Record

January 1999 *Federal Election Commission* *Volume 25, Number 1*

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A Message from the Chairman

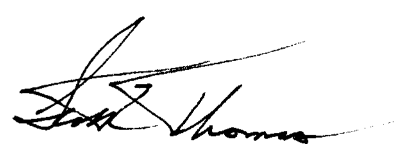
As we approach the new millennium, the FEC must not only address familiar tasks, but face new and fresh challenges.

Unprecedented spending by PACs and other political committees during the 1996 and 1998 election cycles has left a great deal of work in its wake. Audit and enforcement matters arising from those elections still confront us and must be concluded.

At the same time, the Commission must prepare for the future. The Y2K problem, preparation for the 2000 presidential election, uncertainties in the public funding program, and a host of other matters will command the Commission's attention in 1999.

The Commission and its highly qualified staff also will strive to maintain a high level of responsiveness to your questions and informational needs. We hope you will continue to use our web site (http://www.fec.gov), toll free number (800/424-9530) and FEC Faxline, the automated fax-on-demand system through which many FEC publications and other materials are available (202/501-3413).

The growing workload and increased responsibilities facing the Commission in 1999 are truly significant. We look forward to exploring new ways to meet these challenges. We welcome your comments and suggestions. ✥



Commissioners

New Chairman and Vice Chairman Elected

On December 10, 1998, the Commission elected Scott E. Thomas as its Chairman and Darryl R. Wold as its Vice Chairman. Mr. Thomas had been serving as Acting Chairman since the September departure of former Commissioner Joan D. Aikens.

Mr. Thomas, a Democrat, began his career with the FEC as a legal intern in 1975. He also served as an Assistant General Counsel for Enforcement and as Executive Assistant to the late Thomas E. Harris, a former Commissioner. In 1986, Mr. Thomas was first nominated to become an FEC commissioner by President Ronald Reagan. He has been twice reappointed for the post—first by President George Bush in 1991 and again by President Bill Clinton in 1997.

A Wyoming native, Mr. Thomas graduated from Stanford University and holds a law degree from Georgetown University Law Center.

Mr. Wold, a Republican, is one of the newest members of the Commission having been nominated by Mr. Clinton in 1997. Before joining the Commission, Mr. Wold was an attorney in private practice in Orange County, CA. He also served as counsel for election law litigation and enforcement defense matters for a California law firm that practices election and political law.

A native Californian, Mr. Wold graduated from Claremont McKenna College and received a law degree from Stanford University. ✥

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Court Cases

RNC v. FEC (98-5263)

On November 6, 1998, the U.S. Court of Appeals for the District of Columbia Circuit affirmed a lower court ruling that denied the Republican National Committee's (RNC's) and the Ohio Democratic Party's (ODP's) motion for a preliminary injunction in this case.

In April 1998, the RNC and ODP had asked the district court to prevent the FEC from enforcing its allocation regulation 11 CFR 106.5. The regulation requires that the RNC, ODP and other party committees pay for a portion of certain federal election-related advertisement costs with federally permissible funds, or hard money. The other portion of the advertisements can be funded with nonfederal funds (soft money), which is easier to raise in large sums.

The suit charged that the FEC's allocation regulation violated the U.S. Constitution and that the FEC lacked the authority to promulgate the regulation. The plaintiffs also contended that the FEC exceeded its authority in crafting the regulation because the rule pertains to issue advocacy communications. See the June 1998 Record, pp. 1 and 2.

In June 1998, the U.S. District Court for the District of Columbia had denied motions by the RNC and ODP requesting a preliminary injunction to prevent the FEC from taking any action to enforce the regulation. See the August 1998 Record, p. 5. In September 1998, the appellate court denied the parties' emergency motion for an injunction pending appeal of the district court decision. See the November 1998 Record, p. 1.

In taking up the matter on a nonemergency basis, the appellate court stated that the RNC and ODP had failed to show that they were likely to be successful on the merits of the case or that they would suffer irreparable harm if an injunction were not granted.

The court found "scant" evidence the RNC and ODP would suffer irreparable harm, citing the two parties' own affidavits filed in this case. The RNC had stated that, if forced to follow the FEC's regulation, it would have "to divert hard money from federal, candidate support." Likewise, the ODP strategized that it would be able to spend more on issue advocacy advertisements and free up federal funds to support the election of federal candidates if it did not have to follow the allocation rule.

In light of such "weak evidence," the court stated that the RNC and ODP had to show an exceptional likelihood that they would succeed in this case on its merits. This they did not do. Thus, the court denied the injunction.

U.S. Court of Appeals for the District of Columbia Circuit, 98-5263. ✥

Judd v. FEC

On November 4, 1998, the U.S. Court of Appeals for the District of Columbia Circuit denied Keith Judd's request for a rehearing and a rehearing en banc of the court's decision to dismiss this case.

In April 1998, the court dismissed for lack of prosecution Mr. Judd's petition requesting that it find the Presidential Primary Matching Payment Account Act unconstitutional and that it award him public funding equal to that received by President Bill Clinton during his 1996 reelection effort. The court later denied Mr. Judd's motion that it reexamine that decision. See articles in the June 1998 and October 1998 Record.

