

# Record

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Federal Election Commission

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## Message from the Chair

The year 2003 promises to be a challenging one at the FEC. Having completed all major rulemakings to implement provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA), the Commission now looks ahead to the task of implementing the new law.

As part of that process, the FEC is prepared to provide guidance to the regulated community in a number of ways. The Commission will initiate additional rulemakings in 2003 and respond to advisory opinion requests to further clarify the requirements of the BCRA and other provisions of the campaign finance law.

The FEC will also continue its educational outreach programs, including roundtables workshops on different aspects of the new regulations, and conferences in Washington DC and throughout the country designed to give a comprehensive overview of the campaign finance law. Additionally, the Commission will update its *Campaign Guide* series and many of its brochures to address the law's requirements in the clearest possible terms.

In the weeks ahead, the Commission will approve new reporting software, forms and instructions. As always, staff in the FEC's Reports Analysis and Information divisions will be available to answer questions about the new reporting requirements and the new law. Please do not hesitate to call our 800 number (800/424-9530) for assistance.

Even as we work to implement the BCRA, the Commission recognizes that the Supreme Court is expected to rule on the constitutionality of certain provisions of the BCRA in June 2003. The Commission is prepared to respond, as necessary, to that decision.

We look forward to meeting the challenges and opportunities presented to this agency in the coming months.



## Commissioners

### Weintraub Joins Commission

Ellen L. Weintraub was appointed to the Federal Election Commission by President Bush on December 6, 2002, and sworn-in on December 9.

Before joining the Commission, Ms. Weintraub was of Counsel at Perkins Coie, LLP, in Washington, DC. Prior to her work at Perkins Coie, she was Counsel to the House Committee on Standards of Official Conduct (the Ethics Committee). In that capacity, she served as editor-in-chief of the House Ethics Manual and as a principal contributor to the Senate Ethics Manual. She has written numerous articles on ethics and public policy, including co-authoring the chapter on Congressional ethics for the 1998 ABA Lobbying Manual. Ms. Weintraub received her B.A. *cum laude* from

#### 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)

**Ellen L. Weintraub**, Chair  
**Bradley A. Smith**, Vice Chairman  
**David M. Mason**, Commissioner  
**Danny L. McDonald**,  
Commissioner

**Scott E. Thomas**, Commissioner  
**Michael E. Toner**, Commissioner

**James A. Pehrkon**, Staff Director  
**Lawrence H. Norton**, General Counsel

Published by the Information Division

**Greg J. Scott**, Assistant Staff Director

**Amy Kort**, Editor

<http://www.fec.gov>

Yale College and her J.D. from Harvard Law School. ♦

—Amy Kort

### New Chair and Vice Chairman Elected

On December 18, 2002, the Commission elected Ellen L. Weintraub as its Chair and Bradley A. Smith as Vice Chairman for 2003.

Chair Weintraub was appointed to the Commission on December 6, 2002. (See related biography, at left). Vice-Chairman Smith joined the Commission in February 2000.

Commissioner Smith was previously Professor of Law at Capital University Law School in Columbus, Ohio. Prior to joining the faculty at Capital in 1993, he had practiced with the Columbus law firm of Vorys, Sater, Seymour & Pease, served as United States Vice Consul in Guayaquil, Ecuador, worked as a consultant in the health care field and served as General Manager of the Small Business Association of Michigan. Commissioner Smith received his B.A. *cum laude* from Kalamazoo College in Kalamazoo, Michigan, and his J.D. *cum laude* from Harvard Law School. ♦

—Amy Kort

## Reports

### Draft Reporting Forms and E-Filing Formats Available for Public Comment

In order to implement the reporting provisions of the Bipartisan Campaign Reform Act, the Commission has revised its current reporting forms and electronic filing formats and, in some cases, developed new forms. The draft forms and electronic filing formats are available on the FEC's web site at [http://www.fec.gov/pages/bcra/bcra\\_reporting.htm#DraftForms](http://www.fec.gov/pages/bcra/bcra_reporting.htm#DraftForms).

The final versions of the forms and formats may differ considerably from the drafts, so filers must not use the draft forms for any actual FEC filing. Draft instructions for the forms will be posted as they become available.

#### How to Comment

The Commission invites the regulated community and interested parties to comment on the draft forms and electronic filing formats. Comments must be received by January 10, 2003:

#### • Draft Forms and Instructions

**Comments:** All comments should be addressed to the FEC Information Division. Faxed comments should be sent to (202) 219-8504. Comments sent by mail should be addressed to the FEC Information Division, 999 E Street, NW, Washington, DC 20463. E-mail comments should be sent to [forms@fec.gov](mailto:forms@fec.gov). Please label your subject line "Form Comments." To make a comment by telephone, call the FEC's toll-free line (1-800-424-9530) and ask to speak to a Public Affairs Specialist. The specialist will note your comments, and forward them for consideration, without asking for your identification.

• **Format Comments:** All comments should be addressed to Jeff Chumley in the FEC Data Systems Development Division. Faxed comments should be sent to (202)219-0613. Comments sent by mail should be addressed to Jeff Chumley, Data Systems Development Division, 999 E Street, NW, Washington, DC 20463. E-mail comments should be sent to [jchumley@fec.gov](mailto:jchumley@fec.gov). Please label your subject line "Form Comments." To make a comment by telephone, call the FEC's toll-free line, 1-800-424-9530 and ask for extension 1321. ♦

—Amy Kort

## Reports Due in 2003

This article on filing requirements for 2003 is supplemented by the reporting tables on the following pages. Please note that the Bipartisan Campaign Reform Act of 2002 (BCRA), and Commission regulations that implement the BCRA, result in a number of significant changes to committees' filing procedures, including requirements that:

- Authorized committees of House and Senate candidates file quarterly in both election and non-election years;
- National committees of political parties file monthly; and
- State, district and local party committees that participate in "federal election activity" file monthly.<sup>1</sup>

In addition to revising some committees' filing schedules, these statutory and regulatory changes have also affected the types of activity that must be reported. The Commission is in the process of creating new electronic filing software platforms and paper reporting forms to allow committees to more easily comply with these requirements. In the interim, committees should continue using the current software and reporting forms, as discussed below.

### General Information

It is the responsibility of the committee treasurer to file required reports on time. To assist treasurers, the Commission sends committees notices of upcoming reporting deadlines. Please note that filing deadlines are not extended in cases where the filing date falls on a weekend or federal holiday. In such cases, reports filed by first-class

mail, overnight delivery or courier must be received by the Commission on the business day preceding the filing date. Reports filed electronically must be received by the Commission and pass the validation test by 11:59 Eastern time on the filing date.

Under the Commission's mandatory electronic filing regulations, individuals and organizations<sup>2</sup> that receive contributions or make expenditures in excess of \$50,000 in a calendar year—or expect to do so—must file all reports and statements with the FEC electronically. Electronic filers who instead file on paper or submit an electronic report that does not pass the validation test will be considered nonfilers and may be subject to enforcement actions (including administrative fines).

Committees that file with the Secretary of the Senate<sup>3</sup> are not subject to the mandatory electronic filing rules, but are encouraged to file an unofficial electronic copy of their reports with the FEC in order to speed disclosure. 11 CFR 104.18.

The Commission's electronic filing software, FECFile 4, can be downloaded from the FEC's web site at [www.fec.gov](http://www.fec.gov) (click on the Electronic Filing icon). Filers may also use commercial or privately-developed software as long as the software meets the Commission's format specifications, which are available on the Commission's web site.

Most paper forms are available at the FEC's web site (<http://www.fec.gov/reporting.html>) and from FEC Faxline, the agency's automated fax system (202/501-3413). The 2003 Reporting Schedule is also available on the FEC's

web site (<http://www.fec.gov/pages/report.htm>), and from Faxline, the FEC's automated fax system (202/501-3413, request document 586). For more information on reporting, call the FEC at 800/424-9530 (press 1, then 3) or 202/694-1100.

### Interim Reporting Requirements

On November 21, 2002, the Commission approved a policy statement on reporting requirements during the transition period following the effective date of the BCRA. The Commission is in the process of updating its reporting forms, software and instructions to incorporate all the new regulations. In the interim, filers will continue to use existing disclosure forms and software for their January 31<sup>st</sup> Year End Report and, for monthly filers only, the February Monthly Report, which covers January 2003.

The Commission has concluded that a period of transition and adjustment with respect to reporting is needed. Currently, sample reporting forms and electronic filing formats are available on the FEC web site at [http://www.fec.gov/pages/bcra/bcra\\_reporting.htm#DraftForms](http://www.fec.gov/pages/bcra/bcra_reporting.htm#DraftForms). While committees should not use the sample reporting formats, or paper reporting forms to file their reports, the Commission invites public comment on what changes, if any, should be made to the sample formats and forms. The Commission plans to have finalized versions of the software and forms in time for the 2003 March Monthly report.

To assist filers during the transition period, the Commission has developed interim disclosure procedures that address BCRA-related transactions not contemplated by the existing reporting forms and filing software. Questions concerning these procedures may be directed to the FEC's

<sup>1</sup> "Federal election activity" is a new category of activity defined at 11 CFR 100.24. See the [September 2002 Record](#), page 1.

<sup>2</sup> The regulation covers individuals and organizations required to file reports with the Commission, including any person making an independent expenditure.

<sup>3</sup> See "Where to File" on page 5.

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## Reports

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Information Division, Reports Analysis Division or Electronic Filing Office, as appropriate.

The Commission intends to exercise its discretion by not pursuing the committees and other persons and entities for possible violations of the reporting statutes and regulations covered by the instructions set out in the policy statement, so long as the filers fully adhere to those instructions and timely file the reports. The policy statement was published in the December 2002 *Record*, page 1, and is available on the FEC web site at [www.fec.gov/pages/bcra/interim\\_reporting\\_policy.htm](http://www.fec.gov/pages/bcra/interim_reporting_policy.htm).

### Year-End Reports Covering 2002 Activity

All committees must file a 2002 year-end report due January 31, 2003. The coverage and reporting dates are found on page 5.

### Reports Covering 2003 Activity

To find out which reports your committee must file in 2003, check the Guide to 2003 Reporting at right. Then check the tables on page 5 for reporting dates. Please note that committees active in special elections in 2003 may have to file additional special election reports, as explained on page 6.

### Authorized Committees of Candidates

*House and Senate Candidates.* All campaigns that raise or spend more than \$5,000 (and thus trigger registration and reporting requirements) must file quarterly reports in 2003. Under the BCRA, principal campaign committees may no longer file on a semiannual basis in non-election years. 2 U.S.C. §434(a)(2)(B).

Committees that wish to terminate must continue filing reports until notified in writing that their

## Guide to 2003 Reporting

| Type of Filer   | Reports       |             |                 |                   |
|---|---------------|-------------|-----------------|-------------------|
|   | 2002 Year-End | Semi-annual | Quarterly       | Monthly           |
| <b>House and Senate Candidate Committees</b> <sup>1</sup> | ✓             |             | ✓               |                   |
| <b>Presidential Candidate Committees</b>                  | ✓             |             | ✓               | or <sup>2</sup> ✓ |
| <b>National Party Committees</b>                          | ✓             |             |                 | ✓                 |
| <b>State, Local and District Party Committees</b>         | ✓             | ✓           | or <sup>3</sup> | ✓                 |
| <b>Political Action Committees</b>                        | ✓             | ✓           | or <sup>4</sup> | ✓                 |

<sup>1</sup> This category includes committees of candidates retiring debts from a previous election or running for a future election.

