Record

December 2001 *Federal Election Commission* *Volume 27, Number 12*

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Reporting Communications to the Restricted Class

The Federal Election Campaign Act (the Act) prohibits corporations and labor organizations from using their general treasury funds to make contributions or expenditures in connection with federal elections. 2 U.S.C. §441b(a). However, corporations and labor organizations may engage in other activities that are exempt from the Act's definitions of contribution and expenditure. One such activity is the distribution of express advocacy[1] communications to the organization's restricted class.[2] Such communications may, for example, take the form of a candidate appearance before the members of a union or a publication

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[1] Express advocacy communications are communications that expressly advocate the election or defeat of a clearly identified federal candidate. 11 CFR 100.22.

[2] For purposes of distributing communications, the restricted class of a corporation or labor organization consists of the organization's executive and administrative staff, stockholders/members and the families of the aforementioned groups. 11 CFR 114.5(g).

Court Cases

Committee for a Unified Independent Party, Inc. (CUIP) v. FEC

On October 10, 2001, the U.S. District Court for the Southern District of New York granted the Commission's motion to dismiss this case, finding that the Committee for a Unified Independent Party, Inc. (CUIP), along with the political parties and individuals who filed suit (collectively the Plaintiffs), lacked standing to challenge the Commission's debate regulations. Plaintiffs had asked the court to find that the FEC's debate regulations are not authorized by the Federal Election Campaign Act (the Act) and violate the First and Fifth Amendments.

The regulations in question, 11 CFR 110.13 and 114.4(f), permit nonprofit corporations to stage candidate debates and to accept donations from corporations and labor unions to defray the costs of those debates. This exemption from the general prohibition against corporate or union contributions and expenditures is based on a statutory provision that permits "nonpartisan activity (by corporations or unions) designed to encourage individuals to

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sent to the executives and stockholders of a corporation.

Corporations and labor organizations must report disbursements for these communications to the restricted class if:

- The communication contains express advocacy (note, however, that if the communication is primarily devoted to subjects other than express advocacy—that is, if the communication deals with issue advocacy only—then no reporting is required); and
- The costs for a particular type of election (e.g., all primary elections) aggregate over $2,000.

If both of the above criteria are met, the corporation or labor organization must report the costs of the communications on FEC Form 7. 11 CFR 104.6(a).

Filing Form 7

FEC Form 7 must be filed quarterly during a calendar year in which a regularly scheduled general election is held (or, in the case of a special election, Form 7 should be filed in accord with the reporting schedule for that election), beginning with the first reporting period during which the aggregate costs for a particular type of election (e.g., all primary elections) exceed $2,000. The corporation or labor organization must continue to file quarterly and pre-general election reports if it makes additional disbursements for communications (containing express advocacy) in connection with the same primary, special or run-off election. 11 CFR 104.6(b).

For each communication the report must contain:

- The type of communication (e.g., direct mail, telephone, telegram);
- The date(s) of the communication;
- The candidate's name, office sought and whether the communication was for a primary or a general election;
- Whether the communication was in support of, or in opposition to, a particular candidate; and
- The cost of the communication.

FEC Form 7 is available on the FEC web site (www.fec.gov/reporting.html).

—Gary Mullen

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Court Cases

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vote or to register to vote." 2 U.S.C. §431(9)(B)(ii).

In order to have standing to bring a case in federal court, the plaintiffs must satisfy a three-part test. The plaintiffs must:

1. Allege personal injury;
2. Show that the injury is fairly traceable to the defendant's allegedly unlawful conduct; and
3. Show that the injury is likely to be redressed by the relief that the plaintiffs request.

In this case, the court found that the plaintiffs that were political parties lacked standing because they either were not injured as a result of the regulations or could not trace their injury directly to the regulations. Likewise, the CUIP, an organization interested in sponsoring multilateral debates, could not show an injury that was traceable to the debate regulations. The court also found that the plaintiffs who were individual voters, minor party supporters or former candidates lacked standing to challenge the regulations. Having found that Plaintiffs lacked standing, the court ordered the case closed without considering the merits of Plaintiffs' claims.

See the July 2000 *Record*, page 8.

U.S. District Court, Southern District of New York, 00 CIV 3476 (BSJ) (JCF)

—Amy Kort

New Litigation

Friends for Houghton v. FEC

On September 13, 2001, Plaintiffs filed a complaint in the U.S. District Court for the Western District of New York. The complaint appeals a civil money penalty the Commission imposed on Friends for Houghton (the Committee) for failure to file the Committee's 2000 Pre-Primary Report.

According to the allegations in the complaint, Congressman Houghton was a candidate in the New York primary held September 12, 2000. As a result, his campaign committee was required to file a pre-primary report due August 31. On September 1, the Commission sent a notice to the Committee indicating that it may have failed to file its pre-primary report, and that it would have four business days from the date of the notice to file the report. Because of the Labor Day holiday, the fourth business day after September 1 was September 8. The Committee filed the report on that day.

Under the Commission's Administrative Fine program, election-sensitive reports[1]—including pre-primary reports—are considered late if they are filed after their due date, but more than four days before an election. Committees filing later than that are considered nonfilers.

On October 17, 2000, the Commission found reason to believe that the Committee and its treasurer had violated 2 U.S.C. §434(a), which requires the timely filing of reports by political committees. Having filed its pre-primary report less than five days before the election, the committee was considered a nonfiler. The Commission assessed a civil money penalty in the amount of $9,000 in accordance with 11 CFR 111.43.

In its complaint, the Committee argues that the Commission should have considered it a late filer instead of a nonfiler, reducing its civil money penalty to $3,850.