U.S. Court of Appeals for the District of Columbia Circuit, 98-1078. ✥

Cincinnati v. Kruse Burris v. Russell

On November 16, 1998, the U.S. Supreme Court refused to review two court cases that posed First Amendment challenges to limits on campaign contributions and expenditures in state and local elections. Both cases had been cast as potential challenges to *Buckley v. Valeo*, the landmark court case on the Federal Election Campaign Act (the Act). The FEC was not a party to either suit.

Background of *Buckley*

The appellate courts' reasoning in the two cases is based in great part on *Buckley*, where the high court equated campaign spending with the First Amendment's guarantee of free speech. While the Court found that a compelling government interest in preventing real or perceived corruption justified imposing restrictions on contributions, it concluded that this governmental interest was inadequate to sustain limitations on campaign expenditures.

Decision in *Cincinnati*

In the first case, *Cincinnati v. Kruse*, John Kruse, a candidate for a Cincinnati City Council seat, challenged a council ordinance that limited campaign expenditures for council elections to about $140,000. The city council argued that the rising cost of city council races had resulted in a rise in the influence of wealthy donors and the decline in the influence of small donors. The U.S. District Court for the Southern District of Ohio at Cincinnati ruled in favor of Mr. Kruse, finding that the ordinance was unconstitutional on its face.

The U.S. Court of Appeals for the Sixth Circuit affirmed that ruling on April 27, 1998. It reiterated the Supreme Court's view that restrictions that have the potential of limiting the First Amendment guarantee of political expression must be subjected to "exacting scrutiny" by the courts and that "the prevention of corruption or the appearance of corruption" is the only governmental interest that survives strict scrutiny and, as a result, justifies restrictions on campaign finance.

- *Cincinnati failed to show that an expenditure limit would reduce corruption in the political process.* The city had no direct evidence that imposing contribution limits alone could prevent quid pro quo corruption. The council did not adopt contribution limits until after it had passed the expenditure limits. Further, it based its views of corruption on perceived abuse of the Act on the federal level. The court found that such evidence was not enough. The three-judge panel stated that problems on the federal level are explained primarily by the exception allowing soft money contributions to party committees "and do not undermine the Supreme Court's conclusion that spending restrictions are not narrowly tailored to addressing the problem of the corrupting nature of money in politics."

  The court also said the perception that the public is discouraged and cynical about the democratic process as a result of perceived corruption in campaign finance is not sufficient evidence for limiting campaign spending.
- *Cincinnati failed to show that an expenditure limit would curb the rising cost of campaigns.* The city, through an amicus brief filed by the Brennan Center, had argued that the *Buckley* Court had not considered what is now perceived to be "uncontrollable campaign spending" and the effects of such spending, such as the large amounts of time candidates must spend raising campaign funds. The court rejected this view, stating that the Supreme Court, in *Buckley*, concluded that "reducing the allegedly skyrocketing costs of political campaigns is not compelling or sufficient to justify restrictions on campaign spending."
- *Cincinnati failed to prove that leveling the playing field among candidates is sufficient justification for an expenditure limit.* The city had argued that the government had an interest in eliminating the advantage wealth plays in elections and the perceived disadvantage of poor and minority voters and candidates. The court found that restricting the free speech guarantees of some in order to enhance the voices of others would violate the First Amendment. It also said that the *Buckley* Court had rejected this argument. The *Buckley* Court explained that spending limits, rather than promoting financial equality among candidates, could instead protect incumbents and handicap well-known candidates.

Decision in *Russell*

In *Burris v. Russell*, Ron Russell challenged the Arkansas Ethics

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Court Cases

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Commission after the state's voters approved a referendum that set contribution limits per election for district races at $100 per contributor and for statewide races (such as governor and state treasurer) at $300 per contributor. (The lowest contribution limit per contributor allowed under *Buckley* is $1,000.) The referendum also introduced an entity called the small-donor PAC. Individuals could contribute up to $25 to the PAC, and the PAC, in turn, could contribute up to $2,500 per candidate, per election. The initiative also created independent expenditure committees that could accept no more than $500 from any person annually. Finally, the initiative authorized local governments to set reasonable limits on the amount of campaign funds candidates for local offices could raise. Before this initiative, Arkansas voters had approved a measure that limited PAC contributions to $200 per year, down from $1,000.

This case was merged with *Citizens for Clean Government v. Russell*. The U.S. District Court for the Eastern District of Arkansas rendered a split decision, upholding some of the contribution limits and ruling others unconstitutional. On June 4, 1998, the U.S. Court of Appeals for the Eighth District struck down the individual and PAC contribution limits.

- *Supporters of the initiative failed to prove a link between large contributions and undue influence or corruption of Arkansas officials.* Proponents argued, for example, that financial contributions and support by the Tobacco Institute and other pro-tobacco sources caused a state legislator to champion a measure that would have prohibited local governments from regulating tobacco products. The court, however, showed that the pro-tobacco legislator in question had already stated his support for tobacco interests, had not changed his position on the issue as a result of the contributions and had not tried to conceal the tobacco industry contributions. The court also found that the $2,700 in tobacco money the legislator received was not enough to influence his vote on the measure. "We believe," the court stated, "that $1,000 is simply not a large enough sum of money to yield, of its own accord and without further evidence, a reasonable perception of undue influence or corruption."

This same pattern emerged with contributions to legislators from several lobbyists who represented various groups, including real estate interests. Again, none of the contributions individually exceeded $1,000.