<sup>2</sup> Presidential committees may file on either a quarterly or a monthly basis. Those wishing to change their filing frequency should notify the Commission in writing.

<sup>3</sup> State, district and local party committees that engage in "federal election activity" must file on a monthly basis. 11 CFR 300.36(c)(1). Other state, district and local party committees may file on a semiannual basis.

<sup>4</sup> Political action committees (PACs) may file on either a semiannual or a monthly basis. Committees wishing to change their filing frequency must notify the Commission in writing when filing a report under the committee's current schedule. Electronic filers must file this request electronically. A committee may change its filing frequency only once per calendar year. 11 CFR 104.5(c).

termination report has been accepted by the Commission.

*Presidential Candidates.* All committees authorized by Presidential candidates must file on either a monthly or a quarterly schedule in 2003. A Presidential committee wishing to change its filing schedule should notify the Commission in writing. 11 CFR 104.5(b)(2).

### State, District and Local Party Committees

State, district and local party committees that engage in "federal

election activity" must file on a monthly schedule. 11 CFR 300.36(c)(1). Committees that do not engage in "federal election activity" may file on a semiannual basis in 2003.

### National Party Committees

Under the BCRA, national committees of political parties must file on a monthly schedule in all years and may no longer choose to change their filing schedule in non-election years. 2 U.S.C. §434(a)(4)(B).

## 2002 Year-End Report

Note: All committees file this report.

| Report   | Period Covered                               | Filing Date <sup>1</sup> |
|----------|--|--------------------------|
| Year-End | Closing date of last report through 12/31/02 | January 31, 2003         |

## 2003 Monthly Reports

Note: All national party committees and any state, district or local party committee that engages in "federal election activity" must file monthly reports.

| Report    | Period Covered | Filing Date <sup>1</sup> |
|-----------|----------------|--------------------------|
| February  | January 1-31   | February 20              |
| March     | February 1-28  | March 20                 |
| April     | March 1-31     | April 20*                |
| May       | April 1-30     | May 20                   |
| June      | May 1-31       | June 20                  |
| July      | June 1-30      | July 20*                 |
| August    | July 1-31      | August 20                |
| September | August 1-31    | September 20*            |
| October   | September 1-30 | October 20               |
| November  | October 1-31   | November 20              |
| December  | November 1-30  | December 20*             |
| Year-End  | December 1-31  | January 31, 2004*        |

## 2003 Quarterly Reports

Note: All principal campaign committees must now file on a quarterly schedule in non-election years as well as in election years. Presidential committees may choose to file quarterly, rather than monthly, in non-election years.

| Report      | Close of Books | Filing Date <sup>1</sup> |
|-------------|----------------|--------------------------|
| 1st Quarter | March 31       | April 15                 |
| 2nd Quarter | June 30        | July 15                  |
| 3rd Quarter | September 30   | October 15               |
| Year-End    | December 31    | January 31, 2004*        |

## 2003 Semiannual Reports

Note: PACs that file quarterly in election years file on a semiannual schedule in non-election years.

| Report   | Close of Books | Filing Date <sup>1</sup> |
|----------|----------------|--------------------------|
| Mid-Year | June 30        | July 31                  |
| Year-End | December 31    | January 31, 2004*        |

\* Note that this filing date falls on a weekend. Filing dates are not extended for weekends or federal holidays.

<sup>1</sup> Reports sent by registered or certified mail must be postmarked by the filing date. Reports sent by other means—including first class mail—must be received by the filing date. 11 CFR 104.5(e).

## Political Action Committees

PACs (separate segregated funds and nonconnected committees) that filed on a quarterly basis during 2002 file on a semiannual basis in 2003. Monthly filers continue on the monthly schedule. PACs may change their filing schedule, but must first notify the Commission in writing. Electronic filers must file this request electronically. A committee may change its filing frequency only once a year. 11 CFR 104.5(c).

### Where to File

Committee treasurers must file FEC reports with the appropriate federal office. State filing requirements also apply to reports filed by the principal campaign committees of candidates seeking office in Guam, Montana and Puerto Rico and to reports filed by PACs and party committees who support these candidates. 2 U.S.C. §439(a)(2)(B).

*House Candidate Committees.* Principal campaign committees of House candidates file with the FEC. 11 CFR 105.1.

*Senate Candidate Committees.* Principal campaign committees of Senate candidates file with the Secretary of the Senate. 11 CFR 105.2.

*Presidential Committees.* Principal campaign committees of Presidential candidates file with the FEC. 11 CFR 105.3.

*Candidate Committees with More Than One Authorized Committee.* If a campaign includes more than one authorized committee, the principal campaign committee files, with its own report, the reports prepared by the other authorized committees as well as a consolidated report (FEC Form 3Z). 11 CFR 104.3(f).

*PACs and Party Committees.* Generally, PACs and party committees file with the FEC. 11 CFR 105.4. However, committees supporting only Senate candidates, and the national Democratic and Republican Senatorial committees,

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## Reports

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file with the Secretary of the Senate. 11 CFR 105.

### Waiver of State Filing

Under the Commission's State Filing Waiver program, qualified states are relieved of the requirement to make paper copies of FEC reports available to the public. As a result, political committees no longer have to file copies of their federal reports at the state level in the states that have received the waiver.<sup>4</sup> Committees in states not certified for the waiver must continue to file copies of their reports with the appropriate state election office. The addresses for the federal offices (FEC and Secretary of the Senate) appear in the instructions for the Summary Page of FEC Forms 3 and 3X. A list of state filing offices is available from the Commission.

### Late Filing

The Federal Election Campaign Act does not permit the Commission to grant extensions of filing deadlines under any circumstances.

<sup>4</sup> The Commission has certified that the following states and territories qualify for filing waivers: Alabama, Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virgin Islands, Virginia, Washington, West Virginia, Wisconsin and Wyoming. Committees that file their reports at the FEC need not file copies in these states. Guam, Montana and Puerto Rico are not currently in the State Filing Waiver Program.

Filing late reports can result in enforcement action by the Commission.

The agency pursues compliance actions against late-filers and nonfilers under the Administrative Fine program and on a case-by-case basis. For more information on the Administrative Fine program, visit the FEC web site at [www.fec.gov](http://www.fec.gov) and click on the Administrative Fine icon.

### Independent Expenditures

The BCRA requires political committees and other persons who make independent expenditures at any time during the calendar year—up to and including the 20th day before an election—to disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. This reporting requirement is in addition to the requirement to file 24-hour notices of independent expenditures each time that disbursements for independent expenditures aggregate at or above \$1,000 during the last 20 days—up to 24 hours—before an election. 2 U.S.C. §§434(b),(d) and (g). Political committees must report independent expenditures that do not trigger the 48- or 24-hour reporting thresholds on their regularly-scheduled disclosure reports. Other persons report these expenditures once they exceed \$250. 11 CFR 104.4(b)(1) and 109.10(b).

All individuals, persons and committees, including Senate committees, must file 24- and 48-hour notices of independent expenditures with the Commission. 11 CFR 104.4, 109.10, 105.1 and 105.2.

### Committees Active in Special Elections

Committees authorized by candidates running in any 2003 special election must file pre- and post-election reports in addition to regularly-scheduled reports. 11 CFR 104.5(h). They are also required to comply with the 48-hour notice

requirement for contributions of \$1,000 or more (including loans) received shortly before an election. See 11 CFR 104.5(f).

PACs and party committees supporting candidates running in special elections may also have to file pre- and post-election reports—unless they file on a monthly basis. 11 CFR 104.5(c)(3) and 104.5(h). All PACs are subject to 24-hour reporting of independent expenditures made shortly before an election. See 11 CFR 104.4(b) and (c) and 104.5(g).

Additionally, individuals and other persons who make “electioneering communications”<sup>5</sup> that aggregate in excess of \$10,000 must file disclosure statements with the Commission within 24 hours of distribution to the public. See related article, page 14.

When timing permits, the *Record* will alert committees to special election reporting dates. ♦

—Amy Kort

## Regulations

### Contribution Limits Increased

On January 1, 2003, new regulations took effect that:

- Raise the individual contribution limits to candidates, state, district and local party committees and national party committees;
- Change the \$25,000 annual contribution limit for individuals to a \$95,000 biennial limit;
- Increase the limit on contributions from national party committees to Senate candidates; and
- Require certain contribution limits to be indexed for inflation.

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<sup>5</sup> “Electioneering communications” are a new category of communication, defined at 11 CFR 100.29. See the November 2002 Record, page 3.

## Contribution Limits

| Donors   | Recipients                          |                                 |  |                                       | Special Limits   |
|--|-------------------------------------|---------------------------------|--|---------------------------------------|--|
|  | Candidate Committee                 | PAC <sup>1</sup>                | State, District and Local Party Committee <sup>2</sup> | National Party Committee <sup>3</sup> |  |
| <b>Individual</b>  | \$2,000* per election <sup>4</sup>  | \$5,000 per year                | \$10,000 per year combined limit                       | \$25,000* per year                    | Biennial limit of \$95,000* (\$37,500 to all candidates and \$57,500 <sup>5</sup> to all PACs and parties) |
| <b>State, District and Local Party Committee<sup>2</sup></b> | \$5,000 per election combined limit | \$5,000 per year combined limit | Unlimited transfers to other party committees          |                                       |  |
| <b>National Party Committee<sup>3</sup></b>                  | \$5,000 per election                | \$5,000 per year                | Unlimited transfers to other party committees          |                                       | \$35,000* to Senate candidate per campaign <sup>6</sup>  |
| <b>PAC Multicandidate<sup>7</sup></b>                        | \$5,000 per election                | \$5,000 per year                | \$5,000 per year combined limit                        | \$15,000 per year                     |  |
| <b>PAC Not Multicandidate<sup>7</sup></b>                    | \$2,000* per election               | \$5,000 per year                | \$10,000 per year combined limit                       | \$25,000* per year                    |  |

\*These limits will be indexed for inflation.

<sup>1</sup> These limits apply to both separate segregated funds (SSFs) and political action committees (PACs). Affiliated committees share the same set of limits on contributions made and received.

<sup>2</sup> A state party committee shares its limits with local and district party committees in that state unless a local or district committee's independence can be demonstrated. These limits apply to multicandidate committees only.

<sup>3</sup> A party's national committee, Senate campaign committee and House campaign committee are each considered national party committees, and each have separate limits, except with respect to Senate candidates—see Special Limits column.

<sup>4</sup> Each of the following is considered a separate election with a separate limit: primary election, caucus or convention with the authority to nominate, general election, runoff election and special election.

<sup>5</sup> No more than \$37,500 of this amount may be contributed to state and local parties and PACs.

<sup>6</sup> This limit is shared by the national committee and the Senate campaign committee.

<sup>7</sup> A multicandidate committee is a political committee that has been registered for at least six months, has received contributions from more than 50 contributors and—with the exception of a state party committee—has made contributions to at least five federal candidates.

## Regulations

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The chart on page 7 details the new contribution limits.

