

# Record

June 2001

Federal Election Commission

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## Table of Contents

	<b>Regulations</b>
1	Independent Expenditure Reporting Rulemaking
3	Coordinated General Public Political Communications
<b>3</b>	<b>Federal Register</b>
	<b>Election Administration</b>
1	OEA Advisory Panel Meeting
	<b>Alternative Dispute Resolution</b>
4	ADR Program Resolves Cases
	<b>Administrative Fine Program</b>
5	Committees Fined
5	Disclosure Improved
6	Use of Civil Money Penalties
<b>6</b>	<b>Advisory Opinions</b>
	<b>Court Cases</b>
8	FEC v. Friends for Fasi
9	Christine Beaumont v. FEC
9	On Appeal
	<b>Publications</b>
9	Disclosure Directory Available
	<b>Budget</b>
10	FY 2002 Request
	<b>Reports</b>
10	Arizona State Filing Waiver
	<b>Outreach</b>
10	Public Appearances
10	June Conference
	<b>Commission</b>
11	FEC Semi-Finalist in "Innovations" Competition

## Regulations

### Notice of Proposed Rulemaking on Reporting of Independent Expenditures, Last-Minute Contributions

On May 3, 2001, the Commission approved a Notice of Proposed Rulemaking (NPRM), which seeks comment on proposed changes to the procedures for filing certain reports of independent expenditures and last-minute contributions. The notice was published in the May 9, 2001, *Federal Register* (66 FR 23628). The proposed rules are meant to implement statutory changes to the Federal Election Campaign Act (the Act) required by Public Law (P.L.) 106-346, enacted on October 23, 2000. The proposed rules also codify current procedures for filing reports on last-minute contributions (i.e., 48-hour notices). The new filing methods are intended to speed up disclosure and provide filers with more flexibility.

### Filing Deadline

Under current regulations, reports of independent expenditures of \$1,000 or more made less than twenty days but more than twenty-four hours before an election ("24-hour notices") are considered timely

(continued on page 2)

## Election Administration

### Advisory Panel on Election Administration Airs Concerns

Voting technology and standards, election management guidelines, election reforms and adequate funding for the Federal Election Commission's Office of Election Administration (OEA) were primary topics of discussion May 4-5, 2001, at a conference of the OEA's Advisory Panel in Baltimore. The Advisory Panel, established in 1976, is comprised of 20 state and local election officials from around the nation. The Panel advises the FEC on the needs of election administrators and how the OEA might best serve those needs.

Panel members at the conference expressed concerns about securing sufficient funding for the OEA, formerly known as the National Clearinghouse on Election Administration. They affirmed that the OEA's research and clearinghouse functions provide necessary resources for improving the administration of elections. They expressed support for additional and continued funding for the OEA's efforts, and they noted that their most immediate concern is support for the Voting Systems Standards (VSS) Program.

(continued on page 4)

## Regulations

(continued from page 1)

filed if they are postmarked for certified or registered mail within 24 hours of the time the independent expenditure was made. Under the statutory changes and the proposed rules, 24-hour notices would be considered timely filed only if they were received by the Commission or Secretary of the Senate<sup>1</sup> within 24 hours of the time the independent expenditure was made.

The Commission also proposes to clarify when an independent expenditure is “made.” The proposed definition states that an independent expenditure is made at the earliest of three possible events:

- When a written contract, promise or agreement to make the independent expenditure is executed;
- When the communication is first disseminated to the public; or
- When the person making the expenditure pays for it.

The Commission seeks comments on this proposed definition—specifically, on whether this is an accurate reflection of when an independent expenditure is likely to have been “made.”

### Methods of Filing

To assist filers in meeting the filing deadline, the Act and the proposed rules would allow 24-hour notices to be filed by fax machine or electronic mail. Persons other than political committees also would be allowed to fax or e-mail any reports of independent expenditures filed under the regular reporting schedules. Electronic filers would have to continue to file all reports of independent expenditures using the Commission’s electronic filing system.

The proposed revisions would also clarify that 24-hour notices are *not* among those reports considered timely filed when postmarked for registered or certified mail.

The statutory changes also require that the Commission provide methods of verification of documents, other than by signature, for all purposes, including certification under penalties of perjury. Under current regulations, the forms used to disclose independent expenditures (i.e., FEC Form 5, Schedule E or a signed statement) must contain a notarized certification, under penalty of perjury, stating whether the expenditures were “coordinated” with any candidate, authorized committee or agent thereof and whether the expenditures were made

by a qualified nonprofit corporation.<sup>2</sup> 11 CFR 114.10.

The Commission is proposing to allow filers to self-certify 24-hour notices. This means that, in the case of 24-hour notices, notarization would no longer be required. The proposed regulations set forth two methods for verifying 24-hour notices of independent expenditures. Reports filed in paper form (e.g., by hand delivery or fax machine) would be verified by the filer’s signature beneath the certification language. Reports filed by e-mail would be verified by requiring the filer to type his or her name beneath the certification language.

The Commission seeks comments on this and any other methods of certification (e.g., electronic notarization or digital signatures).