The court found that the $100 and $300 contribution limits approved in the voter initiative were too low to allow meaningful participation in the political process. The court also held that the $200-per-year PAC contribution limit enacted before the voter initiative was "simply too low to allow for appropriately robust participation in protected political speech and association."

The court concluded that, "the limitations in question here are … dramatically lower than, and different in kind from, the limits approved in *Buckley*, and thus are unconstitutionally low."

- *Proponents of small-donor PACs with higher contribution limits failed to show that differential treatment was warranted.* The supporters argued that raising funds in $25 amounts would alleviate the potential for corruption. The court found, in fact, that the potential for corruption would move from the individual contributor to the small-donor PAC itself.

  "If any contribution is likely to give rise to a reasonable perception of undue influence or corruption, it would be one from an entity permitted to contribute two-and-a-half times the amount that most others are allowed to contribute," the court stated. "The small-donor PAC provision is not, then, narrowly tailored to serve the compelling government interest of combating the reality or perception of undue influence or corruption."

Severability. The court found that the contribution limits were severable from the remainder of the voter initiative. It let stand the provisions for independent expenditure committees and rendered no decision on the instructions to local governments to establish reasonable limitations on campaign contributions and expenditures.

Kruse v. City of Cincinnati, *142 F.3d 907 (6th Cir. 1998), cert. denied 1998 WL 651027 (U.S.)*; Russell v. Burris, *146 F.3d 563 (8th Cir. 1998), cert. denied 1998 WL 596728 (U.S.).* ✥

Reports

Reports Due in 1999

This article on filing requirements for 1999 is supplemented by the reporting tables on this and the following page.

It is the responsibility of the committee treasurer to file required reports on time. To assist treasurers, the Commission sends committees FEC reporting forms and notices of upcoming reporting deadlines.

For more information on reporting or to order extra forms, call the FEC at 800/424-9530 (press 1) or 202/694-1100. Most forms are available at the FEC's web site (http://www.fec.gov) and from FEC Faxline, the agency's automated fax system (202/501-3413).

Year-End Reports Covering 1998 Activity

All committees must file a 1998 year-end report due January 31, 1999. The coverage and reporting dates are found in the table on page 6.

Reports Covering 1999 Activity

To find out what reports your committee must file in 1999, check the Guide to 1999 Reporting on this page. Then check the table on page 6 for reporting dates. Please note that committees active in special elections in 1999 may have to file additional special election reports, as explained below.

Where to File

Committee treasurers must file FEC reports with the appropriate federal and state filing offices. Please note that:

- The addresses for the federal offices (FEC and Secretary of the Senate) appear in the instructions on the back of the Summary Page of FEC Forms 3 and 3X.
- A list of state filing offices is available from the Commission.

House Candidate Committees. Principal campaign committees of House candidates file with the FEC. 11 CFR 105.1. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of the state in which the candidate seeks (or sought) election. 2 U.S.C. §439(a)(2)(B).

Senate Candidate Committees. Principal campaign committees of Senate candidates file with the Secretary of the Senate, as appropriate. 11 CFR 105.2. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of the state in which the candidate seeks (or sought) election. 2 U.S.C. §439(a)(2)(B).

Presidential Committees. Principal campaign committees of Presidential candidates file with the FEC. 11 CFR 105.3. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of each state in which the committee makes expenditures. 11 CFR 108.2.

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 or page 5 of FEC Form 3P, as appropriate). 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, file with the Secretary of the Senate. 11 CFR 105.2.

PACs and party committees must simultaneously file copies of reports and statements with the Secretary of State (or equivalent officer), as follows:

- Committees making contributions or expenditures in connection with House and Senate campaigns also file in the state in which the candidate seeks election. The committee is required to file only that portion of the report applicable to the candidate in that state (e.g., the Summary Page and the schedule showing the contribution or expenditure). 2 U.S.C. §439(a)(2)(B).
- Committees making contributions or expenditures in connection with Presidential candidates also file in the states in which the Presidential committee and the donor committee have their headquarters. 11 CFR 108.4.

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Guide to 1999 Reporting

Type of Filer	Reports				
	’98 Year-End	Semi-annual	Quarterly		Monthly
House and Senate Candidate Committees[1]	✓	✓			
Presidential Candidate Committees[2]	✓		✓	or	✓
PACs and Party Committees[3]	✓	✓	or		✓

[1]This category includes committees of candidates retiring debts from a previous election or running for a future election.

[2]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.

[3]PACs and party committees 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. A committee may change its filing frequency once per calendar year. 11 CFR 104.5(c).

Reports
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Late Filing

The Federal Election Campaign Act does not permit the Commission to grant extensions of filing deadlines under any circumstances. Filing late reports could result in enforcement action by the Commission.

Committees Active in Special Elections

Committees authorized by candidates running in any 1999 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, rather than semiannually, basis. 11 CFR 104.5(c)(3) and 104.5(h). However, 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).

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

Electronic Filing Update: Electronic Filing Help for Committees Using Commercial Software

The Commission has announced that two brands of reporting software have been tested and are compatible with the requirements of the FEC's electronic filing program. Filers using Campaign Manager made by Aristotle Publishing, Inc., or Keep in Touch made by Gnossos

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1998 Year-End Report
(Required of all committees.)

