)(ii), such amount shall include the gross receipts advantage of the candidate's authorized committee.

(ii) Gross receipts advantage. For purposes of clause (i), the term "gross receipts advantage" means the excess, if any, of--

(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

(2) Time to accept contributions under increased limit.

(A) In general. Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)--

(i) until the candidate has received notification of the opposition personal funds amount under section 304(a)(6)(B) [*2 USCS § 434(a)(6)(B)*]; and

(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 110 percent of the opposition personal funds amount.

(B) Effect of withdrawal of an opposing candidate. A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

(3) Disposal of excess contributions.

(A) In general. The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

(B) Return to contributors. A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

(j) Limitation on repayment of personal loans. Any candidate who incurs personal loans made after the effective date of the Bipartisan Campaign Reform Act of 2002 [effective Nov. 6, 2002] in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed $ 250,000, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of such election.

HISTORY:

(Feb. 7, 1972, P.L. 92-225, Title III, § 315 [320], as added May 11, 1976, P.L. 94-283, Title I, § 112(2), 90 Stat. 487; Jan. 8, 1980, P.L. 96-187, Title I, § 105(5), 93 Stat. 1354; March 27, 2002, P.L. 107-155, Title I, § 102, Title II, Subtitle A, § 202, Subtitle B, §§ 213, 214(a), Title III, §§ 304(a), 307(a)-(d), 316, 319(b), 116 Stat. 86, 90, 94, 97, 102, 108, 112.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Feb. 7, 1972, P.L. 92-225, 86 Stat. 3, popularly known as the Federal Election Campaign Act of 1971, which appears generally as *2 USCS §§ 431* et seq. For full classification of such Act, consult USCS Tables volumes.

For effective date of "Bipartisan Campaign Reform Act of 2002", referred to in subsec. (j), see § 402 of Act March 27, 2002, P.L. 107-155, which appears as *2 USCS § 431* note.

Explanatory notes:

"1986" has been inserted in brackets in subsecs. (a)(5) and (b)(1) pursuant to § 2 of Act Oct. 22, 1986, P.L. 99-514, which redesignated the Internal Revenue Code of 1954 (Act Aug. 16, 1954, ch 736) as the Internal Revenue Code of 1986. In redesignating the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, Congress provided, in Act Oct. 22, 1986, P.L. 99-514, § 2(b), 100 Stat. 2095, for construction of references to the Internal Revenue Code as follows: except when inappropriate, any reference in any law, Executive Order, or other document to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal

Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

The word "and" has been enclosed in brackets in subsec. (a)(7)(B)(iii) to indicate the probable intent of Congress to delete such word.

Another § 320 of Act Feb. 7, 1972, P.L. 92-225 was classified to *2 USCS § 441* and was repealed by Act May 11, 1946, P.L. 94-283, Title I, § 112(1), 90 Stat. 486.

Another § 315 of Act Feb. 7, 1972, P.L. 92-255 was redsignated as § 314 by Act May 11, 1976, P.L. 94-283, Title I, § 105, 90 Stat. 481, and later as § 310 by Act Ja. 8, 1980, P.L. 96-187, Title I, § 105(4), 93 Stat. 1354.

Another § 315 of Act Feb. 7, 1972, P.L. 92-255 was redesignated as § 311 by Act Jan. 8, 1980, P.L. 96-187, Title I, § 105(4), 93 Stat. 1354.

Amendments:

2002. Act March 27, 2002 (effective on 11/6/2002, but not applicable with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date, as provided by § 402(a)(4) of such Act, which appears as *2 USCS § 431* note), in subsec. (a), in para. (1), in the introductory matter, substituted "Except as provided in subsection (i) and section 315A, no person" for "No person", and, in para. (7), in subpara. (B), redesignated cl. (ii) as cl. (iii), and inserted new cl. (ii), redesignated subpara. (C) as subpara. (D), and inserted new subpara. (C); in subsec. (d), in para. (1), substituted ", (3), and (4)" for "and (3)", and added para. (4); and added subsecs. (i) and (j).

Such Act further (applicable with respect to contributions made on or after 1/1/2003, as provided by § 307(e) of such Act, which appears as a note to this section), in subsec. (a), in para. (1), in subpara. (A), substituted "$ 2,000" for "$ 1,000", in subpara. (B), substituted "$ 25,000" for "$ 20,000", and deleted "or" following the concluding semicolon, in subpara. (C), inserted "(other than a committee described in subparagraph (D))", and substituted "; or" for a concluding period, and added subpara. (D), and substituted para. (3) for one which read: "(3) No individual shall make contributions aggregating more than $ 25,000 in any calendar year. For purposes of this paragraph, any contribution made to a candidate in a year other than the calendar year in which the election is held with respect to which such contribution is made, is considered to be made during the calendar year in which such election is held."; in subsec. (c), in para. (1), inserted the subparagraph designator "(A)" and deleted "Each limitation established by subsection (b) and subsection (d) shall be increased by such percent difference. Each amount so increased shall be the amount in effect for such calendar year." following "base period.", and added subparas. (B) and (C), and, in para. (2)(B), substituted "means--" for "means the calendar year 1974." and added cls. (i) and (ii); and, in subsec. (h), substituted "$ 35,000" for "$ 17,500".

Redesignation:

Section 105(5) of Act Jan. 8, 1980, redesignated § 320 of Act Feb. 7, 1972, P.L. 92-225, Title III, as § 315 of such Act.

Other provisions:

Regulations on coordinated communications paid for by persons other than candidates, etc. Act March 27, 2002, P.L. 107-155, Title II, Subtitle B, § 214(c), 116 Stat. 95 (effective on Nov. 6, 2002 but not applicable with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date, as provided by § 402 of such Act, which appears as *2 USCS § 431* note), provides:

"The Federal Election Commission shall promulgate new regulations on coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees. The regulations shall not

require agreement or formal collaboration to establish coordination. In addition to any subject determined by the Commission, the regulations shall address--

"(1) payments for the republication of campaign materials;

"(2) payments for the use of a common vendor;

"(3) payments for communications directed or made by persons who previously served as an employee of a candidate or a political party; and

"(4) payments for communications made by a person after substantial discussion about the communication with a candidate or a political party.".

Application of amendments made by § 307 of Act March 27, 2002. Act March 27, 2002, P.L. 107-155, Title III, § 307(e), 116 Stat. 103, provides: "The amendments made by this section [amending subsecs. (a)(1), (3), (c)(1), (2)(B), and (h) of this section] shall apply with respect to contributions made on or after January 1, 2003.".

NOTES:

Code of Federal Regulations:

Federal Election Commission--Reports by political committees and other persons (*2 U.S.C. 434*), *11 CFR 104.1* et seq.

Federal Election Commission--Allocations of candidate and committee activities, *11 CFR 106.1* et seq.

Federal Election Commission--Coordinated and independent expenditures (*2 U.S.C. 431(17)*, *441a(a)* and (d), and Pub. L. 107-155 Sec. 214(c)), *11 CFR 109.1* et seq.

Federal Election Commission--Contribution and expenditure limitations and prohibitions, *11 CFR 110.1* et seq.

Federal Election Commission--Use of campaign accounts for non-campaign purposes, *11 CFR 113.1* et seq.

Federal Election Commission--Debts owed by candidates and political committees, *11 CFR 116.1* et seq.

Federal Election Commission--Non-Federal funds, *11 CFR 300.1* et seq.

Federal Election Commission--Increased limits for candidates opposing self-financed candidates, *11 CFR 400.1* et seq.

Related Statutes & Rules:

Sentencing Guidelines for the United States Courts, *18 USCS Appx § 2C1.8*.

This section is referred to in *2 USCS § 434*; *5 USCS § 7323*; *26 USCS §§ 9004*, *9008*, *9034*, *9035*.

Research Guide:

Federal Procedure:

15 Moore's Federal Practice (Matthew Bender 3d ed.), ch 101, Issues of Justiciability § 101.41.

10B Fed Proc L Ed, Elections and Elective Franchise § 29:256.

Am Jur:

16 Am Jur 2d, Constitutional Law § 160.

26 Am Jur 2d, Elections §§ 462, 466, 467.

Criminal Law and Practice:

2 Business Crime (Matthew Bender), ch 6A, Preventing Corporate Criminal Liability P 6A.01.

Annotations:

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State regulation of the giving or making of political contributions or expenditures by private individuals. *94 ALR3d 944.*

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Galson. The Law of Politics: The Role of Law in Advancing Democracy: Emerging Constitutional Paradigms and Justifications for Campaign Finance Regulation: The Case of 527 Groups. 95 Geo LJ 1181, April 2007.

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Interpretive Notes and Decisions:

1. Generally 2. Constitutionality 3.--First Amendment rights; free speech 4.--Fifth Amendment rights 5.--Ninth Amendment rights 6. Standing 7. Enforcement authority 8. Purpose of contributions 9. Contributions to political committees 10. Committee expenditures 11. Aggregation of contributions

1. Generally

On its face, § 315(a)(7)(B)(ii) of Federal Election Campaign Act of 1971 (FECA) (*2 USCS § 441a(a)(7)(b)(ii)*)--a provision of Title II of Bipartisan Campaign Reform Act of 2002 under which expenditures that are coordinated with political party are treated as contributions to party. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Federal Election Campaign Act, *2 USCS § 431* et seq., neither prohibits nor authorizes out-of-state contributions. *Sykes v FEC (2004, DC Dist Col) 335 F Supp 2d 84,* affd (2005, App DC) *2005 US App LEXIS 6363.*

2. Constitutionality

Title I of Bipartisan Campaign Reform Act of 2002 (codified at locations including *2 USCS §§ 431* et seq.)--regulating use of "soft money" by political parties, officeholders, and candidates--does not exceed Congress' authority under Federal Constitution's elections clause to make or alter rules governing federal elections. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Title I of Bipartisan Campaign Reform Act of 2002 (BCRA) (codified at locations including *2 USCS §§ 431* et seq.)--regulating use of "soft money" by political parties, officeholders, and candidates--does not impair authority of states to regulate their own elections and thus does not violate federal constitutional principles of federalism. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

On its face, § 315(a)(7)(C) of Federal Election Campaign Act (FECA) (*2 USCS § 441a(a)(7)(C)*)--as amended by Title II of Bipartisan Campaign Reform Act of 2002 to provide that disbursements for electioneering communications that are coordinated with candidate or party will be treated as contributions to, and expenditures by, that candidate or party--does not violate Federal Constitution. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Facial challenge to federal constitutional validity of §§ 214(b) and 214(c) of Bipartisan Campaign Reform Act of 2002 (*2 USCS § 441a* note)--under which Federal Election Commission promulgated new regulations dealing with "coordinated communications" paid for by persons other than candidates or their parties--was not ripe, to extent that alleged constitutional infirmities were found in implementing regulations rather than statute itself, for issues concerning regulations (1) were not appropriately raised in facial challenge, and (2) had to be pursued in separate proceeding. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Provision of *2 USCS § 441a* which restricts amount of contribution allowable by unincorporated association and its political action committee is constitutional because to overturn such restriction would be to grant such associations

special privilege of unlimited and direct contribution ability, which is privilege not extended to individual persons. *California Medical Asso. v Federal Election Com. (1980, CA9 Cal) 641 F2d 619,* affd *(1981) 453 US 182, 69 L Ed 2d 567, 101 S Ct 2712 .*

On remand from Supreme Court, court would remand to district court for further proceedings since resolution of constitutionality of party expenditure provision as applied to coordinated expenditures was too important to be resolved in haste and courts would benefit by parties fleshing out record with further evidence. *FEC v Colorado Republican Fed. Campaign Comm. (1996, CA10 Colo) 96 F3d 471.*

There is no constitutional prerequisite for agreement, in order to find that expenditure is coordinated, and thus, *2 USCS § 441a(a)(7)(B)(ii)* is not unconstitutional. *McConnell v FEC (2003, DC Dist Col) 251 F Supp 2d 176,* affd in part and revd in part on other grounds (2003, US) *540 US 93, 157 L Ed 2d 491, 124 S Ct 619, 17 FLW Fed S 13.*

Essentially forcing national political parties to choose between making coordinated expenditures, under Party Expenditures Provision, or unlimited independent expenditures on behalf of their federal candidates, as required by *2 USCS § 441a(d)(4)*, is unconstitutional. *McConnell v FEC (2003, DC Dist Col) 251 F Supp 2d 176,* affd in part and revd in part on other grounds (2003, US) *540 US 93, 157 L Ed 2d 491, 124 S Ct 619, 17 FLW Fed S 13.*

3.--First Amendment rights; free speech

Provisions of former *18 USCS § 608* which impose ceilings on political contributions do not violate First Amendment speech and association rights or invidiously discriminate against nonincumbent candidates and minority party candidates, but are supported by substantial governmental interest in limiting corruption and its appearance; provisions which limit independent political expenditures by individuals and groups, and personal expenditures by candidates, and which fix ceilings on overall campaign expenditures by candidates are unconstitutional as impermissibly burdening right of free expression under First Amendment, and cannot be sustained on basis of certain enumerated governmental interests. *Buckley v Valeo (1976) 424 US 1, 96 S Ct 612, 46 L Ed 2d 659, 76-1 USTC P 9189* (criticized in *Homans v City of Albuquerque (2002, DC NM) 217 F Supp 2d 1197)* and (criticized in *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13)* and (criticized in *Ctr. for Individual Freedom, Inc. v Ireland (2008, SD W Va) 2008 US Dist LEXIS 83856).*