### Proposed Changes to Electronic Filing Program

Under current regulations, those filers participating in the Commission’s electronic filing program must submit a paper copy of Form 5 or Schedule E, along with the electronic copy, in order to file a notarized document. In order to allow all electronic filers to comply with the new requirement that 24-hour notices be received within 24 hours of the time when the independent expenditure was made, the Commission proposes to drop Form 5 and Schedule E from the list of reports for which a paper copy follow-up is required. The Commission proposes to require electronic filers to verify all reports of inde-

<sup>1</sup> *The Secretary of the United States Senate is the proper recipient of reports of independent expenditures that either support or oppose only Senate candidates. 11 CFR 104.4(c)(2).*

**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)

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<http://www.fec.gov>

<sup>2</sup> *The Commission also requests comments on whether to either:*

- *Add to its regulations a requirement that those who file a signed statement instead of Form 5 certify that the expenditure was not made to finance, disseminate, distribute or republish campaign materials prepared by a candidate or a candidate’s agent or committee; or*
- *Remove this certification language from Form 5 and Schedule E.*

pendent expenditures using the same process that they would use to file any other electronic report.

### Reports Available Within 24 Hours

The statutory changes require the Commission to make an electronically-filed document accessible on the Internet within 24 hours after the document is received by the Commission. The Commission proposes making all reports of independent expenditures that were filed by fax, e-mail or the Commission's electronic filing system available on the Commission's Web site within 24 hours of receipt.<sup>3</sup>

### Reports of Last Minute Contributions (48-Hour Notices)

The Commission also proposes revising its regulations regarding reports by authorized committees receiving contributions of \$1,000 or more made less than 20 days but more than 48 hours ("48-hour notices") before the day of an election. The Commission has for some time allowed authorized committees to file these reports by fax and, more recently, on-line in addition to other permissible filing methods. The proposed revisions would codify fax and e-mail as appropriate additional filing methods.

### Commenting on Proposed Regulations

Comments must be received on or before June 8, 2001. All comments should be addressed to Ms. Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal

<sup>3</sup> Since reports of independent expenditures that support or oppose only Senate candidates are filed with the Secretary of the Senate, these reports may not be available on the Commission's Web site within 24 hours of receipt by the Secretary of the Senate.

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

Faxed comments should be sent to 202/219-3923, with printed copy follow-up to insure legibility. E-mail comments should be sent to [IndyExpRep@fec.gov](mailto:IndyExpRep@fec.gov). Those sending comments by electronic mail must include their full name, e-mail address and postal address within the text of their comments. Comments that do not contain this information will not be considered.

For further information, contact Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Cheryl Fowle, Attorney, 999 E Street, NW., Washington, DC 20463, 202/694-1650 or 800/424-9530. ♦

### Announcement of Effective Date for General Public Political Communications Coordinated with Candidates and Party Committees; Independent Expenditures

The Commission's new rules on coordination of general public political communications with party and candidate committees became effective on May 9, 2001. See *Federal Register* Announcement of Effective Date (66 FR 23537, May 9, 2001).

The new rules define what is meant by "coordinated expenditures," through the addition of new section 100.23 to 11 CFR. Expenditures that are coordinated with a candidate or a party are considered in-kind contributions and are subject to the limits, prohibitions and reporting requirements of the Federal Election Campaign Act.

Under 11 CFR 100.23(c), an expenditure for a general public political communication is considered to be coordinated with a candidate or party committee if the communication is paid for by any person other than the candidate's authorized committee or a party committee and is created, produced or distributed:

### Federal Register

Federal Register notices are available from the FEC's Public Records Office.

#### Notice 2001-5

General Public Political Communications Coordinated with Candidates and Party Committees; Independent Expenditures; Announcement of Effective Date (66 FR 23537, May 9, 2001).

#### Notice 2001-6

Independent Expenditure Reporting; Notice of Proposed Rulemaking; (66 FR 23628, May 9, 2001).

- At the request or suggestion of the candidate, the candidate's authorized committee, a party committee or their agents;
- After one of these persons or parties has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication; or
- After substantial discussion<sup>1</sup> or negotiation between the purchaser, creator, producer or distributor of the communication and the candidate, the candidate committee, the

(continued on page 4)

<sup>1</sup> Under 11 CFR 100.23(c)(2)(iii), substantial discussion or negotiation may include one or more meetings, conversations or conferences about the value or importance of a communication for a particular election. The Commission clarified that whether these discussions or negotiations qualify as "substantial" depends upon their substance rather than upon their frequency.

## Election Administration

(continued from page 1)

The FEC produced the first national voluntary VSS for computer-based equipment in 1990. These standards are used by the National Association of State Election Directors (NASSED) in its national program, which provides for independent, third-party testing of voting systems. The OEA has been coordinating an update of these standards with the NASSED Voting Systems Standards Board, which oversees the national testing process.

The draft of the revised VSS is scheduled to be released for public review and comment in two segments, Volume I in late June and Volume II at the end of October 2001. Volume I will contain standards for the overall performance of voting systems. Volume II will contain criteria for the subsequent testing of automated vote tabulation systems by certified independent test authorities. The OEA will review recommendations obtained during a public comment period, and it plans to incorporate appropriate suggestions into the next published version of the standards.