The Committee asks that the court:

- Declare that the Commission's determination that the Committee and its treasurer violated 2 U.S.C. §434(a), and its assessment of a civil money penalty of $9,000, were arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law;
- Prevent the Commission from designating the Committee a nonfiler and from enforcing the civil money penalty of $9,000; and
- Order the Commission to modify both its determination that the Committee is a nonfiler and its assessment of the civil money penalty.

U.S. District Court for the Western District of New York, 01-64444.✥

—Jim Wilson

[1] *Election sensitive reports are those filed immediately before an election and include pre-primary, pre-special, pre-general, October quarterly and October monthly reports.*

Graham v. FEC

On September 14, 2001, Plaintiffs filed a complaint in the U.S. District Court for the Eastern District of Arkansas, Western Division. The complaint appeals a civil money penalty the Commission imposed on the Dewayne Graham for Congress Committee (the Committee) and Everett Martindale, as the Committee's treasurer, for failure to file the Committee's 2000 October Quarterly Report. According to the allegations of the complaint, the Committee attempted to file a termination report in July of 2000, but the Commission did not act on the termination report until November 2000.

In August 2001, the Commission found reason to believe that the Committee and Mr. Martindale had violated 2 U.S.C. §434(a), which requires the timely filing of reports by political committees, by not filing an October 2000 Quarterly Report. The Commission assessed a civil penalty in the amount of $900 in accordance with 11 CFR 111.43.

Plaintiffs claim that the Commission failed to act on the Committee's termination request in a timely fashion and has taken an "arbitrary and unconscionable position" in assessing the civil penalty, thus violating the plaintiffs' constitutional rights. Plaintiffs ask the court to exempt them from the Commission's rulings and fines based upon the plaintiffs' extenuating circumstances.

U.S. District Court for the Eastern District of Arkansas, Western Division, 4-01-CV-00635.✥

—Amy Kort

Kean for Congress Committee v. FEC

On September 18, 2001, the Kean for Congress Committee (the Committee) asked the U.S. District Court for the District of Columbia to find that the Commission's failure to act on the Committee's administrative complaint was contrary to law.

The Committee's administrative complaint, filed on June 1, 2000, alleged that the Council for Responsible Government (CRG), a Virginia corporation, had secretly funded campaign mailings in an attempt to influence the New Jersey Congressional Seventh District Republican primary. The Committee contended that the campaign mailings violated the Federal Election Campaign Act's prohibition on corporate contributions and also lacked the disclaimer required on public communications. 2 U.S.C. §§ 441b and 441d. The Committee also asked the Commission for injunctive relief to prevent the CRG from continuing to engage in the alleged prohibited activity.

The Committee contends that, as of September 18, 2001, the FEC had not taken any action on its complaint, and asks that the court:

- Declare the FEC's failure to act within 120 days of the filing of the complaint contrary to law;
- Order the FEC to bring itself into compliance with the law within 30 days; and
- Grant any further relief as the court deems just and proper.

U.S. District Court for the District of Columbia, 1:01CV01979.✥

—Gary Mullen

On Appeal

Hooker v. Sundquist, et al.

On September 25, 2001, the U.S. Court of Appeals for the Sixth Circuit affirmed the October 18, 2000, judgment of the United States District Court for the Middle District of Tennessee dismissing this case. The court of appeals agreed with the district court that:

- John Jay Hooker was barred from challenging the constitutionality of the Presidential Election Campaign

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Court Cases

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Fund Act and the Presidential Primary Matching Payment Account Act in this case because he had unsuccessfully challenged those statutes in previous litigation; and

- Mr. Hooker lacked standing to bring this case because he had not alleged that he himself had suffered a concrete, particularized injury.

This case was originally captioned *Hooker v. All Contributors, et al*. See the August 2000 Record, page 15, and the April 2001 Record, page 8.

U.S. Court of Appeals for the Sixth Circuit, 00-6580.◆

—Amy Kort

FEC v. Toledano

On September 27, 2001, James Toledano appealed this case to the U.S. Court of Appeals for the Ninth Circuit. The appeal challenges the June 6, 2001, decision of the U.S. District Court for the Central District of California, which imposed a $7,500 civil penalty on Mr. Toledano after finding that he had violated 2 U.S.C. §432(b)(2). This provision requires persons who receive contributions for a political committee in excess of $50 to forward these contributions to the committee's treasurer within 10 days after receiving them.

See the July 2001 Record, page 8.

U.S. Court of Appeals for the Ninth Circuit, 01-56762.◆

—Amy Kort

FEC v. Public Citizen, Inc., et al

On October 10, 2001, the U.S. Court of Appeals for the Eleventh Circuit ruled that Public Citizen, Inc., and its separate segregated fund, Public Citizen's Fund for a Clean Congress (the Fund), violated 2 U.S.C. §441d(a) by failing to include a disclaimer stating that their independent expenditures had not been authorized by any candidate or candidate's committee. This ruling reversed the decision on this issue by the U.S. District Court for the Northern District of Georgia, which had granted summary judgment to the defendants in September 1999. See page 2 of November 1999 Record.

District Court Decision. The FEC had alleged that the Fund failed to include the disclaimer required by 2 U.S.C. §441d(a) in television advertisements and printed flyers that expressly advocated the defeat of former Representative Newt Gingrich. The statute states that, whenever a person makes an independent expenditure, the communication must disclose both the name of the person who paid for the communication and the fact that the communication was not authorized by any candidate or candidate's committee. 2 U.S.C. §441d(a). Although the Fund identified who paid for the ads, it did not include a disclaimer stating whether or not the communications had been authorized by a candidate.

The district court, however, held that the disclaimer stating that the communications were paid for by the Fund, combined with the Fund's disclosure reports to the FEC, rendered the candidate authorization statement unnecessary. The district court ruled that the statute violated the First Amendment because it was broader than necessary to achieve this goal.

