

Record

November 2002

Federal Election Commission

Volume 28, Number 11

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Regulations

BCRA Takes Effect

Many provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) take effect November 6, 2002. With the exception of the national party committees' soft money rules, the rules taking effect on November 6 do not apply to activity resulting from elections held before November 6th, including general election runoffs and recounts. However, after November 5, committees, organizations and individuals must otherwise comply with provisions of the BCRA, as appropriate, for all of their other activity, including activity related to the upcoming special general election in Hawaii. See related article on page 5.

BCRA Requirements that Become Effective November 6

Provisions that take effective on November 6 include:

- A ban on the use of nonfederal funds by national party committees, including funds raised or spent for the purpose of building or purchasing a party office building;
- Rules governing fundraising and disbursements by state, district and local party committees—including the raising and spending of so-called "Levin funds;"

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Reports

Post-General Reporting Reminder

The 30-day Post-General Election report is due on December 5. The Post-General report covers activity from October 17 (or from the close of books of the last report filed) through November 25. The following committees must file this report:

- All registered PACs and party committees—even committees with little or no activity to disclose. Monthly filers must submit this report in lieu of the November monthly report.¹
- Authorized committees of federal candidates running in the general election, including committees of unopposed candidates. Note that because the reporting period for the Post-General report spans two election cycles, candidate committees should use the Post-Election Detailed Summary Page (FEC Form 3, Pages 5-8) instead of the normal Detailed Summary Page.

In order to be considered timely filed, reports sent electronically must be received by the Commission, and pass the validation test,

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¹ Monthly filers should not file a November monthly report in addition to the Post-General report.

Reports

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before midnight on the December 5 filing deadline. A committee required to file electronically that instead files on paper reporting forms will be considered a nonfiler.

Reports sent by regular first-class or overnight mail, or by hand delivery, must be received by the Commission's close of business on the filing deadline. Reports sent via registered or certified mail must be postmarked on or before December 5 to be considered timely filed. A committee sending its reports via registered or certified mail should keep its mailing receipt with the U.S. Postal Service postmark as proof of filing.

Additional Information

For more information on 2002 reporting dates:

- See the reporting tables in the [January 2002 Record](#), page 4;

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

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

David M. Mason, Chairman
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<http://www.fec.gov>

- Call and request the reporting tables from the FEC at 800/424-9530 (press 1, then 3) or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or
- Visit the FEC's web page at <http://www.fec.gov/pages/report.htm> to view the reporting tables online. ♦

—Amy Kort

Commission Certifies Massachusetts for State Filing Waiver

The Commission has certified that Massachusetts qualifies for a state filing waiver.¹ Consequently, federal committees and candidates in Massachusetts no longer have to file copies of their federal reports with the Massachusetts Secretary of the Commonwealth. ♦

—Amy Kort

¹ The Commission has certified that the following states and territories qualify for filing waivers: Alabama, Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virgin Islands, Virginia, Washington, West Virginia, Wisconsin and Wyoming. Committees that file their reports at the FEC need not file copies in these states. Guam, Montana and Puerto Rico are not currently in the State Filing Waiver Program.

Regulations

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- Rules defining and governing “federal election activity;”
- Rules governing nonfederal fundraising by federal candidates and officeholders;
- Restrictions on donations to and solicitations for 501(c) and so-called “527” organizations by party committees, federal candidates and federal officeholders;¹
- Requirements for the funding and reporting of “electioneering communications;”²
- Prohibitions on contributions by minors;
- Strengthened prohibitions on contributions, expenditures, independent expenditures and disbursements for electioneering communications by foreign nationals;³
- Additional requirements for disclaimers accompanying radio, television and print campaign materials;
- Increases to the civil penalties for violations of the ban on contributions in the name of another and the expansion of the prohibition on fraudulent misrepresentation;
- The codification of several aspects of the current regulatory test for the permissible use of campaign

¹ All of the above rules relating to the use of nonfederal funds are addressed in the Commission's “Final Rules on Prohibited and Excessive Contributions: Nonfederal Funds or Soft Money” (67 FR 49064, July 29, 2002). These rules are summarized in the [September 2002 Record](#), page 1.

² The Commission approved final rules on “electioneering communications” on September 26, 2002. See related article on page 3.

³ The Commission published a Notice of Proposed Rulemaking (NPRM) on contribution limitations and prohibitions in the August 22, 2002, Federal Register (67 FR 54366). The NPRM is summarized in the [September 2002 Record](#), page 11.

funds by candidates and officeholders;⁴

- Rules on independent and coordinated expenditures by political committees;
- The definition of coordination between a candidate or political party and a person making a communication;⁵
- Reporting requirements for independent expenditures;
- Increased contribution limits to candidates opposing self-financed candidates under the BCRA's so-called "Millionaires' Amendment;" and
- New requirements for inaugural committees.

The BCRA's increases to the contributions limits do not become effective until January 1, 2003. Thus, the current contribution limits will remain in effect throughout 2002.

Commission Rulemakings

The BCRA requires all implementing regulations to be promulgated by December 22, 2002. To date, the Commission has approved rules that eliminate or restrict nonfederal financial activity ("soft money") for national, state and local party committees. Additionally, the Commission has approved final rules concerning electioneering communications ([67 FR 65190](#),

⁴ On August 29 the Commission published in the Federal Register an NPRM proposing rules to implement statutory changes relating to disclaimers, fraudulent solicitations, permissible and prohibited uses of campaign funds and civil penalties ([67 FR 55348](#)). The NPRM is summarized in the [October 2002 Record](#), page 1.

⁵ On September 24 the Commission published in the Federal Register an NPRM proposing rules to implement statutory changes relating to coordination and to independent and coordinated expenditures. A summary of the NPRM is available in the [October 2002 Record](#), page 4.

October 23, 2002). In conjunction with these final rules, the Commission has also approved interim final rules with a request for comments pertaining to the Federal Communications Commission database on electioneering communications ([67 FR 65212](#), October 23, 2002). Comments concerning the interim final rules are due on January 21, 2003.