For a summary of these regulations—which also affect recordkeeping requirements, prohibit certain contributions and donations by minors and strengthen the prohibitions on contributions and donations by foreign nationals—see the December 2002 *Record*, page 8. The final rules and their Explanation and Justification were published in the November 19, 2002, *Federal Register* (67 FR 69928) and are available on the FEC web site at [www.fec.gov/pages/bcra/rulemakings/part\\_110\\_rules.htm](http://www.fec.gov/pages/bcra/rulemakings/part_110_rules.htm). ♦

—Amy Kort

### Final Rules on Disclaimers, Fraudulent Solicitation, Civil Penalties and Personal Use of Campaign Funds

On November 25, 2002, the Commission approved final rules to implement provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA), which:

- Specify new requirements for disclaimers accompanying radio, television, print and other campaign communications;
- Make changes regarding the personal use of campaign funds by candidates and federal officeholders;
- Allow non-incumbent federal candidates to pay themselves salaries from campaign funds, as described below;
- Expand the scope of the statutory prohibition on fraudulent misrepresentation; and
- Increase the civil penalties for violating the prohibition on contributions made in the name of another.

The final rules and their Explanation and Justification were published in the December 13, 2002, *Federal*

*Register* (67 FR 76962) and are available on the FEC web site at [www.fec.gov/pages/bcra/rulemakings/other\\_provisions.htm](http://www.fec.gov/pages/bcra/rulemakings/other_provisions.htm).

#### Disclaimers

The new regulations replace pre-BCRA 11 CFR 110.11 with a new section of the same number that implements statutory changes to the disclaimer requirements. The disclaimer requirements in this new section apply to public communications, including “communications through any broadcast, cable or satellite transmission, newspaper, magazine, outdoor advertising facility, mailing or other type of general public political advertising.” See 11 CFR 100.26. These requirements also apply to political committees’ web sites, to unsolicited e-mail of more than 500 substantially-similar communications and to any “electioneering communication.” All disclaimers must be “clear and conspicuous” regardless of the medium in which the communication is transmitted. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if its placement is easily overlooked. 11 CFR 110.11(c)(1).

*Political committees.* Any communication made by a political committee—including communications that do not expressly advocate the election or defeat of a clearly-identified federal candidate or solicit a contribution—must display a disclaimer. 11 CFR 110.11(a)(1).

The disclaimer for a communication paid for and authorized by a candidate or candidate’s committee must state that the communication is paid for by the candidate’s committee. The disclaimer for a communication authorized by the candidate or candidate’s committee, but paid for by any other person, must state both who paid for the communication and that it was authorized by that candidate.

Communications not authorized by a candidate or his/her campaign

committee, including any solicitation, must disclose the permanent street address, telephone number or web site address of the person who paid for the communication, and also state that the communication was not authorized by any candidate. 11 CFR 110.11(b).

*Specific requirements for radio and television communications.* For radio and television communications authorized by a candidate, the candidate must deliver an audio statement identifying himself or herself, and stating that he or she has approved the communication. For a television communication, this disclaimer must be conveyed by either:

- A full-screen view of the candidate making the statement; or
- A “clearly identifiable photographic or similar image of the candidate” that appears during the candidate’s voice-over statement. 11 CFR 110.11(c)(3)(ii)(A) and (B).

Additionally, television communications must contain a “clearly readable” written statement that appears at the end of the communication for a period of at least four seconds with a reasonable degree of color contrast between the background and the disclaimer statement. The written statement must occupy at least four percent of the vertical picture height. 11 CFR 110.11(c)(3)(iii).

For a radio or television communication that is not authorized by a candidate, the name of the political committee or other person who is responsible for the communication and, if applicable, the name of the sponsoring committee’s connected organization is required in the disclaimer.<sup>1</sup>

<sup>1</sup> In addition, communications transmitted through telephone banks, as defined by 11 CFR 100.28, must carry this same disclaimer statement.



In the case of a televised ad, the disclaimer must also include a statement that is conveyed by a full screen view of a representative of the political committee or other person making the statement, or a voice-over by the representative. In addition, the disclaimer must appear in writing at the end of the communication in a “clearly readable” manner with a reasonable degree of color contrast to the background, and it must be shown for a period of four seconds. 11 CFR 110.11(c)(4).

The regulations include safe harbor guidelines for television communication disclaimers:

- A still picture of the candidate shall be considered “clearly identifiable” if it occupies at least 80 percent of the vertical screen height; and
- Disclaimers that are printed in black text on a white background, as well as disclaimers that have at least the same degree of contrast with the background color as the degree of contrast between the background color and the color of the largest text used in the communication, will be considered “clearly readable.” 11 CFR 110.11(c)(3)(iii)(C).

*Specific requirements for printed communications.* Printed materials must contain a printed box that is set apart from the contents in the communication. The disclaimer print in this box must be of sufficient type size to be “clearly readable” by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. 11 CFR 110.11(c)(2)(ii) and (iii).

The regulations contain a safe harbor that establishes a fixed, twelve-point type size as a sufficient size for disclaimer text in newspapers, magazines, flyers, signs and other printed communications that are no larger than the common

poster size of 24 inches by 36 inches. 11 CFR 110.11(c)(2)(i). Disclaimers for larger communications will be judged on a case-by-case basis.

The regulations additionally provide two safe harbor examples that would comply with the color-contrast requirement:

- The disclaimer is printed in black text on a white background; or
- The degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication. 11 CFR 110.11(c)(2)(iii).<sup>2</sup>

### Personal Use of Campaign Funds

The new rules retain the existing prohibition against the personal use of campaign funds as well as the so-called “irrespective test.” Candidates may not, therefore, use funds in a campaign account to “fulfill a commitment, obligation, or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.” 11 CFR 113.1(g). Personal use of campaign funds includes, but is not limited to, payment of the following: household items or supplies, clothing (except for clothing items of *de minimis* value), tuition payments, mortgage, rent or utility payments, vacations and health or country club dues. 11 CFR 113.1(g)(1)(i). The regulations have, however, been amended as follows.

*Candidate salaries.* The most notable change permits a candidate for federal office to receive a salary from his or her principal campaign

committee.<sup>3</sup> According to the regulations, a salary may be received under the following conditions:

- The salary must be paid by the principal campaign committee.
- The salary must not exceed the lesser of either the minimum annual salary for the federal office sought or what the candidate received as earned income in the previous year.<sup>4</sup>
- Individuals who elect to receive a salary from their campaign committees must provide income tax records and additional proof of earnings from relevant years upon request from the Commission.
- Payments of salary from the committee must be made on a pro-rata basis.<sup>5</sup>
- Incumbent federal officeholders may not receive salary payment from campaign funds.
- The first payment of salary shall be made no sooner than the filing deadline for access to the primary election ballot in the state in which the candidate is running for office.<sup>6</sup>

*Members of a candidate’s family.* The new regulations amend the definition of a candidate’s family at

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<sup>3</sup> This amendment to the regulations supersedes Advisory Opinion 1999-1.

<sup>4</sup> Any salary paid by the campaign committee will be equal to the lesser of these two amounts. Furthermore, additional salary or wages received from other sources will count toward the limit that may be received by the candidate.

<sup>5</sup> This provision will prevent a candidate from receiving a whole year’s salary if he or she is not a candidate for an entire twelve-month period.

<sup>6</sup> The filing deadline for the primary election for federal candidates is determined by state law. In those states that do not have a primary election, candidates may not receive payment until after January 1<sup>st</sup> of each even-numbered year.

<sup>2</sup> Please note these examples do not constitute the only ways to satisfy the color contrast requirement.

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11 CFR 113.1(g)(7). The previous regulations included as a member of a candidate's family, "a person who has a committed relationship with a candidate, such as sharing a household and having mutual responsibility for each other's welfare or living expenses." 11 CFR 113.1(g)(7)(iv). This section has been removed from the new regulations and replaced with a provision that includes any person who shares a residence with the candidate.

The Commission recognized that any person living with the candidate may pay a share of his or her living expenses without making a contribution to the campaign. The Commission further noted that the personal funds of a candidate would include his or her share of a joint account held with the person(s) with whom a residence is shared. However, gifts from the campaign to family members or anyone residing with the candidate are prohibited because they may be used support personal expenses of the candidate. 11 CFR 113.1(g)(4).

*Recordkeeping of personal uses.* Recordkeeping requirements for expenses that may be partly personal in nature have been added to the regulations. Such expenses may include, but are not limited to, the costs of vehicles, travel, meals and legal services.<sup>7</sup> The new provision requires that logs of these expenses be maintained to help the Commission determine on a case-by-case basis what portion was for personal use rather than for campaign related activity or officeholder duties.

*"Any other lawful purpose."* The BCRA deleted the phrase "for any other lawful purpose" from the list of permitted uses of campaign funds at 2 U.S.C. §439a. Therefore, the Commission has removed the

section referring to "any other lawful purpose" regarding the use of campaign funds. Thus, in addition to paying expenses in connection with the campaign for federal office, campaign funds may be used only for non-campaign purposes included in an exhaustive list found at 11 CFR 113.2 (a), (b), and (c).

*Contributions to other candidates.* In a previous rulemaking, the Commission amended the regulations regarding contribution limits (see the December 2002 *Record*, page 8). The Commission has noted, however, that the contribution limits for authorized candidate committees has not changed as a result of the BCRA. Authorized committees may make contributions of \$1,000 or less to authorized committees of other federal candidates. They may also make contributions to state and local candidates in furtherance of the federal candidate's election. See 2 U.S.C. §439a(a)(1).

*Payment of campaign and officeholder expenses from campaign accounts.* Congress has deleted the phrase "in excess of any amount to defray" campaign expenses from 2 U.S.C. §439a. Therefore, the Commission has revised 11 CFR 113.1 and 113.2 so that officeholders may spend money from campaign accounts to pay for campaign and non-campaign expenses incurred as a consequence of holding federal office. Such expenses, according to the Commission, may be paid in any order.

### Prohibitions on Fraudulent Solicitations

The final rule prohibits a person from fraudulently misrepresenting that the person is speaking, writing or otherwise acting for, or on behalf of, a federal candidate or political party, or an employee or agent of either, for the purpose of soliciting contributions or donations. Persons are also banned from willfully and knowingly participating in, or conspiring to participate in, any

scheme to do so. 11 CFR 110.6(b)(1) and (2). The regulation implementing this new provision, together with the pre-BCRA fraudulent misrepresentation regulation formerly found at 11 CFR 110.9(b), is combined in new 11 CFR 110.16.

### Civil Penalties

The BCRA amends the Federal Election Campaign Act (the Act) to impose greater penalties for knowing and willful violations of the Act regarding contributions made in the name of another.<sup>8</sup> The Commission has amended the regulations to impose a civil penalty for such violations that is not less than 300 percent of the amount of any contribution, but is no more than \$50,000 or 1,000 percent of the amount of the contribution involved. 11 CFR 111.24.

—Kathy Carothers and  
Michelle Ryan

### Final Rules on Coordinated and Independent Expenditures

On December 5, 2002, the Commission approved final rules to implement provisions of the Bipartisan Campaign Reform Act (BCRA) that:

- Define coordination between a candidate or a political party and a person making a communication; and
- Set forth requirements for political party committees regarding the permitted timing of independent and coordinated expenditures, and transfers and assignments.