Appeals Court Decision. The FEC argued that 2 U.S.C. §441d(a) served the governmental interest in protecting the integrity of the electoral process by immediately informing the voters whether a political advertisement was attributable to a candidate or to other persons, including the candidate's supporters. The appeals court agreed and ruled that the statute was narrowly tailored to serve the stated governmental interest because it applied only to candidate elections and was limited to communications that expressly advocated the election or defeat of a clearly identified candidate. As a result, the court found that the disclaimer requirements in 2 U.S.C. §441d(a) did not "impermissibly infringe on Public Citizen's First Amendment rights to free speech."

The appeals court vacated the district court's grant of summary judgment for Public Citizen and remanded the case to the district court to grant summary judgment to the FEC on its §441d(a) claims and to determine appropriate relief for the violations.

U.S. Court of Appeals for the Eleventh Circuit, 99-14823.◆

—Kate Miller

Campaign Guides Available

For each type of committee, a *Campaign Guide* explains, in clear English, the complex regulations regarding the activity of political committees. It shows readers, for example, how to fill out FEC reports and illustrates how the law applies to practical situations.

The FEC publishes four *Campaign Guides*, each for a different type of committee, and we are happy to mail your committee as many copies as you need, free of charge. We encourage you to view them on our web site (go to www.fec.gov, then click on "Campaign Finance Law Resources" and then scroll down to "Publications").

If you would like to place an order for paper copies of the *Campaign Guides*, please call 800-424-9530, press 1, then 3.

Reports

Oklahoma Special Election Reporting

The Special Election to fill the U.S. House seat being vacated by Congressman Steve Largent in the First Congressional district of Oklahoma will be held on February 12, 2002. The Special Primary will be December 11 and the Special Runoff, if needed, will be January 8. In the event that a Special Runoff Election is not necessary, the Special General Election will be held on January 8, 2002, instead of February 12, 2002.

Authorized committees of candidates running in these elections and other political committees—including PACs—that support these candidates and do not file monthly must file special election reports.[1] Committees involved in any of these elections should consult the accompanying chart for filing information.

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[1]Since PACs and parties must aggregate activity on a calendar-year basis, they must disclose activity for reporting periods that span 2001 and 2002 using two separate reporting forms. If the Special General is held January 8, 2002, these committees will file their Post-General report on two forms—one form to cover the 2001 activity (labeled as the Year-End report) and another to cover only 2002 activity (labeled as the Post-General report). Both reporting forms must be filed by the filing date for the Post-General report listed in the chart at right. If the Special General is held February 12, 2002, these committees will file their Pre-General report on two forms—one form to cover the 2001 activity (labeled as the Year-End report) and another to cover only 2002 activity (labeled as the Pre-General report). Both reporting forms must be filed by the filing date for the Pre-General report listed in the chart at right.

Oklahoma Special Election Reporting

Committees Involved Only in the Special Primary Election on December 11, 2001, Must File:

	Close of Books	Reg./Cert. Mail Date	Filing Date
Pre-Primary Report	November 21	November 26	November 29
Year-End Report	December 31	January 31	January 31

If Only Two Elections are Held, Committees Involved in Both the Special Primary on December 11, 2001, and the Special General on January 8, 2002, Must File:

	Close of Books	Reg./Cert. Mail Date	Filing Date
Pre-Primary Report	November 21	November 26	November 29
Pre-General Report	December 19	December 24	December 27
Year-End Report		— Waived —	
Post-General Report[1]	January 28	February 7	February 7
April Quarterly Report	March 31	April 15	April 15

If Three Elections are Held, Committees Involved in Only the Special Primary on December 11, 2001, and the Special Runoff on January 8, 2002, Must File:

	Close of Books	Reg./Cert. Mail Date	Filing Date
Pre-Primary Report	November 21	November 26	November 29
Pre-Runoff Report	December 19	December 24	December 27
Year-End Report	December 31	January 31	January 31

Committees Involved in the Special Primary on December 11, 2001, the Special Runoff on January 8, 2002, and the Special General on February 12, 2002, Must File:

	Close of Books	Reg./Cert. Mail Date	Filing Date
Pre-Primary Report	November 21	November 26	November 29
Pre-Runoff Report	December 19	December 24	December 27
Year-End Report		— Waived —	
Pre-General Report[1]	January 23	January 28	January 31
Post-General Report	March 4	March 14	March 14
April Quarterly Report	March 31	April 15	April 15

Reports

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Note that 48-hour notices are required of authorized committees when they receive contributions of $1,000 or more less than 20 days—but more than 48 hours—before any election in which the candidate is running. For the Special Primary, 48-hour notices are required for contributions received between November 22 and December 8. If only two elections are held, 48-hour notices are required between December 20 and January 5 for contributions received for the Special General. If a Special Runoff is held, 48-hour notices are required for contributions received between December 20 and January 5 for the Special Runoff and between January 24 and February 9 for the Special General.

Reports filed electronically must be submitted by midnight on the filing date. A committee required to file electronically that files instead on FEC 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) must be received by the Commission's close of business on the filing date.

For more information about any of these filing requirements, please call the FEC's Information Division at 800/424-9530 (press 1, then 3) or 202/694-1100.❖

—Amy Kort

Audits

Audit of Missouri Democratic State Committee

On August 23, 2001, the Commission approved the final audit report on the Missouri Democratic State Committee (the Committee). The report found that between January 1, 1997, and December 31, 1998, the Committee:

- Mishandled earmarked contributions;
- Exceeded its coordinated party expenditure limit;
- Received excessive contributions;
- Mishandled the payment of allocable expenses and the deposit of rebates; and
- Failed to report debts.

Earmarked Contributions

Under the Federal Election Campaign Act (the Act) and Commission regulations, a contribution that is given to an intermediary or conduit and earmarked for a particular candidate is considered a contribution from the contributor to the candidate. The intermediary or conduit must forward the contribution within 10 days and must report the original source and the intended recipient of the earmarked contribution in its FEC disclosure reports. 2 U.S.C. §441a(a)(8); 11 CFR 110.6 and 102.8.