The Commission has also published Notices of Proposed Rulemaking on coordinated and independent expenditures, contribution limitations and prohibitions and other issues, including disclaimers, fraudulent solicitation, civil penalties and the personal use of campaign funds by officeholders and candidates. The Commission intends to approve and publish the interim final rules implementing the Millionaires' Amendment in December.

Additional Information

The FEC web site (www.fec.gov) now has a BCRA section, which provides links to:

- The Federal Election Campaign Act, as amended by the BCRA;
- Summaries of major BCRA-related changes to the federal campaign finance law;
- Summaries of current litigation involving challenges to the new law;
- *Federal Register* notices announcing new and revised Commission regulations that implement the BCRA, including NPRMs;
- Information on educational outreach offered by the Commission; and
- The Commission's calendar for rulemakings.

Visit www.fec.gov and click on the BCRA icon. ♦

—Amy Kort

Final Rules on Electioneering Communications

On October 10, 2002, the Federal Election Commission (FEC) approved final rules to implement provisions of the Bipartisan Campaign Reform Act regulating television or radio communications that refer to a clearly identified federal candidate and are distributed to the relevant electorate within 60 days prior to the general election or 30 days prior to a primary.

These rules do not affect the 2002 election cycle or any runoff elections or recounts that result from the November 5, 2002, elections.

The final rules and their Explanation and Justification were published in the October 23, 2002, *Federal Register* ([67 FR 65190](#)) and are available on the FEC web site at www.fec.gov/pages/bcra/rulemakings/electioneering_communications.htm.

"Electioneering Communication" Defined

An electioneering communication is any broadcast, cable or satellite communication which fulfills **each** of the following conditions:

The communication refers to a clearly identified candidate. A communication refers to a clearly identified federal candidate if it contains the candidate's name, nickname or image, or makes any unambiguous reference to the person or their status as a candidate, such as "the Democratic candidate for Senate." 11 CFR 100.29(b)(2).

The communication is publicly distributed. Generally, a communication is publicly distributed if it is disseminated for a fee by a television station, radio station, cable television system or satellite system.

In the case of Presidential and Vice-Presidential candidates, the communication is publicly distributed if it can be received by 50,000 or more people:

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- In a state where a primary election or caucus is being held within 30 days;
- Anywhere in the United States during the period between 30 days prior to the nominating convention and the conclusion of that convention; or
- Anywhere in the United States within 60 days prior to the general election. 11 CFR 100.29(b)(3)(ii).

The Commission will publish on its web site a list of the applicable event in each state that triggers the 30-day period for Presidential and Vice-Presidential candidates.

Electioneering communications are limited to paid programming. The station must seek or receive payment for distribution of the communication. Both infomercials and commercials are included within the definition. 11 CFR 100.29(b)(3)(i).

The communication is distributed during a certain time period before an election. Electioneering communications are transmitted within 60 days prior to a general election or 30 days prior to a primary election for federal office, including elections in which the candidate is unopposed. A “primary election” includes any caucus or convention of a political party which has the authority to nominate a candidate to federal office. 11 CFR 100.29(a)(2).

This condition regarding the timing of the communication applies only to elections in which the candidate referred to is running.

In the case of Congressional candidates only, the communication is targeted to the relevant electorate. The communication targets the relevant electorate if it can be received by 50,000 or more people in the district (in the case of a U.S. House candidate) or state (in the case of a Senate candidate) that the candidate seeks to represent. 11 CFR 100.29(b)(5).

The Federal Communications Commission (FCC) will provide on its web site the information necessary to determine whether a communication can be received by 50,000 people. Under interim rules promulgated by the FEC, if this information is not yet available, the person making a communication may argue that it could not have been received by 50,000 people of the relevant electorate.¹ To make this argument, they may:

- Use written documentation from the entity that transmitted the communication;
- Demonstrate that the communication is not distributed on a station located in a metropolitan area; or
- Demonstrate that the person possesses information which leads them to reasonably believe that the communication could not be received by 50,000 or more people in the relevant area.

Exemptions

The regulations at 11 CFR 100.29(c)(1) through (6) exempt certain communications from the definition of “electioneering communication:”

- A communication that is disseminated through a means other than a television station, radio station, cable television system or satellite system. For example, printed media—including newspapers, magazines, bumper stickers, yard signs and billboards—are not included, nor are communications over the Internet, e-mail or the telephone;

¹ The interim rules were published in the October 23, 2002, Federal Register (67 FR 65212), and are open to public comments until January 21, 2003. The full text of the final rules and the Explanation and Justification is available on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline at 202-501-3413 (document 358).

- A news story, commentary or editorial broadcast by a television station, radio station, cable television system or satellite system. However, the facilities may not be owned or controlled by a political party, political committee or candidate, unless the communication satisfies the exemption for news stories at 11 CFR 100.132(a) and (b);
- Expenditures or independent expenditures that must otherwise be reported to the Commission;
- A candidate debate or forum or a communication that solely promotes a debate or forum. Communications promoting the debate or forum must be made by or on behalf of the sponsor;
- Communications by state or local candidates that do not promote, support, attack or oppose federal candidates; and
- Communications by 501(c)(3) organizations. However, these organizations are still barred from participating in partisan political activity by the Internal Revenue Code. Making electioneering communications may jeopardize their tax-exempt status.²

Application

Corporations and Labor Organizations. Corporations and labor organizations are prohibited from making or financing electioneering communications to those outside of their restricted class. 11 CFR 114.2(b)(2)(iii).³

² For further information on 501(c)(3) organizations, contact the Exempt Organizations division of the IRS at 1-877-829-5500.

³ Generally, the restricted class comprises the executive and administrative personnel and their families. It also includes a corporation’s stockholders and their families, or a labor or membership organization’s members and their families. See 11 CFR 114.1(c) and (e).

Further, they may not provide funds to any person if they know, have reason to know or are willfully blind to the fact that the funds are for the purpose of making electioneering communications. 11 CFR 114.14(a) and (c).