Provision of Federal Election Campaign Act (*2 USCS § 441a(a)(1)(C)*), which prohibits individuals and unincorporated associations from contributing more than $ 5,000 per calendar year to any multicandidate political committee, does not violate First Amendment. *Cal. Med. Ass'n v Fed. Election Comm'n (1981) 453 US 182, 69 L Ed 2d 567, 101 S Ct 2712.*

Political party's expenditures that are coordinated with candidate of party--unlike truly independent expenditures by party in connection with election--may, consistent with *Federal Constitution's First Amendment*, be restricted in order to minimize circumvention of political contribution limits set by provision of Federal Election Campaign Act of 1971 (FECA) (*2 USCS § 441a(a)*); thus, another FECA provision (*2 USCS § 441a(d)(3)*), which limits amounts that national or state party committees are permitted to spend on congressional elections, is not facially invalid under First Amendment with respect to party's coordinated expenditures. *FEC v Colo. Republican Fed. Campaign Comm. (2001) 533 US 431, 150 L Ed 2d 461, 121 S Ct 2351, 2001 CDOS 5225, 2001 Daily Journal DAR 6447, 2001 Colo J C A R 3296, 14 FLW Fed S 389.*

In determining whether Federal Election Campaign Act of 1971 provision (*2 USCS § 441a(d)(3)*), which limits amounts that national or state party committees are permitted to spend on congressional elections, is facially valid under *Federal Constitution's First Amendment* with respect to party's expenditures that are coordinated with candidate of party, United States Supreme Court will apply to coordinated spending limitation same scrutiny that is appropriate for contribution limit, that is, whether restriction is closely drawn to match sufficiently important government interest in combating political corruption. *FEC v Colo. Republican Fed. Campaign Comm. (2001) 533 US 431, 150 L Ed 2d 461,*

121 S Ct 2351, 2001 CDOS 5225, 2001 Daily Journal DAR 6447, 2001 Colo J C A R 3296, 14 FLW Fed S 389.

Section 315(d)(4) of Federal Election Campaign Act (*2 USCS § 441a(d)(4)*)--as amended by Title II of Bipartisan Campaign Reform Act of 2002 to require political parties to choose between coordinated and independent expenditures during postnomination pre-election period--violated *Federal Constitution's First Amendment* by placing unconstitutional burden on parties' right to make unlimited independent expenditures. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Regulatory procedure enforcing spending limitations upon candidates for federal office imposed impermissible prior restraints in violation of First Amendment. *American Civil Liberties Union, Inc. v Jennings (1973, DC Dist Col) 366 F Supp 1041,* vacated on other grounds *(1975) 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.*

Regulatory procedure enforcing spending limitations upon candidates for federal office imposed impermissible prior restraints in violation of First Amendment; regulations required prior certification of statements "in derogation" of any candidate and imposed criminal penalties for publishing advertisement not meeting certification requirements. *American Civil Liberties Union, Inc. v Jennings (1973, DC Dist Col) 366 F Supp 1041,* vacated on other grounds *(1975) 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.*

If *2 USCS § 441b* were intended by Congress to prohibit antiabortion group's expenditures of printing and distributing of newsletters containing compilation of voting records of candidates for office, it would be unconstitutional under First Amendment since expenditures at issue were independent of any candidate or party, and were made by nonprofit corporation formed to advance ideological cause and for purpose of publishing direct political speech. *Federal Election Com. v Massachusetts Citizens for Life, Inc. (1984, DC Mass) 589 F Supp 646,* affd (1985, CA1 Mass) *769 F2d 13, 12 Media L R 1041,* affd *(1986) 479 US 238, 93 L Ed 2d 539, 107 S Ct 616.*

Interpretation of Federal Election Campaign Act of 1971, (*2 USCS §§ 431* et seq.) under which contributions independently made by voluntarily associated labor organizations are aggregated should be avoided where possible as such interpretation raises serious constitutional questions concerning restriction of exercise of First Amendment rights. *Federal Election Com. v Sailors' Union of Pacific Political Fund (1986, ND Cal) 624 F Supp 492,* affd (1987, CA9 Cal) *828 F2d 502.*

Contribution limitation of *2 USCS § 441a,* under which defendant was prosecuted, did not violate his First Amendment rights of freedom of expression and association, despite his claim that limit was too low to allow meaningful participation in protected political speech and association, where no evidence was presented to show severe impact on political dialogue or effective advocacy. *Fireman v United States (1998, DC Mass) 20 F Supp 2d 229.*

4.--Fifth Amendment rights

Title I of Bipartisan Campaign Reform Act of 2002 (BCRA) (codified at locations including *2 USCS §§ 431* et seq.) does not violate equal protection component of due process clause of *Federal Constitution's Fifth Amendment* as allegedly discriminating against political parties in favor of special interest groups. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Provision of Federal Election Campaign Act setting expenditure limits, for Presidential candidates eligible to receive payments from Secretary of Treasury (*2 USCS § 441a(b)(1)(B)*) does not violate First, Fifth or Ninth Amendment of Constitution. *Republican Nat'l Committee v Federal Election Com. (1979, CA2 NY) 616 F2d 1,* affd *(1980) 445 US 955, 64 L Ed 2d 231, 100 S Ct 1639.*

Payment to multicandidate political committee could, from constitutional standpoint, be subject to same regulatory power as campaign donations made directly to candidate without violation of First or Fifth Amendments in view of

Federal Election Campaign Act definition of political committee and by reason of substantial latitude permitted associations for political expression, including right to make unlimited expenditures except for direct candidate contributions or payments to multicandidate political committees. *California Medical Asso. v Federal Election Com. (1980, CA9 Cal) 641 F2d 619,* affd *(1981) 453 US 182, 69 L Ed 2d 567, 101 S Ct 2712.*

5.--Ninth Amendment rights

Provision of Federal Election Campaign Act setting expenditure limits, for Presidential candidates eligible to receive payments from Secretary of Treasury (*2 USCS § 441a(b)(1)(B)*) does not violate First, Fifth or Ninth Amendment of Constitution. *Republican Nat'l Committee v Federal Election Com. (1979, CA2 NY) 616 F2d 1,* affd *(1980) 445 US 955, 64 L Ed 2d 231, 100 S Ct 1639.*

6. Standing

Group of plaintiffs consisting of voters, voter organizations, and candidates lacked standing to challenge federal constitutional validity of § 315(a)(1) of Federal Election Campaign Act of 1971 (*2 USCS § 441a(a)(1)*)--as amended by Bipartisan Campaign Reform Act of 2002 (BCRA) to increase and index for inflation certain campaign contribution limits. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Group of plaintiffs lacked standing to challenge, in U.S. Supreme Court, validity of § 315(a)(1) of Federal Election Campaign Act of 1971 (FECA) (*2 USCS § 441a(a)(1)*)--as amended by Bipartisan Campaign Reform Act of 2002 (BCRA) to increase and index for inflation certain campaign contribution limits--on basis of contention that § 315(a)(1), together with FECA § 315's individual and political action committee contribution limitations, imposed editorial control on plaintiffs' congressional campaigns and public interest advocacy, in asserted violation of free press guarantee of *Federal Constitution's First Amendment. McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Group of plaintiffs consisting of voters, voter organizations, and candidates lacked standing to challenge federal constitutional validity of "millionaire provisions" of Bipartisan Campaign Reform Act of 2002 (BCRA)--amending § 315 of Federal Election Campaign Act of 1971 (FECA) (*2 USCS § 441a*) and adding FECA § 315A (*2 USCS § 441a-1*)--which provided for series of staggered increases in otherwise applicable contribution-to-candidate limits if candidate's opponent spent triggering amount of personal funds. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

7. Enforcement authority

Under *2 USCS § 437c* Federal Election Commission has exclusive primary jurisdiction with respect to civil enforcement of Federal Election Campaign Act (*2 USCS §§ 431* et seq.); plaintiff Common Cause does not have right of action against American Medical Association on alleged ground that on numerous occasions Association had violated Federal Election Campaign Act by making political contributions through its political committees in excess of $ 5,000 limit to candidate for federal electoral office (*2 USCS § 441a(a)(2)(A)*), unless United States District Court directed Commission to proceed and it failed to do so. *Common Cause v Federal Election Com. (1979, DC Dist Col) 82 FRD 59.*

8. Purpose of contributions

Loan guarantors violated dollar limits on campaign contributions where solicitations and guarantees were made 3 months after election by personal friends and relatives of candidate to repay campaign debt and candidate declared intention never to run for office again, because under these circumstances guarantees were for purpose of influencing election; to hold otherwise would allow candidate to run campaign at deficit and collect excessive contributions after election. *Federal Election Com. v Ted Haley Congressional Committee (1988, CA9 Wash) 852 F2d 1111.*

California Medical Association and political action committee violated statutory limitation of *2 USCS § 441a* on contributions made to and knowingly accepted by committee when contributions were not earmarked for particular use, and when committee used such contributions for purpose of influencing federal elections as well as for other purposes beyond FECA's (*2 USCS §§ 431* et seq.) regulatory embrace; Federal Election Commission is not required to prove that each contribution was made for purpose of influencing federal elections. *Federal Election Com. v California Medical Asso. (1980, ND Cal) 502 F Supp 196.*

Treasurer of United States House of Representatives candidate's campaign committee "knowingly accepted" $ 5,000 contribution from Republican committee, which at time contribution was made was not multicandidate political committee in violation of *2 USCS § 441a(f)*, despite treasurer's assertion that he had no knowledge that committee was not qualified to make contribution, where (1) contribution in excess of $ 1,000 is facially defective and requires further inquiry to determine if it is made in violation of *2 USCS § 441a(f)* and (2) Federal Election Commission index of political committees was readily available to treasurer. *Federal Election Com. v John A. Dramesi for Congress Committee (1986, DC NJ) 640 F Supp 985.*

9. Contributions to political committees

Designation by political party's state committees of national senatorial campaign committee as agent for purpose of making campaign expenditures does not violate *2 USCS § 441a. Federal Election Comm'n v Democratic Senatorial Campaign Committee (1981) 454 US 27, 70 L Ed 2d 23, 102 S Ct 38* (criticized in *Colo. Republican Fed. Campaign Comm. v FEC (1996) 518 US 604, 135 L Ed 2d 795, 116 S Ct 2309, 96 CDOS 4676, 96 Daily Journal DAR 7541, 10 FLW Fed S 72).*

Value of administrative services donated by association to political committee is included in computation of contributions for purposes of $ 5000 limit imposed by *2 USCS § 441a. California Medical Asso. v Federal Election Com. (1980, CA9 Cal) 641 F2d 619,* affd *(1981) 453 US 182, 69 L Ed 2d 567, 101 S Ct 2712.*

Commission's construction of terms direction and control in its regulation regarding earmarked contributions to national committee was reasonable, hence it was appropriate to dismiss complaint that National Republican Senatorial Committee had violated campaign contribution limits by not counting earmarked contributions against its limit but only passing on contributions to individual candidates for counting against contributor's per candidate limit. *Federal Election Comm'n v National Republican Senatorial Comm. (1992, App DC) 296 US App DC 190, 966 F2d 1471.*

Federal Election Commission's dismissal of complaint was improper under *2 USCS § 441a(h)* as arbitrary and capricious, where political committee treated contributions received as result of mass mailing as "earmarked" for certain senatorial campaigns when committee exerted direction or control over choice of recipients and thus violated spending limits. *Common Cause v Federal Election Com. (1990, DC Dist Col) 729 F Supp 148.*

Federal Election Commission's (FEC) decision not to investigate allegations that political action committee (PAC) violated campaign contribution limits by conducting advertising campaign urging voters to support U.S. Senate candidate was not contrary to law, where only record fact supporting possibility that PAC's expenditures were made in cooperation or in concert with candidate so as to make them "contributions" subject to limitation under *2 USCS § 441a(a)(7)(B)(i)* was PAC's use of same key political consultants as candidate's campaign, because mere fact of use of common consultants is not enough to lead to inference of coordination and to require investigation, giving proper deference to FEC's decision. *Democratic Senatorial Campaign Committee v Federal Election Com. (1990, DC Dist Col) 745 F Supp 742.*

Two organizations were "political committees" under Federal Election Campaign Act of 1971, *2 USCS §§ 431* et seq., because organizations' major purpose was nomination or election of specific candidates; organizations violated Act by receiving over $ 5,000 in contributions from individual. *FEC v Malenick (2004, DC Dist Col) 310 F Supp 2d 230.*