Report	Period Covered	Filing Date[1]
Year-End	Closing date of last report through December 31, 1998	January 31, 1999

1999 Semiannual Reports

Report	Period Covered	Filing Date[1]
Mid-Year	Jan. 1–June 30	July 31, 1999
Year-End	July 1–Dec. 31	January 31, 2000

1999 Monthly Reports

Report	Period Covered	Filing Date[1]
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, 2000

1999 Quarterly Reports
(Option available to Presidential committees only.)

Report	Period Covered	Filing Date[1]
1st Quarter	Jan. 1–March 31	April 15
2nd Quarter	April 1–June 30	July 15
3rd Quarter	July 1–Sept. 30	October 15
Year-End	Oct. 1–Dec. 31	January 31, 2000

[1] *Reports sent by registered or certified mail must be postmarked by the filing date; reports sent by other means (including Federal Express) must be received by the federal and state filing offices on that date.*

Software should be able to electronically file reports covering 1999 activity.

Commission surveys indicate that some committees have purchased software to manage their activities and prepare their FEC reports. The Commission wants to help these committees report electronically without having to make major changes in the way they do their work. The best way to accomplish this is for the committees to work with the software companies, encouraging the companies to integrate electronic filing into their products and provide help to the committees who use them.

Filers with the latest version of Campaign Manager or Keep in Touch can now send reports to the FEC by modem or diskette. Before, committees with commercial software usually prepared reports on computers, printed out the result and mailed the pages to the FEC.

Last year, the FEC requested proposals from software companies wherein the Commission would make small payments to a company in exchange for its allowing the FEC to test its program for compliance with electronic filing. Aristotle and Gnossos responded to this initial request.

The arrangement also stipulates that the companies maintain software compatibility with the FEC through the 2000 election cycle and that they offer technical support to their political committee customers. These vendors also will participate with the FEC in electronic filing training seminars for the regulated community.

Political committees that use FEC-compatible commercial software should find electronic filing a quick, flexible and efficient way to file their reports. The FEC anticipates working with other commercial vendors in the future to ensure compatibility of their software with the electronic filing program. ✥

Regulations

Commission Seeks Comments About Changes to Public Funding Regulations

On Dec. 10, 1998, the Commission approved a Notice of Proposed Rulemaking (NPRM) regarding proposed changes to the rules governing publicly funded Presidential primary and general election candidates. The deadline for comments is February 1.

The rulemaking addresses a number of topics and would affect 11 CFR Parts 9001 through 9039.

Coordination Between Publicly Funded Presidential Candidates and Their Political Parties

The proposal seeks comments concerning the situation where a national party committee works closely with its presumptive Presidential nominee to raise and spend funds on behalf of that presumptive nominee during the primary season once the identity of that person is clear. In this situation, the Commission assumes that the presumptive nominee has nearly exhausted his or her spending limit for the primary election. Any expenditures would count against the national committee's general election coordinated spending limit on behalf of the party's nominee for President (2 U.S.C. §441a(d)).

The proposal also addresses advertising, sponsored by national party committees, that clearly identifies a presidential candidate. The proposal would state that such expenditures are made on behalf of the candidate unless:

- The advertisement is focused on legislative or public policy issues;
- The advertisement is addressed to an audience that would be affected by the legislation being discussed; and
- The advertisement mentions the candidate only incidentally or only as it relates to his or her role as sponsor, proponent or opponent for the subject being presented.

Under the proposed approach, costs for general public political advertisements that clearly identify a Presidential candidate of another party would be considered expenditures on behalf of the sponsoring party committee's nominee or eventual nominee—even if that person does not accept public funds for either the primary or the general election.

Comments are also requested on whether the Commission should apply a standard other than "clearly identified candidate"—other options include express advocacy or electioneering message—to determine when advertising by a political party committee should be treated as an expenditure on behalf of a publicly funded Presidential candidate.

The Commission's proposal also addresses polling, media production and consulting services. Spending for such services by a party committee would be considered coordinated expenditures on behalf of publicly funded Presidential candidates if either:

- The activities are sponsored jointly and/or the costs are shared between the party committee and the candidate under a single contract or arrangement; or
- The polling, scripts or other contract products relate to a clearly identified candidate and either (1) the polling results are provided to the Presidential campaign or (2) the Presidential campaign is consulted in advance.

The Commission seeks comments on whether it should promulgate new rules to address the transfer or sharing of employees between Presidential campaigns and political party committees. The rules would provide that spending by party committees for salary, travel and other employee expenses for those

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Regulations

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employees who had also worked for a publicly funded Presidential campaign during the same election cycle would be considered expenditures on behalf of the Presidential candidate. There would be two exceptions to cover situations where either the Presidential candidate is no longer considered active under 11 CFR 9033.5 or the employee's duties are substantially different from those performed for the candidate.

Qualified Campaign Expenses

The Commission proposes clarifying the regulations that provide "bright line" distinctions between primary and general election expenses. Expenditures for goods or services that may benefit both primary and general elections would generally be attributed on the basis of whether they were used before or after a candidate received the nomination. With regard to the use of campaign offices before the party nomination, the current rules require that expenses be attributed to the primary unless staff are working "exclusively" on general election preparations. Under the proposal, the exception would apply to people working "full time" on the general election. An alternative would be to drop the "exclusive use" exception with regard to overhead and salary expenses for workers.

The proposal also would clarify that candidates who win their parties' nominations would not treat salary or overhead expenses as winding down costs until after the end of the expenditure report period, which is 30 days after the general election.