The Committee received $183,810[1] in contributions that contributors appeared to have earmarked for the Nixon Campaign Fund, the principal campaign committee for Senatorial candidate Jay Nixon. While the contributor checks were made payable to the Missouri Democratic State Committee, some deposit batches were marked "Nixon $" or contained Nixon Campaign Fund return address envelopes. Some contributions listed Mr. Nixon's name on the check memo line, and one contribution included a letter to Mr. Nixon stating "enclosed is my check in the amount of $1,000.00 to aid in your campaign." The Committee did not forward these contributions to the Nixon Campaign Fund and did not disclose them as earmarked contributions on its FEC reports.

The notations and correspondences included on the checks and in the deposit batches indicate that some contributors believed their contributions would be spent on behalf of Mr. Nixon. In that case, the Committee received earmarked contributions. The contributions in question may have been part of a "tally" system, in which committees record the amount of money a particular candidate has helped raise for the committee. The Commission has determined that this practice is permissible so long as the contributions are in no way earmarked for a particular candidate and the contributor is not led to believe that the contribution will benefit a specific candidate. The Commission also determined, however, that tallying could result in the receipt of earmarked contributions from contributors who intended their contributions to be used for a specific candidate.

Of the 78 earmarked contributions that the Committee received, 28 included funds from contributors who had already given Mr. Nixon's campaign the maximum amount allowed under the Act's contribution limits. An additional 26 contributions were in amounts that on their face exceeded the contribution limits. Thus, most of these contributions would have resulted in excessive contributions to the Nixon Campaign Fund if the Committee had forwarded them.

Coordinated Party Expenditures

Under the Act and Commission regulations, national party commit-

[1] *The Committee received an additional $171, 500 in earmarked contributions that were deposited in the committee's nonfederal account.*

tees and state party committees may make coordinated party expenditures in connection with the general election campaigns of federal candidates. These expenditures do not count against the contribution limits but are subject to separate coordinated party expenditure limits. 2 U.S.C. §441a(d)(1) and (3). 11 CFR 110.7(b) and (c).

The 1998 coordinated party expenditure limit for Senate candidates in Missouri was $260,140. 2 U.S.C. §441a(c)(1) and d(3). Thus, the Committee and the Democratic Senatorial Campaign Committee (DSCC) could each spend this amount toward Mr. Nixon's 1998 general election campaign.

Prior to the election, the DSCC transferred $79,000 of its expenditure limit to the Committee, raising the Committee's limit to $339,140. However, the Committee's coordinated party expenditures on behalf of Mr. Nixon totaled $372,840. The DSCC later transferred an additional $40,000 of its coordinated party expenditure limit to the Committee. The final audit report found that the Committee had exceeded its coordinated party expenditure limit by $28,700, because the DSCC did not authorize the transfer of this final portion of its expenditure limit until May 25, 2001— seven months after the election.

Excessive Contributions

If a committee receives a contribution that appears to be excessive, the treasurer must, within 10 days, either return the contribution or deposit it and seek a redesignation or reattribution. In doing so, the committee must offer the contributor the option of a refund. If the contributor does not provide the redesignation or reattribution, the committee treasurer must, within 60 days of receipt of the contribution, refund the contribution to the contributor. 11 CFR 103.3.

Between January 1, 1997, and December 31, 1998, the Committee received $62,965 in excessive contributions. For seven of the contributions, excessive portions—totaling $61,000—were transferred to a nonfederal account. However, at the time of the transfers, the Committee failed to notify the contributors of the transfer or inform them that refunds could be requested. In April 2000, the Committee obtained written authorization for the transfers from four of the seven contributors. The committee later refunded the remaining $1,965 in excessive contributions to contributors who had not authorized the transfers.[2]

Allocation of Shared Expenses

Under Commission regulations, committees that maintain separate federal and nonfederal accounts must pay all allocable expenses from the federal account. Funds may be transferred from the nonfederal to the federal account only to cover the nonfederal portion of these allocable expenses. 11 CFR 106.5(g)(1)(i). Similarly, if a committee receives a refund or a rebate of an allocable expense, the refund or rebate must be deposited in a federal account. The refund or rebate must then be allocated between the federal and nonfederal accounts using the same allocation ratio used to allocate the original payment. See AO 1995-22.

The final audit report found that the Committee paid $189,571 from its nonfederal accounts to cover allocable administrative and generic voter drive expenses. The federal portion of these expenses was $54,976. No refund from the nonfederal accounts to the federal accounts was necessary, however, because the federal accounts had overpaid their share of allocable expenses by $194,000, according to the Commission's testing of shared activities originating from the federal accounts. The Committee filed Schedules H4 (Joint Federal/Nonfederal Activity Schedule) to disclose the payments for allocable expenses that were made from the nonfederal account.

The Committee also received and deposited in its federal accounts $24,130 in vendor refunds and rebates. The refunds and rebates were related to payments for shared federal and nonfederal expenses. The nonfederal share of the refunds and rebates was $17,132; however, the Committee did not reimburse the nonfederal accounts for their share. Again, no refund was necessary because the nonfederal share of the refunds and rebates was offset by the amount that the federal accounts had overpaid their share of allocable expenses.[3]

Reporting Debts

Between January 1, 1997, and December 31, 1998, the Committee failed to report debts totaling $140,673. The Committee later filed amended Schedules D to disclose these debts.✥

—Amy Kort

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[2] The Committee stated that it was not aware of any requirement to obtain permission from the donor in order to transfer part of a contribution to a nonfederal account. Commission regulations do not expressly provide for the option of transferring the excessive portion of a contribution to a nonfederal account. The Commission did not require the refund of the excessive contributions in this case because the language of the Request for Additional Information (RFAI), which the Commission initially sent to the Committee, may not have fully clarified the requirements for transfers of excessive contributions.