Where *11 C.F.R. § 109.21(c)* excludes coordinated communications made more than 120 days before political

convention, or general or primary election, as well as any that do not refer to candidate for federal office or political party and any not aimed at particular candidate's electorate or electorate where named political party has candidate in race, regulation is not reasonable accommodation under *2 USCS § 441a(a)(7)(B)*; Congress did not intend to change established campaign finance law which treats coordinated communications expenditures as contributions regardless of their content or when they are broadcast, and regulation thus undercut statutory purpose of regulating campaign finance and preventing circumvention of campaign finance rules. *Shays v FEC (2004, DC Dist Col) 337 F Supp 2d 28,* dismd, in part (2004, App DC) *2004 US App LEXIS 24896* and affd (2005, App DC) *367 US App DC 185, 414 F3d 76.*

Where *11 C.F.R. § 109.3* defines "agent" for purposes of *2 USCS § 441a(a)(7)(B)(i)* as one having express or implied authority, but does not include one acting with apparent authority, regulatory construction is permissible under statute, but regulation is nonetheless invalid; there is no indication that Federal Election Commission considered how their decision to exclude apparent authority might facilitate circumvention of campaign finance laws or perpetuate appearance of corruption, and thus Commission failed to consider important aspect of problem which rendered rule arbitrary and capricious. *Shays v FEC (2004, DC Dist Col) 337 F Supp 2d 28,* dismd, in part (2004, App DC) *2004 US App LEXIS 24896* and affd (2005, App DC) *367 US App DC 185, 414 F3d 76.*

Preliminary injunction did not issue to bar Federal Elections Commission (FEC) from enforcing contribution limits applicable to political committees under Federal Election Campaign Act, *2 USCS § 441a(a)(1)(C)*, (a)(3), against political association whose by-laws precluded it from contributing to FEC-regulated candidates or political committees but permitted it to make so-called "independent expenditures" because association was unlikely to succeed in its as-applied First Amendment challenge to federal campaign contribution limits. *SpeechNow.org v FEC (2008, DC Dist Col) 567 F Supp 2d 70.*

Federal Election Commission's revised allocation and contribution regulations, *11 CFR §§ 100.57* and *106.6(f)*, promulgated pursuant to Federal Election Campaign Act of 1971 (FECA), Pub. L. No. 92-255, 86 Stat. 3, as amended by Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, were contribution limits, subject to lesser scrutiny, served important governmental purposes of preventing corruption and appearance of corruption by foreclosing Federal Election Campaign Act circumvention, and were closely drawn to do so; thus, they did not violate plaintiff political committee's First Amendment rights. *EMILY'S List v FEC (2008, DC Dist Col) 569 F Supp 2d 18.*

10. Committee expenditures

While *2 USCS § 441a*, which limits amount that national committee and state committees of political party may spend in connection with general election of candidate for United States congressional office, does not authorize national committee to make expenditures in its own right, it does not foreclose state committee of political party from designating national committee as its agent for purpose of making expenditures allowed by Federal Election Campaign Act *(2 USCS §§ 4431* et seq.). *Federal Election Comm'n v Democratic Senatorial Campaign Committee (1981) 454 US 27, 70 L Ed 2d 23, 102 S Ct 38* (criticized in *Colo. Republican Fed. Campaign Comm. v FEC (1996) 518 US 604, 135 L Ed 2d 795, 116 S Ct 2309, 96 CDOS 4676, 96 Daily Journal DAR 7541, 10 FLW Fed S 72).*

Government recoupment of portion of federal matching campaign funds paid to presidential candidate which exceed individual state expenditure limits as set forth in *2 USCS § 441a* was not unconstitutional, since recoupment did not deny benefits to candidate because candidate was exercising constitutional rights where recoupment remedy does not recall private monies expended in state campaign but polices restrictions Congress placed on expenditures of public monies. *John Glenn Presidential Committee, Inc. v Federal Election Com. (1987, App DC) 262 US App DC 35, 822 F2d 1097.*

11. Aggregation of contributions

Two affiliate unions of Seafarers International Union of North America are not local units for purposes of

aggregating campaign funds contributed by three independent political action committees to determine whether union complied with *2 USCS § 441a*, since affiliates were independent labor organizations and, defendant union lacked requisite degree of control over affiliates activities, notwithstanding international union had authority to regulate dues collected by affiliate unions, audit affiliates' records, and to appoint financial custodian when affiliate fails to submit financial reports or pay per capita tax, where affiliates predated existence of international union and international union's constitution specifically provides that affiliates may disassociate with international union at will. *Federal Election Com. v Sailors' Union of Pacific Political Fund (1987, CA9 Cal) 828 F2d 502.*

"Independent expenditures" exception did not apply to defendant's contributions to candidate's campaign allegedly because he gave money to media organization rather than directly to candidate, since agents of candidate and defendant were acting in concert and candidate cooperated with defendant by accepting money and performing commercial, and it was immaterial that defendant also secretly supported another candidate's campaign. *United States v Goland (1992, CA9 Cal) 959 F2d 1449, 92 CDOS 2548, 92* Daily Journal DAR 4067, reh, en banc, den (1992, CA9) *977 F2d 1359, 92 CDOS 8779, 92* Daily Journal DAR 14542 and cert den *(1993) 507 US 960, 122 L Ed 2d 759, 113 S Ct 1384.*

In holding that Republican National Independent Expenditure Committee and National Republican Senatorial Committee were not affiliated and therefore that there was not probable cause to believe that they had exceeded expenditure limits, FEC did not adequately analyze issue of affiliation in terms prescribed by governing statute and regulation; there was no discussion of affiliation issue independent of analysis of separate coordination issue. *Common Cause v FEC (1990, App DC) 285 US App DC 11, 906 F2d 705* (criticized in *Common Cause v FEC (1997, App DC) 323 US App DC 359, 108 F3d 413).*

Federal Elections Committee cannot treat 3 political action committees (PACs) as related organizations whose campaign contributions must be aggregated for purposes of determining compliance with statutory limitations on political contributions even though labor organizations to which PACs are associated are members of international union, since international union does not control its member unions and since rules governing relationship between international union and members preserves independence of member unions; alternatively individual member unions are not divisions, departments or local units of international union where there is no indicia of such relationship and international union's constitution preserves autonomy of its members. *Federal Election Com. v Sailors' Union of Pacific Political Fund (1986, ND Cal) 624 F Supp 492,* affd (1987, CA9 Cal) *828 F2d 502.*

Interpretation of Federal Election Campaign Act of 1971, (*2 USCS §§ 431* et seq.) under which contributions independently made by voluntarily associated labor organizations are aggregated should be avoided where possible as such interpretation raises serious constitutional questions concerning restriction of exercise of First Amendment rights. *Federal Election Com. v Sailors' Union of Pacific Political Fund (1986, ND Cal) 624 F Supp 492,* affd (1987, CA9 Cal) *828 F2d 502.*

No conspiracy to defraud United States by violating Federal Election Campaign Act is shown by actions of group of securities brokers borrowing from firm's branch manager to donate $ 1,000 each to Senate campaign, since no single contributor donated more than $ 1,000 to campaign. *United States v Valentine (1986, SD NY) 637 F Supp 196, 22 Fed Rules Evid Serv 201.*

Summary judgment is denied against Federal Election Commission where FEC's interpretation--that candidate's express or direct coordination is necessary prerequisite to determine if political contributions were impermissible under campaign contribution limits to candidate or political party's committee which is unauthorized by any candidate--is not unreasonable or contrary to law, and thus court cannot substitute its judgment for FEC's in light of limited judicial review of agency action. *Common Cause v Federal Election Com. (1986, DC Dist Col) 655 F Supp 619,* revd, in part on other grounds, vacated, in part (1988, App DC) *268 US App DC 440, 842 F2d 436* (criticized in *Common Cause v FEC (1997, App DC) 323 US App DC 359, 108 F3d 413).*

Owner of two political committees controlled another entity that made contributions to candidates, but Federal

Election Commission did not establish that political committees violated *2 USCS § 441a(a)*; record evidence was not sufficient to support valuation of committees' "in-kind contributions" to federal candidates. *FEC v Malenick (2004, DC Dist Col) 310 F Supp 2d 230.*

Absent justification for defendant Federal Election Commission (FEC) writing off evidence that candidates ran advertisements to influence federal elections outside pre-election windows of *11 C.F.R. § 109.21(c)*'s content standards, it was not reasoned decisionmaking and § 109.21(c), upon plaintiff U.S. House of Representatives member's challenge, was remanded; *2 USCS § 441a(a)(7)(B)(i)* provided that expenditures that were coordinated with candidate constituted campaign contributions, and, *5 USCS § 431(9)(A)(i)*, in turn, defined "expenditure" as any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for purpose of influencing any election for Federal office, but FEC's Explanation and Justification failed to provide any assurance that its revised content standards actually "captured universe" of communications made for purpose of influencing federal election. *Shays v United States FEC (2007, DC Dist Col) 508 F Supp 2d 10,* affd in part and revd in part on other grounds, remanded (2008, App DC) *381 US App DC 296, 528 F3d 914.*

TAB 8

LexisNexis

LEXSTAT 2 U.S.C. Â§ 441D

*** CURRENT THROUGH PL 111-90, APPROVED 11/03/2009 WITH A GAP OF 111-84 ***

TITLE 2. THE CONGRESS
CHAPTER 14. FEDERAL ELECTION CAMPAIGNS
DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

Go to the United States Code Service Archive Directory

2 USCS § 441d

§ 441d. Publication and distribution of statements and solicitations; charge for newspaper or magazine space

(a) Identification of funding and authorizing sources. Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising or makes a disbursement for an electioneering communication (as defined in section 304(f)(3) [*2 USCS § 434(f)(3)*]), such communication--

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, [or]

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee; [or]

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

(b) Charge for newspaper or magazine space. No person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate for use in connection with such candidate's campaign, may charge any amount for such space which exceeds the amount charged for comparable use of such space for other purposes.

(c) Specification. Any printed communication described in subsection (a) shall--

(1) be of sufficient type size to be clearly readable by the recipient of the communication;

(2) be contained in a printed box set apart from the other contents of the communication; and

(3) be printed with a reasonable degree of color contrast between the background and the printed statement.

(d) Additional requirements.

(1) Communications by candidates or authorized persons.

(A) By radio. Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through radio shall include, in addition to the requirements of that paragraph, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

(B) By television. Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through television shall include, in addition to the requirements of that paragraph, a statement that identifies the candidate and states that the candidate has approved the communication. Such statement--

(i) shall be conveyed by--

(I) an unobscured, full-screen view of the candidate making the statement, or

(II) the candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and

(ii) shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

(2) Communications by others. Any communication described in paragraph (3) of subsection (a) which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the following audio statement: "-------- is responsible for the content of this advertising." (with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor). If transmitted through television, the statement shall be conveyed by an unobscured, full-screen view of a representative of the political committee or other person making the statement, or by a representative of such political committee or other person in voice-over, and shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

HISTORY:

(Feb. 7, 1972, P.L. 92-225, Title III, § 318 [323] as added May 11, 1976, P.L. 94-283, Title I, § 112(2), 90 Stat. 493; Jan. 8, 1980, P.L. 96-187, Title I, §§ 105(5), 111, 93 Stat. 1354, 1365; March 27, 2002, P.L. 107-155, Title III, § 311, 116 Stat. 105.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The word "or" has been enclosed in brackets at the end of subsec. (a)(1) to indicate the probable intent of Congress to delete it.

The word "or" has inserted in brackets at the end of subsec. (a)(2) to indicate the probable intent of Congress to include it.

Another § 318 of Act Feb. 2, 1972, P.L. 92-255, was redesignated as § 317 of such Act by Title I, § 105 of Act May 11, 1976, P.L. 94-283, and further redesignated as § 313 by Title I, § 105 (4) of Act Jan. 8, 1980, P.L. 96-187.

Another § 318 of Act Feb. 2, 1972, P.L. 92-255, was repealed by by Title I, § 105(1) of Act Jan. 8, 1980, P.L. 96-187.

Amendments:

1980. Act Jan. 8, 1980 (effective 1/8/80, pursuant to Title I, § 301(a) of such Act, which appears as *2 USCS § 431* note), substituted this section for one which read:

"Publication or distribution of political statements.

"Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication--

"(1) if authorized by a candidate, his authorized political committees, or their agents, shall clearly and conspicuously, in accordance with regulations prescribed by the Commission, state that the communication has been authorized; or

"(2) if not authorized by a candidate, his authorized political committees, or their agents, shall clearly and conspicuously, in accordance with regulations prescribed by the Commission, state that the communication is not authorized by any candidate, and state the name of the person who made or financed the expenditure for the communication, including, in the case of a political committee, the name of any affiliated or connected organization required to be disclosed under section 303(b)(2).".

2002. Act March 27, 2002 (effective on 11/6/2002 but not applicable with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date, as provided by § 402(a)(4) of such Act, which appears as *2 USCS § 431* note), in subsec. (a), in the introductory matter, substituted "Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever" for "Whenever", substituted "a disbursement" for "an expenditure", deleted "direct" preceding "mailing", and inserted "or makes a disbursement for an electioneering communication (as defined in section 304(f)(3))", and, in para. (3), inserted "and permanent street address, telephone number, or World Wide Web address"; and added subsecs. (c) and (d).