However, the separate segregated fund (PAC) of a corporation may make electioneering communications. 11 CFR 114.5(i).

Qualified Nonprofit Corporations. Qualified nonprofit corporations (QNC) may make electioneering communications. To qualify, the entity must be a nonprofit corporation incorporated under 26 U.S.C. §501(c)(4) that is ideological in nature and qualifies for exemptions under 11 CFR 114.10.

If a QNC makes electioneering communications that aggregate in excess of \$10,000 in a calendar year, it must certify that it is eligible for the QNC exemption. The certification must include the name and address of the corporation and the signature and printed name of the individual making the qualifying statement. It must also certify that the corporation meets the standards of a QNC, either by satisfying all of the qualifications at 11 CFR 114.10(c)(1)-(5), or through a court ruling pursuant to 11 CFR 114.10(e)(1)(i)(B). The certification is due no later than when the first electioneering communications report is required to be filed. 11 CFR 100.29(e).

QNCs still may not make contributions to federal political committees, nor may they accept any funds from corporations or labor organizations. 11 CFR 114.10(d)(2) and (3). Also, these regulations do not supercede any section of the Internal Revenue Code regarding 501(c)(4) organizations. 11 CFR 100.29(i).

"527" Organizations. The prohibition against the use of corporate funds to make or finance electioneering communications does not apply to certain organizations incorporated under 26 U.S.C. §527.

Hawaii Special Election Reporting

The Special General Election to fill the U.S. House seat of the late Representative Patsy T. Mink in the Second Congressional District will be held on November 30, 2002. Committees active in this election must comply with provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) that take effect November 6 (see related article, page 1). Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more between November 11 and November 27. Committees (including PACs) involved in this election must follow the reporting schedule below.¹

Committees Involved in the Special General Must File:

	Close of Books	Reg./Cert. Mail Date	Filing Date
Pre-General Report	November 10	November 15	November 18
Post-General Report ²	December 20	December 30	December 30
Year-End Report	December 31	January 31	January 31, 2003

¹ Reports filed electronically must be submitted by midnight on the filing date. A committee required to file electronically that instead files on paper reporting forms will be considered a nonfiler. Reports filed on paper and sent by registered or certified mail must be postmarked by the mailing date; reports sent by any other means (including reports sent via first class mail and overnight delivery) must be received by the Commission's close of business on the filing date.

² The reporting period for the Post-General Election report spans two election cycles. For this report only, candidate committees should use the Post-Election Detailed Summary Page (FEC Form 3, Pages 5-8) instead of the normal Detailed Summary Page.

Incorporated state party committees and state candidate committees registered as 527 organizations are exempt from the corporate prohibition provided that the committee:

- Is not a political committee as defined at 11 CFR 100.5;
- Incorporates for liability purposes only;
- Does not use any funds donated by corporations or labor organizations to fund the electioneering communication; and
- Complies with the FEC's reporting requirements for electioneering communications. 11 CFR 114.2(b)(2)(iii).

Unincorporated, unregistered "527" organizations may also make electioneering communications, subject to the disclosure requirements and the prohibition against corporate and labor funds.

Individuals, Partnerships and PACs. Individuals, partnerships and PACs may make or finance electioneering communications, provided that certain conditions are met. Those that accept funds provided by corporations or labor organizations may not use those funds to pay for electioneering communications, nor may they give these funds to another

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to defray the costs of making an electioneering communication. 11 CFR 114.14(b).

They must be able to demonstrate through a reasonable accounting procedure that no prohibited funds were used to pay for the electioneering communication. 11 CFR 114.14(d).

Disclosure Requirements

The final rules on electioneering communications do not include the final rules on reporting these communications. A consolidated rulemaking on reporting is forthcoming. See related article below. However, the statute does require that electioneering communications which cost more than \$10,000 must be disclosed to the FEC within 24 hours of the disclosure date.⁴

Additional Information

The full text of the final rules and the Explanation and Justification is available on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline at 202-501-3413 (document 353).

—Phillip Deen and
Dorothy Yeager

Notice of Proposed Rulemaking on BCRA Reporting

On October 10, 2002, the Commission approved a Notice of Proposed Rulemaking (NPRM) addressing reporting issues raised in the Bipartisan Campaign Reform Act of 2002 (BCRA), including the reporting of:

- Independent expenditures;
- Electioneering communications; and

- State and local party office building funds.

The proposed regulations also address changes to the filing schedules of House and Senate committees and national party committees.

The NPRM was published in the October 21, 2002, *Federal Register* (67 FR 64555), and is open to public comments until November 8, 2002.

Independent Expenditures

The BCRA requires political committees and other persons who make independent expenditures at any time during a calendar year—up to and including the 20th day before an election—to disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. This reporting requirement is in addition to the requirement to file 24-hour notices of independent expenditures each time that disbursements for independent expenditures aggregate at or above \$1,000 during the last 20 days—up to 24-hours—before an election. 2 U.S.C. §§434(b), (d) and (g).

The proposed rules address when and how such reports should be filed. For example, the proposed rules would:

- Require that all 24- and 48-hour reports of independent expenditures be filed with the Commission, including reports of independent expenditures supporting and opposing Senate candidates;
- Require that these reports be *received* by the Commission by the filing deadline, in which case certified or registered mail would not be a viable filing option;
- Allow filers to file by fax, e-mail and electronic filing;¹
- Explain when and how independent expenditures should be aggregated for the purpose of determining whether the \$1,000

and \$10,000 reporting thresholds have been reached; and

- Require filers to certify that the expenditure was independent from a political party committee and its agents, as well as from any candidate or candidate's committee.

Under the proposed rules, the date that a communication is publicly distributed or otherwise publicly disseminated would serve as the date that a person or committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amounts of \$1,000 or \$10,000. The NPRM asks whether expenditures and contracts to make expenditures for communications that have not yet been publicly disseminated should be included when determining whether a reporting threshold has been reached. The Commission also requests comments on issues such as whether independent expenditures should be aggregated for the purposes of 48-hour reports on a per-election basis within the calendar year or on an election-cycle basis within the calendar year.