[3] The Committee stated that Commission rules do not specifically prescribe how a committee should dispose of a vendor's refund of a previously allocated expense. For examples of how refunds and rebates may be reported, see the Campaign Guide for Political Party Committees, *page 61.*

Audits

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Audit of Sharpless 2000

On October 16, 2001, the Commission approved the final audit report of Sharpless 2000 (the Committee), the principal campaign committee of John Sharpless. The report found that, during the 2000 election cycle, the Committee did not:

- Redesignate, reattribute or refund excessive contributions in a timely manner; and
- Maintain a cancelled check, invoice or bill for disbursements in excess of $200.

Excessive Contributions

Under the Federal Election Campaign Act (the Act) and Commission regulations, an individual may contribute $1,000 per election to a federal candidate. If a campaign receives an excessive contribution, the treasurer may request a written redesignation of the excessive portion or may ask the donor if the contribution was intended to be a joint contribution attributable to more than one person. 11 CFR 110.1. If the treasurer does not receive a written redesignation or reattribution within 60 days of the original receipt of the contribution, the treasurer must refund the contribution to the contributor. If a political committee receives a written redesignation or reattribution statement, but does not retain it, the redesignation or reattribution is not effective. 11 CFR 110.1(l)(5).

The Committee received $20,056 in excessive contributions from 41 individuals. The Committee did not, however, receive written redesignation or reattribution letters from any of the 41 contributors within the 60 day time period for redesignations and reattributions. The Committee produced letters from 23 contributors, representing $9,431 in contributions, stating that primary contributions in excess of $1,000 and up to $2,000 were intended for the general election. These letters were, however, obtained by the Committee long after the 60 day time period expired. The contributions were not refunded, and after November 15, 2000, the Committee did not maintain sufficient funds to refund these contributions.

The Committee contends that they were careful to ensure that no contributor made contributions in excess of $2,000, and the Committee assumed that contributions in excess of $1,000 made on or before the primary election were meant for the general election.

The Commission did not accept the Committee's explanations. The Act establishes a $1,000 contribution limit for each election, not an overall $2,000 limit. 2 U.S.C. 441a(a). Moreover, undesignated contributions made on or before the date of an election are attributed to that election. Finally, if excessive contributions are not redesignated or reattributed within 60 days, they must be refunded.

The Committee has neither refunded the excessive contributions nor has it disclosed them on Schedule D as debts owed.

Disbursement Documentation

The Act requires treasurers of political committees to keep a receipt, invoice or cancelled check for each disbursement over $200 that a political committee makes. The Committee did not maintain a canceled check, invoice or bill for a material number of disbursements in excess of $200. The Committee's bank account arrangement did not provide for the bank to return cancelled checks, which significantly contributed to this problem. In response to the Commission's interim audit report, the Committee provided copies of the cancelled checks.✥

—George Smaragdis

Advisory Opinions

AO 2001-12

Preemption of State Law Governing Contributions to Building Fund; Use of Building Fund

The Democratic Party of Wisconsin (DPW) may accept corporate donations to a building fund for the purchase, renovation or construction of a headquarters facility, despite state laws prohibiting such donations. The party may use these funds to finance capital improvements to its facility, as defined by the Internal Revenue Code, when the capital expenditures are made in connection with the purchase, renovation or construction of a headquarters facility. DPW may also use the building fund to pay the salary of an employee whose sole responsibility is to raise money for the fund. DPW may not, however, use the building fund to pay off the balance of the lease on its current building.

Background

Under the Federal Election Campaign Act and Commission regulations, anything of value given to a state committee or national committee of a political party specifically designated to defray the costs incurred for construction, purchase or renovation of an office facility is not considered a contribution or expenditure, provided that the facility is not acquired to influence the election of any particular candidate for federal office. 2 U.S.C. §431(8)(B)(viii); 11 CFR 100.7(b)(12), 100.8(b)(13) and 114.1(a)(2)(ix). Based on this exemption, the Commission has allowed state party committees to accept corporate and labor union donations to a building fund for the purchase or construction of an office

facility. AOs 2000-01, 1997-14, 1993-9, 1991-5, 1986-40 and 1983-8.

In keeping with these precedents, DPW intends to accept corporate donations to its building fund and would not report these contributions to the FEC. Wisconsin state law, however, limits and in some cases prohibits contributions to candidates and political parties. Specifically, Wisconsin law limits the amount that an individual may contribute to a party to $10,000 and prohibits any corporate contributions to political parties.

Preemption of State Law

The Act "supersede[s] and preempt[s] any provision of State law with respect to election to Federal office." 2 U.S.C. §453; 11 CFR 108.7(a). Specifically, with regard to limitations on campaign expenditures, sources of campaign funds and reporting and disclosure of political contributions, the Act preempts state law.

In five advisory opinions issued to state parties regarding building funds, the Commission has concluded that federal regulations preempt state prohibitions on corporate contributions. AOs 1998-8, 1997-14, 1993-9, 1991-5 and 1986-40. Because DPW's situation is materially indistinguishable from previous cases that the Commission has considered, DPW may accept corporate donations and other donations in excess of state limits for its building fund. State disclosure requirements are not preempted or superseded.

Use of Building Fund

The Commission has determined that building funds may be used to pay:

- The principal and interest of a mortgage for the purchase, renovation and/or construction of the building;
- The salary, fees and other expenses of an employee or consultant whose sole responsibility is to raise money for the building fund; and
- The cost of capital improvements to the office facility, as defined by the Internal Revenue Code, when these costs are paid in connection with the purchase, renovation or construction of a headquarters facility. AOs 2001-1, 1998-8, 1993-9 and 1998-7.