Redesignation:

Section 105(5) of Act Jan. 8, 1980, redesignated § 323 of Title III of Act Feb. 7, 1972, P.L. 92-225, as § 318 of such Title.

NOTES:

Code of Federal Regulations:

Federal Election Commission--Registration, organization, and recordkeeping by political committees (*2 U.S.C 433*), *11 CFR 102.1* et seq.

Federal Election Commission--Coordinated and independent expenditures (*2 U.S.C. 431(17)*, *441a(a)* and (d), and Pub. L. 107-155 Sec. 214(c)), *11 CFR 109.1* et seq.

Federal Election Commission--Contribution and expenditure limitations and prohibitions, *11 CFR 110.1* et seq.

Related Statutes & Rules:

Sentencing Guidelines for the United States Courts, *18 USCS Appx § 2C1.8*.

Research Guide:

Am Jur Trials:

15 Am Jur Trials, Unfair Election Campaign Practices, p. 1.

Annotations:

Validity, Construction, and Application of Campaign Finance Laws--Supreme Court Cases. *19 ALR Fed 2d 1*.

Validity and construction of state statute prohibiting anonymous political advertising. *4 ALR4th 741.*

Texts:

1 The Law of Advertising (Matthew Bender), ch 7, Access to the Media § 7.05.

Law Review Articles:

Schotland. Analyzing the Bipartisan Campaign Reform Act of 2002. *56 Admin L Rev 867,* Summer 2004.

Hansen. Anything But Typical. *89 ABA J 22, 24,* September 2003.

Wick. Federal Election Campaign Act of 1971 and Political Broadcast Reform. *22 DePaul L Rev 582,* Spring 1973.

Feingold. Campaign Finance Reform. 22 Yale Law & Pol'y Rev 339, Spring 2004.

Interpretive Notes and Decisions:

1. Generally; relationship with other laws 2. Constitutionality 3.--First Amendment rights 4. Conduct in violation of Act 5. Penalties

1. Generally; relationship with other laws

Postal Service may not, (while enforcing proscriptions against fraudulent representations in mail solicitations under *39 USCS § 3005*) impose constraints upon use of names or disclaimers of organizations that mail solicitations for political contributions beyond those restraints imposed by Federal Election Campaign Act, in particular *2 USCS §§ 432* and *441*; solicitations for political contributions are not entirely immune from postal service scrutiny under *39 USCS § 3005*, since certain statements may constitute false representation under § 3005 and no standards exist under FECA for such representations. *Galliano v United States Postal Service (1988, App DC) 267 US App DC 14, 836 F2d 1362.*

Provision for allocation of costs of public communications in *11 CFR § 106.6(f)*, which referred to both federal and nonfederal candidates based on proportion of space or time devoted to each clearly identified Federal candidate as compared to total space or time devoted to all clearly identified candidates was undoubtedly closely tailored because to extent federal references were small part of communication, federal share of expenditure would be proportionately small under time/space allocation rules; conversely, if federal candidate making endorsement or referenced was prominently featured in ad, it was reasonable to require larger federal allocation because ad could have promoted federal candidate's own campaign as well as that of non-federal candidate; further, with respect to public communications that referenced either only federal or only nonfederal candidates, allocation rule at *11 CFR § 106.6(f)* required that communication be financed accordingly and, thus, provision was not overbroad and did not facially infringe on plaintiff political action committee's First Amendment rights. *EMILY'S List v FEC (2008, DC Dist Col) 569 F Supp 2d 18.*

2. Constitutionality

Section 318 of Federal Election Campaign Act of 1971 (FECA) (*2 USCS § 441d*)--as amended by Bipartisan Campaign Reform Act of 2002 to require that electioneering communications authorized by candidate or candidate's political committee clearly identify candidate or committee or, if not so authorized, identify payor and announce lack of authorization--is not unconstitutional.. *McConnell v FEC (2003) 540 US 93, 124 S Ct 619, 157 L Ed 2d 491, 17 FLW Fed S 13* (criticized in *Jackson v Leake (2006, ED NC) 476 F Supp 2d 515).*

Predecessor to *2 USCS § 441d* was constitutional. *United States v Scott (1961, DC ND) 195 F Supp 440.*

Provisions of Federal Election Campaign Act (*2 USCS §§ 431-454*) and its implementing regulations requiring that communications businesses and media, before making regular charges for publications, be assured that presumably valid requirements imposed by Congress upon federal office seekers and those actively supporting or opposing such candidacy have been satisfied, and imposing criminal sanctions for noncompliance, establishes impermissible prior restraint, discourages free and open discussion of matters of public concern and is unconstitutional means of effectuating legislative goals. *American Civil Liberties Union, Inc. v Jennings (1973, DC Dist Col) 366 F Supp 1041,* vacated on other grounds *(1975) 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.*

Requiring disclosure of sponsors of electioneering communications, as required by *2 USCS § 441d(d)*, is constitutional. *McConnell v FEC (2003, DC Dist Col) 251 F Supp 2d 176,* affd in part and revd in part on other grounds (2003, US) *540 US 93, 157 L Ed 2d 491, 124 S Ct 619, 17 FLW Fed S 13.*

3.--First Amendment rights

Statute's requirement that communication expressly advocating election or defeat of clearly identified candidate disclose whether communication was authorized by candidate or candidate's committee is narrowly tailored to serve overriding governmental interest in assisting voters in evaluating candidates and thus does not violate *First Amendment. FEC v Public Citizen (2001, CA11 Ga) 268 F3d 1283, 14 FLW Fed C 1363,* reh, en banc, den (2002, CA11 Ga) *31 Fed Appx 933.*

Predecessor to *2 USCS § 441d* was not rendered void on its face by *USCS Const, Amendment 1*, since it was limited in its coverage to requiring fairness in federal elections and did not preclude anonymous criticism of oppressive practices and laws. *United States v Insco (1973, MD Fla) 365 F Supp 1308.*

Citizens group's proposed advertisements for movie produced by group to advocate against political candidate fell within safe harbor of prohibitions of Federal Election Commission because advertisements merely proposed commercial transaction, to buy movie; however, there was no violation of First Amendment to require group's advertisements to comply with disclosure and disclaimer requirements of *2 USCS §§ 434(f)* and *441d* because advertisements were within entire range of electioneering communications and group presented no evidence to show that disclosure of information would yield reprisals. *Citizens United v FEC (2008, DC Dist Col) 530 F Supp 2d 274,* motions ruled upon (2008, DC Dist Col) *2008 US Dist LEXIS 54767.*

4. Conduct in violation of Act

Defendant's conviction under predecessor to *2 USCS § 441d* for printing and distributing certain bumper stickers which did not contain statutorily-prescribed attribution clause would be reversed on ground that defendant was inadequately apprised of culpable nature of his conduct at time charged offense occurred because there was complete silence in both statute and legislative history in regard to bumper stickers, a universal practice prevailed among federal candidates in not affixing attribution clauses to bumper stickers employed in their campaigns, and no prosecutions had ever been brought by Department of Justice with respect to unattributed bumper stickers despite universal practice of omitting identification statements. *United States v Insco (1974, CA5 Fla) 496 F2d 204.*

Nonprofit political advocacy organization's mailing constituted solicitation of contributions within meaning of *2 USCS § 441d(a)*, since statements in cover letter from physician left no doubt that funds contributed would be used to advocate President Reagan's defeat at polls, not simply to criticize his policies during election year, and, by omitting requisite disclosure of who paid for it, violated act. *Federal Election Comm'n v Survival Educ. Fund (1995, CA2 NY) 65 F3d 285.*

Regulatory procedure enforcing spending limitations upon candidates for federal office imposed impermissible prior restraints in violation of First Amendment; regulations required prior certification of statements "in derogation" of any candidate and imposed criminal penalties for publishing advertisement not meeting certification requirements. *American Civil Liberties Union, Inc. v Jennings (1973, DC Dist Col) 366 F Supp 1041,* vacated on other grounds *(1975)*

422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.

5. Penalties

Repeated acts of deceit designed to subvert free electoral process which violated predecessor to *2 USCS § 441d* involved sufficient moral turpitude and gross misconduct to warrant suspension of license to practice as attorney; conviction of conspiracy to violate predecessor to *2 USCS § 441d* and commission of overt acts in furtherance of conspiracy justified suspension of attorney and requirement that attorney pass Professional Responsibility Examination offered by *State Bar of California. Segretti v State Bar of California (1976) 15 Cal 3d 878, 126 Cal Rptr 793, 544 P2d 929.*

TAB 9

LexisNexis

LEXSTAT 11 C.F.R. 100.16

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 100 -- SCOPE AND DEFINITIONS (2 U.S.C. 431)
SUBPART A -- GENERAL DEFINITIONS

Go to the CFR Archive Directory

11 CFR 100.16

§ 100.16 Independent expenditure (2 U.S.C. 431(17)).

(a) The term independent expenditure means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents. A communication is "made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents" if it is a coordinated communication under *11 CFR 109.21* or a party coordinated communication under *11 CFR 109.37*.

(b) No expenditure by an authorized committee of a candidate on behalf of that candidate shall qualify as an independent expenditure.

(c) No expenditure shall be considered independent if the person making the expenditure allows a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents to become materially involved in decisions regarding the communication as described in *11 CFR 109.21(d)(2)*, or shares financial responsibility for the costs of production or dissemination with any such person.

HISTORY: *[45 FR 15094,* Mar. 7, 1980; ratified at *58 FR 59640,* Nov. 10, 1993; *65 FR 76138, 76145,* Dec. 6, 2000; *66 FR 23537,* May 9, 2001; *68 FR 421, 451,* Jan. 3, 2003]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
2 U.S.C. 431, 434, 438(a)(8).

NOTES: [EFFECTIVE DATE NOTE: *68 FR 421, 451,* Jan. 3, 2003, revised this section, effective Feb. 3, 2003.]
NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: For Federal Register citations concerning Part 100 Supplemental Explanation and Justification, see: *72 FR 5595,* Feb. 7, 2007.]

240 words

TAB 10

LexisNexis

LEXSTAT 11 C.F.R. 100.75

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 100 -- SCOPE AND DEFINITIONS (2 U.S.C. 431)
SUBPART C -- EXCEPTIONS TO CONTRIBUTIONS

Go to the CFR Archive Directory

11 CFR 100.75

§ 100.75 Use of a volunteer's real or personal property.

No contribution results where an individual, in the course of volunteering personal services on his or her residential premises to any candidate or to any political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a political party for party-related activity. For the purposes of this section, an individual's residential premises, shall include a recreation room in a residential complex where the individual volunteering services resides, provided that the room is available for use without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not a contribution.

HISTORY: *[67 FR 50582, 50587,* Aug. 5, 2002]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
2 U.S.C. 431, 434, 438(a)(8).

NOTES: [EFFECTIVE DATE NOTE: *67 FR 50582, 50587,* Aug. 5, 2002, added Subpart C, effective Nov. 6, 2002.]
NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 100 Supplemental Explanation and Justification, see: *72 FR 5595*, Feb. 7, 2007.]

124 words

TAB 11

LexisNexis

LEXSTAT 11 C.F.R. 100.77

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 100 -- SCOPE AND DEFINITIONS (2 U.S.C. 431)
SUBPART C -- EXCEPTIONS TO CONTRIBUTIONS

Go to the CFR Archive Directory

11 CFR 100.77

§ 100.77 Invitations, food, and beverages.

The cost of invitations, food and beverages is not a contribution where such items are voluntarily provided by an individual volunteering personal services on the individual's residential premises or in a church or community room as specified at *11 CFR 100.75* and *100.76* to a candidate for candidate-related activity or to any political committee of a political party for party-related activity, to the extent that: The aggregate value of such invitations, food and beverages provided by the individual on behalf of the candidate does not exceed $ 1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed $ 2,000 in any calendar year.

HISTORY: *[67 FR 50582, 50587,* Aug. 5, 2002; *69 FR 68237, 68238,* Nov. 24, 2004]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
2 U.S.C. 431, 434, 438(a)(8).

NOTES: [EFFECTIVE DATE NOTE: *69 FR 68237, 68238,* Nov. 24, 2004, amended this section, effective Nov. 24, 2004.]
NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 100 Supplemental Explanation and Justification, see: *72 FR 5595,* Feb. 7, 2007.]

136 words

TAB 12

LexisNexis

LEXSTAT 11 C.F.R. 102.1

LEXISNEXIS' CODE OF FEDERAL REGULATIONS

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 102 -- REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

Go to the CFR Archive Directory

11 CFR 102.1

§ 102.1 Registration of political committees (2 U.S.C. 433(a)).

(a) Principal Campaign Committees. Each principal campaign committee shall file a Statement of Organization in accordance with *11 CFR 102.2* no later than 10 days after designation pursuant to *11 CFR 101.1*. In addition, each principal campaign committee shall file all designations, statements and reports which are filed with such committee at the place of filing specified at 11 CFR part 105.

(b) Authorized Committees. Each authorized committee(s) shall file only one Statement of Organization in accordance with *11 CFR 102.2* no later than 10 days after designation pursuant to *11 CFR 101.1*. Such Statement(s) shall be filed with the principal campaign committee of the authorizing candidate.