Electioneering Communications

The BCRA requires persons who make electioneering communications that aggregate more than \$10,000 to file disclosure statements with the Commission within 24 hours of the disclosure date. 2 U.S.C. §434(f)(1). Under the proposed rules, the disclosure date would be:

- The first day in a calendar year that an electioneering communication is publicly distributed, once the person making the communication has made disbursements or executed contracts for the direct costs of producing or airing electioneering communications aggregating in excess of \$10,000; or
- Any subsequent day in the calendar year that an electioneering

⁴ "Disclosure date" will be defined in the consolidated rulemaking on reporting.

¹ Electronic filers must file all reports and statements electronically.

communication is publicly distributed, once the person has made disbursements or executed contracts for the direct costs of producing or airing electioneering communications aggregating in excess of \$10,000 since the last disclosure was made.

The Commission would require the electioneering communication to be reported by the end of the day following the disclosure date. The Commission seeks comments on this interpretation.

Additionally, the proposed rules address such issues as how to define:

- “The direct costs associated with the producing or airing of an electioneering communication.” The Commission proposes to include in the regulations an exhaustive lists of such costs, and seeks comments on whether other costs should be included, or whether the list should not be exhaustive.
- “Any person sharing or exercising control over the activities” of the person making an electioneering communication disbursement. The BCRA requires that such individuals be disclosed. The Commission requests comments on whether the definition of such individuals should focus on the person’s activities or on his or her role in the organization, such as that of an officer, director or partner.
- Funds given to individuals or organizations, other than a political committee, for the purpose of funding electioneering communications. The Commission asks whether these funds should be considered “donations” rather than “contributions” under the Federal Election Campaign Act (the Act).

Finally, the proposed rules address disclosure and recordkeeping requirements for individuals and organizations that make disbursements for electioneering communications. For example,

the Commission proposes that organizations that report electioneering communications, including qualified nonprofit organizations, must disclose the names of donors whose contributions aggregate in excess of \$1,000 during the calendar year, regardless of whether the communication was paid out of a segregated bank account.

Filing Frequency for House and Senate Committees and National Party Committees

The proposed rules would implement the BCRA’s requirement that all principal campaign committees of House and Senate candidates file quarterly in non-election years as well as in election years. 2 U.S.C. §434(a)(2)(B).

As a result, House and Senate campaign committees would no longer be able to file on a semi-annual basis during non-election years. This requirement would not, however, affect the principal campaign committees, or other authorized committees, of Presidential candidates.

Moreover, while non-authorized committees may choose to file quarterly or monthly, under the BCRA national party committees must file on a monthly basis in all years and are no longer allowed to change their filing schedule in non-election years. 2 U.S.C. §434(a)(4)(B). Thus, under the Commission’s proposed rules, national party committees would no longer be able to file on a quarterly basis in election years and semi-annually in non-election years. The proposed rules would also apply to national Congressional campaign committees, and the Commission seeks comments on whether these committees should be specifically included in the regulations.

Funds for Party Office Buildings

Commission regulations on nonfederal funds (or “soft money”) that become effective on November 6 provide that donations used by a

state, district or local party committee for the purchase or construction of an office building are subject to state law if they are donated to a nonfederal account. However, if funds or things of value are contributed to or used by the party’s federal account to buy or build an office building, then the amounts donated are contributions under the Act. 11 CFR 300.12 and 300.35. The proposed reporting rules would clarify that any funds or things of value received by a federal account and used for the purchase or construction of an office facility, regardless of any specific contributor designation, are contributions and not treated any differently from other funds or goods donated to the federal account.

Comments

The full text of the NPRM is available on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline, 202/501-3413.

All comments should be addressed to Mr. John Vergelli, Acting Assistant General Counsel, and must be submitted in either written or electronic form by November 8, 2002. The Commission recommends that comments be submitted via e-mail. E-mail comments should be sent to BCRAreport@fec.gov and must include the full name and postal service address of the commenter. Comments that do not contain this information will not be considered. Faxed comments should be sent to 202/219-3923, with a printed copy follow-up to insure legibility. Mailed comments should be sent to the Federal Election Commission, 999 E Street NW, Washington, DC 20463. No oral comments can be accepted. ♦

—Amy Kort

Compliance

MUR 4530, et al. Foreign National Contributions in 1996 Election

On September 20, 2002, the Commission made public its final action on MUR 4530, et al., enforcement cases that relate primarily to foreign activity in connection with the 1996 elections. The combined enforcement actions resulted in \$719,500 in civil penalties. In addition, committees were required to disgorge certain prohibited funds.

Individuals, corporations and political committees face civil penalties for soliciting, making and/or accepting prohibited foreign national contributions, contributions in the name of another, corporate contributions and excessive personal contributions. Respondents include Charlie Trie, John Huang, Pauline Kanchanalak and the Hsi Lai Buddhist Temple, which was assessed the largest single fine — \$120,000. Penalties for recipient political committees—principally the Democratic National Committee (DNC)—stem from their acceptance of prohibited contributions which they failed to refund when they became aware the funds were illegal.

While the number of respondents involved in these matters precludes comprehensive coverage in the *Record*, examples of the violations are provided below. In addition, a chart listing all of the respondents and civil penalty amounts appears at right.¹

Contributions from Foreign Nationals

Foreign nationals are prohibited from contributing anything of value to influence an election for political

¹ In addition, the Commission found probable cause to believe, but took no further action against six respondents; and found reason to believe, but took no further action with respect to 34 others.