<sup>8</sup> The Act's civil penalties are set forth in two tiers of monetary penalties at 2 U.S.C. §§437g(a)(5), (6), and (12). The first tier addresses violations of the Act, whereas the second tier speaks to "knowing and willful" violations of the Act. The Commission addressed changes to the second tier regarding contributions in the name of another.

<sup>7</sup> See 11 CFR 113.1(g)(1)(ii)(A), (B), (C), and (D) and 11 CFR 113.2.

Note that new reporting requirements for certain independent expenditures are included in the final rules on BCRA reporting, approved on December 12, 2002.<sup>1</sup>

The final rules and their Explanation and Justification are available on the FEC web site at [www.fec.gov/pages/bcra/rulemakings/coordinated\\_independent\\_expenditures.htm](http://www.fec.gov/pages/bcra/rulemakings/coordinated_independent_expenditures.htm). These rules will take effect after the 30-legislative day Congressional review period.

### Coordination

The BCRA repealed Commission regulations defining a “coordinated general public political communication” (old 11 CFR 100.23), and instructed the Commission to promulgate new rules on “coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees.” Pub. L. 107-155, sec. 214(c) (March 27, 2002).

New 11 CFR 109.20(a) implements 2 U.S.C. §§441a(a)(7)(B)(i) and (ii) by defining “coordinated” to mean “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political party committee or its agents.”<sup>2</sup>

The rules in section 109.21 define a “coordinated communication,” which is treated as an in-kind contribution to the candidate, authorized committee or party

committee the communication is coordinated with, and must be reported as such. The new regulations provide for a three-part test to determine whether a communication is coordinated. Satisfaction of all of the three specific tests justifies the conclusion that payments for the coordinated communication are for the purpose of influencing a federal election. The three parts of the test consider:

- The source of payment;
- A “content standard” regarding the subject matter of the communication; and
- A “conduct standard” regarding the interactions between the person paying for the communication and the candidate or political party committee.

11 CFR 109.21(a).

*Source of Payment.* A coordinated communication is paid for by someone other than a candidate, an authorized committee or a political party committee. However, a person’s status as a candidate would not exempt him or her from the coordination regulations with respect to payments he or she makes on behalf of a different candidate.

11 CFR 109.21(a)(1).

*Content Standard.* The purpose of the four content standards is to determine whether the subject matter of a communication is reasonably related to an election. A communication that meets any of these four standards meets the content requirement:

1. A communication that is an “electioneering communication”;
2. A public communication that republishes, disseminates or distributes candidate campaign materials, unless the activity meets one of the exceptions at 11 CFR 109.23(b) discussed in the conduct standards below;

### 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 at [www.fec.gov/pages/pacronym.htm](http://www.fec.gov/pages/pacronym.htm).

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.

<sup>1</sup> This rulemaking is summarized on page 14. The full text of the rulemaking is available on the FEC’s web site at [http://www.fec.gov/pages/bcra/rulemakings/consolidated\\_reporting.htm](http://www.fec.gov/pages/bcra/rulemakings/consolidated_reporting.htm).

<sup>2</sup> “Agent” is defined at 11 CFR 109.3, for the purposes of 11 CFR part 109 only.

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3. A public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; or
  4. A public communication that:
    - Refers to a clearly-identified federal candidate or political party;
    - Is publicly distributed or disseminated 120 days or fewer before a primary or general election or a convention or caucus with the authority to nominate a candidate; and
    - Is directed to voters in the jurisdiction of the clearly identified candidate or to voters in a jurisdiction where one or more candidates of the political party appear on the ballot.
- 11 CFR 109.21(c)(1)-(4).

*Conduct Standard.* Under the final rules, if one of the conduct standards is met, and the first two parts of the test (the content standards and the source of payment) are also met, then the communication is coordinated. 11 CFR 109.21(d). The conduct standards are as follows:

### Need FEC Material in a Hurry?

Use FEC Faxline to obtain FEC material fast. It operates 24 hours a day, 7 days a week. Hundreds of FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

Use a touch tone phone to dial **202/501-3413** and follow the instructions. To order a complete menu of Faxline documents, enter document number 411 at the prompt.

1. *Request or Suggestion.* This test has two prongs, and satisfying either satisfies the test. The first prong is satisfied if the person creating, producing or distributing the communication does so at the request or suggestion of a candidate, authorized committee, political party committee or agent of any of these. The second prong of the “request or suggestion” conduct standard is satisfied if a person paying for the communication suggests the creation, production or distribution of the communication to the candidate, authorized committee, political party committee or agent of any of the above, and the candidate or political party committee assents to the suggestion. 11 CFR 109.21(d)(1).
2. *Material Involvement.* This test is satisfied if a candidate, candidate committee, political party committee or an agent of any of these was “materially involved in decisions” regarding any of the following aspects of a public communication paid for by someone else:
  - Content of the communication;
  - Intended audience;
  - Means or mode of the communication;
  - Specific media outlet used;
  - Timing or frequency of the communication; or
  - Size or prominence of a printed communication or duration of a communication by means of broadcast, cable or satellite. 11 CFR 109.21(d)(2).
3. *Substantial Discussion.* A communication meets this standard if it is created, produced or distributed after one or more substantial discussions between the person paying for the communication, or the person’s agents, and the candidate clearly identified in the communication or that candidate’s committee, that candidate’s opponent or opponent’s committee, a political party committee, or an agent of the above. A discussion would be “substantial” if information about the plans, projects, activities or needs of the candidate or political party committee that is material to the creation, production or distribution of the communication is conveyed to the person paying for the communication. 11 CFR 109.21(d)(3).
4. *Employment of Common Vendor.* This conduct standard explains what a common vendor is and provides that the use of a common vendor in the creation, production or distribution of a communication satisfies the conduct standard if:
  - The person paying for the communication contracts with, or employs, a “commercial vendor” to create, produce or distribute the communication.<sup>3</sup>
  - The commercial vendor, including any officer, owner or employee of the vendor, has a previous or current relationship with the candidate or political party committee that puts the commercial vendor in a position to acquire information about the campaign plans, projects, activities or needs of the candidate or political party committee. This previous relationship is defined in terms of nine specific services related to campaigning and campaign communications. Note that these services would have to have been rendered during the election cycle in which the communication is first publicly distributed.
  - The commercial vendor uses or conveys information about the campaign plans, projects, activities or needs of the candidate or political party committee, or

<sup>3</sup> The term “commercial vendor” is defined at 11 CFR 116.1(c).

information previously used by the commercial vendor in serving the candidate or political party committee, to the person paying for the communication, and that information is material to the creation, production or distribution of the communication. 11 CFR 109.21(d)(4).

5. *Former Employee/Independent Contractor.* This standard applies to communications paid for by a person who has previously been an employee or an independent contractor of a candidate's campaign committee or a political party committee during the election cycle. The standard requires that the former employee use or convey material information about the plans, projects, activities or needs of the candidate or political party committee, or material information used by the former employee in serving the candidate or political party committee, to the person paying for the communication, and the information is material to the creation, production or distribution of the communication. 11 CFR 109.21(d)(5).<sup>4</sup>

6. *Dissemination, distribution or republication of campaign material.* A communication that republishes, disseminates or

distributes campaign material only satisfies the first three conduct standards on the basis of the candidate's conduct—or that of his or her committee or agents—that occurs after the original preparation of the campaign materials that are disseminated, distributed or republished. 11 CFR 109.21(d)(6).<sup>5</sup>

*Agreement or formal collaboration.* Neither agreement (defined as a mutual understanding on any part of the material aspect of the communication or its dissemination) nor formal collaboration (defined as planned or systematically-organized work) is necessary for a communication to be a coordinated communication. 11 CFR 109.21(e).

*Safe harbor for responses to inquires about legislative or policy issues.* A candidate's or political party committee's response to an inquiry about that candidate's or party's positions on legislative or policy issues, which does not include discussion of campaign, plans, projects, activities or needs, will not satisfy any of the conduct standards. 11 CFR 109.21(f)

*Party Coordinated Communications.* Although Congress did not specifically direct the Commission to promulgate a new regulation on coordinated communications paid for by political party committees, the Commission is promulgating

final rules to set forth the circumstances under which communications paid for by a party committee would be considered to be coordinated with a candidate, a candidate's authorized committee or their agents. These rules would generally apply the same coordination standards that would be applied to communications paid for by other persons. 11 CFR 109.37.

### **Coordinated and Independent Expenditures by Party Committees**

National, state and subordinate committees of political parties may make expenditures up to prescribed limits in connection with the general election campaigns of federal candidates without counting such expenditures against the committees' contribution limits. 2 U.S.C. §441a(d). These expenditures are commonly referred to as "coordinated party expenditures," and the limits for these expenditures can be found in new section 11 CFR 109.32.<sup>6</sup>

*When coordinated party expenditures can be made.* Political party committees can make coordinated party expenditures in connection with the general election campaign before or after the party's candidate has been nominated. All pre-nomination coordinated expenditures continue to be subject to the coordinated party expenditure limitations, whether or not the candidate on whose behalf they are made receives the party's nomination. 11 CFR 109.34.

*Restrictions on making both independent expenditures and coordinated expenditures.* In the BCRA, Congress prohibits political party committees, under certain

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<sup>4</sup> Under the final rules, a candidate or political party committee would not be held responsible for receiving or accepting an in-kind contribution that resulted only from conduct described in the fourth and fifth conduct standards. 11 CFR 109.21(d)(4) and (d)(5). However, the person paying for a communication that is coordinated because of conduct described in the fourth or fifth conduct standards would still be responsible for making an in-kind contribution for purposes of the contribution limitations, prohibitions and reporting requirements of the Act. 11 CFR 109.21(b)(2).

<sup>5</sup> Please note that the financing of the distribution or republication of campaign materials, while considered an in-kind contribution by the person making the expenditure, is not considered an expenditure by the candidate's authorized committee unless the dissemination, distribution or republication of campaign materials is coordinated. Additionally, republications of campaign materials coordinated with party committees are in-kind contributions to such party committees, and are reportable as such. 11 CFR 109.23(a).

<sup>6</sup> These limits were formerly located at 11 CFR 110.7.

## Regulations

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conditions, from making both coordinated party expenditures and independent expenditures with respect to the same candidate, and from making transfers and assignments to other political party committees. 2 U.S.C. §441a(d)(4). Congress plainly intended to combine certain political party committees into a collective entity or entities for purposes of these restrictions. 2 U.S.C. §441a(d)(4)(B).

For the purposes of these restrictions only, all political parties established and maintained by a national political party (including all Congressional campaign committees), and all political committees established and maintained by a state political party (including any subordinate committee of a state committee), shall be considered to be a single political committee. 11 CFR 109.35(a).

Under the BCRA and the new regulations, a political party committee is prohibited from making any post-nomination coordinated party expenditure in connection with the general election campaign of a candidate at any time after that political party committee makes any post-nomination independent expenditure with respect to the candidate. 11 CFR 109.35(b)(1). Similarly, a political party committee is prohibited from making any post-nomination independent expenditure with respect to a candidate at any time after that political party committee makes a post-nomination coordinated expenditure in connection with the general election campaign of the candidate. 11 CFR 109.35(b)(2).