Compliance and Fundraising Costs

The Commission is considering amending these rules to simplify the calculation of legal and accounting costs for the primary election. Under the proposal, the regulations would be amended to state that a "standard deduction" equal to 10 percent of all operating expenditures for each reporting period could be treated as compliance expenses exempt from the primary expenditure limit. The proposal would not permit committees to demonstrate that their compliance expenses were greater than 10 percent of operating expenditures.

The Commission is proposing several alternatives for Presidential campaigns that wish to form pre-nomination General Election Legal and Accounting Compliance Funds (GELACs).

- Alternative One. The proposal would bar solicitations for contributions for a GELAC prior to a candidate's nomination. A committee could establish a GELAC before the nomination, but only for receiving correctly redesignated contributions that would otherwise have to be refunded as excessive primary election contributions.
- Alternative Two. The proposal would bar GELAC fundraising before a specific date, for example, April 15 of the Presidential election year. If a candidate failed to win his or her party's nomination for President, the GELAC contributions would have to be refunded.
- Alternative Three. The proposal would allow GELAC fundraising to begin 90 days before each candidate's date of nomination.
- Alternative Four. This proposal would bar establishment of a GELAC until the date of the last Presidential primary before the national nominating convention. One variation on this proposal would allow the presumptive nominee to establish the GELAC earlier than the last Presidential primary, but prohibit fundraising until after that date.
- Alternative Five. This proposal would allow Presidential primary candidates to establish and run a GELAC at any time. Candidates who did not win their party's nomination could use the contributions in the GELAC to offset their GELAC fundraising and administrative expenses, and would only need to refund the amount remaining in their accounts as of the date their party selected its nominee.

The Commission is also proposing alternatives for joint primary/GELAC solicitations.

- Alternative One. This proposal would require committees to allocate solicitation expenses and the distribution of net proceeds from the fundraiser following the percentage of contributions each committee received from the event.
- Alternative Two. The proposal would prohibit joint fundraising between primary committees and GELACs.
- Alternative Three. This proposal would treat all expenses incurred by the GELAC prior to the candidate's date of ineligibility or date of nomination as qualified campaign expenses for the primary election.
- Alternative Four. This proposal would detail the types of fundraising costs that a GELAC could cover. For example, under this proposal, GELAC solicitation expenses could include costs for printing invitations and solicitations, mailing postage and telemarketing, but not expenses for catering, facilities rental, fundraising consultants, employee salaries or travel to the event site.

The Commission also is seeking comments on whether the provisions that cover transfers of funds from primary committees to GELACs should be strengthened.

Modification of the Audit and Repayment Process

There are three alternatives under this proposal.

- Alternative One. The Commission proposes returning to the procedures it used for 1992 Presidential candidates who received public funding. This procedure included an FEC Audit Division exit conference to discuss preliminary findings with Presidential campaign committees; an interim audit report containing a preliminary calculation of the repayment obligations of a federally financed campaign committee; and a final audit report, which was considered by the Commission in open session. Before the Commission considered the interim and final audit reports, the audited committee had a chance to review them and submit materials disputing or commenting on them.
- Alternative Two. This proposal would make no change to the current audit process.
- Alternative Three. This proposal would retain many of the current audit procedures. However, one change would include legal analysis in the exit conference memorandum and have the memorandum approved by at least four Commissioners in executive session before its release to the committee during the exit conference.

The Commission is also proposing to more clearly indicate that a post-administrative review of a repayment determination (the candidate submits materials supporting a smaller repayment and can request an oral hearing in an effort to convince the Commission to change the repayment determination) must be approved by at least four Commissioners, and that this vote is not to revise a repayment determination, but simply to issue a repayment determination.

Bases For Repayment Determinations

The Commission is considering whether to delete the regulation (11 CFR 9038.2(b)(2)(ii)(A)) that permits it to order repayment of primary matching funds if a publicly funded Presidential campaign committee has made expenditures in excess of the primary spending limit. Differences between the general and primary election statutes have led the Commission to question whether the FEC has the statutory authority to obtain repayments when a primary campaign exceeds either the overall spending limit for the Presidential primaries or the limits applicable to each state. The Commission is also examining whether it should seek repayments when a campaign exceeds its spending limit by receiving in-kind contributions from a party committee making expenditures on its Presidential candidate's behalf. The NPRM explains at length the statutory basis for the current regulation and the arguments for its elimination.

Net Outstanding Campaign Obligations/Capital Assets

The proposed regulations would revise the formulas for assessing the value of capital assets owned by either the Presidential primary or the general election campaign for purposes of determining net outstanding campaign obligations.

The Commission is also proposing to clarify application of the term "capital assets" to components of a computer system or a telecommunications system that are used as a whole.

Transportation and Services Provided to the Media

The Commission seeks comments on whether it should revise the primary and general election rules to include lists of allowable and prohibited expenses for ground costs that publicly funded campaigns may bill to the media. Among items disputed in the past were security services for the press, sound and lighting equipment and press risers and camera platforms.

The Commission also is seeking comments on whether to further clarify regulations specifying that Presidential campaigns can only charge each member of the press for his her own pro rata share of the costs of meals, phones and transportation.

Documentation of Disbursements

The Commission is proposing to modify its regulations to clarify that documentation for disbursements greater than $200 must always include a canceled check that has been negotiated by the payee.