DPW may therefore use the building fund to pay these expenses.

However, DPW may not use its building fund to pay off the remainder of the lease on its current headquarters. The building fund exemption is restricted to expenses relating directly to the purchase, construction or renovation of a facility. It does not cover leases. See AOs 1988-12 and 1983-8.

Date Issued: October 25, 2001; Length: 6 pages.✥

—Phillip Deen

AO 2001-14

Allocation of Payments for Employee's Salary, Benefits and Cell Phone Usage

The Los Angeles County Democratic Central Committee (the Committee) may use a combination of allocation ratios to allocate monthly payments for the salary, benefits and cell phone usage of an employee who manages media relations for the committee and organizes multiple fundraising events and projects. Normally these expenses would be allocated as administrative expenses. In this case, however, the employee will record the amount of time he spends each month on non-fundraising matters and on each fundraising event and project, and the Committee will use this record to determine how much of the employee's salary,

(continued on page 10)

PACronyms, Other PAC Publications Available

The Commission annually publishes *PACronyms*, an alphabetical listing of acronyms, abbreviations and common names of political action committees (PACs).

For each PAC listed, the index provides the full name of the PAC, its city, state, FEC identification number and, if not identifiable from the full name, its connected, sponsoring or affiliated organization.

The index is helpful in identifying PACs that are not readily identified in their reports and statements on file with the FEC.

To order a free copy of *PACronyms*, call the FEC's Disclosure Division at 800/424-9530 (press 3) or 202/694-1120. *PACronyms* also is available on diskette for $1 and can be accessed free under the "Using FEC Services" icon at the FEC's web site—http://www.fec.gov. Other PAC indexes, described below, may be ordered from the Disclosure Division. Prepayment is required.

- An alphabetical list of all registered PACs showing each PAC's identification number, address, treasurer and connected organization ($13.25).
- A list of registered PACs arranged by state providing the same information as above ($13.25).
- An alphabetical list of organizations sponsoring PACs showing the PAC's name and identification number ($7.50).

The Disclosure Division can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St., NW.

Advisory Opinions

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benefits and cell phone usage should be allocated as fundraising expenses.

Allocation

Under Commission regulations, a party committee that establishes both federal and nonfederal accounts must allocate certain types of expenses between the two accounts.[1] Types of expenses that must be allocated include:

- Administrative expenses, "including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate"; and
- Direct costs of fundraising programs or events for both federal and nonfederal elections, including "disbursements for solicitations of funds and for planning and administration of actual fundraising events." 11 CFR 106.5(a)(2)(i) and (ii). See also 11 CFR 106.5(a)(2)(iii) and (iv).

Administrative Expenses. State and local party committees that choose to pay a portion of their administrative expenses from a nonfederal account must allocate their administrative expenses according to the "ballot composition method." 11 CFR 106.5(d). Under this method, a committee determines its ballot composition ratio at the start of the election cycle. The ballot composition ratio is based on the ratio of federal offices to total nonfederal and federal offices expected on the ballot in the next general election to be held in the committee's state or locality. 11 CFR 106.5(d)(1)(i).[2]

Fundraising Expenses. Fundraising costs must be allocated according to a ratio that is determined for each particular fundraising event or program. Fundraising costs for a given program or event are allocated according to the "funds received method"—the ratio of funds received by the federal account to the total receipts for the event or program.

Before each program or event, the committee estimates this ratio based on its reasonable prediction of its federal and nonfederal revenue for the program or event. Any payments for the fundraiser made prior to the actual program or event are allocated according to this estimated ratio. 11 CFR 106.5(f)(1). Within 60 days after the program or event, the committee must adjust the ratio so that it reflects the actual ratio of funds received. If the nonfederal account has paid more than its share, the committee must transfer funds from its nonfederal to its federal account in order to reflect the adjusted ratio. If the federal account has paid more than its share, the committee may transfer funds from the nonfederal account to the federal account as appropriate. Such a transfer must occur within 60 days after the program or event. 11 CFR 106.5(f)(2).[3]

Allocating Employee's Salary, Benefits and Phone Costs

The salary of a party employee would normally be allocated according to the ballot composition formula because the category of "salaries" is specifically listed in Commission regulations as an example of an administrative expense. However, Commission regulations also include as direct costs of fundraising the planning and administration of individual fundraising events.

In this case, where a committee employee spends a portion of his salaried time organizing individual fundraising events or programs, the Committee may consider the salary and benefits paid to that employee for his time spent on the fundraisers to be fundraising expenses. Thus, the Committee may allocate the portion of the employee's time devoted to each fundraising event or program using the funds received method. The Committee may also

[1] *A committee may also choose to make such disbursements entirely from its federal accounts. 11 CFR 106.5(a)*

[2] *The regulations at 11 CFR 106.5(d)(1)(i) list the relevant federal and state offices and explain how they should be counted for the purposes of the ratio. Commission regulations also allow a local party committee to include up to two additional nonfederal offices if any partisan local candidates are expected on the ballot in any regularly-scheduled election during the two year congressional election cycle, as well as one additional generic nonfederal point. 11 CFR 106.5(d)(1)(ii).*

[3] *In the case of a telemarketing or direct mail campaign, the "date" of the program is the last day of the telemarketing campaign or the date on which the final direct mail solicitations are made. 11 CFR 106.5(f)(1) and (2).*

Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* starting with January 1996 are available through the Internet as PDF files. Visit the FEC's World Wide Web site at http://www.fec.gov and click on "What's New" for this issue. Click "Campaign Finance Law Resources" to see back issues. Future *Record* issues will be posted on the web as well. You will need Adobe® Acrobat® Reader software to view the publication. The FEC's web site has a link that will take you to Adobe's web site, where you can download the latest version of the software for free.

include the portion of the employee's cell phone usage directly related to each fundraising event or program in its assessment of fundraising expenses to be allocated according to the particular allocation ratio for that event or program. The Committee can use the ratio of the employee's hours worked on a given fundraiser to the employee's total hours worked for the month to determine the portion of cell phone usage devoted to that fundraiser.[4] Any expenses for the director's time or cell phone usage that are related to fundraising in general, but are not attributable to any particular fundraising event or program, should be treated as administrative expenses and allocated according to the Committee's ballot composition method. See AO 1992-2.