**Prohibited Transfers.** Congress provided in the BCRA that a “committee of a political party” that makes coordinated party expenditures with respect to a candidate must not, during an election cycle, transfer any funds to, assign author-

ity to make coordinated party expenditures under 2 U.S.C. §441a(d) to, or receive a transfer of funds from, a “committee of the political party” that has made or intends to make an independent expenditure with respect to the candidate. 2 U.S.C. §441a(d)(4)(C). The final rules generally track this statutory language. 11 CFR 109.35(c).

**National party independent expenditures on behalf of Presidential candidates.** Prior to the enactment of the BCRA, the Commission’s rules prohibited a national committee of a political party from making independent expenditures in connection with the general election campaign of a Presidential candidate. See former 11 CFR 110.7(a)(5). However, section 441a(d)(4), added by the BCRA, precludes such a broad prohibition. As a result, the Commission has added a new section that specifically prohibits a national committee of a political party from making independent expenditures with respect to a Presidential candidate if it serves as the principal campaign committee or authorized committee of its Presidential candidate under 11 CFR 9002.1(c). 11 CFR 109.36. ♦

—Jim Wilson

## Final Rules on BCRA Reporting

On December 12, 2002, the Commission approved final rules on reporting requirements related to the Bipartisan Campaign Reform Act of 2002 (BCRA), including:

- Reporting of independent expenditures;
- Reporting of electioneering communications;
- Quarterly reporting by the principal campaign committees of House and Senate candidates;
- Monthly reporting by national committees of political parties; and

- Reporting funds for state and local party office buildings.

The final rules and their Explanation and Justification are available on the FEC web site at [http://www.fec.gov/pages/bcra/rulemakings/consolidated\\_reporting.htm](http://www.fec.gov/pages/bcra/rulemakings/consolidated_reporting.htm). The new rules will take effect after the 30-legislative day Congressional review period.

Please note that the Commission has also recently issued a policy statement explaining that during the transition period following the BCRA’s effective date, the Commission does not intend to pursue reporting violations so long as individuals and committees comply with the Interim Reporting Procedures set out in the policy statement. The policy statement was published in the November 29, 2002, *Federal Register* (67 FR 71057) and in the [December 2002 Record](#), page 1. The Commission is also currently developing new reporting forms, instructions and software, which will be available for reports due March 20 and April 15, 2003. Committees should continue to use the old forms and software until that time, as detailed in the Interim Reporting Procedures. Samples of the proposed new forms and formats can be viewed on the Commission’s web site at [http://www.fec.gov/pages/bcra/bcra\\_reporting.htm#DraftForms](http://www.fec.gov/pages/bcra/bcra_reporting.htm#DraftForms). Committees should not use the sample forms to file their reports.

## Independent Expenditures

The BCRA requires political committees and other persons who make independent expenditures at any time during a calendar year—up to and including the 20<sup>th</sup> day before an election—to disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. This reporting requirement is in addition to the pre-BCRA requirement to file 24-hour notices of independent expenditures each time

that disbursements for independent expenditures aggregate at or above \$1,000 during the last 20 days—up to 24-hours—before an election. 2 U.S.C. §§434(b), (d) and (g). The new rules address when and how such reports should be filed.

*Independent expenditures aggregating less than \$10,000.* Committees must report on Schedule E of Form 3X independent expenditures that aggregate less than \$10,000 with respect to a given election during the calendar year that are made up to and including the 20<sup>th</sup> day before an election. The report must be filed no later than the filing date of the committee's next regularly-scheduled report. 11 CFR 104.4(a) and (b)(1). Individuals other than political committees disclose on FEC Form 5 independent expenditures aggregating in excess of \$250 with respect to a given election during the calendar year that are made during this time period. The report must be filed by the filing deadline of the next report under the quarterly filing schedule. 11 CFR 109.10(b).

Both committees and individuals must file an additional report each time that independent expenditures made less than 20 days, but more than 24 hours, before an election aggregate in excess of \$1,000. These reports must be *received* by the Commission by the end of the day following the date that the communication is publicly disseminated. All individuals and committees, even those supporting or opposing Senate candidates, must file 24-hour notices of independent expenditures with the Commission. Electronic filers must file these reports electronically, and paper filers may file by fax or e-mail. Additionally, electronic filers and paper filers may file 24-hour reports using the FEC web site's online program. 11 CFR 104.4(c), 109.10(d) and 100.19(d)(3).

*Independent expenditures aggregating \$10,000 and above.* Once an individual's or committee's independent expenditures reach or exceed \$10,000 in the aggregate at any time up to and including the 20<sup>th</sup> day before an election, they must be reported within 48 hours of the date that the expenditure is publicly distributed. All 48-hour reports must be filed with and *received* by the Commission at the end of the second day after the independent expenditure is publicly distributed. Electronic filers must file these reports electronically, and paper filers may file by fax or e-mail. 11 CFR 104.4(b)(2), 109.10(c) and 100.19(d)(3).

*Verification of independence.* All 24- and 48-hour reports must contain, among other things, a verification under penalty of perjury as to whether the expenditure was made in cooperation, consultation or concert with a candidate, a candidate's committee, a political party committee or an agent of any of these. 11 CFR 104.4(d)(1) and 109.10(e)(1)(v).

*Aggregating independent expenditures for reporting purposes.* Independent expenditures are aggregated toward the various reporting thresholds on a per-election basis within the calendar year. Consider, as examples, the following scenarios, all of which occur outside of the 20-day window before an election when 24-hour notices are required:

- If a committee makes \$5,000 in independent expenditures with respect to a Senate candidate, and \$5,000 in independent expenditures with respect to a House candidate, then the committee is not required to file 48-hour reports, but must disclose this activity on its next regularly-scheduled report.
- If the committee makes \$5,000 in independent expenditures with respect to a clearly-identified

candidate in the primary, and an additional \$5,000 in independent expenditures with respect to the same candidate in the general, then again no 48-hour notice is required and the expenditures are disclosed on the committee's next report.

- If the committee makes \$6,000 in independent expenditures supporting a Senate candidate in the primary election and \$4,000 opposing that Senate candidate's opponent in the same election, then the committee must file a 48-hour report.

The date that a communication is publicly disseminated serves as the date that a person or committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amounts of \$1,000 or \$10,000. The calculation of the aggregate amount of the independent expenditures must include both disbursements for independent expenditures and all contracts obliging funds for disbursements of independent expenditures. 11 CFR 104.4(f).

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## Federal Register

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

### [Notice 2002-25](#)

Final Rules on Disclaimers, Fraudulent Solicitation, Civil Penalties and Personal Use of Campaign Funds (67 FR 76962, December 13, 2002).

## Regulations

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### Electioneering Communications

The BCRA requires persons who make electioneering communications that aggregate more than \$10,000 to file disclosure statements with the Commission within 24 hours of the disclosure date. 2 U.S.C. §434(f)(1). The new regulations implement this provision, and require that the statement be *received* by the Commission by 11:59 on the day following the disclosure date. Electronic filers must file these reports electronically, and paper filers may file by fax or email. 11 CFR 100.19(f).

The regulations define “disclosure date” as:

- The first date on which an electioneering communication is publicly distributed, provided that the person making the electioneering communication has made disbursement(s), or has executed contract(s) to make disbursements, for the direct costs of producing or

airing<sup>1</sup> one or more electioneering communication aggregating in excess of \$10,000; or

- Any other date during the same calendar year on which an electioneering communication is publicly distributed, provided that the person making the communication has made disbursement(s) or executed contract(s) to make disbursements for the direct costs of airing one or more electioneering communication aggregating in excess of \$10,000 since the most recent disclosure date. 11 CFR 104.20(a)(1)(i).

Disbursements made at any time for the direct costs of producing or airing the publicly-distributed electioneering communication, or other unreported electioneering communications, count toward the threshold. However, costs already reported for earlier electioneering communications are not included.

Each statement must disclose:

- The identification of the person who made the disbursement, or who executed a contract to make a disbursement, and the person’s principal place of business if the person is not an individual;
- The identification of any person sharing or exercising direction or

control<sup>2</sup> over the activities of the person who made the disbursement or executed the contract;

- The identification of the custodian of books and accounts from which the disbursements were made;
- The amount of each disbursement or amount obligated in excess of \$200 during the period covered by the statement, the date of the transaction and the person who received the funds;
- All clearly-identified candidates referred to in the electioneering communication and the elections in which they are candidates;
- The disclosure date; and
- The name and address of each donor who, since the first day of the preceding calendar year, has donated in the aggregate \$1,000 or more to the person making the disbursements, or to the separate segregated bank account if the disbursements were paid exclusively from that bank account. 11 CFR 104.20(c).

### Filing Frequency for House and Senate Committees and National Party Committees

*House and Senate Candidates.* The BCRA requires that all principal campaign committees of House and Senate candidates file quarterly in non-election years as well as in election years. 2 U.S.C. §434(a)(2)(B). As a result, House and Senate campaign committees may no longer file on a semi-annual basis during non-election years. 11 CFR 104.5(a).

*National party committees.* Under the BCRA, national party commit-

### 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.

<sup>1</sup> The direct costs of producing or airing electioneering communications are defined as the costs charged by a vendor, such as studio rental time, staff salaries, costs of video or audio recording media and talent, or the cost of airtime on broadcast, cable and satellite radio and television stations, studio time, material costs and the charges for a broker to purchase the airtime. 11 CFR 104.20(a)(2).

<sup>2</sup> Persons sharing or exercising direction or control means officers, directors, executive directors or their equivalent, partners and, in the case of unincorporated organizations, owners of the entity or person making the disbursement for the electioneering communication. 11 CFR 104.20(a)(3).



## BCRA on the FEC's Web Site

The Commission has added a new section to its web site ([www.fec.gov](http://www.fec.gov)) devoted to the Bipartisan Campaign Reform Act of 2002 (BCRA).

The new page provides links to:

- The Federal Election Campaign Act, as amended by the BCRA;
- Summaries of major BCRA-related changes to the federal campaign finance law;
- Summaries of current litigation involving challenges to the new law;
- *Federal Register* notices announcing new and revised Commission regulations that implement the BCRA; and
- Information on educational outreach offered by the Commission, including upcoming Roundtable sessions and the Commission's tentative 2003 conference schedule.

The new section also allows individuals to view the Commission's calendar for rulemakings, including projected dates for the Notices of Proposed Rulemaking, public hearings, final rules and effective dates for regulations concerning:

- Soft money;
- Electioneering Communications;
- Contribution Limitations and Prohibitions;
- Coordinated and Independent Expenditures;
- The Millionaires' Amendment;
- Consolidated Reporting rules; and
- Other provisions of the BCRA.

The BCRA section of the web site will be continuously updated. Visit [www.fec.gov](http://www.fec.gov) and click on the BCRA icon.

tees must file on a monthly basis in all years. 2 U.S.C. §434(a)(4)(B). Thus, under the new regulations a national committee of a political party, including a national Congressional campaign committee, must always file monthly and may no longer file on a quarterly basis in election years and semi-annually in non-election years. 11 CFR 104.5(c)(4).