(c) Separate Segregated Funds. Each separate segregated fund established under *2 U.S.C. 441b*(b)(2)(C) shall file a Statement of Organization with the Federal Election Commission no later than 10 days after establishment. This requirement shall not apply to a fund established solely for the purpose of financing political activity in connection with State or local elections. Examples of establishment events after which a fund would be required to register include, but are not limited to: a vote by the board of directors or comparable governing body of an organization to create a separate segregated fund to be used wholly or in part for federal elections; selection of initial officers to administer such a fund; or payment of the initial operating expenses of such a fund.

(d) Other Political Committees. All other committees shall file a Statement of Organization no later than 10 days after becoming a political committee within the meaning of *11 CFR 100.5*. Such statement(s) shall be filed at the place of filing specified at 11 CFR part 105.

HISTORY: *[45 FR 15104,* Mar. 7, 1980; ratified at *58 FR 59640,* Nov. 10, 1993]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

NOTES: NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

345 words

TAB 13

LexisNexis

LEXSTAT 11 C.F.R. 102.2

LEXISNEXIS' CODE OF FEDERAL REGULATIONS

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 102 -- REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

Go to the CFR Archive Directory

11 CFR 102.2

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).

(a) Forms. (1) The Statement of Organization shall be filed in accordance with 11 CFR part 105 on Federal Election Commission Form 1, which may be obtained from the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Statement shall be signed by the treasurer and shall include the following information:

(i) The name, address, and type of committee;

(ii) The name, address, relationship, and type of any connected organization or affiliated committee in accordance with *11 CFR 102.2(b)*;

(iii) The name, address, and committee position of the custodian of books and accounts of the committee;

(iv) The name and address of the treasurer of the committee;

(v) If the committee is authorized by a candidate, the name, office sought (including State and Congressional district, when applicable) and party affiliation of the candidate; and the address to which communications should be sent;

(vi) A listing of all banks, safe deposit boxes, or other depositories used by the committee;

(vii) The Internet address of the committee's official web site, if such a web site exists. If the committee is required to file electronically under *11 CFR 104.18*, its electronic mail address, if such an address exists; and

(viii) If the committee is a principal campaign committee of a candidate for the Senate or the House of Representatives, the principal campaign committee's electronic mail address.

(2) Any change or correction in the information previously filed in the Statement of Organization shall be reported no later than 10 days following the date of the change or correction by filing an amended Statement of Organization or, if the political committee is not required to file electronically under *11 CFR 104.18*, by filing a letter noting the change(s). The amendment need list only the name of the political committee and the change or correction.

(3) A committee shall certify to the Commission that it has satisfied the criteria for becoming a multicandidate committee set forth at *11 CFR 100.5(e)(3)* by filing FEC Form 1M no later than ten (10) calendar days after qualifying for multicandidate committee status.

(b) For purposes of *11 CFR 102.2(a)(1)(ii)*, political committees shall disclose the names of any connected organization(s) or affiliated committee(s) in accordance with *11 CFR 102.2(b) (1)* and (2).

(1) Affiliated committee includes any committee defined in *11 CFR 100.5(g)*, *110.3(a)* or (b), or 110.14(j) or (k).

(i) A principal campaign committee is required to disclose the names and addresses of all other authorized committees that have been authorized by its candidate. Authorized committees need only disclose the name of their principal campaign committee.

(ii)(A) Political committees established by a single parent corporation, a single national or international union, a single organization or federation of national or international unions, a single national membership organization or trade association, or any other similar group of persons (other than political party organizations) are required to disclose the names and addresses of all political committees established by any subsidiary, or by any State, local, or other subordinate unit of a national or international union or federation thereof, or by any subordinate units of a national membership organization, trade association, or other group of persons (other than political party organizations).

(B) Political committees established by subsidiaries, or by State, local, or other subordinate units are only required to disclose the name and address of each political committee established by their parent or superior body, e.g., parent corporation, national or international union or organization or federation of such unions, or national organization or trade association.

(2) Connected organization includes any organization defined at *11 CFR 100.6*.

(c) Committee identification number. Upon receipt of a Statement of Organization under 11 CFR part 102 by the Commission, an identification number shall be assigned to the committee, receipt shall be acknowledged, and the political committee shall be notified of the number assigned. This identification number shall be entered by the political committee on all subsequent reports or statements filed under the Act, as well as on all communications concerning reports and statements.

HISTORY: *[45 FR 15104,* Mar. 7, 1980, as amended at *50 FR 50778,* Dec. 12, 1985; *54 FR 34109,* Aug. 17, 1989; *54 FR 48580,* Nov. 24, 1989; *58 FR 42172,* Aug. 6, 1993, as confirmed at *58 FR 59641,* Nov. 10, 1993; ratified at *58 FR 59640,* Nov. 10, 1993; *65 FR 38415, 38422,* June 21, 2000; *65 FR 63535,* Oct. 24, 2000; *68 FR 3970, 3995,* Jan. 27, 2003; *68 FR 64512, 64516,* Nov. 14, 2003; *68 FR 67013, 67018,* Dec. 1, 2003; *73 FR 79597, 79601,* Dec. 30, 2008]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

NOTES: [EFFECTIVE DATE NOTE: *73 FR 79597, 79601,* Dec. 30, 2008, revised paragraph (a)(1)(viii), effective Feb. 1, 2009.]
NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a

11 CFR 102.2

Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

811 words

TAB 14

LexisNexis

LEXSTAT 11 C.F.R. 102.3

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 102 -- REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

Go to the CFR Archive Directory

11 CFR 102.3

§ 102.3 Termination of registration (2 U.S.C. 433(d)(1)).

(a)(1) A political committee (other than a principal campaign committee) may terminate only upon filing a termination report on the appropriate FEC Form or upon filing a written statement containing the same information at the place of filing specified at 11 CFR part 105. Except as provided in *11 CFR 102.4(c)*, only a committee which will no longer receive any contributions or make any disbursements that would otherwise qualify it as a political committee may terminate, provided that such committee has no outstanding debts and obligations. In addition to the Notice, the committee shall also provide a final report of receipts and disbursements, which report shall include a statement as to the purpose for which such residual funds will be used, including a statement as to whether such residual funds will be used to defray expenses incurred in connection with an individual's duties as a holder of federal office.

(2) An authorized committee of a qualified Member, as defined at *11 CFR 113.1(f)*, shall comply with the requirements of *11 CFR 113.2* before any excess funds are converted to such Member's personal use. All other authorized committees shall include in their termination reports a statement signed by the treasurer, stating that no noncash committee assets will be converted to personal use.

(b) Except as provided at *11 CFR 102.4*, a principal campaign committee may not terminate until it has met the requirements of *11 CFR 102.3(a)* and until all debts of any other authorized committee(s) of the candidate have been extinguished.

HISTORY: *[45 FR 15104,* Mar. 7, 1980, as amended at *45 FR 21209,* Apr. 1, 1980; *56 FR 34126,* July 25, 1991; ratified at *58 FR 59640,* Nov. 10, 1993]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

NOTES: NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

304 words

TAB 15

LexisNexis

LEXSTAT 11 C.F.R. 102.9

LEXISNEXIS' CODE OF FEDERAL REGULATIONS

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 102 -- REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

Go to the CFR Archive Directory

11 CFR 102.9

§ 102.9 Accounting for contributions and expenditures (2 U.S.C. 432(c)).

The treasurer of a political committee or an agent authorized by the treasurer to receive contributions and make expenditures shall fulfill all recordkeeping duties as set forth at *11 CFR 102.9(a)* through (f):

(a) An account shall be kept by any reasonable accounting procedure of all contributions received by or on behalf of the political committee.

(1) For contributions in excess of $ 50, such account shall include the name and address of the contributor and the date of receipt and amount of such contribution.

(2) For contributions from any person whose contributions aggregate more than $ 200 during a calendar year, such account shall include the identification of the person, and the date of receipt and amount of such contribution.

(3) For contributions from a political committee, such account shall include the identification of the political committee and the date of receipt and amount of such contribution.

(4) In addition to the account to be kept under paragraph (a)(1) of this section, for contributions in excess of $ 50, the treasurer of a political committee or an agent authorized by the treasurer shall maintain:

(i) A full-size photocopy of each check or written instrument; or

(ii) A digital image of each check or written instrument. The political committee or other person shall provide the computer equipment and software needed to retrieve and read the digital images, if necessary, at no cost to the Commission.

(b)(1) An account shall be kept of all disbursements made by or on behalf of the political committee. Such account

shall consist of a record of:

(i) the name and address of every person to whom any disbursement is made;

(ii) the date, amount, and purpose of the disbursement; and

(iii) if the disbursement is made for a candidate, the name and office (including State and congressional district, if any) sought by that candidate.

(iv) For purposes of *11 CFR 102.9(b)(1)*, purpose has the same meaning given the term at *11 CFR 104.3(b)(3)(i)(A)*.

(2) In addition to the account to be kept under *11 CFR 102.9(b)(1)*, a receipt or invoice from the payee or a cancelled check to the payee shall be obtained and kept for each disbursement in excess of $ 200 by or on behalf of, the committee, except that credit card transactions, shall be documented in accordance with *11 CFR 102.9(b)(2)(ii)* and disbursements by share draft or check drawn on a credit union account shall be documented in accordance with *11 CFR 102.9(b)(2)(iii)*.

(i)(A) For purposes of *11 CFR 102.9(b)(2)*, payee means the person who provides the goods or services to the committee or agent thereof in return for payment, except for an advance of $ 500 or less for travel and subsistence to an individual who will be the recipient of the goods or services.

(B) For any advance of $ 500 or less to an individual for travel and subsistence, the expense voucher or other expense account documentation and a cancelled check to the recipient of the advance shall be obtained and kept.

(ii) For any credit card transaction, documentation shall include a monthly billing statement or customer receipt for each transaction and the cancelled check used to pay the credit card account.

(iii) For purposes of *11 CFR 102.9(b)(2)*, a carbon copy of a share draft or check drawn on a credit union account may be used as a duplicate record of such draft or check provided that the monthly account statement showing that the share draft or check was paid by the credit union is also retained.

(c) The treasurer shall preserve all records and accounts required to be kept under *11 CFR 102.9* for 3 years after the report to which such records and accounts relate is filed.

(d) In performing recordkeeping duties, the treasurer or his or her authorized agent shall use his or her best efforts to obtain, maintain and submit the required information and shall keep a complete record of such efforts. If there is a showing that best efforts have been made, any records of a committee shall be deemed to be in compliance with this Act. With regard to the requirements of *11 CFR 102.9(b)(2)* concerning receipts, invoices and cancelled checks, the treasurer will not be deemed to have exercised best efforts to obtain, maintain and submit the records unless he or she has made at least one written effort per transaction to obtain a duplicate copy of the invoice, receipt, or cancelled check.

(e)(1) If the candidate, or his or her authorized committee(s), receives contributions that are designated for use in connection with the general election pursuant to *11 CFR 110.1(b)* prior to the date of the primary election, such candidate or such committee(s) shall use an acceptable accounting method to distinguish between contributions received for the primary election and contributions received for the general election. Acceptable accounting methods include, but are not limited to:

(i) The designation of separate accounts for each election, caucus or convention; or

(ii) The establishment of separate books and records for each election.

(2) Regardless of the method used under paragraph (e)(1) of this section, an authorized committee's records must

demonstrate that, prior to the primary election, recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made.

(3) If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors, redesignated in accordance with *11 CFR 110.1(b)(5)* or *110.2(b)(5)*, or reattributed in accordance with *11 CFR 110.1(k)(3)*, as appropriate.

(f) The treasurer shall maintain the documentation required by *11 CFR 110.1(l)*, concerning designations, redesignations, reattributions and the dates of contributions. If the treasurer does not maintain this documentation, *11 CFR 110.1(l)(5)* shall apply.

HISTORY: *[45 FR 15104,* Mar. 7, 1980, as amended at *52 FR 773,* Jan. 9, 1987; ratified at *58 FR 59640,* Nov. 10, 1993; *67 FR 69928, 69946,* Nov. 19, 2002]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

NOTES: [EFFECTIVE DATE NOTE: *67 FR 69928, 69946,* Nov. 19, 2002, added paragraph (a)(4) and revised paragraph (e), effective Jan. 1, 2003.]
NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

1132 words

TAB 16

LexisNexis

LEXSTAT 11 C.F.R. 103.2

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 103 -- CAMPAIGN DEPOSITORIES (2 U.S.C. 432(H))

Go to the CFR Archive Directory

11 CFR 103.2

§ 103.2 Depositories (2 U.S.C. 432(h)(1)).

Each political committee shall designate one or more State banks, federally chartered depository institutions (including a national bank), or depository institutions the depositor accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories. One or more depositories may be established in one or more States. Each political committee shall maintain at least one checking account or transaction account at one of its depositories. Additional accounts may be established at each depository.

HISTORY: *[45 FR 15108,* Mar. 7, 1980; ratified at *58 FR 59640,* Nov. 10, 1993]

AUTHORITY: *2 U.S.C. 432*(h), 438(a)(8).