Matching Fund Documentation

Another proposal would permit Presidential primary committees to use digital imaging technology to submit their matching fund threshold submissions to the Commission, as well as contributor redesignations, reattributions and supporting materials to establish the matchability of contributions.

Prenomination Vice Presidential Committees

The Commission proposes new regulations specifying that payment of expenses incurred in connection with seeking the Vice Presidential nomination would be expenditures by the candidate who obtains that political party's nomination for President. This rule would apply only to a Vice Presidential candidate who became the nominee of his or her party. Comments are also invited as to whether this proposed rule should be further restricted to apply only to situations where the Vice Presidential nominee's committee has acted in concert with the Presidential nominee's committee.

Under the proposal, funds raised and spent by the Vice Presidential committee for travel of its candidate and his or her family to the convention would not count against the Presidential candidate's expenditure limit.

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Nominating Conventions and Host Committees

Another proposal defines the conditions under which public funds received by a convention committee could be used to make up for the cost of lost items.

The Commission is also proposing to allow local banks to donate funds and make in-kind donations to host committees, government agencies and municipal corporations in connection with nominating conventions.

The Commission is also seeking comments on whether it should augment its regulations to provide greater detail about the expenses a host committee can fund with donated funds, and the expenses convention committees can cover with public funds.

Because the major political parties are already in the midst of selecting convention locations, the Commission is requesting comments as to whether it would be better to defer consideration of this topic until after the 2000 Presidential elections.

Comments

The NPRM, published in the December 16, 1998, *Federal Register* (63 FR 69524), provides greater detail about the various proposed changes. A copy of that document is available:

- From the Public Records Office at 800/424-9530 (press 3),
- Through the FEC's Faxline at 202/501-3413 (request document 235), and
- At the FEC's web site—http://www.fec.gov.

Public comments must be submitted in either written or electronic form to Susan E. Propper, Assistant General Counsel. Written comments should be mailed to the Federal Election Commission, 999 E St., NW, Washington, DC 20463. Faxed comments should be transmitted to 202/219-3923, with a copy mailed to the preceding address to ensure legibility.

Comments also may be sent by e-mail to publicfund@fec.gov. Electronic submissions must include the commenter's full name, e-mail address and postal mail address. ✥

Commission Publishes Rulemaking Notice on "Member" Regulations

On December 10, 1998, the Commission approved a Notice of Proposed Rulemaking (NPRM) offering further proposals for revisions to the rules governing who qualifies as a "member" of a membership organization. The deadline for comments is February 1.

This is the second NPRM on this subject. The first, published in December 1997, offered three alternatives and was initiated in response to a petition for rulemaking filed with the Commission in response to *Chamber of Commerce of the United States v. FEC*. See the January 1998 *Record*, p. 4. The Commission held a public hearing on the subject in April, but commenters offered no consensus on which alternative would best suit membership organizations. See the June 1998 *Record*, p. 9. This notice replaces the earlier NPRM.

Terminology

The Commission has proposed replacing the term "membership association" with "membership organization" at 11 CFR 100.8(b)(4)(iv)(A) and 114.1(e)(1). The replacement is the term used in the Federal Election Campaign Act (the Act).

Membership Organizations

The new proposal focuses primarily on the attributes of membership organizations. It suggests revisions to the preliminary requirements an organization must meet to qualify as a membership organization—changes that were not proposed in the original NPRM. The proposed changes would amend 11 CFR 100.8(b)(4)(iv)(A) and 114.1(e)(1) in the following ways.

- The proposal would replace language in the regulations that calls for a membership organization to expressly provide for members in its articles and bylaws with a more general statement that such organizations should be composed of members.
- The proposal would require that a membership organization be self governing. The organization would have to provide in its articles, bylaws or other formal organizational documents that the power and authority to direct and control the organization be vested in some or all members, although the organization could delegate these responsibilities to committees or groups within the organization.
- The proposal would require membership organizations to inform their members of their rights, qualifications and obligations under the organization's articles, bylaws and other formal organization documents, and to make these documents available to their members.
- The proposal would clarify that the current membership communications exception at 11 CFR 100.8(b)(4) applies only to communications made at the direction or control of a membership organization, and not of any outside party.

Definition of Member

The new proposal also addresses the definition of member, as explained below. The proposal would require members to renew membership in writing on an annual basis, as well as meet one of the following requirements:

- Pay annual dues set by the membership organization. The regulations do not specify a minimum amount of dues.

- In those situations where members are not required to pay a specific amount of annual dues, membership organizations would have to provide "direct and enforceable participatory and governing rights" to members. The new rules would provide some examples of the types of activities that would signify a sufficient organizational attachment, but they would not set out an exhaustive list.
- Retired union members who have paid dues and been active members of the organization for at least 10 years would be granted member status. Their past membership, the Commission suggests, would satisfy the requirement of a significant financial attachment to the membership organization and their union insurance policies and retirement benefits would provide significant organizational attachment.
- In the previous NPRM, the Commission suggested that students and lifetime members would be able to qualify as members even if they paid smaller dues than active members. This proposal remains a part of the current NPRM. The preceding requirements would satisfy the requirement from *FEC v. National Right to Work Committee*[1] that members have a "relatively enduring and independently significant financial or organizational attachment" to the organization.