Determining the Monthly Ratio

In order to arrive at the portion that the federal and nonfederal accounts would pay of the employee's monthly salary, benefits and cell phone usage, the Committee plans to have the employee complete a time sheet each month. The employee will use the time sheet to account for the percentage of his total monthly hours spent on each project. The Committee will then apply the appropriate allocation ratio to the portion of hours worked on each type of activity (i.e., nonfundraising activities and individual fundraising events and programs).

For example, if the employee's salary were $6,000 per month, the employee spent 40 percent of his monthly hours on a particular fundraising event, and the allocation ratio for that event were 20 percent federal and 80 percent nonfederal, the Committee would compensate the employee for that 40 percent of his monthly hours as follows:

- The formula for the federal account's portion would be .4 (the 40 percent of hours that the employee spent on the fundraising event) multiplied by $6,000 (the employee's monthly salary) multiplied by .2 (the 20 percent that is the federal account's portion of total receipts from the fundraiser) to equal $480.
- The formula for the nonfederal account's portion would be .4 (the 40 percent of hours that the employee spent on the fundraising event) multiplied by $6,000 (the employee's monthly salary) multiplied by .8 (the 80 percent that is the nonfederal account's portion of total receipts from the fundraiser) to equal $1,920.

The Committee would make the appropriate transfer of funds between the federal and nonfederal accounts within 60 days after the close of the program or event in order to ensure that the allocation ratio reflects the final ratio of funds received for that event.

To account for the balance of the employee's total monthly salary, the Committee would apply this method to the portion of monthly hours spent on each activity:

- Non-fundraising matters would be allocated between the federal and nonfederal accounts according to the ballot composition method;
- Fundraising events and projects that benefited only the federal account would not be allocated, but rather be paid for entirely from the federal account (see AO 1992-2); and
- Fundraising events and projects that benefited only the nonfederal account need not be allocated, but rather may be paid for entirely from the nonfederal account.❖

Date Issued: October 15, 2001; Length: 7 pages.

—Amy Kort

[4] *The permission granted in this opinion does not extend beyond the Committee's costs specified in the opinion.*

Advisory Opinion Requests

AOR 2001-18

Affiliation between LLC PAC and SSF of one of its two corporate owners (BellSouth Corporation, November 1, 2001)

AOR 2001-19

Federal preemption of state law that prohibits use of bingo as fundraising device for federal account of local party committee (Oakland Democratic Campaign Committee, November 2, 2001)❖

FEC Expands Acceptance of Credit Cards

The Federal Election Commission now accepts American Express, Diners Club and Discover Cards in addition to Visa and MasterCard. While most FEC materials are available free of charge, some campaign finance reports and statements, statistical compilations, indexes and directories require payment. Walk-in visitors and those placing requests by telephone may use any of the above-listed credit cards, cash or checks. Individuals and organizations may also place funds on deposit with the office to purchase these items. Since pre-payment is required, using credit cards or funds placed on deposit can speed the processing and delivery of orders. For further information, contact the Public Records Office at 800/424-9530 (press 3) or 202/694-1120.

Alternative Dispute Resolution

ADR Program Update

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

1. The Commission reached agreement with Dr. John Templeton, Jr. concerning Dr. Templeton's contributions in excess of the $25,000 annual contribution limit. Dr. Templeton obtained refunds from five recipient committees so that his aggregate yearly contributions would not exceed that limit.

2. The Commission reached agreement with the Robert Casey, Jr. for Auditor General Committee and its treasurer, Thomas Ostrowski; the Committee to Elect Ed O'Brien and its treasurer, Stephen Dobrosky; and the Citizens for Ron Kink committee and its treasurer, Joseph Brimmeier, concerning excessive contributions, failure to file a Statement of Organization and the receipt of a contribution from an unregistered organization:

- The Robert Casey, Jr. for Auditor General Committee and Mr. Ostrowski acknowledged their mistake and misunderstanding of the Act. They agreed to make no further excessive contributions to federal elections and to pay a $600 civil penalty.
- The Committee to Elect Ed O'Brien and Mr. Dobrosky refunded the excessive contribution that they had received and agreed to attend an FEC seminar for campaign committees.
- Citizens for Ron Kink and Mr. Brimmeier refunded the excessive contribution that they had received. They also agreed to work with the Commission's Reports Analysis Division (RAD) to conclude their reporting responsibilities and file for termination.

3. The Commission reached agreement with the Flitter 2000 Committee and its treasurer, Thomas A. Monahan, and the Erie County Democratic Party Committee and its treasurer, Ric Coluzzi, concerning excessive contributions and the failure to register and report as a committee and to report in-kind contributions. All respondents acknowledged that they violated the Act:

- The Flitter 2000 committee and Mr. Monahan refunded $1,000 to the local party committee and agreed to pay a $250 civil penalty. The respondents will work with RAD to properly terminate the committee.
- The Erie County Democratic Party committee and Mr. Coluzzi agreed to pay a $250 civil penalty and to have a committee representative attend an FEC seminar on political committee requirements by July 30, 2002.