MUR 4530, et al. Civil Penalties

Respondent	Amount
ACPC, Inc.	\$25,000
American Eco Corp.	\$40,000
Chung, Chien Chuen “Johnny”	\$21,000*
Clinton/Gore '96 Primary Committee, Inc. and Joan Pollitt, Treasurer.	\$2,000
DNC Services Corporation / Democratic National Committee and its Treasurer	\$115,000
Gandhi, Yogesh	\$2,500*
Glicken, Howard	\$5,000
Global Resources Management, Inc.	\$0*
Green, Ernest & Phyllis Caudle-Green	\$65,000
Ho, Jack / J&M International, Inc.	\$2,500
International Buddhist Progress Society, Inc. d/b/a/ Hsi Lai Buddhist Temple	\$120,000
Huang, John	\$95,000*
Green Stamp America, Inc. f/k/a Japan Green Stamp America, Inc.	\$70,000
Kanchanalak, Pauline	\$25,000*
Kim, Chong	\$15,000*
Kronenberg, Duangnet	\$20,000
Lee, Robert	\$250*
Pagan, Gilberto	\$1,250
Psaltis, Georgio / Psaltis Corporation / Christine Warnke / Hogan & Hartson LLP / Michael Cheroutes	\$67,500
T&W Arts and Crafts (USA), Inc.	\$8,000
Trie, Yah Lin “Charlie”	\$7,000*
Zhan, Keshi	\$12,500

* The Commission reduced this civil penalty determination based on documentation of the respondent's financial condition.

office, including federal, state or local office, either directly or through any other person. 2 U.S.C. §441e(a) and 11 CFR 110.4(a). A foreign national is defined, in part, as an individual who is not a citizen of the United States and is not lawfully admitted for permanent residence, as defined by 8 U.S.C. §1101(a)(20). See also 2 U.S.C. §441e(b).

Georgios Psaltis, a Greek foreign national, was the sole owner of the Psaltis Corporation. The Psaltis Corporation made \$50,000 in contributions to the DNC. The

Psaltis Corporation had no U.S.-derived income at the time of the contributions. Rather, the funds were provided, at least in part, by Mr. Psaltis himself. Christine Warnke, Michael Cheroutes and Hogan & Hartson LLP were also parties to the conciliation agreement. The Commission determined that there was probable cause to believe that Ms. Warnke, a DNC lay fundraiser, violated the prohibition by soliciting, accepting or receiving Mr. Psaltis' contributions. The Commission also determined that

there was reason to believe that Mr. Cheroutes violated the foreign national prohibition and probable cause to believe that Hogan and Hartson violated the ban.

In another instance, Gilberto Pagan, a citizen of the Dominican Republic, contributed \$5,000 to the DNC using a check drawn on the Royal Bank of Canada. Although the DNC was informed of Mr. Pagan's status as a foreign national, the check was not timely refunded or disgorged.

Direction of funds by Foreign Nationals

It is unlawful for any foreign national to direct, dictate, control or directly participate in the decision-making process of any person, including domestic corporations, with regard to decisions concerning the making of contributions in connection with any elections for any local, state or federal office. 11 CFR 110.4(a).

ACPC, Inc., is incorporated in the state of Delaware. In 1996, its president was Alfredo Riviere, a Venezuelan national. On April 16, 1996, ACPC made a corporate contribution of \$50,000 to the DNC. Mr. Riviere participated in the decision to make the contribution, and the contribution was thus made in violation of 2 U.S.C. §441e(a).

Contributions in the Name of Another

It is unlawful for any person to make a contribution in the name of another person, to knowingly permit his or her name to be used to effect such a contribution or to knowingly accept such a contribution to influence a federal election. 2 U.S.C. §441f and 11 CFR 110.4(b).

Yah Lin "Charlie" Trie, a U.S. citizen, was among those found to have violated this provision. He made numerous contributions to the DNC directly, through his wife, his companies and other U.S. residents. These contributions were then reimbursed with funds primarily

from a foreign national, Ng Lap Seng, a citizen of China who resides in Macau.

Pauline Kanchanalak, a foreign national and President of Ban Chang International (USA), Inc., channeled over \$700,000 through Duangnet Kronenberg and Praitun Kanchanalak, both permanent U.S. residents, to the DNC and other political committees. These funds came from the treasuries of Ban Chang International and its U.S. subsidiary, and from the personal funds of Pauline Kanchanalak and other foreign nationals. The resulting contributions were not only from prohibited foreign and/or corporate sources, but also contributions in the name of another.

John Huang, Vice-Chairman for Finance for the DNC, solicited, accepted or received some of the prohibited foreign and corporate contributions in the name of another. He reimbursed contributions to Democratic campaigns in California with corporate funds and funds from Indonesia.²

Prohibited Corporate Contributions

The Federal Election Campaign Act prohibits corporations from making contributions or expenditures in connection with any election of any candidate for federal office. 2 U.S.C. §441b(a). In addition, corporations are prohibited from facilitating the making of contributions to federal candidates. 11 CFR 114.2(f)(1). Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with federal elections.

The Hsi Lai Buddhist Temple, a California corporation, hosted a fundraising event on April 29, 1996, that was attended by Vice President Al Gore. The Temple incurred \$4,424.13 in out-of-pocket expenses

² Mr. Trie, Ms. Kanchanalak and Mr. Huang have each pled guilty to violations of federal law.

for the event—a prohibited in-kind corporate contribution.

Temple funds were also used to reimburse over \$120,000 in contributions made in the name of another to the DNC's federal account and to other federal committees. For example, Venerable Yi Chu, a corporate officer of the Temple, collected \$5,000 checks for the DNC from 11 individuals, ten of whom were reimbursed with checks drawn on the Temple's bank accounts.

Excessive Personal Contributions

Individuals may contribute no more than \$1,000 per election to any candidate's campaign for federal office. 2 U.S.C. §441a(a)(1)(A).

In 1995, Chien Chuen "Johnny" Chung reimbursed 20 individuals in the amount of \$1,000 each for admission to a Clinton/Gore '96 fundraiser. The reimbursements resulted in not only contributions in the name of another, but also a \$20,000 excessive contribution from Mr. Chung to the Clinton/Gore campaign.

Failure to Timely Refund or Disgorge

In addition to his excessive contributions in the name of another, Chien Chuen "Johnny" Chung pled guilty in 1998 to conspiracy to violate 2 U.S.C. §§441a and 441f in connection with making \$20,000 in conduit contributions to Clinton/Gore '96, among other charges.