Other Proposed Revisions

- The proposal would recognize as membership organizations certain organizations that, under state law, are not allowed to have "members" for policy reasons unrelated to the Act, if they otherwise meet the requirement of these rules.
- The proposal would include unincorporated associations under the regulation's definition of membership organization, for purposes of the internal communications exemption in 11 CFR 100.8 only. Unincorporated associations would include entities that are not trade associations, cooperatives, corporations without capital stock or labor organizations, but that nonetheless meet the requirements for membership organizations. This proposal, if adopted, would not however allow unincorporated associations to establish and support separate segregated funds.

Comments

The NPRM, published in the December 16, 1998, *Federal Register* (63 FR 69224), provides greater detail about the new proposal. A copy of that document is available:

- From the Public Records Office at 800/424-9530 (press 3),
- Through the FEC's Faxline at 202/501-3413 (request document 229), and
- At the FEC's web site—http://www.fec.gov.

Public comments must be submitted in either written or electronic form to Susan E. Propper, Assistant General Counsel. Written comments should be mailed to the Federal Election Commission, 999 E St., NW, Washington, DC 20463. Faxed comments should be transmitted to 202/219-3923, with a copy mailed to the preceding address to ensure legibility.

Comments also may be sent by e-mail to members@fec.gov. In order to be considered, electronic submissions must include the commenter's full name, e-mail address and postal mail address. ✥

[1] FEC v. National Right to Work Committee, *459 U.S. 196, 204 (1982).*

Commission Seeks Comments on Regulations for LLCs, Subchapter S Corporations

On December 10, 1998, the Commission approved a Notice of Proposed Rulemaking (NPRM) to seek comments on new rules governing contributions from limited liability companies (LLCs) and possible new rules on subchapter S corporations. The last day to submit comments on these subjects is February 1.

LLCs

Currently, the Commission has responded to LLCs on a case-by-case basis through its advisory opinion process. LLCs in California, the District of Columbia, Illinois, Missouri, Pennsylvania and Virginia have been deemed "persons" for purposes of the Federal Election Campaign Act (the Act) and have been allowed to make contributions in federal elections to the same extent that other persons can. Through this rulemaking, the Commission intends to promulgate a nationwide approach to regulating contributions from LLCs. The NPRM contains draft language on two possible approaches.

Alternative A. This proposal would treat all LLCs as partnerships are treated under the Act. Contributions from an LLC would be attributed to the LLC and to each member of the LLC in direct proportion to his or her share of the business's profits, or as directed by the LLC. Profits from any LLC members that are prohibited from making contributions under the Act would not be included in contributions to federal candidates. LLCs could, however, make contributions to federal candidates if some, but not all, of their members were prohibited from giving. This is a change from the treatment of LLCs as persons under past advisory opinions.

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Regulations

(continued from page 11)

Alternative B. This proposal would require that LLCs be treated as either partnerships or corporations, depending on which option they had elected under Internal Revenue Service taxation rules. If an LLC opted to be treated as a partnership for purposes of the IRS, then it would follow FEC regulations governing partnerships when making federal contributions. If, on the other hand, an LLC opted to be treated as a corporation for IRS , it would follow the Act and regulations governing corporations and would be unable to make direct contributions in federal elections, although it could establish a separate segregated fund and engage in other authorized activities. If an LLC did not select tax treatment as either a partnership or a corporation, the Commission would treat it as a partnership, as this is the default position for IRS in cases where LLCs fail to select either alternative.

Subchapter "S" Corporations

The Commission also invites comments about treatment of subchapter S corporations for purposes of the Act. Specifically, the Commission is seeking comments both on the merits of allowing subchapter S corporations to make contributions in federal elections, and on whether the Commission has authority to act in this manner. The contributions would be attributed only to the individual stockholders of the corporation as personal contributions subject to the Act's limits for individuals.

Comments

The NPRM, published in the December 18, 1998, *Federal Register* (63 FR 70065), provides greater detail about the proposals. A copy of that document is available:

- From the Public Records Office at 800/424-9530 (press 3),
- Through the FEC's Faxline at 202/501-3413 (request document 236), and
- At the FEC's web site—http://www.fec.gov.

Public comments must be submitted in either written or electronic form to N. Bradley Litchfield, Associate General Counsel. Written comments should be mailed to the Federal Election Commission, 999 E St., NW, Washington, DC 20463. Faxed comments should be transmitted to 202/219-3923, with a copy mailed to the preceding address to ensure legibility.

Comments also may be sent by e-mail to LLCnprm@fec.gov. Electronic submissions must include the commenter's full name, e-mail address and postal mail address. ✥

Federal Register

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

Notice 1998-17
Definition of "Member" of a Membership Association; Notice of Proposed Rulemaking (63 FR 69224, December 16, 1998)

Notice 1998-18
Public Financing of Presidential Primary and General Election Candidates; Notice of Proposed Rulemaking (63 FR 69524, December 16, 1998)

Notice 1998-19
Treatment of Limited Liability Companies Under the Federal Election Campaign Act; Notice of Proposed Rulemaking (63 FR 70065, December 18, 1998)

Commission Hears Soft Money Testimony

FEC proposals to change the way party committees use soft money drew sharply divergent opinions from witnesses at a November 18, 1998, public hearing. While one side suggested that soft money is a viable way for party committees to support their nonfederal candidates, the other side argued that the large, unregulated contributions have made meaningless the contribution limits of the federal election statutes.