4. The Commission reached agreement with the Senn 2000 committee and its treasurer, Rudi Bertschi, concerning the use of nonfederal funds in connection with federal elections. The respondents, having already reimbursed the

John F. Zamparelli; the Markey for Congress Committee and its treasurer, Marie C. Carbone; and the Richard E. Neal for Congress Committee and its treasurer, Michael Hall. The ADR office determined that allegations of excessive contributions, contributions in the name of another and contributions that exceeded the annual $25,000 contribution limit were unsubstantiated.

7. The Commission reached agreement with the American Animal Husbandry Coalition PAC and its treasurer, Sharon McFarland, concerning their failure to file reports with the Commission and to accurately report receipts and expenditures and their continued fundraising after the committee had filed for termination. The respondents acknowledge their reporting errors and agree to work with RAD to correct the reports and to terminate the committee.

Closed ADR-negotiated settlement summaries are available from the Public Records Office at 999 E Street, NW., Washington, DC 20463. The Public Records Office may also be contacted at 800/424-9530 (press 3).❖

—Amy Kort

Outreach

FEC Roundtable

The Commission will host a roundtable session in January 2002. See the table below for more details.

FEC roundtables, limited to 12 participants per session, are conducted at the FEC's headquarters in Washington, DC.

The registration fee is $25, and participants will be accepted on a first-come, first-served basis. Please contact the FEC before registering or sending money to be sure that openings remain in the session. Prepayment is required. Registration forms and information are available:

- Online at http://www.fec.gov/pages/infosvc.htm;
- By phone—call 800/424-9530 (press 1. then 3) or 202/694-1064; and
- From Faxline, the FEC's automated fax system —call 202/501-3413 and request document 590.❖

—Amy Kort

Regional Conference in San Francisco for Candidates, Parties and PACs

In early February, the Federal Election Commission will hold a comprehensive, two and one-half day regional conference in San Francisco. This conference is designed to help federal political committees understand and comply with the federal campaign finance law. The conference will provide an overview of the basic provisions of the federal election law and discuss specific requirements that apply to:

- House and Senate campaigns;
- Political parties; and
- Corporate, labor and trade association PACs (as well as their sponsoring organizations).

The conference will feature interactive workshops presented by Commissioners and experienced FEC staff. A representative from the Internal Revenue Service will also be available to answer election-related tax questions. The FEC certifies that an application is pending for approval of this activity for MCLE credit by the State Bar of California.

The conference will be held **February 5-7, 2002**, at the Grand Hyatt Hotel in San Francisco, California. The registration fee for the conference is $375. The fee, which covers the cost of the conference, reception, materials and meals, must be received by January 14, which is also the last day to cancel and still receive a full refund. A late registration fee of $10 will be added for payments received on or after January 15, 2002.

A room rate of $218 is available for hotel reservations made by January 14. To received this special rate, call the Grand Hyatt Hotel at 415/398-1234 and mention that you are attending the FEC conference. After January 14, room rates are subject to availability. The hotel is located downtown on Union Square, near cable cars, Chinatown and the shopping district.

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Roundtable

Date	Subject	Intended Audience
January 9, 2002 9:30 - 11:00 a.m.	**Reporting Requirements for 2002** • Deadlines • Pitfalls to avoid	• House and Senate campaigns • PACs • Political party committees • Lawyers, accountants and consultants to above

Outreach

(continued from page 13)

Registration

Conference registrations will be accepted on a first-come, first-served basis. Attendance is limited, and other FEC conferences have sold out in the past, so please register early.

For registration information:

- Call Sylvester Management Corporation at 800/246-7277;
- Visit the FEC web site at www.fec.gov/pages/infosvc.htm#Conferences; or
- Send an email to toni@sylvestermanagement.com.

—Amy Kort

FEC Announces Spring Conferences

Conference for Candidate and Party Committees
Date: March 2002
Location: Washington, D.C. Area
(To Be Announced)

Conference for Corporations
Date: April 22-24, 2002
Location: Washington, D.C.
(Loews L'Enfant Plaza)

Conference for Trade Associations
Date: May 22-24, 2002
Location: Washington, D.C.
(Loews L'Enfant Plaza)

Conference for Member and Labor Organizations
Date: June 26-28, 2002
Location: Washington, D.C.
(Loews L'Enfant Plaza)

Compliance

Nonfiler

The Joe Grimaud for Congress Committee filed its pre-primary report for the October 30, 2001, special primary election in South Carolina on paper rather than electronically. As a result, under the Commission's mandatory electronic filing regulations, the report was not considered to have been filed by the October 18 due date. The Commission sent a Mandatory Electronic Filing Notice on October 19, 2001, notifying the committee that its paper filing was not valid and that it must file its report electronically.

The mandatory electronic filing regulations require any committee that receives contributions or makes expenditures in excess of $50,000 in the current calendar year, or that reasonably expects to do so, to submit its reports electronically. Reports filed on paper do not satisfy the reporting obligation for these filers. 11 CFR 104.18 (a)(2).

On September 24, 2001, the Commission notified principal campaign committees involved in South Carolina's special primary and run-off elections of their potential filing requirements. Committees that failed to file reports by the October 18 due date were notified on October 19 that their reports had not been received and that their names would be published if they did not respond within four business days.

The Federal Election Campaign Act requires the Commission to publish the names of principal campaign committees if they fail to file 12 day pre-election reports and the quarterly report due before the candidate's election. 2 U.S.C. 437g(b) and 438 (a)(7). The agency may also pursue enforcement actions against nonfilers and late filers under the Administrative Fine program on a case-by-case basis.❖

—Amy Kort

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The first number in each citation refers to the "number" (month) of the 2001 *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.

Advisory Opinions

Public Appearance

December 5, 2001
American University
Washington, D.C.
Commissioner Wold

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Court Cases

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Reports

FECFile Help on Web

The manual for the Commission's FECFile 4 electronic filing software is available on the FEC's web site. You can download a PDF version of the manual at http://herndon.sdrdc.com/fecfile4.pdf.

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