### Funds for Party Office Buildings

Commission regulations on nonfederal funds (or "soft money") provide that donations used by a state, district or local party committee for the purchase or construction of an office building are subject to state law if they are donated to a nonfederal account. However, if funds or things of value are contributed to or used by the party's federal account to buy or build an office building, then the amounts donated are contributions. 11 CFR 300.12 and 300.35. The new rules clarify that any funds or things of value received by a federal account and used for the purchase or construction of an office facility, regardless of any specific contributor designation, are contributions and not treated any differently from other funds or goods donated to the federal account. 11 CFR 104.3(g). ♦

—Amy Kort

## Statistics

### Party Fundraising Reaches \$1.1 Billion in 2002 Election Cycle

The Republican and Democratic parties reported raising a total of \$1.1 billion in federal and nonfederal funds from January 1, 2001, through November 25, 2002. Post-election reports to the Commission include the final nonfederal receipts ("soft money") for national parties, which are barred by the Bipartisan Campaign Reform Act of

2002 (BCRA) from raising or spending new nonfederal funds after November 5, 2002. See the [September 2002 Record](#), page 1.

Receipt totals were nearly equal to the party fundraising totals in the 2000 election cycle, which included a competitive Presidential campaign. Receipts were 72 percent higher than in 1997-98, the most recent non-Presidential cycle.

Federally permissible funds (hard money) declined from 2000 levels, as they have consistently in non-Presidential cycles. When compared with 1998, however, Democratic Party federal receipts were up 43 percent, and Republican federal receipts were 47 percent higher than their 1998 totals.

Nonfederal receipts reached the highest levels ever in 2002, even without a Presidential campaign. Totals for Democratic committees were nearly triple their 1998 values (up 168 percent), while Republican nonfederal totals nearly doubled (up 90 percent) when compared with 1998.

### Additional Information

A press release dated December 18, 2002, provides detailed information about the financial activity of the Democratic and Republican parties, including tables chronicling overall party receipts dating back to 1992. The press release is available:

- On the FEC web site at [www.fec.gov/news.html](http://www.fec.gov/news.html);
- From the Public Records office (800/424-9530, press 3) and the Press Office (800/424-9530, press 5); and
- By fax (call the FEC Faxline at 202/501-3413). ♦

—Amy Kort

## Legislation

### Help America Vote Act

On October 29, 2002, Congress passed the Help America Vote Act (the Act) to improve election administration in federal elections. PL 107-252. The Act includes provisions that establish:

- A funding program to replace punch card voting systems;
- Minimum election administration standards for states and local entities responsible for the administration of federal elections; and
- A new agency—the Election Assistance Commission—to assist in the administration of federal elections.

### 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](http://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.

Over the six months following the passage of the bill, the funding program will disburse funds to state election administrators who announce their official intention to use the funds for:

- Improving the administration of elections for federal office;
- Educating voters concerning voting procedures, rights and technologies;
- Training election officials, poll workers and election volunteers;
- Improving, modifying or replacing voting systems for casting and counting votes;
- Improving polling places by making them more physically accessible to the disabled and by providing assistance to individuals with limited proficiency in the English language; and
- Creating hotlines for providing voting information and reporting voter fraud.

The Act includes extensive provisions to standardize voting system standards nationwide. For instance, under the Act, all voting systems used in federal elections must:

- Permit the voter to verify the votes selected on the ballot before the ballot is cast and to change or correct any errors;
- Be accessible for individuals with disabilities;
- Provide alternative language accessibility; and
- Adopt a uniform standard definition of what constitutes a vote and what will be counted as a vote for each voting system used in the state.

The Act also establishes the Election Assistance Commission (EAC). The EAC will serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of federal elections. The duties of the EAC will include:

- Maintenance of a clearinghouse of information on the experiences of state and local governments in operating voting systems in accord with federal guidelines;
- Testing and certification of voting system hardware and software;
- Conducting studies and other research to promote the effective administration of federal elections; and
- Providing information and training on the management of payments and grants provided by the EAC.

The EAC will be composed of four Commissioners appointed by the President and approved by the Senate. Also, the EAC will have a “Standards Board” composed of 110 members (55 state election officials and 55 local election officials). The Standards Board is subject to certification by the chair of the Federal Election Commission (FEC). All of the duties, liabilities, assets and personnel of the FEC’s Office of Election Administration will be transferred to the EAC upon the appointment of the EAC Commissioners. ♦

—Gary Mullen

## Election Administration

### Implementation Plan for Voting Systems Standards

On December 5, 2002, the Commission approved an Implementation Plan for the 2002 Voting System Standards. The Plan provides guidance to assist states, voting system vendors and local jurisdictions in the transition from the 1990 Voting System Standards to the 2002 Standards. See the June 2002 *Record*, page 7.

The Commission developed the 1990 Standards to ensure that voting machines met certain baselines for accuracy, reliability and durability.

The 2002 Standards, approved on April 30, 2002, account for the rapid development of technologies over the last 12 years, and for the changing needs of election officials.

The Commission and its Office of Election Administration developed the Implementation Plan with assistance from vendors, state and local officials, testing authorities and members of the election administration community. The Plan addresses the roles of the primary participants, the implementation of the 2002 Standards in national testing, recommendations to states implementing the 2002 Standards and the approach that the Commission anticipates using for future revisions to the Standards.

Although the Help America Vote Act of 2002 will affect the long-term implementation of the Standards, it is unclear when and how these changes will take effect. The 2002 Standards will serve as a necessary policy directive until the new federal law is implemented. The Standards and the Implementation Plan are available on the Commission's web site at [http://www.fec.gov/pages/vssfinal/vss\\_implementation.html](http://www.fec.gov/pages/vssfinal/vss_implementation.html). ♦

—Amy Kort

## Court Cases

### Jeremiah T. Cunningham v. FEC

On October 28, 2002, the U.S. District Court for the Southern District of Indiana granted the Commission's motion for summary judgment against the Robert W. Rock for Congress committee (the Committee) and its treasurer, Jeremiah T. Cunningham. The Committee had filed suit challenging the Commission's determination that the Committee had failed to file timely its 2000 Post-General report and alleging that the civil money

penalty assessed by the Commission was excessive, erroneous and unwarranted.

The court granted the FEC's motion for summary judgment and denied the Committee's cross-motion for summary judgment, finding that:

- The Committee had waived before the court any arguments it failed to raise before the Commission during its administrative proceedings; and
- The Commission's penalty determination, assessed in accordance with its administrative fines regulations, was not arbitrary and capricious.

### Background

On March 20, 2001, the Commission found reason to believe that the Committee had filed its 2000 Post-General Report on February 1, 2001, more than 30 days after the December 7, 2000, deadline. If a report is not filed within 30 days of the deadline, it is considered not filed.

As part of its Administrative Fine program, the Commission made a preliminary determination that the Committee had violated the Act's reporting requirements and thus owed a \$4,500 civil penalty. Commission regulations provide for an administrative process through which respondents can challenge the preliminary finding and proposed civil penalty. See 11 CFR 111.35-111.37. The Commission informed the Committee that it had 40 days to challenge the Commission's finding, but the Committee failed to raise any arguments before the Commission challenging that finding. The Commission then made a final determination that the plaintiffs violated the Federal Election Campaign Act (the Act) and assessed the civil money penalty in accordance with its administrative fines regulations.

### Court Case

Under the Administrative Procedure Act, a district court may set aside an agency action only if it is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A). The Committee argued that the penalty was excessive and unwarranted because:

- The report had been filed with the Commission by the time the Commission made its final determination and assessed the \$4,500 civil money penalty; and
- The Commission did not take the Committee's cash-on-hand into account when determining the amount of the penalty.

The court found that the Committee had received adequate notice of the Commission's action and that it had waived any arguments before the court by not raising them before the Commission during its administrative proceedings.<sup>1</sup> See 11 CFR 111.38.

The court also held that the Commission's determination was rationally based on the administrative record before it. It further found that the Federal Election

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<sup>1</sup> Notice of the Commission's preliminary determination as well as its final determination was sent to the Committee's address of record as listed on its Statement of Organization, which was also the same address of Mr. Rock, the candidate and attorney for the Committee and its treasurer in this case. A signed certified mail receipt indicated that the preliminary determination notice was received by the Committee, even if Mr. Cunningham did not specifically receive it. The court concluded that mailing a document to the last known address constitutes adequate notice, and the Committee was not deprived of an opportunity for administrative review.

## Court Cases

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Campaign Act states that, when calculating civil penalties, the Commission must consider the amount of the violation involved (that is, the level of activity of the report that was untimely filed) and the existence of any prior violations. The Act delegates solely to the Commission the determination of what other factors to take into account in calculating the civil penalty, a decision that the court concluded was not for courts “to second guess.” 2 U.S.C. §437g(a)(4)(C)(i)(II).

U.S. District Court for the Southern District of Indiana, Indianapolis Division (IP 01-0897-C B/S). ♦

—Phillip Deen

### FEC v. Toledano

On November 7, 2002, the U.S. Court of Appeals for the Ninth Circuit affirmed the decision of the U.S. District Court for the Central District of California granting the Commission summary judgment in this case and imposing a \$7,500 fine against James Toledano. The

appeals court also ordered Mr. Toledano to pay the Commission’s attorney’s fees on this appeal as a sanction for his “bad-faith conduct and abuse of the judicial process.”

The appeals court found that Mr. Toledano violated 2 U.S.C. §432(b), which requires persons who receive contributions in excess of \$50 to forward these contributions to the committee’s treasurer within ten days after receiving them. In 1996 Mr. Toledano, who was then the chairman of the Orange County Democratic Party (the Party), received a \$10,000 contribution check made out to the Party, which he used to print and mail pamphlets supporting a Congressional candidate. Mr. Toledano did not forward the contribution to the committee treasurer within ten days or even inform him of it.

On appeal, Mr. Toledano argued, among other things, that his actions did not violate 2 U.S.C. §432(b) given that he “had de facto authority to act as treasurer” because he was convinced that the real treasurer was “incompetent and failed to discharge his duties responsibly.” The court found that Mr. Toledano was not a designated agent of the treasurer and could not exercise the treasurer’s authority under the statute or Commission regulations. The court further concluded that “to recognize unauthorized ‘de facto agents’ of the treasurer and thus open up multiple points of entry and exit through which campaign funds may flow is to create predictable confusion and unravel the whole statutory scheme.” The court concluded that by failing to forward the contribution to the Party’s treasurer, Mr. Toledano prevented the contribution, which turned out to be excessive, from being scrutinized by the Party’s treasurer for its legality.

The court affirmed all aspects of the district court’s order granting the Commission summary judgment and imposing a \$7,500 fine. The court also referred the case to the Appel-

late Commissioner for a determination of the Commission’s attorney’s fees and related expenses in defending this case on appeal. See the December 2001 *Record*, page 4.

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

—Amy Kort

### FEC v. Christine Beaumont, et al.

On November 18, 2002, the U.S. Supreme Court granted a petition for *writ of certiorari*, agreeing to review this case on its merits. On January 25, 2002, the U.S. Court of Appeals for the Fourth Circuit found that the Federal Election Campaign Act’s prohibitions on corporate contributions and expenditures were unconstitutional as applied to North Carolina Right to Life, Inc., a nonprofit, MCFL-type corporation. See the March 2002 *Record*, page 4. ♦

—Amy Kort

### Hawaii Right to Life, Inc. v. FEC

On November 26, 2002, the U.S. District Court for the District of Columbia granted the motions of Hawaii Right to Life, Inc., (HRTL) for a temporary restraining order and a preliminary injunction. The order and injunction bar the Commission from acting inconsistently with the court’s finding that HRTL is currently a so-called “MCFL-corporation,” and is thus exempt from the Federal Election Campaign Act’s (the Act) ban on corporate expenditures in connection with federal elections. On December 16, 2002, the court entered a final order that effectively converted the preliminary injunction into a permanent injunction.