NOTES: NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

108 words

TAB 17

LexisNexis

LEXSTAT 11 C.F.R. 103.3

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 103 -- CAMPAIGN DEPOSITORIES (2 U.S.C. 432(H))

Go to the CFR Archive Directory

11 CFR 103.3

§ 103.3 Deposit of receipts and disbursements (2 U.S.C. 432(h)(1)).

(a) All receipts by a political committee shall be deposited in account(s) established pursuant to *11 CFR 103.2*, except that any contribution may be, within 10 days of the treasurer's receipt, returned to the contributor without being deposited. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt. A committee shall make all disbursements by check or similar drafts drawn on an account at its designated campaign depository, except for expenditures of S 100 or less made from a petty cash fund maintained pursuant to *11 CFR 102.11*. Funds may be transferred from the depository for investment purposes, but shall be returned to the depository before such funds are used to make expenditures.

(b) The treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of *11 CFR 110.1* or *110.2*.

(1) Contributions that present genuine questions as to whether they were made by corporations, labor organizations, foreign nationals, or Federal contractors may be, within ten days of the treasurer's receipt, either deposited into a campaign depository under *11 CFR 103.3(a)* or returned to the contributor. If any such contribution is deposited, the treasurer shall make his or her best efforts to determine the legality of the contribution. The treasurer shall make at least one written or oral request for evidence of the legality of the contribution. Such evidence includes, but is not limited to, a written statement from the contributor explaining why the contribution is legal, or a written statement by the treasurer memorializing an oral communication explaining why the contribution is legal. If the contribution cannot be determined to be legal, the treasurer shall, within thirty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

(2) If the treasurer in exercising his or her responsibilities under *11 CFR 103.3(b)* determined that at the time a contribution was received and deposited, it did not appear to be made by a corporation, labor organization, foreign national or Federal contractor, or made in the name of another, but later discovers that it is illegal based on new

evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered. If the political committee does not have sufficient funds to refund the contribution at the time the illegality is discovered, the political committee shall make the refund from the next funds it receives.

(3) Contributions which on their face exceed the contribution limitations set forth in *11 CFR 110.1* or *110.2*, and contributions which do not appear to be excessive on their face, but which exceed the contribution limits set forth in *11 CFR 110.1* or *110.2* when aggregated with other contributions from the same contributor, and contributions which cannot be accepted under the net debts outstanding provisions of *11 CFR 110.1(b)(3)* and *110.2(b)(3)* may be either deposited into a campaign depository under *11 CFR 103.3(a)* or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with *11 CFR 110.1(b)*, *110.1(k)* or *110.2(b)*, as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

(4) Any contribution which appears to be illegal under *11 CFR 103.3(b)(1)* or (3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

(5) If a contribution which appears to be illegal under *11 CFR 103.3(b)(1)* or (3) is deposited in a campaign depository, the treasurer shall make and retain a written record noting the basis for the appearance of illegality. A statement noting that the legality of the contribution is in question shall be included in the report noting the receipt of the contribution. If a contribution is refunded to the contributor because it cannot be determined to be legal, the treasurer shall note the refund on the report covering the reporting period in which the refund is made.

HISTORY: *[52 FR 774,* Jan. 9, 1987; ratified at *58 FR 59640,* Nov. 10, 1993]

AUTHORITY: *2 U.S.C. 432*(h), 438(a)(8).

NOTES: NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

954 words

TAB 18

LexisNexis

LEXSTAT 11 C.F.R. § 104.5

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 104 -- REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (2 U.S.C. 434)

Go to the CFR Archive Directory

11 CFR 104.5

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

(a) Principal campaign committee of House of Representatives or Senate candidate. Each treasurer of a principal campaign committee of a candidate for the House of Representatives or for the Senate must file quarterly reports on the dates specified in paragraph (a)(1) of this section in both election years and non-election years, and must file additional reports on the dates specified in paragraph (a)(2) of this section in election years.

(1) Quarterly reports.

(i) Quarterly reports must be filed no later than the 15th day following the close of the immediately preceding calendar quarter (on April 15, July 15, and October 15), except that the report for the final calendar quarter of the year must be filed no later than January 31 of the following calendar year.

(ii) The report must be complete as of the last day of each calendar quarter.

(iii) The requirement for a quarterly report shall be waived if, under paragraph (a)(2) of this section, a pre-election report is required to be filed during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(2) Additional reports in the election year. (i) Pre-election reports. (A) Pre-election reports for the primary and general election must be filed no later than 12 days before any primary or general election in which the candidate seeks election. If sent by registered or certified mail, Priority Mail or Express Mail with a delivery confirmation, or with an overnight delivery service and scheduled to be delivered the next business day after the date of deposit and recorded in the overnight delivery service's on-line tracking system, the postmark on the report must be dated no later than the 15th day before any election.

(B) The pre-election report must disclose all receipts and disbursements as of the 20th day before a primary or

general election.

(ii) Post-general election report.

(A) The post-general election report must be filed no later than 30 days after any general election in which the candidate seeks election.

(B) The post-general election report must be complete as of the 20th day after the general election.

(b) Principal campaign committee of Presidential candidate. Each treasurer of a principal campaign committee of a candidate for President shall file reports on the dates specified at *11 CFR 104.5(b)(1)* and (2).

(1) Election year reports. (i) If on January 1 of the election year, the committee has received or anticipates receiving contributions aggregating $ 100,000 or more, or has made or anticipates making expenditures aggregating $ 100,000 or more, it shall file monthly reports.

(A) Each report shall be filed no later than the 20th day after the last day of each month.

(B) The report shall be complete as of the last day of each month.

(C) In lieu of the monthly reports due in November and December, a pre-election report shall be filed as prescribed at paragraph (a)(2)(i) of this section, a post-general election report shall be filed as prescribed at paragraph (a)(2)(ii) of this section, and a year-end report shall be filed no later than January 31 of the following calendar year.

(ii) If on January 1 of the election year, the committee does not anticipate receiving and has not received contributions aggregating $ 100,000 and does not anticipate making and has not made expenditures aggregating $ 100,000, the committee shall file a preelection report or reports, a post general election report, and quarterly reports, as prescribed in paragraphs (a)(1) and (2) of this section.

(iii) If during the election year, a committee filing under *11 CFR 104.5(b)(1)(ii)* receives contributions aggregating $ 100,000 or makes expenditures aggregating $ 100,000, the treasurer shall begin filing monthly reports at the next reporting period.

(2) Non-election year reports. During a non-election year, the treasurer shall file either monthly reports as prescribed by paragraph (b)(1)(i) of this section or quarterly reports as prescribed by paragraph (a)(1) of this section. A principal campaign committee of a Presidential candidate may elect to change the frequency of its reporting from monthly to quarterly or vice versa during a non-election year only after notifying the Commission in writing of its intention at the time it files a required report under its pre-existing filing frequency. The committee will then be required to file the next required report under its new filing frequency. The committee may change its filing frequency no more than once per calendar year.

(c) Political committees that are not authorized committees of candidates. Except as provided in paragraph (c)(4) of this section, each political committee that is not the authorized committee of a candidate must file either: Election year and non-election year reports in accordance with paragraphs (c)(1) and (2) of this section; or monthly reports in accordance with paragraph (c)(3) of this section. A political committee reporting under paragraph (c) of this section may elect to change the frequency of its reporting from monthly to quarterly and semi-annually or vice versa. A political committee reporting under this paragraph (c) may change the frequency of its reporting only after notifying the Commission in writing of its intention at the time it files a required report under its current filing frequency. Such political committee will then be required to file the next required report under its new filing frequency. A political committee may change its filing frequency no more than once per calendar year.

(1) Election year reports -- (i) Quarterly reports. (A) Quarterly reports shall be filed no later than the 15th day

following the close of the immediately preceding calendar quarter, (on April 15, July 15, and October 15), except that the report for the final calendar quarter of the year shall be filed on January 31 of the following calendar year.

(B) The reports shall be complete as of the last day of the calendar quarter for which the report is filed.

(C) The requirement for a quarterly report shall be waived if under *11 CFR 104.5(c)(1)(ii)* a pre-election report is required to be filed during the period beginning on the fifth day after the close of the calendar quarter and ending on the fifteenth day after the close of the calendar quarter.

(ii) Pre-election reports. (A) Pre-election reports for the primary and general election shall be filed by a political committee which makes contributions or expenditures in connection with any such election if such disbursements have not been previously disclosed. Pre-election reports shall be filed no later than 12 days before any primary or general election. If sent by registered or certified mail, Priority Mail or Express Mail with a delivery confirmation, or with an overnight delivery service and scheduled to be delivered the next business day after the date of deposit and recorded in the overnight delivery service's on-line tracking system, the postmark on the report shall be dated no later than the 15th day before any election.

(B) The report shall disclose all receipts and disbursements as of the 20th day before a primary or general election.

(iii) Post-general election reports. (A) A post-general election report shall be filed no later than 30 days after any general election.

(B) The report shall be complete as of the 20th day after the general election.

(2) Non-election year reports -- (i) Semi-annual reports. (A) The first report shall cover January 1 through June 30, and shall be filed no later than July 31.

(B) The second report shall cover July 1 through December 31, and shall be filed no later than January 31 of the following year.

(3) Monthly reports. (i) Except as provided at *11 CFR 104.5(c)(3)(ii)*, monthly reports shall be filed no later than 20 days after the last day of the month.

(ii) In lieu of the monthly reports due in November and December, in any year in which a regularly scheduled general election is held, a pre-election report shall be filed as prescribed at *11 CFR 104.5(a)(1)(ii)*, a post general election report shall be filed as prescribed at *11 CFR 104.5(a)(1)(iii)*, and a year-end report shall be filed no later than January 31 of the following calendar year.

(4) National party committee reporting. Notwithstanding anything to the contrary in this paragraph, a national committee of a political party, including a national Congressional campaign committee, must report monthly in accordance with paragraph (c)(3) of this section in both election and non-election years.

(d) Committees supporting Vice Presidential candidates. The treasurer of a committee supporting a candidate for the office of Vice President (other than a nominee of a political party) shall file reports on the same basis that the principal campaign committee of a Presidential candidate must file reports under *11 CFR 104.5(b)*.

(e) Date of filing. A designation, report or statement, other than those addressed in paragraphs (f), (g), and (j) of this section, sent by registered or certified mail, Priority Mail or Express Mail with a delivery confirmation, or with an overnight delivery service and scheduled to be delivered the next business day after the date of deposit and recorded in the overnight delivery service's on-line tracking system, shall be considered filed on the date of the postmark except that a twelve day pre-election report sent by such mail or overnight delivery service must have a postmark dated no later than the 15th day before any election. Designations, reports or statements, other than those addressed in paragraphs (f),

(g), and (j) of this section, sent by first class mail, or by any means other than those listed in this paragraph (e), must be received by the close of business on the prescribed filing date to be timely filed. Designations, reports or statements electronically filed must be received and validated at or before 11:59 p.m., eastern standard/daylight time on the prescribed filing date to be timely filed.

(f) 48-hour notification of contributions. If any contribution of $ 1,000 or more is received by any authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01 a.m. of the day of the election, the principal campaign committee of that candidate shall notify the Commission, the Secretary of the Senate and the Secretary of State, as appropriate, within 48 hours of receipt of the contribution. The notification shall be in writing and shall include the name of the candidate and office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be filed in accordance with *11 CFR 100.19*. The notification shall be in addition to the reporting of these contributions on the post-election report.

(g) Reports of independent expenditures. (1) 48-hour reports of independent expenditures. Every person that must file a 48-hour report under *11 CFR 104.4(b)* must ensure the Commission receives the report by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate $ 10,000 or more, that person must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which the $ 10,000 threshold is reached or exceeded. (See *11 CFR 104.4(f)* for aggregation.)

(2) 24-hour reports of independent expenditures. Every person that must file a 24-hour report under *11 CFR 104.4(c)* must ensure that the Commission receives the report by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate $ 1,000 or more, that person must ensure that the Commission receives a 24-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which the $ 1,000 threshold is reached or exceeded. (See *11 CFR 104.4(f)* for aggregation.)

(3) Each 24-hour or 48-hour report of independent expenditures filed under this section shall contain the information required by *11 CFR 104.3(b)(3)(vii)* indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

(4) For purposes of this part and 11 CFR part 109, a communication that is mailed to its intended audience is publicly disseminated when it is relinquished to the U.S. Postal Service.

(h) Special election reports. (1) Within 5 days of the setting of a special election, the Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and for political committees, other than authorized committees, which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall publish such reporting dates in the FEDERAL REGISTER and shall notify the principal campaign committees of all candidates in such election of the reporting dates. The Commission shall not require such committees to file more than one pre-election report for each election and one post-election report for the election which fills the vacancy.

(2) Reports required to be filed under *11 CFR 104.5(a)* or (c) may be waived by the Commission for committees filing special election reports if a report under *11 CFR 104.5(a)* or (c) is due within 10 days of the date a special election report is due. The Commission shall notify all appropriate committees of reports so waived.