The FEC has requested \$3 million in supplemental funds for enhancement of the OEA, telling Congress in its proposal that the funds are sought "to better assist state and local election administrators, who are responsible for administering federal elections." The FEC would direct a large portion of this funding toward further improving the VSS.

Additional details are available in a news release dated May 9, 2001. The release is available:

- On the FEC Web site at <http://www.fec.gov/news.html>; and
- From the Public Records (800/424-9530, press 3) and Press Offices (800/424-9530, press 5). ♦

## Regulations

(continued from page 3)

party committee or their agents that results in collaboration or agreement about the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of the communication.

In addition, the definition of "independent expenditure" at 11 CFR 109.1 has been revised to conform with the new rules at 11 CFR 100.23.

You may obtain a free copy of the final rules as they appeared in the *Federal Register* (65 FR 76138) through the FEC Faxline. Dial 202/501-3413 and request document 246. For a summary of the new rules, see the January 2001 *Record*, p. 2. ♦

## Alternative Dispute Resolution

### ADR Program Resolves Four More Cases

During March, April and May, 2001, the Commission accepted four more agreements under the Alternative Dispute Resolution (ADR) program, bringing the total number of agreements reached to 12. The respondents, the alleged violations of the Federal Election Campaign Act and the penalties assessed are listed below.

On May 10, 2001, the Commission reached agreement with the Liberal Party of New York (the Party). The Party agreed to pay a civil money penalty of \$6,000 for failure to reconcile a cash-on-hand discrepancy between its amended 1998 Post-General report and the 1998 Year-End report. The Party

also agreed to file amended 1998 Post-General and 1998 Year-End reports and will attend a Commission-sponsored seminar on reporting requirements.

On May 10, 2001, the Commission reached agreement with the Illinois Senate Victory Fund (Victory). Victory agreed to pay a civil money penalty of \$1,500 for failure to provide a Schedule B for transfers for its 1998 October Quarterly and 1998 Post-General reports. Victory also will file amended 1998 October Quarterly and 1998 Post-General reports with the required Schedule B.

On April 24, 2001, the Commission reached agreement with District 1199C National Union of Hospital and Health Care Employees Political Action Fund (the Fund). The Fund agreed to pay a \$2,000 civil money penalty for failure to establish a nonfederal account and for the use of nonfederal funds in connection with a federal election. The respondent will attend an FEC-sponsored seminar on reporting requirements.

On March 6, 2001, the Commission reached agreement with the Rogers for Congress Committee (the Committee) and Jerry Spitler, Todd Spitler and Scott Spitler (Spitler):

- The Committee agreed to pay a \$2,550 civil money penalty for accepting excessive contributions and corporate contributions. Committee staff will attend an FEC-sponsored seminar on campaign committee reporting and will meet with Commission staff to review reporting procedures; and
- Spitler agreed to pay a \$8,200 civil money penalty for excessive contributions.

Closed ADR-negotiated settlement summaries are available from the Public Records Office at 999 E Street, NW., Washington, DC 20463, or at 800/424-9530 (press 3). ♦

## Administrative Fines

### Committees Fined for Late and Nonfiled Reports

On April 25, 2001, the Federal Election Commission publicized its final action on 14 new Administrative Fine cases, bringing the total number of cases to 64. Civil money penalties are determined by the number of days the report was late or whether the report was so late as to be considered not filed, the amount of financial activity involved and any prior penalties for violations. Election sensitive reports, which include reports and notices filed immediately before an election, (i.e., 48-hour notices, and pre-primary, pre-special, pre-general, October quarterly and October monthly reports) receive higher penalties. The committees listed in the chart at right, and the treasurers of those committees, were assessed civil money penalties when the Commission made its final determination. Unpaid civil money penalties are referred to the Department of the Treasury for collection.

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). ♦

### Timely Disclosure Improved Under Administrative Fine Program

Since the Administrative Fine Program was implemented with the 2000 July Quarterly report, the number of reports filed late or not filed at all has generally decreased. Reports are considered late if they are received after the due date, but within 30 days of that date. Election-sensitive reports are considered late if they are filed after their due date, but prior to four days before

### Committees Fined Under Administrative Fine Program

Committee	Civil Penalty	Late/Nonfiled—Report*
Conseco Inc., Concerned Citizens PAC	\$675	Late—2000 Sept. M.
Danner for Congress	\$825	Late—2000 Oct. Q.
Friends of Mark Brewer	\$8,000	Non—2000 July Q.
Hamilton for Congress	\$7,000	Late—2000 July Q.
IUE Cmte. on Political Education		
International Union/Electronic Electrical Tech. Salaried Mach. Workers	\$6,000	Non—2000 Oct. M.
Kilian for Congress	\$1,800	Non—2000 July Q.
Midnight Sun PAC	\$500	Late—2000 Sept. M.
Moore for U.S. Senate	\$700	Late—2000 Oct. Q.
PECO Energy Company PAC	\$1,800	Non—2000 July Q.
Ray Haynes for US Senate	\$388	Late—2000 Oct. Q.
Title Industry PAC	\$800	Late—2000 Oct. M.
United Assoc. of Steam/Pipefitters		
Local Union 524 Pol. Action Fund	\$300	Late—2000 Oct. Q.
U.S. Chamber of Commerce PAC	\$250	Late—2000 Sept. M.
Venturepac	\$500	Late—2000 Sept. M.