### Court Complaint

In a complaint filed on November 22, 2002, the plaintiff asked the court to find that it qualifies for a

### Web Access to Senate Candidates’ Campaign Finance Reports

Senate campaign finance reports are available to the public on the FEC web site. All Senate reports received after May 15, 2000, are currently accessible on the site, and the FEC will make future reports available within 48 hours of receiving them.

To view these reports, go to [www.fec.gov](http://www.fec.gov), click on “Campaign Finance Reports and Data,” and then select “View Financial Reports.”

constitutionally-mandated exception from the Act's prohibition on corporate expenditures in connection with a federal election. See *FEC v. Massachusetts Citizens for Life, Inc.*, (*MCFL*) 479 U.S. 238 (1986). In the alternative, HRTL challenged the constitutionality of the Commission's definitions of "electioneering communication" and "expressly advocating." 11 CFR 100.29 and 100.22. HRTL planned, among other things, to air radio ads in advance of the Hawaii special elections to fill the remainder of the late Patsy Mink's term in the current Congress and her seat in the next Congress.

HRTL asserted that it could run these ads because it met the requirements of a protected nonprofit corporation under *MCFL*, even though it did not meet the test of a

"qualified nonprofit corporation" under the Commission's regulations at 11 CFR 114.10(c). HRTL also claimed that these ads would contain issue advocacy rather than express advocacy, and that it would be unable to participate in its planned activity unless the court enjoined the Commission from enforcing against HRTL the "electioneering communication" and "expressly advocating" regulations.

*Qualified nonprofit corporations.*

Under Commission regulations a corporation is considered a "qualified nonprofit corporation" if it meets the following criteria:

- Its only express purpose is the promotion of political ideas;
- It cannot engage in business activities;
- It has no shareholders and no persons who are offered or receive any benefit that is a disincentive to disassociate from the corporation on the basis of the corporation's position on a political issue;
- It was not established by a business corporation and does not directly or indirectly accept donations or anything of value from business corporations; and
- It is described in the Internal Revenue Code at 26 U.S.C. §501(c)(4). 11 CFR 114.10(c).

HRTL alleged that it meets some but not all of these criteria because it engages in business activities, such as selling pins and T-shirts, and because it hopes to receive some contributions from business corporations. The plaintiff contended that the Commission's criteria for identifying "qualified nonprofit corporations" are too narrow and that, because its business activities and corporate contributions are *de minimis*, it should qualify for the exemption under the Supreme Court's decision in *MCFL*.

**Requested Relief.**

HRTL asked that the court, among other things:

- Declare that HRTL is an "*MCFL*-corporation";
- Declare the definition of a "qualified nonprofit corporation" at 11 CFR 114.10(c) is unconstitutional, unlawful and invalid; and
- Preliminarily enjoin the Commission from enforcing 11 CFR 114.10(c) with respect to broadcast communications by HRTL concerning federal candidates in the November and January Hawaii special elections.

In case the court did not find that HRTL is an "*MCFL*-corporation," HRTL asked the court to find, in the alternative, that the Commission's definitions of "electioneering communication" at 11 CFR 100.29 and "expressly advocating" at 11 CFR 100.22(b) are unconstitutional, unlawful, invalid and beyond the Commission's statutory authority.

Based on the allegations in HRTL's complaint and motions, the Commission conceded that HRTL should be treated as a "qualified nonprofit corporation" for 2002. Nonetheless, HRTL submitted an affidavit declaring that it had received contributions, or commitments for contributions, from business corporations in an amount not expected to exceed \$50, which it claimed prevented it from qualifying under the regulations as a "qualified nonprofit corporation."

**Preliminary Injunction and Final Order**

The court ruled that HRTL currently is a nonprofit organization that qualifies under the *MCFL* decision (as interpreted in the DC Circuit) for the exemption from the ban on corporate expenditures, despite the fact that it engages in *de minimis* business activities and

## FEC Accepts 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.

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## Court Cases

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receives insubstantial sums from business corporations. In *FEC v. National Rifle Association*, the court held that \$1,000 in contributions from for-profit corporations in a single year was *de minimis*, and therefore did not disqualify the NRA from treatment as an exempt “MCFL-corporation” during that year.<sup>1</sup> 254 F.3d 173 (D.C. Cir. 2001).

On December 16, 2002, at the request of the parties, the court entered a final order, which declares that, as of the time of this ruling, HRTL qualifies as an “MCFL-corporation,” and enjoins the Commission from acting inconsistently with the order. The court chose not to rule at any time on HRTL’s challenge regarding the constitutionality of Commission regulations.

U.S. District Court for the District of Columbia,  
1:02CV02313.◆

—Amy Kort

## Compliance

### MUR 5187 Corporate Reimbursements of Contributions

On December 3, 2002, the Commission entered into conciliation agreements with Mattel, Inc., (Mattel) former Mattel Senior Vice President Fermin Cuza and former Mattel consultant Alan Schwartz, resulting in civil penalties of \$477,000—one of the highest cumulative civil penalties in the history of the Commission. The conciliation agreements settle violations of the Federal Election Campaign Act (the Act) resulting

from Mattel’s reimbursement to individuals of \$120,714 in federal political contributions to 23 candidates, two party committees and five PACs between 1996 and 2000. The agreements provide that Mattel will pay \$94,000, Mr. Cuza will pay \$188,000 and Mr. Schwartz will pay \$195,000 in civil penalties. The Commission’s investigation stemmed from a *sua sponte* complaint filed by Mattel. In the complaint, Mattel voluntarily disclosed that it had discovered that a former senior executive, Mr. Cuza, had caused Mattel to reimburse various individuals for federal political contributions.

The Act prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. §441b. In addition, the Act prohibits making contributions in the name of another, knowingly permitting one’s name to be used to effect such a contribution and knowingly accepting such a contribution. Further, no person may knowingly help or assist any person in making a contribution in the name of another. This prohibition also applies to any person who provides the money to others to effect contributions in their names. 2 U.S.C. §441f.

Mr. Cuza, who was in charge of Government Affairs at Mattel, directed the hiring of Alan Schwartz—the sole proprietor of Asset Management Systems (AMS)—as a consultant to Mattel. According to the conciliation agreements, beginning in 1996, at Mr. Cuza’s direction, Mattel made payments to AMS for various consulting services and for other purposes. In consultation with Mr. Cuza, Mr. Schwartz used these funds to make contributions to federal candidates and political committees. Mr. Schwartz also used funds received from Mattel to reimburse other individuals, includ-

ing Mr. Cuza, for contributions to various federal political committees. As a result, Mr. Cuza and Mr. Schwartz, their spouses and family members and other individuals made reimbursed contributions totaling \$120,714 to federal political committees.

The Commission acknowledged that there was evidence that Mr. Cuza concealed these payments from his superiors at Mattel. The Commission found no evidence that any of the recipient political committees were aware that Mattel was the true source of the contributions or that any Mattel executive other than Mr. Cuza was aware that the payments to Mr. Schwartz and AMS were for the purpose of reimbursing federal political contributions.

In his conciliation agreement, Mr. Cuza admitted to “knowing and willful” violations by:

- Consenting to prohibited corporate contributions by Mattel;
- Allowing his name to be used to make contributions in the name of another; and
- Assisting Mattel in making contributions in the name of another.

Similarly, Mr. Schwartz and AMS admitted to “knowing and willful” violations by:

- Allowing Mr. Schwartz’s name to be used to make contributions in the name of another;
- Making contributions in the name of another; and
- Assisting Mattel and Mr. Cuza in making contributions in the name of another.

Mattel admitted to violations by making prohibited corporate contributions and by making contributions in the name of another.

Mattel, Mr. Cuza and Mr. Schwartz are required to:

- Pay the civil penalties;
- Cease and desist from violating these sections of Act;

<sup>1</sup> See the [August 2001 Record](#), page 3.

- Waive their right to a refund of all political contributions from the recipient committees; and
- Instruct each recipient to disgorge all illegal contributions that have not been previously refunded or disgorged to the U.S. Treasury.

In addition to the Commission's action in this case, the California Fair Political Practices Commission (FPPC) and the Los Angeles Ethics Commission entered into settlements with Mattel, Mr. Cuza and Mr. Schwartz, regarding similar conduct with regard to state and local political contributions during the same time period. These settlements provide for an additional \$454,000 in penalties—\$218,000 to the FPPC and \$236,000 to the Los Angeles Ethics Commission. ♦

—Amy Kort

## 800 Line

### Frequently Asked Questions About ADR

The FEC's Alternative Dispute Resolution Pilot program was made permanent on September 12, 2002, and is now the Alternative Dispute Resolution Office.

Alternative Dispute Resolution (ADR) is a series of constructive and efficient procedures for resolving disputes through the mutual consent of the parties involved.

### 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>.

Unlike more formal procedures of the Federal Election Commission's (FEC) enforcement process, ADR encourages parties to engage in negotiations that focus on compliance and promptly lead to the resolution of a dispute. By expanding the tools for resolving administrative complaints, referrals from the Reports Analysis Division (RAD) and Title 2 audit referrals, the ADR program aims to:

- Resolve complaints and referrals faster;
- Reduce costs for respondents; and
- Bring cases to a mutually satisfactory resolution.

In the course of processing cases through the ADR program, the ADR Office (ADRO) has received a number of inquiries, some of which are addressed below.

**Q: How can a committee get more information about the ADR option and whether a specific case might qualify for processing through the use of ADR?**

A: Interested individuals can learn about the ADR program through the FEC's brochure "Alternative Dispute Resolution Program," which describes how cases qualify for the program. The brochure is now available to the public on the FEC's web site at [www.fec.gov](http://www.fec.gov)—go to the "Campaign Finance Law Resources" link and look under "Publications." A request can be made to have the free brochure sent by mail by calling 800/424-9530 (press 1 and then 3) or 202/694-1100.

**Q: How do I know if my case qualifies for ADR?**

A: It is important to understand that having your case processed under ADR is not a right, but is an option only for appropriate cases. The FEC will conduct an initial review and evaluation process to determine if your case is appropriate for ADR. In order to have your case considered for the ADR program, you must file a complete response to

the complaint or referral, and agree in writing to the terms for participation in ADR. The terms to participate in ADR are:

- Commit to engage in the ADR process;
- Participate in negotiations to reach settlement, and, if unsuccessful, to engage in mediation; and
- Waive the statute of limitations provisions governing the case as long as it is being processed in the FEC's ADR program.

**Q: Can I opt out of ADR?**

A: If you have been advised that your case has been assigned for ADR but determine that you do not want to avail yourself of the option, you should inform the ADRO. Your case will then be sent to the Office of General Counsel (OGC) for processing in the traditional enforcement program. If your case originated as an audit or a reporting referral, opting out of ADR will likely result in increased scrutiny of your committee's activities during the next election cycle.

**Q: What is the difference between negotiations and mediation as applied to the ADR program?**

A: Negotiations at the FEC involve direct, bilateral discussions between the respondent (and/or their representative) and a representative of the FEC's ADRO. The negotiations focus on future compliance and are aimed at resolving the complaint. Mediation involves the same two parties, but with the addition of a neutral, impartial third party—the mediator—who assists the parties in resolving the complaint. The mediator does not have the authority to resolve the matter himself or herself, but works with the parties to facilitate their discussions and guide them in their negotiations.