(i) Committees should retain proof of mailing or other means of transmittal of the reports to the Commission.

(j) 24-hour statements of electioneering communications. Every person who has made a disbursement or who has executed a contract to make a disbursement for the direct costs of producing or airing electioneering communications as defined in *11 CFR 100.29* aggregating in excess of $ 10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. The statement shall be filed under penalty of perjury and in accordance with *11 CFR 104.20.*

HISTORY: *[45 FR 15108,* Mar. 7, 1980; ratified at *58 FR 59640,* Nov. 10, 1993; *61 FR 3549,* Feb. 1, 1996; *65 FR 31787, 31794,* May 19, 2000; *65 FR 38415, 38423,* June 21, 2000; *65 FR 63535,* Oct. 24, 2000; *67 FR 12834, 12839,* Mar. 20, 2002; *67 FR 40586,* June 13, 2002; *68 FR 404, 418,* Jan. 3, 2003; *68 FR 47386, 47414,* Aug. 8, 2003; *68 FR 66699,* Nov. 28, 2003; *69 FR 68237, 68238,* Nov. 24, 2004; *70 FR 13089, 13091,* Mar. 18, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, 441a, and *36 U.S.C. 510.*

NOTES: [EFFECTIVE DATE NOTE: *69 FR 68237, 68238,* Nov. 24, 2004, amended paragraph (c)(3)(ii), effective Nov. 24, 2004; *70 FR 13089, 13091,* Mar. 18, 2005, revised paragraphs (a)(2)(i)(A), (c)(1)(ii)(A), and (e), effective Apr. 18, 2005.]
NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: For Federal Register citations concerning Part 104 Policy Statements, see: *67 FR 71075,* Nov. 29, 2002; *71 FR 38513,* July 7, 2006; *72 FR 887,* Jan. 9, 2007; *72 FR 16695,* Apr. 5, 2007; *72 FR 31438,* June 7, 2007.]

2627 words

TAB 19

LexisNexis

LEXSTAT 11 C.F.R. 109.1

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 109 -- COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441A(A) AND (D), AND PUB. L. 107-155 SEC. 214(C))
SUBPART A -- SCOPE AND DEFINITIONS

Go to the CFR Archive Directory

11 CFR 109.1

§ 109.1 When will this part apply?

This part applies to expenditures that are made independently from a candidate, an authorized committee, a political party committee, or their agents, and to those payments that are made in coordination with a candidate, an authorized committee, a political party committee, or their agents. The rules in this part explain how these types of payments must be reported and how they must be treated by candidates, authorized committees, and political party committees. In addition, subpart D of part 109 describes procedures and limits that apply only to payments, transfers, and assignments made by political party committees.

HISTORY: *[45 FR 15118,* Mar. 7, 1980; ratified at *58 FR 59640,* Nov. 10, 1993; *60 FR 35305,* July 6, 1995; *60 FR 52069,* Oct. 5, 1995; *60 FR 64260, 64273,* Dec. 14, 1995; *61 FR 10269,* March 13, 1996; *65 FR 76138, 76146,* Dec. 6, 2000; *66 FR 23537,* May 9, 2001; *67 FR 12834, 12840,* Mar. 20, 2002; *67 FR 40586,* June 13, 2002; *68 FR 421, 452,* Jan. 3, 2003]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
2 U.S.C. 431(17), 434(c), 438(a)(8), 441a, 441d; Sec. 214(c) of Pub. L. 107-155, *116 Stat. 81.*

NOTES: [EFFECTIVE DATE NOTE: *68 FR 421, 452,* Jan. 3, 2003, revised Part 109, effective Feb. 3, 2003.]
NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: For Federal Register citations concerning Part 109 Explanation and Justifications, see: *71 FR 4975,* Jan. 31, 2006.]

106 words

TAB 20

LexisNexis

LEXSTAT 11 C.F.R. 109.10

LEXISNEXIS' CODE OF FEDERAL REGULATIONS

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 109 -- COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441A(A) AND (D), AND PUB. L. 107-155 SEC. 214(C))
SUBPART B -- INDEPENDENT EXPENDITURES

Go to the CFR Archive Directory

11 CFR 109.10

§ 109.10 How do political committees and other persons report independent expenditures?

(a) Political committees, including political party committees, must report independent expenditures under *11 CFR 104.4.*

(b) Every person that is not a political committee and that makes independent expenditures aggregating in excess of $ 250 with respect to a given election in a calendar year shall file a verified statement or report on FEC Form 5 in accordance with *11 CFR 104.4(e)* containing the information required by paragraph (e) of this section. Every person filing a report or statement under this section shall do so in accordance with the quarterly reporting schedule specified in *11 CFR 104.5(a)(1)(i)* and (ii) and shall file a report or statement for any quarterly period during which any such independent expenditures that aggregate in excess of $ 250 are made and in any quarterly reporting period thereafter in which additional independent expenditures are made.

(c) Every person that is not a political committee and that makes independent expenditures aggregating $ 10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election, must report the independent expenditures on FEC Form 5, or by signed statement if the person is not otherwise required to file electronically under *11 CFR 104.18.* (See *11 CFR 104.4(f)* for aggregation.) The person making the independent expenditures aggregating $ 10,000 or more must ensure that the Commission receives the report or statement by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $ 10,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures. Each 48-hour report must contain the information required by paragraph (e)(1) of this section.

(d) Every person making, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of an election,

independent expenditures aggregating $ 1,000 or more with respect to a given election must report those independent expenditures and ensure that the Commission receives the report or signed statement by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate $ 1,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures. (See *11 CFR 104.4(f)* for aggregation.) Such report or statement shall contain the information required by paragraph (e) of this section.

(e) Content of verified reports and statements and verification of reports and statements.

(1) Contents of verified reports and statement. If a signed report or statement is submitted, the report or statement shall include:

(i) The reporting person's name, mailing address, occupation, and the name of his or her employer, if any;

(ii) The identification (name and mailing address) of the person to whom the expenditure was made;

(iii) The amount, date, and purpose of each expenditure;

(iv) A statement that indicates whether such expenditure was in support of, or in opposition to a candidate, together with the candidate's name and office sought;

(v) A verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents; and

(vi) The identification of each person who made a contribution in excess of $ 200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.

(2) Verification of independent expenditure statements and reports. Every person shall verify reports and statements of independent expenditures filed pursuant to the requirements of this section by one of the methods stated in paragraph (e)(2)(i) or (ii) of this section. Any report or statement verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(i) For reports or statements filed on paper (e.g., by hand-delivery, U.S. Mail, or facsimile machine), the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by paragraph (e)(1)(v) of this section.

(ii) For reports or statements filed by electronic mail, the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by paragraph (e)(1)(v) of this section.

HISTORY: *[68 FR 404, 420, 421, 452,* Jan. 3, 2003]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
2 U.S.C. 431(17), 434(c), 438(a)(8), 441a, 441d; Sec. 214(c) of Pub. L. 107-155, *116 Stat. 81.*

NOTES: [EFFECTIVE DATE NOTE: *68 FR 404, 420, 421, 452,* Jan. 3, 2003, revised part 109, effective Feb. 3, 2003.]
NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:

Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: For Federal Register citations concerning Part 109 Explanation and Justifications, see: *71 FR 4975*, Jan. 31, 2006.]

914 words

TAB 21

LexisNexis

LEXSTAT 11 C.F.R. 109.20

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 109 -- COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441A(A) AND (D), AND PUB. L. 107-155 SEC. 214(C))
SUBPART C -- COORDINATION

Go to the CFR Archive Directory

11 CFR 109.20

§ 109.20 What does "coordinated" mean?

(a) Coordinated means made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee. For purposes of this subpart C, any reference to a candidate, or a candidate's authorized committee, or a political party committee includes an agent thereof.

(b) Any expenditure that is coordinated within the meaning of paragraph (a) of this section, but that is not made for a coordinated communication under *11 CFR 109.21* or a party coordinated communication under *11 CFR 109.37*, is either an in-kind contribution to, or a coordinated party expenditure with respect to, the candidate or political party committee with whom or with which it was coordinated and must be reported as an expenditure made by that candidate or political party committee, unless otherwise exempted under 11 CFR part 100, subparts C or E.

HISTORY: *[68 FR 421, 453,* Jan. 3, 2003; *71 FR 33190, 33208,* June 8, 2006]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
2 U.S.C. 431(17), 434(c), 438(a)(8), 441a, 441d; Sec. 214(c) of Pub. L. 107-155, *116 Stat. 81.*

NOTES: [EFFECTIVE DATE NOTE: *71 FR 33190, 33208,* June 8, 2006, revised paragraph (a), effective July 10, 2006.]
NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*

Interstate Commerce Commission: 49 CFR part 1325

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: For Federal Register citations concerning Part 109 Explanation and Justifications, see: *71 FR 4975,* Jan. 31, 2006.]

171 words

TAB 22

LexisNexis

LEXSTAT 11 C.F.R. 109.21

LEXISNEXIS' CODE OF FEDERAL REGULATIONS

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 109 -- COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441A(A) AND (D), AND PUB. L. 107-155 SEC. 214(C))
SUBPART C -- COORDINATION

Go to the CFR Archive Directory

11 CFR 109.21

§ 109.21 What is a "coordinated communication"?

(a) Definition. A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication:

(1) Is paid for, in whole or in part, by a person other than that candidate, authorized committee, or political party committee;

(2) Satisfies at least one of the content standards in paragraph (c) of this section; and

(3) Satisfies at least one of the conduct standards in paragraph (d) of this section.

(b) Treatment as an in-kind contribution and expenditure; Reporting -- (1) General rule. A payment for a coordinated communication is made for the purpose of influencing a Federal election, and is an in-kind contribution under *11 CFR 100.52(d)* to the candidate, authorized committee, or political party committee with whom or which it is coordinated, unless excepted under 11 CFR part 100, subpart C, and must be reported as an expenditure made by that candidate, authorized committee, or political party committee under *11 CFR 104.13*, unless excepted under 11 CFR part 100, subpart E.

(2) In-kind contributions resulting from conduct described in paragraphs (d)(4) or (d)(5) of this section. Notwithstanding paragraph (b)(1) of this section, the candidate, authorized committee, or political party committee with whom or which a communication is coordinated does not receive or accept an in-kind contribution, and is not required to report an expenditure, that results from conduct described in paragraphs (d)(4) or (d)(5) of this section, unless the candidate, authorized committee, or political party committee engages in conduct described in paragraphs (d)(1) through (d)(3) of this section.

(3) Reporting of coordinated communications. A political committee, other than a political party committee, that makes a coordinated communication must report the payment for the communication as a contribution made to the candidate or political party committee with whom or which it was coordinated and as an expenditure in accordance with *11 CFR 104.3(b)(1)(v)*. A candidate, authorized committee, or political party committee with whom or which a communication paid for by another person is coordinated must report the usual and normal value of the communication as an in-kind contribution in accordance with *11 CFR 104.13*, meaning that it must report the amount of the payment as a receipt under *11 CFR 104.3(a)* and as an expenditure under *11 CFR 104.3(b)*.

(c) Content standards. Each of the types of content described in paragraphs (c)(1) through (c)(4) satisfies the content standard of this section.

(1) A communication that is an electioneering communication under *11 CFR 100.29*.

(2) A public communication, as defined in *11 CFR 100.26*, that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee, unless the dissemination, distribution, or republication is excepted under *11 CFR 109.23(b)*. For a communication that satisfies this content standard, see paragraph (d)(6) of this section.

(3) A public communication, as defined in *11 CFR 100.26*, that expressly advocates the election or defeat of a clearly identified candidate for Federal office.

(4) A public communication, as defined in *11 CFR 100.26*, that satisfies paragraph (c)(4)(i), (ii), (iii), or (iv) of this section:

(i) References to House and Senate candidates. The public communication refers to a clearly identified House or Senate candidate and is publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the clearly identified candidate's general, special, or runoff election, or primary or preference election, or nominating convention or caucus.

(ii) References to Presidential and Vice Presidential candidates. The public communication refers to a clearly identified Presidential or Vice Presidential candidate and is publicly distributed or otherwise publicly disseminated in a jurisdiction during the period of time beginning 120 days before the clearly identified candidate's primary or preference election in that jurisdiction, or nominating convention or caucus in that jurisdiction, up to and including the day of the general election.

(iii) References to political parties. The public communication refers to a political party, does not refer to a clearly identified Federal candidate, and is publicly distributed or otherwise publicly disseminated in a jurisdiction in which one or more candidates of that political party will appear on the ballot.

(A) When the public communication is coordinated with a candidate and it is publicly distributed or otherwise publicly disseminated in that candidate's jurisdiction, the time period in paragraph (c)(4)(i) or (ii) of this section that would apply to a communication containing a reference to that candidate applies;

(B) When the public communication is coordinated with a political party committee and it is publicly distributed or otherwise publicly disseminated during the two-year election cycle ending on the date of a regularly scheduled non-Presidential general election, the time period in paragraph (c)(4)(i) of this section applies;

(C) When the public communication is coordinated with a political party committee and it is publicly distributed or otherwise publicly disseminated during the two-year election cycle ending on the date of a Presidential general election, the time period in paragraph (c)(4)(ii) of this section applies.