\* "M" indicates a monthly report; "Q" indicates a quarterly report.

the election. (Election sensitive reports are those filed immediately before an election and include pre-primary, pre-special, pre-general, October quarterly and October monthly reports.) Committees filing reports after these late dates are considered nonfilers.

Under the Administrative Fine Program, the number of reports filed late declined in each reporting period—except the monthly report for August. For some periods, the decline in the number of late reports was significant. For example, the percentage of late year-end reports

decreased from 24 percent for the year-end 1998 report to 11 percent for the year-end 2000 report. The largest percentage drop in the number of late filers occurred with recent monthly report filings. In 2000, the number of September monthly reports filed late dropped 16 percentage points from the 1998 cycle, late November reports decreased 18 percent from the 1998 cycle and late December reports decreased 28 percent from the 1998 cycle. Overall, the percentage of all reports filed late dropped from 21.7

(continued on page 6)

## Administrative Fines

(continued from page 5)

percent in 1996 to 15.6 percent in 2000 for comparable reporting periods.

The number of nonfilers generally has declined from the 1998 cycle, with the exception of the year-end report and several monthly reports where the number of nonfilers has increased from 1998. The largest percentage decline in nonfilers occurred with the post-general election report, where nonfilers dropped from 252 in 1998 to 128 in 2000, a 49 percent decrease.

Additional details are available in a news release dated April 25, 2001. The release is available:

- On the FEC Web site at <http://www.fec.gov/news.html>; and
- From the Public Records Office (800/424-9530, press 3) and the Press Office (800/424-9530, press 5). ♦

## Use of Civil Money Penalty Funds from the Administrative Fine Program

Funds collected from civil money penalties assessed under the Administrative Fine Program are not received or used by the Federal Election Commission. Instead, respondents (those who have violated the law) send funds to a special government “lockbox” account. While respondents are directed to make checks, cashiers’ checks or money orders out to the Commission, the checks are deposited into the “lockbox” account and then forwarded to the Department of the Treasury. Moneys collected under the Administrative Fine Program do not affect the Commission’s appropriation or budget. Fines that remain uncollected are forwarded to the Department of the Treasury for collection, as required by the 1996 Debt Collection Improvement Act. ♦

## Advisory Opinions

### AO 2001-4

#### **Use of Electronic Signatures for PAC Contributions by Payroll Deduction**

The Morgan Stanley Dean Witter & Co. Political Action Committee (MSDWPAC) may use an electronic signature system to authorize payroll deduction contributions from its restricted class.<sup>1</sup> The electronic signature system will be part of a Web site that uses the standard “click through” process that forms the basis for much of Internet commercial activity.

When a payroll deduction or other check-off process is used to collect contributions for a separate segregated fund (SSF), the contributor must provide an affirmative authorization in order to permit the deduction.<sup>2</sup> The specific and voluntary intent of the solicited employee must be manifested in a written authorization before the actual deduction of any contributions. See AO 1997-25. Such authorizations are often made through the use of a paper payroll deduction form, where the employee designates the amount to be deducted and then indicates his assent via signature. The signature is required as a unique identifier of the employee, and it also indi-

<sup>1</sup> The “restricted class” personnel of a corporation consists of the corporation’s executive and administrative personnel and its stockholders. The families of these personnel are also included. See 2 U.S.C. §441b(b)(4)(A)(i), 11 CFR 114.1(c)(1), 114.1(j) and 114.5(g)(1).

<sup>2</sup> See *Federal Election Commission v. National Education Association*, 457 F.Supp. 1102 (D.D.C. 1978), where the court determined that a reverse check-off procedure to collect contributions resulted in involuntary contributions to an SSF.

cates to the Commission that the employee authorized his contribution.

In AO 1999-3, the Commission approved the use of electronic signatures to authorize payroll deductions of contributions by members of the restricted class to an SSF. The protocols adopted by the corporation and SSF in that case ensured that only authorized employees could submit payroll deduction authorizations. These protocols included:

- The use of individual passwords for each employee;
- The use of confirmation e-mail messages sent after the submission of the deduction authorization; and
- The ability of contributors to modify or revoke their authorizations.

#### **SSF’s Web site and the “Click-through” Process**

In this case, MSDWPAC’s proposed Internet Web site incorporates the features mentioned above. The site operates as follows:

1. The first page the user sees contains a login screen that requires the user to enter a personally-unique employee identification number. This number will be checked against a database of eligible restricted class members. Only those users whose identification number is verified as belonging to a member of the restricted class will be permitted to access the Web site and proceed to the next series of Web pages.
2. When the user then clicks on a screen option from a menu list to make a “pledge,” a series of screens appears, which requires the user to verify his home address, occupation and e-mail address. The e-mail address screen ensures that the user will be sent an e-mail confirming his contributions. As before, all of

the above information must be provided and is checked against the database for restricted class employees; this information must be correctly matched before access is given to the subsequent steps in the authorization process.