Since Commission regulations require political committee treasurers to refund within 30 days any deposited contributions that are later discovered to be illegal, the Commission determined that, in light of his guilty plea and the related media attention, the treasurer for Clinton/Gore '96 had a responsibility to refund or disgorge Mr. Chung's contributions. 11 CFR 103.3(b)(2). The campaign's treasurer did not timely return or disgorge these funds. ♦

—Phillip Deen

Audits

Commission Makes Final Determination on 2000 Presidential Primary and Convention Audits

The FEC recently made final determinations of the amount of money that the Hagelin and Quayle Presidential primary campaigns and the Reform Party 2000 Convention Committee must repay to the U.S. Treasury for public funds they used during the 2000 elections. The Commission made its determination after conducting audits of the committees, as required under the Presidential Election Campaign Funds Act and the Presidential Primary Matching Payment Account Act. 26 U.S.C. §§9007(a), 9008(g) and 9038(a).

Hagelin Committee

John Hagelin's 2000 primary committee, Hagelin 2000, did not receive primary matching funds in excess of its entitlement and need not make repayments to the Treasury. The Commission's audit found, however, that Hagelin 2000 accepted prohibited corporate and excessive contributions. First, the committee failed to pay in advance for travel on a corporate-owned airplane, as required by Commission regulations. 11 CFR 114.9(e). In paying for the air travel up to a month after flying, Hagelin 2000 accepted \$18,242 in corporate contributions during the time that the bills were outstanding. Second, Hagelin 2000 made untimely reimbursements to the Natural Law Party for its share of payroll and overhead expenses. These late reimbursements resulted in \$71,943 in excessive in-kind contributions from the Natural Law Party during the time that the repayments remained outstanding. 2 U.S.C. §441a(a)(2)(A). Hagelin 2000 later reimbursed the Natural Law Party

for all but \$4,307 of its share of payroll and overhead expenses, and the campaign disclosed this amount as an in-kind contribution from the party.

Quayle Committees

Dan Quayle's 2000 Presidential primary committee, Quayle 2000, Inc., did not receive matching funds in excess of its entitlement, but must repay to the Treasury \$5,307, representing stale-dated checks. Additionally, the audit found that Quayle 2000, Inc., received an excessive contribution from a political action committee, Campaign America, Inc., when the campaign paid for furniture, computer and telephone equipment acquired from that committee six months after receiving it. The value of these goods, \$58,906, was a contribution from the Campaign America committee during the time the payment was outstanding. As a multicandidate committee, Campaign American, Inc., could only contribute \$5,000 to a candidate's primary committee. 2 U.S.C. §441a(a)(2)(A). Finally, the audit found that Quayle 2000, Inc., failed to properly disclose a \$45,000 candidate loan. Moreover, the committee did not properly report information about a one million dollar line of credit obtained from a lending institution, the line of credit's subsequent increase to \$1.75 million or draws on the line of credit. The committee subsequently filed amended reports.

Reform Party 2000 Convention Committee

The Reform Party 2000 Convention Committee (the Convention Committee), which organized the Reform Party's national Presidential nominating convention in Long Beach, California, must repay the Treasury \$333,558, primarily representing payments it made for activities and services not related to that convention. Most of this amount represents funds paid to a

consulting firm that did not perform services for the nominating convention but instead appeared to have worked on an Emergency National Convention in Las Vegas. In March 2000 the U.S. District Court for the District of Virginia, Lynchburg Division, concluded that the Las Vegas Convention was not a properly-convened convention of the Reform party. Thus, payments associated with the Las Vegas convention were not expenses for which the Convention Committee could use public funds. See the May 2000 *Record*, page 9. ♦

—Amy Kort

Alternative Dispute Resolution

Alternative Dispute Resolution Program Becomes Permanent

Based on the success of its two-year-old ADR Pilot program, the Commission voted on September 12, 2002, to establish a permanent Alternative Dispute Resolution Office (ADRO). The Commission also approved a report, prepared by outside consultants, chronicling the Pilot program's success in meeting its goals of:

- Increasing the number of complaints and referrals processed by the Commission;
- Reducing the time required to process complaints and referrals;
- Reducing the cost of processing complaints; and
- Increasing respondents' satisfaction with the Commission's

handling of complaints and referrals.¹

The ADR Process

ADRO reviews and evaluates complaints forwarded to it from the Office of General Counsel (OGC), the Audit Division, the Reports Analysis Division or the Commission itself to determine whether the case is appropriate for the ADR program. If ADRO concludes that a case is appropriate for its consideration, the Commission reviews the case and determines whether it should be permanently assigned to ADRO. In order for a case to be assigned to ADRO, the respondents involved must:

- Express a willingness to engage in the ADR process;
- Set aside the statute of limitations; and
- Participate in bilateral negotiations and, if necessary, mediation.

Once the Commission determines that a case should be assigned to ADRO for processing, the Office sends the respondents a letter notifying them of the availability of the ADR option. The bilateral negotiations offered in the first phase of ADR are oriented toward reaching an expeditious resolution in a manner that is both agreeable to the respondent and in compliance with the Federal Election Campaign Act (FECA). Any resolution reached in negotiations is submitted to the Commission for final approval.

Negotiated settlements definitively resolve the matter and effectively close the case before the Commission. If a resolution is not reached in bilateral negotiation, the

case is either returned to OGC or, upon mutual agreement of the respondents and ADRO, sent to mediation. Mediators are selected from an FEC panel of experienced mediators from the private sector. If no agreement is reached during mediation, the case then returns to OGC for processing. All cases involved in the ADR process remain confidential until closed by the Commission and placed on the public record. ADR-negotiated agreements do not set precedent for other cases.