(iv) References to both political parties and clearly identified Federal candidates. The public communication refers

to a political party and a clearly identified Federal candidate, and is publicly distributed or otherwise publicly disseminated in a jurisdiction in which one or more candidates of that political party will appear on the ballot.

(A) When the public communication is coordinated with a candidate and it is publicly distributed or otherwise publicly disseminated in that candidate's jurisdiction, the time period in paragraph (c)(4)(i) or (ii) of this section that would apply to a communication containing a reference to that candidate applies;

(B) When the public communication is coordinated with a political party committee and it is publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction, the time period in paragraph (c)(4)(i) or (ii) of this section that would apply to a communication containing only a reference to that candidate applies;

(C) When the public communication is coordinated with a political party committee and it is publicly distributed or otherwise publicly disseminated outside the clearly identified candidate's jurisdiction, the time period in paragraph (c)(4)(iii)(B) or (C) of this section that would apply to a communication containing only a reference to a political party applies.

(d) Conduct standards. Any one of the following types of conduct satisfies the conduct standard of this section whether or not there is agreement or formal collaboration, as defined in paragraph (e) of this section:

(1) Request or suggestion. (i) The communication is created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee; or

(ii) The communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or political party committee assents to the suggestion.

(2) Material involvement. This paragraph, (d)(2), is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source. A candidate, authorized committee, or political party committee is materially involved in decisions regarding:

(i) The content of the communication;

(ii) The intended audience for the communication;

(iii) The means or mode of the communication;

(iv) The specific media outlet used for the communication;

(v) The timing or frequency of the communication; or

(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(3) Substantial discussion. This paragraph, (d)(3), is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source. The communication is created, produced, or distributed after one or more substantial discussions about the communication between the person paying for the communication, or the employees or agents of the person paying for the communication, and the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee. A discussion is substantial within the meaning of this paragraph if information about the candidate's or political party committee's campaign plans, projects, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication.

(4) Common vendor. All of the following statements in paragraphs (d)(4)(i) through (d)(4)(iii) of this section are

true:

(i) The person paying for the communication, or an agent of such person, contracts with or employs a commercial vendor, as defined in *11 CFR 116.1(c)*, to create, produce, or distribute the communication;

(ii) That commercial vendor, including any owner, officer, or employee of the commercial vendor, has provided any of the following services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, during the previous 120 days:

(A) Development of media strategy, including the selection or purchasing of advertising slots;

(B) Selection of audiences;

(C) Polling;

(D) Fundraising;

(E) Developing the content of a public communication;

(F) Producing a public communication;

(G) Identifying voters or developing voter lists, mailing lists, or donor lists;

(H) Selecting personnel, contractors, or subcontractors; or

(I) Consulting or otherwise providing political or media advice; and

(iii) This paragraph, (d)(4)(iii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the commercial vendor was obtained from a publicly available source. That commercial vendor uses or conveys to the person paying for the communication:

(A) Information about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate's opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or

(B) Information used previously by the commercial vendor in providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.

(5) Former employee or independent contractor. Both of the following statements in paragraphs (d)(5)(i) and (d)(5)(ii) of this section are true:

(i) The communication is paid for by a person, or by the employer of a person, who was an employee or independent contractor of the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, during the previous 120 days; and

(ii) This paragraph, (d)(5)(ii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the former employee or independent contractor was obtained from a publicly available source. That former employee or independent contractor uses or conveys to the person paying for the communication:

(A) Information about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate's opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or

(B) Information used by the former employee or independent contractor in providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.

(6) Dissemination, distribution, or republication of campaign material. A communication that satisfies the content standard of paragraph (c)(2) of this section or *11 CFR 109.37(a)(2)(i)* shall only satisfy the conduct standards of paragraphs (d)(1) through (d)(3) of this section on the basis of conduct by the candidate, the candidate's authorized committee, or the agents of any of the foregoing, that occurs after the original preparation of the campaign materials that are disseminated, distributed, or republished. The conduct standards of paragraphs (d)(4) and (d)(5) of this section may also apply to such communications as provided in those paragraphs.

(e) Agreement or formal collaboration. Agreement or formal collaboration between the person paying for the communication and the candidate clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, is not required for a communication to be a coordinated communication. Agreement means a mutual understanding or meeting of the minds on all or any part of the material aspects of the communication or its dissemination. Formal collaboration means planned, or systematically organized, work on the communication.

(f) Safe harbor for responses to inquiries about legislative or policy issues. A candidate's or a political party committee's response to an inquiry about that candidate's or political party committee's positions on legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs, does not satisfy any of the conduct standards in paragraph (d) of this section.

(g) Safe harbor for endorsements and solicitations by Federal candidates. (1) A public communication in which a candidate for Federal office endorses another candidate for Federal or non-Federal office is not a coordinated communication with respect to the endorsing Federal candidate unless the public communication promotes, supports, attacks, or opposes the endorsing candidate or another candidate who seeks election to the same office as the endorsing candidate.

(2) A public communication in which a candidate for Federal office solicits funds for another candidate for Federal or non-Federal office, a political committee, or organizations as permitted by *11 CFR 300.65*, is not a coordinated communication with respect to the soliciting Federal candidate unless the public communication promotes, supports, attacks, or opposes the soliciting candidate or another candidate who seeks election to the same office as the soliciting candidate.

(h) Safe harbor for establishment and use of a firewall. The conduct standards in paragraph (d) of this section are not met if the commercial vendor, former employee, or political committee has established and implemented a firewall that meets the requirements of paragraphs (h)(1) and (h)(2) of this section. This safe harbor provision does not apply if specific information indicates that, despite the firewall, information about the candidate's or political party committee's campaign plans, projects, activities, or needs that is material to the creation, production, or distribution of the communication was used or conveyed to the person paying for the communication.

(1) The firewall must be designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party

committee; and

(2) The firewall must be described in a written policy that is distributed to all relevant employees, consultants, and clients affected by the policy.

HISTORY: *[68 FR 421, 453,* Jan. 3, 2003; *71 FR 33190, 33208,* June 8, 2006]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
2 U.S.C. 431(17), 434(c), 438(a)(8), 441a, 441d; Sec. 214(c) of Pub. L. 107-155, *116 Stat. 81.*

NOTES: [EFFECTIVE DATE NOTE: *71 FR 33190, 33208,* June 8, 2006, amended this section, effective July 10, 2006.]
NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: For Federal Register citations concerning Part 109 Explanation and Justifications, see: *71 FR 4975,* Jan. 31, 2006.]

NOTES TO DECISIONS: COURT AND ADMINISTRATIVE DECISIONS SIGNIFICANTLY DISCUSSING SECTION --
Shays v FEC (2004, DC Dist Col) 337 F Supp 2d 28, dismd, in part (2004, App DC) *2004 US App LEXIS 24896* and affd (2005, App DC) *367 US App DC 185, 414 F3d 76*
Shays v United States FEC (2007, DC Dist Col) 508 F Supp 2d 10

2951 words

TAB 23

LEXSTAT 11 C.F.R. 110.5

LEXISNEXIS' CODE OF FEDERAL REGULATIONS

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 110 -- CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

Go to the CFR Archive Directory

11 CFR 110.5

§ 110.5 Aggregate biennial contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

(a) Scope. This section applies to all contributions made by any individual, except individuals prohibited from making contributions under *11 CFR 110.20* and 11 CFR part 115.

(b) Biennial limitations. (1) In the two-year period beginning on January 1 of an odd-numbered year and ending on December 31 of the next even-numbered year, no individual shall make contributions aggregating more than $ 95,000, including no more than:

(i) $ 37,500 in the case of contributions to candidates and the authorized committees of candidates; and

(ii) $ 57,500 in the case of any other contributions, of which not more than $ 37,500 may be attributable to contributions to political committees that are not political committees of any national political parties.

(2) [Reserved]

(3) The contribution limitations in paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with *11 CFR 110.17*. The increased contribution limitations shall be in effect for the two calendar years starting on January 1 of the year in which the contribution limitations are increased.

(4) In every odd-numbered year, the Commission will publish in the FEDERAL REGISTER the amount of the contribution limitations in effect and place such information on the Commission's Web site.

(c)(1) Contributions made on or after January 1, 2004. Any contribution subject to this paragraph (c)(1) to a candidate or his or her authorized committee with respect to a particular election shall be considered to be made during the two-year period described in paragraph (b)(1) of this section in which the contribution is actually made, regardless of the year in which the particular election is held. See *11 CFR 110.1(b)(6)*. This paragraph (c)(1) also applies to

earmarked contributions and contributions to a single candidate committee that has supported or anticipates supporting the candidate.

(2) Contributions made prior to January 1, 2004.

(i) For purposes of this paragraph (c)(2), a contribution to a candidate or his or her authorized committee with respect to a particular election shall be considered to be made during the calendar year in which such election is held.

(ii) For purposes of this paragraph (c)(2), any contribution to an unauthorized committee shall not be considered to be made during the calendar year in which an election is held unless:

(A) The political committee is a single candidate committee which has supported or anticipates supporting the candidate; or

(B) The contribution is earmarked by the contributor for a particular candidate with respect to a particular election.

(d) Independent expenditures. The biennial limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

(e) Contributions to delegates and delegate committees. The biennial limitation on contributions in this section applies to contributions to delegate and delegate committees under *11 CFR 110.14*.

HISTORY: *[54 FR 34112,* Aug. 17, 1989 and *54 FR 48580,* Nov. 24, 1989; ratified at *58 FR 59640,* Nov. 10, 1993; *67 FR 69928, 69948,* Nov. 19, 2002; *68 FR 64512, 64516,* Nov. 14, 2003; *70 FR 5565, 5568,* Feb. 3, 2005; *73 FR 79597, 79602,* Dec. 30, 2008]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
2 U.S.C. 431(8), 431(9), 432(c)(2), 434(i)(3), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and *36 U.S.C. 510.*

NOTES: [EFFECTIVE DATE NOTE: *73 FR 79597, 79602,* Dec. 30, 2008, amended this section, effective Feb. 1, 2009.]
NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

547 words

TAB 24

LexisNexis

LEXSTAT 11 C.F.R. 112.4

LEXISNEXIS' CODE OF FEDERAL REGULATIONS

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 11 -- FEDERAL ELECTIONS
CHAPTER I -- FEDERAL ELECTION COMMISSION
SUBCHAPTER A -- GENERAL
PART 112 -- ADVISORY OPINIONS (2 U.S.C. 437F)

Go to the CFR Archive Directory

11 CFR 112.4

§ 112.4 Issuance of advisory opinions (2 U.S.C. 437f(a) and (b)).

(a) Within 60 calendar days after receiving an advisory opinion request that qualifies under *11 CFR 112.1*, the Commission shall issue to the requesting person a written advisory opinion or shall issue a written response stating that the Commission was unable to approve an advisory opinion by the required affirmative vote of 4 members.

(b) The 60 calendar day period of *11 CFR 112.4(a)* is reduced to 20 calendar days for an advisory opinion request qualified under *11 CFR 112.1* provided the request:

(1) Is submitted by any candidate, including any authorized committee of the candidate (or agent of either), within the 60 calendar days preceding the date of any election for Federal office in which the candidate is seeking nomination or election; and

(2) Presents a specific transaction or activity related to the election that may invoke the 20 day period if the connection is explained in the request.

(c) The 60 day and 20 day periods referred to in *11 CFR 112.4(a)* and (b) only apply when the Commission has received a qualified and complete advisory opinion request under *11 CFR 112.1*, and when the 60th or 20th day occurs on a Saturday, Sunday or Federal holiday, the respective period ends at the close of the business day next following the weekend or holiday.

(d) The Commission may issue advisory opinions pertaining only to the Federal Election Campaign Act of 1971, as amended, chapters 95 or 96 of the Internal Revenue Code of 1954, or rules or regulations duly prescribed under those statutes.

(e) Any rule of law which is not stated in the Act or in chapters 95 or 96 of the Internal Revenue Code of 1954, or in a regulation duly prescribed by the Commission, may be initially proposed only as a rule or regulation pursuant to

procedures established in *2 USC 438*(d) or *26 USC 9009*(c) and 9039(c) as applicable.

(f) No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with 11 CFR part 112; however, this limitation does not preclude distribution by the Commission of information consistent with the Act and chapters 95 or 96 of the Internal Revenue Code of 1954.

(g) When issued by the Commission, each advisory opinion or other response under *11 CFR 112.4(a)* shall be made public and sent by mail, or personally delivered to the person who requested the opinion.

HISTORY: *[45 FR 15123,* Mar. 7, 1980; ratified at *58 FR 59640,* Nov. 10, 1993]

AUTHORITY: *2 U.S.C. 437f,* 438(a)(8).

NOTES: NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 appear in:
Office of the Secretary, Department of Transportation: 14 CFR part 374a
Federal Communications Commission: 47 CFR part 64 (subpart H), *47 CFR §§ 73.1910-73.1944*
Interstate Commerce Commission: 49 CFR part 1325

463 words