3. After the entry of the user's e-mail address, the next screen gives the user the opportunity to specify the amount he wishes to contribute. A statement on the screen informs the user that the suggested guideline is merely a suggestion and that the contributor is under no obligation to follow it or to make a contribution at all.
4. The final page of the Web site presents the last step of the deduction authorization process. On this page, the user is required to review a series of Commission-required affirmation statements.<sup>3</sup> The screen presents the user with the following statement: "By entering your full name below you are agreeing to all of the above items," and then provides a space for the user to type his name. Clicking the "submit" icon provides the electronic signature of the user.<sup>4</sup>

<sup>3</sup> These disclaimers include an acknowledgment that the user is a U.S. citizen or permanent resident alien, and the recognition of the political purpose of the PAC and the uses of contributions made to the PAC. The affirmation statements also attest to the user's willingness to make the contribution and that the contribution is not made with corporate treasury funds or through a business credit card.

<sup>4</sup> The Commission also concluded that a second electronic signature method for the last page on the Web site (where users view the appropriate disclaimers) was permissible. This method required the user to also type his or her Social Security number below his or her name.

While the Commission has not previously considered the "click through" process for contributions made to an SSF, it has previously approved situations where this method was used to make contributions to Presidential candidate committees. See AOs 1999-9 and 1999-22. Furthermore, while past opinions on Internet contributions provided a safe harbor for the security measure a political committee could adopt, once basic security and verification concerns were addressed, these opinions did not purport to restrict or delineate the specific type of technology that must be used. See AOs 1999-9 and 1999-3. Therefore, MSDWPAC's proposed method of accepting restricted class payroll deduction authorization is permissible.

Date Issued: April 19, 2001;  
Length: 5 pages. ♦

#### AO 2001-6

### **Status of State Party as State Committee of Political Party**

The Green Party of Maryland satisfies the requirements for state committee status.<sup>1</sup>

The Federal Election Campaign Act (the Act) defines a state committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party

<sup>1</sup> The Commission notes the description and statements regarding the Party's relationships with the national Green Party organizations. However, the requester has not posed any questions as to the Party's affiliated status with these organizations. Therefore, this opinion does not address issues regarding the application of the Act or Commission regulations to the possible affiliation of the Maryland Green Party with any other political committee or organization within the Green party movement at the local, state or national levels. See 2 U.S.C. §§433(b)(2), 441a(a)(5)(B); and 11 CFR 110.3(b), 110.3(c)(1).

at the State level, as determined by the Commission." 2 U.S.C. §431(15). In order to achieve state committee status under Commission regulations, an organization must meet two requirements. It must have:

- Bylaws or a similar document that "delineates activities commensurate with the day-to-day operation" of a party at a state level; and
- Ballot access for at least one federal candidate who has qualified as a candidate under Commission regulations.<sup>2</sup>

The Green Party of Maryland meets both requirements. It satisfies the first requirement because its bylaws set out a comprehensive organizational structure for the party from the statewide level down through local levels, and the bylaws clearly identify the role of the Green Party of Maryland.

The Green Party of Maryland satisfies the second requirement—ballot access for a federal candidate—in that one individual who had met the requirements for becoming a federal candidate gained ballot access as a candidate of the Green Party of Maryland in 2000. This was Ralph Nader as the Party's candidate for President.

Date Issued: May 7, 2001;  
Length: 4 pages. ♦

(continued on page 8)

<sup>2</sup> An individual becomes a candidate for the purposes of the Act (2 U.S.C. §431(2)) once he or she receives contributions aggregating in excess of \$5,000 or makes expenditures in excess of \$5,000. Federal candidates must designate a principal campaign committee within 15 days after qualifying as a candidate, and the committee also becomes subject to registration and reporting requirements. 2 U.S.C. §§432(e)(1) and 434(a); 11 CFR 102.1 and 104.1.

## Advisory Opinions

(continued from page 7)

### Advisory Opinion Requests

#### AOR 2001-7

Affiliation of a PAC, sponsored by a limited liability company, with SSFs of the companies that are members and owners of the limited liability company (Nuclear Management Company PAC, April 12, 2001)

#### AOR 2001-8

Campaign committee's purchase of candidate's book for distribution to campaign contributors (Senator Arlen Specter; May 16, 2001)◆

## Court Cases

### FEC v. Friends for Fasi; MUR 4594

On January 19, 2001, the U.S. District Court for the District of Hawaii found that Friends for Fasi violated the Federal Election Campaign Act (the Act) by accepting foreign national contributions. 2 U.S.C. §441e. This case grew out of an enforcement matter, MUR 4594, in which the Commission and Longevity International Enterprises (Longevity) had signed a conciliation agreement concluding that Longevity violated the law by making prohibited contributions in connection with an election to a U.S. public office. 2 U.S.C. §441e(a) and 11 CFR 110.4(a).