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## 800 Line

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**Q: Who decides if a case should proceed to mediation if no agreement can be made in negotiations?**

A: If the parties are unable to reach a settlement during bilateral negotiations, then the case will proceed by *mutual* agreement to mediation. If both parties do not agree on proceeding to mediation, the case is returned to OGC for traditional enforcement processing.

**Q: Is the mediator a member of the ADRO or the FEC staff?**

A: No. The mediator is selected from a list of independent, nongovernmental, neutral mediators who work outside the FEC.

**Q: Why is it necessary for the respondent to suspend the statute of limitations in order to participate in the ADR program?**

A: Requiring the respondent to suspend the statute of limitations:

- Ensures that the respondent is committed to the process and a speedy resolution of the dispute;
- Protects the integrity of the FEC's regular enforcement program in the event the case needs to be returned to the OGC for final resolution; and
- Reminds the respondent that no benefit can be derived from delaying the resolution of the complaint.

**Q: Are negotiations and mediation ever held simultaneously?**

A: No. Mediation is initiated only if the negotiations between the parties are unsuccessful, and both parties agree.

**Q: Will the complainant be involved in either the negotiations or mediation stage when the case is being processed by the ADR Office?**

A: No.

**Q: What is the time frame for reaching an agreement during the**

**FEC's negotiations or mediation processes?**

A: The ADR Office is committed to resolving cases within five months from the date the Commission concurs that the case should be processed by the ADRO.

**Q: How will the schedule for negotiations be set?**

A: The schedule for negotiations, and, if necessary, mediation, will be set by mutual consent of the respondent and the FEC's ADRO. Negotiations may be held via telephone conference call, or in-person meetings.

**Q: Can the respondent select a mediator other than one listed on the FEC's list of mediators?**

A: No. The mediators on the FEC's mediator list have received training on the requirements of the Federal Election Campaign Act (the Act) and the role and responsibilities of the FEC.

**Q: Will there be a "standard form" for the agreement once it is negotiated?**

A: No. The agreement will be tailored to address the issues raised in the complaint or referral, and will be shaped by the terms of the settlement negotiated by the parties.

**Q: How do the ADRO's negotiations and final agreement compare with the standard "conciliation agreement" traditionally used to settle a FEC enforcement case?**

A: The ADR program's negotiation process is similar to the procedures used by OGC to obtain a conciliation agreement, but there are some important differences. Both processes aim to arrive at a mutually agreeable settlement. A conciliation agreement, however, usually includes civil penalties; whereas the agreements negotiated by the ADRO may or may not contain a monetary penalty, but are likely to include other terms negotiated by the parties. Moreover, an admission of having violated the Act is usually included in a conciliation agree-

ment; whereas the ADR negotiated settlements may modify or exclude that admission.

**Q: What happens to documents used during negotiations and mediation sessions? Will those documents be used by OGC in subsequent proceedings if the parties fail to reach an agreement?**

A: In the event that the parties do not achieve a settlement through negotiations or mediation, and the case is returned to OGC for processing, the ADRO will remove from the file internal documents used during the negotiations or the mediation process. None of these documents may be used or will be available to OGC for any subsequent efforts, including possible litigation.

**Q: What about the costs if the case proceeds to mediation?**

A: During the initial years of the ADR program, the Commission will pay the mediator's fee and travel costs, if any, unless the respondent prefers to split the costs with the ADRO. The mediation costs covered by the FEC will not include the costs the respondent and their representative incur, such as lodging or transportation costs.

**Q: What role does precedent play in the settlements concluded under the ADR Program?**

A: Neither a negotiated settlement achieved through negotiations with the ADRO, nor a mediated settlement, will provide a precedent for resolving subsequent matters that come before the Commission, including those matters handled through enforcement by OGC. ♦

—Gary Mullen



## Administrative Fines

### Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 18 new Administrative Fine cases, bringing the total number of cases released to the public to 464.

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

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

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

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

—Amy Kort

### Committees Fined and Penalties Assessed

|  |                      |
|--|----------------------|
| 1. Campbell for Senate   | \$6,500              |
| 2. Chevy Chase Bank FSB PAC  | \$725                |
| 3. CWA-COPE Political Contributions Committee  | \$4,550              |
| 4. Federation of American Hospitals PAC (FEDPAC)<br>(FKA American Health Systems PAC)            | \$625                |
| 5. International Longshoremens' Association AFL-CIO<br>Committee on Political Education ILA-COPE | \$2,900              |
| 6. John Taylor for Congress  | \$700 <sup>1</sup>   |
| 7. Kirkland & Ellis PAC (FKA WSS PAC)  | \$3,350              |
| 8. Montgomery Watson Americas Inc., Employee PAC   | \$1,725              |
| 9. National Italian American PAC   | \$1,125 <sup>1</sup> |
| 10. Neill for Congress Committee   | \$600 <sup>2</sup>   |
| 11. New Mexicans for Bill Richardson   | \$4,500              |
| 12. Philip Lowe for Congress   | \$9,500 <sup>1</sup> |
| 13. PSEA PACE for Federal Elections<br>(FKA Pennsylvania PACE for Federal Elections)             | \$5,700              |
| 14. Service Employees International Union<br>Local 434-B Federal COPE                            | \$3,375 <sup>1</sup> |
| 15. Service Employees International Union<br>No 99 Federal PAC                                   | \$3,375              |
| 16. Sony Pictures Entertainment Inc. PAC   | \$900                |
| 17. Voters for Choice/Friends of Family Planning<br>August Monthly Report 2001                   | \$2,700 <sup>1</sup> |
| 18. Voters for Choice/Friends of Family Planning<br>March Monthly Report 2002                    | \$2,250 <sup>1</sup> |

<sup>1</sup> This civil money penalty has not been collected.

<sup>2</sup> This penalty was reduced from \$900 based on information provided in a challenge showing that the committee is not required to file electronically; a paper copy of report was filed late.

## Outreach

### FEC Conferences in March and April

#### Conference for House and Senate Campaigns and Political Party Committees

The Federal Election Commission will hold a conference in Washington DC for House and Senate campaigns and political party committees. The conference will be held **March 12-13, 2003**, and will consist of a series of

interactive workshops presented by Commissioners and experienced FEC staff, who will explain how the requirements of the federal election law apply to House and Senate campaigns and political parties. Discussion topics will include fundraising and reporting, and many workshops will address provisions of the Bipartisan Campaign Reform Act of 2002 that apply to federal candidates and officeholders, campaign committees and political parties. In addition, a representative from the Internal Revenue Service

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## Outreach

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will be available to answer election-related tax questions.

### Conference for Corporations and their PACs

The Commission will hold a conference for corporations and their PACs **April 29-30, 2003**, in Washington, DC. Commissioners and experienced FEC staff will conduct workshops to explain how the requirements of the federal

election law apply to corporations and their PACs, including provisions governing fundraising, contributions, reporting and communications, and some workshops will address new requirements under the BCRA. In addition, a representative from the Internal Revenue Service will be available to answer election-related tax questions.

### Registration Information

The registration fee for each conference is \$385, which covers the cost of the conference, materials and meals. Registrations for the March conference must be received by February 19, and registrations for the April conference must be received by March 28. A ten dollar late fee will be assessed for late registrations.

The conferences will be held at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC. The hotel is located near the L'Enfant Plaza Metro and Virginia Railway Express stations. A room rate of \$189 per night is available to conference attendees. This room rate is only available for reservations made on or before the registration deadline for each conference.

Complete conference registration information will become available in January. Conference registrations will be accepted on a first-come, first-served basis. Attendance is limited, and 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](http://www.fec.gov/pages/infosvc.htm#Conferences); or
- Send an e-mail to [toni@sylvestermanagement.com](mailto:toni@sylvestermanagement.com). ♦

—Amy Kort

## FEC Roundtables

The Commission will host three roundtable sessions in February, addressing the FEC's new regulations governing:

- Disclaimers, use of campaign funds and fraudulent solicitations;
- Coordinated and independent expenditures; and
- The so-called "Millionaires Amendment," which addresses contribution limits for candidates whose opponents spend large amounts of personal funds on the campaign.

Each roundtable is limited to 35 participants, and will be conducted at the FEC's headquarters in Washington, DC. The roundtables will begin at 9:30 a.m. and last until 11:00. Please arrive no later than 9:15, in order to allow for security screening.

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

—Amy Kort

### [FEC Conference Schedule for 2003](#)

#### Conference for House and Senate Campaigns and Political Party Committees

March 12-13, 2003  
Washington, DC

#### Conference for Corporations and their PACs

April 29-30, 2003  
Washington, DC

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

May 21-22, 2003  
Boston, MA

#### Conference for Labor Organizations and their PACs

June 17-18, 2003  
Washington, DC

#### Regional Conference for House and Senate Campaigns, Political Party Committees and Corporate/Labor/Trade PACs

September 9-10, 2003  
Chicago, IL

#### Regional Conference for House and Senate Campaigns, Political Party Committees and Corporate/Labor/Trade PACs

October 28-29, 2003  
San Diego, CA

## Public Appearance

American Association of Political Consultants  
Washington, DC  
Commissioner Mason

## Roundtable Schedule

### New Rules on Disclaimers, Use of Campaign Funds and Fraudulent Solicitations

| Date                                | Subject   | Intended Audience   |
|-------------------------------------|---|---|
| <b>February 5</b><br>9:30 - 11 a.m. | <ul style="list-style-type: none"> <li>• Requirements for print television and radio advertisements and solicitations</li> <li>• Permitted and prohibited uses of campaign funds</li> <li>• Salary payments to candidates</li> <li>• Prohibitions on fraudulent misrepresentation</li> <li>• Prohibitions on contributions and expenditures by foreign nationals</li> </ul> | <ul style="list-style-type: none"> <li>• Campaign committee treasurers</li> <li>• Political committees</li> <li>• Attorneys and consultants to above</li> </ul> |

### New Rules on Coordinated and Independent Expenditures

| Date                                 | Subject   | Intended Audience  |
|--------------------------------------|---|--|
| <b>February 12</b><br>9:30 - 11 a.m. | <ul style="list-style-type: none"> <li>• Communications coordinated with candidates, campaigns or party committees</li> <li>• Definitions of “coordination” and “independent expenditure”</li> <li>• Rules for the timing of independent expenditures and coordinated expenditures by political committees</li> </ul> | <ul style="list-style-type: none"> <li>• Party committee treasurers</li> <li>• Political committees</li> <li>• Attorneys and consultants to above</li> </ul> |

### New Rules on the “Millionaires Amendment”

| Date                                 | Subject   | Intended Audience   |
|--------------------------------------|---|---|
| <b>February 19</b><br>9:30 - 11 a.m. | <ul style="list-style-type: none"> <li>• Requirements for Statements of Candidacy</li> <li>• Modified contribution limits for opponents of candidates spending large amounts of personal funds</li> <li>• Reporting and recordkeeping requirements for candidates expending personal funds and for their opponents</li> </ul> | <ul style="list-style-type: none"> <li>• House and Senate candidates</li> <li>• Treasurers for above</li> <li>• Attorneys and consultants to above</li> </ul> |

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