Results from the Pilot Program

The initial year of the ADR Program (Oct. 1, 2000, through Sept. 30, 2001) was evaluated by the outside consultants of ADR Vantage, Inc., a national conflict management and resolution firm, who found that the “ADR Program has enabled the Commission to increase significantly the number of cases processed.” During the program’s first year, the ADR Office processed 61 cases, of which 47 were concluded with negotiated agreements. The ADR Pilot program brought these cases from referral to conclusion within an average of 148 days. ADRO’s goal is to handle these cases even more expeditiously and bring them to conclusion within 77 days.

ADR Vantage, Inc., interviewed respondents and members of the election bar and concluded that 90 percent of those interviewed believed they saved time and money using the ADR program.

Additionally, ADR-negotiated settlements focus on both remedial penalties and educational activities. ADR-negotiated settlements may contain civil penalties, as well as non-monetary terms of settlement designed to encourage corrective action, such as the respondents’ participation in an FEC conference. Many ADR respondents commented

Public Appearances

November 6, 2002
The Federalist Society, Columbia Law School Chapter
New York, New York
Commissioner Smith

November 9, 2002
American University, Center for Congressional and Presidential Studies
Washington, D.C.
Chairman Mason

November 11, 2002
Center for National Security Law, University of Virginia School of Law
Charlottesville, Virginia
Commissioner Smith

November 12, 2002
Michigan State University, Program in Public Policy and Administration
East Lansing, Michigan
Chairman Mason

November 12, 2002
American Council of Young Political Leaders
Washington, D.C.
Commissioner Thomas

November 14, 2002
Delphi International
Washington, D.C.
Chairman Mason

November 15, 2002
National Association of Business Political Action Committees
Naples, Florida
Commissioner Toner

¹ Another goal of the Pilot Program was to assure satisfaction with the effectiveness of the mediation process. However, at this time no ADR cases have proceeded to mediation, and thus the report did not comment on this aspect of the program.

(continued on page 12)

Alternative Dispute Resolution

(continued from page 11)

that they “especially liked that the ADR process offers an educational opportunity that will make respondents less likely to commit similar violations in the future.”

Commission Chairman David Mason said that the “ADR program has proven to be an important contributor to the FEC’s civil law enforcement efforts. ADR has expanded the reach of our enforcement efforts, resolved complaints quickly and promoted compliance with campaign finance laws through an emphasis on remedial and preventative action.”

Chairman Mason concluded, saying “I look forward to working with the ADR Office, our General Counsel and my colleagues to expand the ADR program appropriately in order to promote further compliance with and better enforcement of the FECA and related statutes.”

Additional Information

More information about the ADR program is available in the Commission’s Alternative Dispute Resolution brochure. The brochure is available on the FEC web site at <http://www.fec.gov/pages/adr.htm>. You may also call the FEC’s Information Division to request that a brochure be mailed to you. Call 800/424-9530 (press 1, then 3) or 202/694-1100. ♦

—Amy Kort

ADR Program Update

The Commission’s Alternative Dispute Resolution (ADR) program recently resolved an additional case, involving numerous respondents and negotiated settlements.

In response to a complaint alleging violations of the Federal Election Campaign Act’s (the Act) contribution limits, prohibition on corporate contributions and report-

Georgia Runoff Election Reporting

A General Election Runoff may be held in Georgia for federal candidates in races where no candidate wins 45 percent of the vote in the general election. The runoff election, if held, will be on November 26, 2002. Although the runoff election will occur after the Bipartisan Campaign Reform Act of 2002 (BCRA) takes effect on November 6, the BCRA’s rules will not apply to this election. Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more between October 17 and November 2 for the general election and between November 7 and November 23 for the runoff election. Committees (including PACs) involved in these elections must follow the reporting schedule below.¹

Committees Involved in Both the General and Runoff Elections Must File:

	Close of Books	Reg./Cert. Mail Date	Filing Date
Pre-General Report	October 16	October 21	October 24
Pre-Runoff Report	November 6 ²	November 11 ³	November 14
Post-Runoff Report	December 16	December 26	December 26
Year-End Report	December 31	January 31	January 31, 2003

¹ Reports filed electronically must be submitted by midnight on the filing date. A committee required to file electronically that instead files on paper reporting forms will be considered a nonfiler. Reports filed on paper and sent by registered or certified mail must be postmarked by the mailing date; reports sent by any other means (including reports sent via first class mail and overnight delivery) must be received by the Commission’s close of business on the filing date.

² The reporting period for the Pre-Runoff report spans two election cycles. For this report only, candidate committees should use the Post-Election Detailed Summary Page (FEC Form 3, Pages 5-8) instead of the normal Detailed Summary Page.

³ Note that the registered/certified mailing date falls on a federal holiday. The report should be postmarked before that date.

ing requirements, the Commission determined that allegations against the Friends and Farmers for Rich Rodriguez for Congress Committee, and a nine other named individuals and businesses, were unsubstantiated.

Two other respondents in this case, GFW Power Systems Company, Inc., and Danell Brothers, Inc., each acknowledged having made a contribution based on the belief that the contribution was

legal. Each respondent received a full refund of the contribution and, in an effort to resolve this matter, agreed to issue a corporation directive to senior management concerning the Act’s prohibition on corporate contributions and expenditures in connection with any federal election. (ADR 027; MUR 5062) ♦

—Amy Kort

Statistics

Party Fundraising Growth Continues

Democratic and Republican national party committees raised \$412.1 million in federal funds during the first 18 months of the 2002 election cycle, representing a 12 percent increase from the same period in 2000. In addition, national party committees reported \$308.2 million in nonfederal receipts during this period, a 21 percent increase over 2000 levels. These increases are especially significant given that parties typically raise more funds in Presidential campaign cycles than in non-Presidential campaigns.

The largest fundraising increases were found among Republican party committees, whose federal receipts totaled \$283.4 million, up 19 percent from 2000 levels. Soft money fundraising by Republican

national committees reached \$181.8 million, a 40-percent increase. Democratic party committees raised slightly more soft money than in the 2000 Presidential cycle—\$126.4 million, up two percent. Democratic hard money receipts declined one percent to \$128.7 million.