#### MUR 4594: Prohibited Foreign National Contributions

Frank Fasi served as Mayor of Honolulu from 1968 through 1980 and from 1984 through 1994. He also campaigned for the office of governor in 1994 and the office of mayor in 1996. The prohibited contributions in question were in-kind contributions to Mr. Fasi and his 1996 mayoral campaign commit-

tee (Friends for Fasi); specifically, the contributions resulted from Longevity discounting the rent for space in Longevity-owned property, the Chinese Cultural Plaza Shopping Center (Cultural Plaza) used by Mr. Fasi's campaign.<sup>1</sup>

Longevity is a Hawaii corporation. All of the original shareholders of Longevity were foreign nationals and residents of the Republic of China. All but one of the members of Longevity's original board of directors were executives of China Airlines, Ltd. (CAL), a foreign corporation. As a result, foreign nationals<sup>2</sup> initially held absolute control and direction over the composition of Longevity's board of directors. Through 1996, Longevity was owned, managed and/or controlled by foreign nationals. Foreign national participation in Longevity's management included approving leases at the Cultural Plaza.

In MUR 4594, the Commission, on September 14, 1999, found probable cause to believe that Longevity, controlled by foreign nationals, made prohibited in-kind contributions to Friends for Fasi and Frank Fasi in the form of below-

market rental rates for space at the Cultural Plaza between January 1994 and November 1996. The Commission subsequently, on December 29, 1999, entered into a conciliation agreement<sup>3</sup> with Longevity in which Longevity admitted the violation, agreed not to engage in any similar activity in the future and paid a civil money penalty of \$75,000.

#### FEC v. Friends for Fasi: Acceptance of Prohibited Contributions

On the same date that the Commission found probable cause that Longevity made prohibited contributions, it found probable cause that Mr. Fasi and Friends for Fasi accepted prohibited contributions. Mr. Fasi and Friends for Fasi did not enter into a conciliation agreement, so the Commission filed a civil complaint on January 12, 2000, alleging that Frank Fasi and Friends for Fasi had violated §441e of the Act, which prohibits the making and accepting of foreign national contributions in connection with any election to a U.S. public office.

On June 6, 2000, the U.S. District Court for the District of Hawaii granted in part and denied in part defendants' motion to dismiss the Commission's January 12 civil complaint. Among other things, defendants had argued that 2 U.S.C. §441e did not apply to contributions to nonfederal elections. The court rejected defendants' argument, finding the Commission's interpre-

<sup>1</sup> Frank Fasi had a written lease with Longevity from January 1981 through February 1984, and he was a month-to-month tenant thereafter, with no written lease, until November 1996, when the premises were vacated. Mr. Fasi's written lease provided for a base rent of more than \$1,500 per month. However, Friends for Fasi, who made all the rental payments, paid only \$800 per month for that space. (The rent varied from April 1996 until November 1996.) According to Longevity, Mr. Fasi and Friends for Fasi were the only tenants to rent space in the Cultural Plaza without a written lease.

<sup>2</sup> A foreign national is an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by 8 CFR 1101(a)(20). See also 2 U.S.C. §441e(b).

<sup>3</sup> Once the Commission determines probable cause, it is required, for a period of at least 30 but not more than 90 days, "to correct or prevent" the violation "by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved." §437g(a)(4)(A)(i). The full complaint procedure can be found at 2 U.S.C. §437g.



tation of §441e to be consistent and reasonable.<sup>4</sup>

On January 19, 2001, the U.S. District Court for the District of Hawaii, signed a consent judgment, in which the court:

- Found that Friends for Fasi violated the ban on contributions from foreign nationals by accepting the discounted rental space from January 1995 to November 1996;
- Ordered Friends for Fasi to pay a \$15,000 civil money penalty; and
- Permanently enjoined Friends for Fasi and its agents, employees, attorneys, including Frank F. Fasi, from accepting “something of value from a foreign national at less than market value in connection with U.S. elections for public office.”

See also the August 2000 *Record*, p. 14, and the March 2000 *Record*, p. 9. ♦

### Christine Beaumont v. FEC

On April 23, 2001, the U.S. Court of Appeals for the Fourth Circuit dismissed as moot a December 22, 2000, Commission appeal that had requested relief from a preliminary injunction of the U.S. District Court for the Eastern District of North Carolina, Northern Division. That preliminary injunction, issued on October 26, 2000, barred the Commission from relying on, enforcing or prosecuting violations of 2 U.S.C. §441(b) and 11 CFR 114.2(b) and 114.10—or any other parts of the Federal Election Cam-

aign Act (the Act) whose restrictions flow from these provisions — against North Carolina Right to Life, Inc., (NCRL), a non-profit, MCFL-type corporation.<sup>1</sup> In its order, the Court wrote: “Assuming that we reverse the district court’s final judgment, we conclude that the FEC will not be precluded from enforcing the challenged provisions with respect to NCRL’s conduct during the life of the preliminary injunction.”

The Commission’s December 22, 2000, appeal had previously been consolidated with its March 6, 2001, appeal of the District Court’s final judgment that the prohibitions on corporate contributions and expenditures of the Act and Commission regulations were unconstitutional as applied to NCRL. The court found that the statute and regulations infringed on NCRL’s First Amend-

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<sup>1</sup> In *FEC v. Massachusetts Citizens for Life (MCFL)* 479 U.S. 238 (1986), the Supreme Court concluded that 2 U.S.C. §441b could not constitutionally prohibit certain nonprofit corporations from making independent expenditures. *MCFL* was exempt from this ban because it had the following features:

- It was formed to promote political ideas and did not engage in business activities;
- It did not have shareholders or other persons who had a claim on its assets or earnings, or who had other disincentives to disassociate themselves from the organization; and
- It was not established by a business corporation or labor union and had a policy of not accepting donations from such entities.

Commission regulations at 11 CFR 114.10 incorporate the *MCFL* decision. These regulations establish a test to determine whether a corporation qualifies for exemption from the Act’s prohibition against corporate independent expenditures.

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<sup>4</sup> The Court granted the motion to dismiss in part by ruling that any violations that took place before January 12, 1995, were beyond the statute of limitations. It denied the motion in part by ruling that each rental payment constituted a separate violation, so that any payments that were discounted after January 12, 1995, constituted violations.

ment rights without a compelling state interest. See the May 2001, *Record*, page 6. The March 6, 2001, appeal is still pending.

U.S. Fourth Circuit Court of Appeals, 2:00-cv-2-BO(2). ♦

### On Appeal

#### Ralph Nader, et al. v. FEC

On April 30, 2001, the U.S. Supreme Court denied plaintiffs’ petition for a writ of certiorari to review a decision by the U.S. Court of Appeals for the First Circuit upholding the FEC’s Debate Regulations. Petitioners had asked for the Debate Regulations to be set aside, arguing that the regulations were in excess of the FEC’s statutory authority under the Federal Election Campaign Act. This case, originally filed as *Becker v. FEC*, was covered in the November 2000, *Record*, p. 8, and in the April 2001, *Record*, p. 8. ♦

## Publications

### Disclosure Directory of Federal and State Election Offices Available

The *Combined Federal/State Disclosure and Election Directory 2001* is now available. This annual publication provides information on the national and state agencies responsible for the disclosure of campaign finances, lobbying, personal finances, public financing, candidates on ballots, election results, spending on state initiatives and other financial filings.

The publication, which includes agency e-mail and Internet addresses, is also available on the Commission’s Web site, [www.fec.gov](http://www.fec.gov). Located in the “[Elections and Voting](#)” section, this

(continued on page 10)

## Publications

(continued from page 9)

interactive version provides hyperlinks to allow viewers to directly access the home pages of the state and federal agencies listed. This version of the publication will be updated periodically throughout the year. The Directory is also available on 3.5" diskette. Paper copies, which are free, may be obtained by calling the Public Records Office at 800/424-9530 (press 3) or 202/694-1120. ♦

## Budget

### Commission Submits Budget Proposal for 2002

On March 29, 2001, the Commission sent its fiscal year 2002 budget proposal to Congress and the Office of Management and Budget (OMB). The proposal requests \$47.67 million and 375 personnel for FEC operations. In prior negotiations, the OMB had recommended \$41.4 million and 357 personnel as the Commission's 2002 appropriation. The Commission's appropriation for 2001 is \$40.41 million and 357 personnel.

In a letter accompanying the formal request, Commission Chairman Danny L. McDonald explained, "While the FEC is aware of the general budgetary climate and has striven to reach agreement with OMB on our budget request, we did not reach agreement for the FY 2002 request. Therefore, we must independently make a special appeal to pursue the staff and resources necessary to fulfill our statutory mission. And, depending upon the scope of campaign finance reform legislation under consideration, the FEC could face significant additional resource needs." The additional funds and personnel could be used to expand the Commission's Office of Election Administration

and to support recently-developed programs, such as Mandatory Electronic Filing, Administrative Fines, state waivers and Alternative Dispute Resolution. ♦

## Reports

### Commission Certifies Arizona for State Filing Waiver

On April 30, 2001, the Commission certified that Arizona qualified for a state filing waiver.<sup>1</sup> Consequently, federal committees and candidates in Arizona no longer have to file copies of their federal reports with the Arizona Office of the Secretary of State. The first report affected by the waiver was the 2001 May Monthly Report. ♦

## Outreach

### Conference for Labor and Membership Organizations

On June 11-13, the Federal Election Commission will hold a conference tailored to meet the specific needs of labor and membership organizations. (Note, however,

<sup>1</sup> *The Commission has certified that the following states and territories qualify for filing waivers: Alabama, American Samoa, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, 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, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin and Wyoming. Committees that file their reports at the FEC need not file copies in these states.*

that this conference is not for trade associations, which have rules unique to them.)

The conference, which will be held in the Washington, DC area, will cover the basic provisions of the federal election law and explain the rules governing participation of labor and membership organizations and their political action committees (PACs). Workshops will also address the new electronic filing requirements, and a representative from the IRS will be available to answer election-related tax questions.

### Registration

The conference registration fee is \$375. A late registration fee of \$10 will be added effective May 26.

Conference registrations are accepted on a first-come, first-serve basis. Attendance is limited, and FEC conferences regularly sell out, so please register early. Individuals may register for the conference on line at Sylvester Management Corporation's secure Web page at

## Public Appearances

June 5-8, 2001  
International Foundation for  
Election Systems  
Mexico City, Mexico  
Vice Chairman Mason

June 7, 2001  
Aristotle  
Washington, DC  
Kate Miller

June 21, 2001  
American League of Lobbyists  
Alexandria, Virginia  
Liz Kurland

June 28-29, 2001  
Center for Alternative Dispute  
Resolution  
Washington, DC  
Allan Silberman

[www.fec.gov/pages/infosvc.htm#Conferences](http://www.fec.gov/pages/infosvc.htm#Conferences) or by calling Sylvester Management Corporation at 800/246-7277. ♦

## Commission

### FEC Semi-Finalist in “Innovations” Competition

The Federal Election Commission has been designated one of 99 semi-finalists from some 1,300 applicants in the “Innovations in American Government” award competition sponsored by the Ford Foundation and administered by Harvard University’s John F. Kennedy School of Government.