Among the national party committees, both parties' Senatorial campaign committees reported large increases in both federal and nonfederal funds. Soft money fundraising also increased sharply for the National Republican Congressional Committee, while both the Democratic National Committee and the Democratic Congressional Campaign Committee raised less soft money in the first 18 months of this campaign than in the previous cycle.

The chart below details Democratic and Republican party committees' federal and nonfederal fundraising, dating back to the 1996 election cycle. National parties will

no longer be permitted to raise or spend soft money after November 5, 2002, as a result of the Bipartisan Campaign Reform Act (BCRA). See related article, page 1.

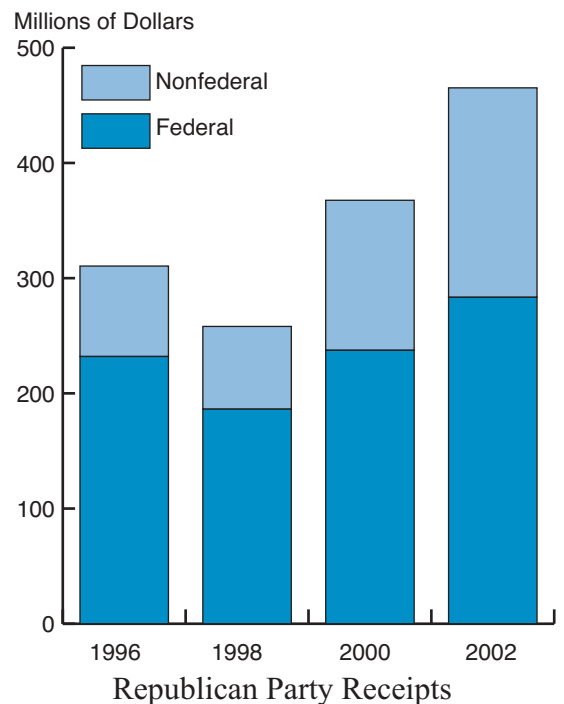
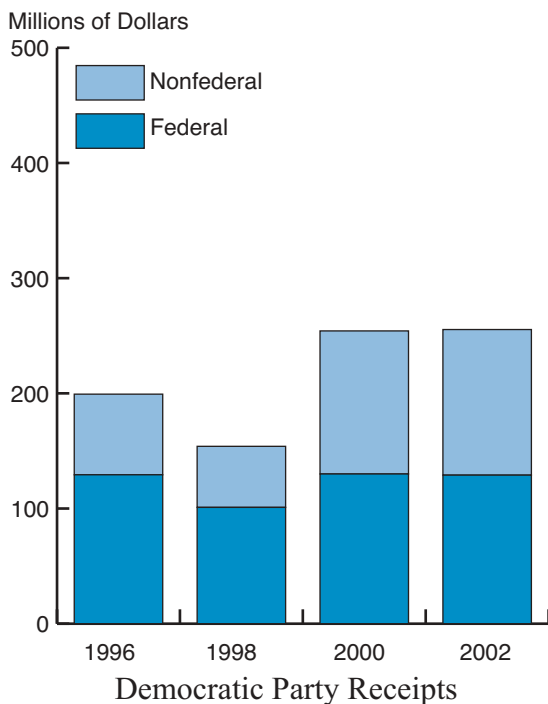
Additional Information

A press release dated September 19, 2002, provides detailed information about the financial activity of the Democratic and Republican parties. The press release is available:

- On the FEC web site at www.fec.gov/news.html;
- From the Public Records office (800/424-9530, press 3) and the Press Office (800/424-9530, press 2); and
- By fax (call the FEC Faxline at 202/501-3413 and request document 615). ♦

—Amy Kort

18-Month Democratic and Republican Party Fundraising—1996-2002



Administrative Fines

Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on ten new Administrative Fine cases, bringing the total number of cases released to the public to 446.

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

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

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

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

—Amy Kort

Committees Fined and Penalties Assessed

1. Committee to Elect Thomas Cramer	\$652 ¹
2. Feinstein for Senate	\$3,900 ²
3. Friends of Bob Graham Committee	_____ ³
4. Golden State PAC	\$401
5. Jim Humphreys for Congress	\$7,200
6. Joe Turnham for Congress (1998 Committee) (Now known as Friends of Joe Turnham)	\$1,800
7. Ohio Dental Association PAC	\$3,475
8. Texas Republican Congressional Committee (AKA Victory 2000)	_____ ³
9. T.E.A.M. PAC	\$2,000
10. 1199 Service Employees International Union Federal Political Action Fund	\$10,000

¹ This civil money penalty has not been collected.

² This penalty was reduced from \$4,000 based on the number of 48-hour notices not filed.

³ The Commission took no further action in this case.

Outreach

FEC Roundtables

On December 4, 2002, the Commission will host a roundtable session on the FEC’s new regulations governing “Electioneering Communications.” This roundtable is limited to 35 participants, and will be conducted at the FEC’s headquarters in Washington, DC. The roundtable will begin at 9:30 a.m. and last until 11:00. Please arrive no later than 9:15, in order to allow for security screening.

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

Roundtable Schedule

Date	Subject	Intended Audience
December 4 9:30 - 11 a.m.	Electioneering Communications • Definition of Electioneering Communication • Who may fund such communications • Reporting requirements • Exemptions	• Political organizations • PACs • Tax-exempt organizations • Consultants to above

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The first number in each citation refers to the “number” (month) of the 2002 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, “1:4” means that the article is in the January issue on page 4.

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- 2001-17: Reporting contributions made via single check split

Federal Register

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

[Notice 2002-19](#)

Notice of Proposed Rulemaking on Bipartisan Campaign Reform Act of 2002 Reporting (67 FR 64555, October 21, 2002).

[Notice 2002-20](#)

Final Rules and Explanation and Justification on Electioneering Communications (67 FR 65190, October 23, 2002).

[Notice 2002-21](#)

Interim Final Rules on FCC Database on Electioneering Communications with Request for Comments (67 FR 65212, October 23, 2002).

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