The recognition highlights the success of the FEC’s “State Filing Waiver Program.” Initiated in 1999, the program eliminates the need for the administration of paper filings of campaign reports at the state level by replacing such paper filings with an Internet-based system of electronic access to reports filed with the Commission. Since candidates for federal office are required by law to file campaign reports with the FEC, and those reports are rapidly posted on the Commission’s Web site ([www.fec.gov](http://www.fec.gov)), the Commission felt it costly and redundant for states to continue processing the federal reports.

To implement the waiver program and encourage state participation, the Commission offered to provide computer equipment, Internet capability and training for state personnel. In December 1999, 12 states applied and received certification into the program. The total number of state offices certified to date is 48. Thirty-five states have accepted the Commission’s offer to provide computer equipment.

To qualify for an Innovations award, government programs “must involve a fresh approach to a

problem of significant concern to a portion of the U.S. public.” Four criteria are used to evaluate each application: originality of the approach, effectiveness in addressing important problems, value of services to clients and the potential for replication in other jurisdictions.

Fifteen finalists will be selected in late May. The National Selection Committee will select five winning programs after a full day of presentations on October 17, 2001, in Washington, DC. Each of the winning programs will receive a \$100,000 award, and remaining finalists will receive \$20,000. There were 1,298 applicants from which the 99 semi-finalists were chosen.

Commission Chairman Danny L. McDonald said of the FEC’s recognition, “The Commission is proud of this accomplishment as well as the innovative people who conceived and implemented it. Although the entire agency undoubtedly is gratified by this honor, we enthusiastically share it with the states and territories participating in the State Filing Waiver Program. They readily offered the public easier access to government’s electronic information portals, which leads to increased public awareness and participation in the process. Every government official—local, state or federal—should be pursuing this goal.” ♦

## Index

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

- Alternative disposition of 2001-5, 5:6
- 2000-24: Preemption of state election law mandating fixed allocation ratio for administrative and voter drive expenses, 2:2
- 2000-27: Status of party as state committee, 3:6
- 2000-28: Disaffiliation of trade associations and their PACs, 2:3
- 2000-30: Nonconnected PAC’s receipt and use of securities, 5:1
- 2000-32: Reporting uncollectable loan, 1:9
- 2000-34: Name and acronym of SSF, 2:5
- 2000-35: Status of party as state committee, 1:10
- 2000-36: Disaffiliation of nonconnected PACs, 2:5
- 2000-37: Use of campaign funds to purchase and present Liberty Medals, 2:6
- 2000-38: Registration of party committee due to delegate expenses, 2:7
- 2000-39: Status of party as state committee, 2:8
- 2000-40: Donations to legal defense fund of Member of Congress, 3:7
- 2001-1: Use of political party’s office building fund to pay building renovation costs and fundraising expenses of building fund, 4:5
- 2001-2: Status of party as state committee, 4:6
- 2001-3: Use of campaign funds to purchase an automobile for campaign purposes, 5:5
- 2001-4: Use of electronic signatures for PAC contributions by payroll deduction, 6:6
- 2001-6: Status of party as state committee, 6:7

### Compliance

- Committees fined under Administrative Fines Program, 2:6, 4:7, 5:7, 6:5

(continued on page 12)

## Index

(continued from page 11)

- MUR 4594: Prohibited Foreign National Contributions, 6:8  
 MUR 4762: Prohibited union contributions and other violations, 2:9  
 MUR 5029: Contributions in the name of another made by corporation and government contractor, 2:10

### Court Cases

- \_\_\_\_\_ v. FEC  
 – Beaumont, 2:8, 3:2, 5:6, 6:9  
 – Buchanan, 1:10  
 – DNC, 2:8, 3:2  
 – Dole, 5:6  
 – Miles for Senate, 3:3  
 – Nader, 4:8, 6:9  
 – Natural Law Party of the United States of America, 1:10, 2:8, 3:2  
 FEC v. \_\_\_\_\_  
 – Friends for Fasi, 6:8  
 Other  
 – Hooker v. All Campaign Contributors, 1:10  
 – Hooker v. Sundquist, 4:8

### Regulations

- Advanced Notice of Proposed Rulemaking on definition of “political committee,” 4:1  
 Notice of Proposed Rulemaking on reporting of independent expenditures and last-minute contributions, 6:1  
 Final rules for general public political communications coordinated with candidates and party committees; independent expenditures, 1:2, 6:3

### Reports

- Amendments to Statements of Organization, 2:1  
 Arizona state filing waiver, 6:10  
 California special election, 3:5  
 Committees required to file tax returns, 3:4  
 Nevada state filing waiver, 2:2  
 Pennsylvania special election, 4:5  
 Reports due in 2001, 1:4  
 Virginia special election, 5:6

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