Soft money generally refers to funds that are raised outside the contribution limits and prohibitions of the Federal Election Campaign Act (the Act). Soft money ostensibly is used for party building activities, not for direct support of federal candidates. The Act prohibits the use of soft money to influence federal elections.

Craig M. Engle, general counsel for the National Republican Senatorial Committee (NRSC), told Commissioners that the hearing was, in fact, based on an inaccurate premise—that there exists a soft money crisis. "There is not a soft money crisis. There is a hard money crisis," he said.

Mr. Engle suggested that the Commission urge Congress to index hard money contribution limits for inflation. He also described the escalating costs of financing campaigns and the need for large sums of money to operate them.

The NRSC also maintained its long-standing position that the FEC is outside its jurisdiction in attempting to regulate soft money. Bobby Burchfield, an attorney for the NRSC, said the FEC's attempts to regulate soft money are tantamount to regulating political speech, which is protected by the First Amendment. He also asserted that large, soft money contributions do not buy wealthy contributors any greater access to government power brokers than do smaller contributions from contributors of more modest means.

On the other side of the issue, Don Simon, general counsel of Common Cause, said soft money contributions had "distorted almost beyond recognition" the federal statute, and that the current use of soft money is "a national scandal of historic proportions."

Calling the increased misuse of soft money during the 1996 elections more blatant than ever, Mr. Simon urged the Commission to enact measures to rein in what he perceived as widespread abuse of nonfederal funds.

Rep. Martin Meehan, who during the last Congressional session proposed legislation that would have curtailed the use of soft money in federal elections, added that soft money is a growing problem in federal elections among both Democrats and Republicans.

Other witnesses advocating a ban on soft money were Roger Witten, counsel for Common Cause, Glenn Moramarco, with the Brennan Center for Justice, and Robert Weinberg, with the American Bar Association's House of Delegates.

Other pro-soft money witnesses were Michael A. Dawson, representing the NRSC, Paul Sullivan and Cleta Mitchell, of Americans Back in Charge Foundation, Inc., and James Bopp, Jr., with the James Madison Center for Free Speech.

For more information about the Notice of Proposed Rulemaking (NPRM) and public hearing on soft money:

- Review testimony from speakers attending the public hearing. For copies of witness testimony, call the Public Records Office at 800/424-9530 (press 3). Eighty-two written comments received in response to the NPRM are also available from the Public Records Office.
- Read the FEC's NPRM in the July 13, 1998, *Federal Register* (63 FR 37721). The document is available from Faxline, the FEC's automated fax service (dial 202/501-3413 and request document 230). The *Federal Register* notice is also available at the FEC's web site—http://www.fec.gov.
- See the August, October and November 1998 issues of the *Record* for summaries of the NPRM and public hearing notices. ✦

Compliance

MUR 4750 Contributions to Extinguish Debt Result in Excess Contributions

The Harvey Gantt for Senate Campaign Committee has paid a $19,000 civil penalty to the FEC because it accepted post-primary election contributions designated for 1996 primary election debts after the debts had been extinguished, resulting in a number of excessive contributions.

After the 1996 primary election, the committee assertedly had $214,964 in primary debt. On July 1, 1996, a few months after the primary, the committee used funds it had raised for the upcoming general election to pay off its outstanding primary debts. Nonetheless, it still accepted post-primary election contributions.

The Federal Election Campaign Act specifically provides that contribution limits apply separately to each election. 2 U.S.C. §441a(a)(6). Political committees are prohibited from knowingly accepting contributions that exceed contribution limits. 2 U.S.C. §441a(f). Undesignated contributions count toward the next election after the date of receipt, and designated post-election contributions can only be accepted if they do not exceed a committee's "net debt outstanding" for that election. 11 CFR 110.1(b)(3)(i) and 110.2(b)(3)(i). If net debts outstanding do exist, a committee should adjust this figure as it receives additional contributions and makes expenditures. 11 CFR 110.1(b)(3)(iii). If net debts do not exist, a committee may not accept post-election contributions.

Any contributions received by the committee after the primary debt was paid counted against the contributor's general election (the next election) limit—even if the contributions were designated for the primary election. Thus, any contributions designated for the primary, but received after the primary election debt was paid, had to be aggregated with contributions made by the same contributors for the general election. All told, the committee accepted $95,135 in excessive contributions.

This matter was initiated by the FEC. Prior to finding probable cause that a violation had occurred, the agency entered into a conciliation agreement with the committee. ✦

MUR 4796 Contributions in the Names of Others

DeLuca Liquor and Wine, Ltd., and one its vice president have paid a combined $60,000 civil penalty for using corporate funds to make contributions to the Dole for President Committee in the names of 10 individuals.

Ray E. Norvell, the company vice president, made a $1,000 contribution to the Dole committee and caused his wife, four managers and their spouses to do the same, with the understanding that DeLuca would reimburse them for the contributions. The Dole committee refunded the $10,000 to DeLuca in May 1997.

It is unlawful for a corporation to make contributions or expenditures

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Compliance

(continued from page 13)

in connection with any federal election. 2 U.S.C. §441b(a). It is also unlawful for any person to make a contribution in the name of another or to knowingly permit his or her name to be used to effect such a contribution. 2 U.S.C. §441f.

This matter was referred to the FEC by the Department of Justice. Prior to finding probable cause that violations had occurred, the FEC entered into a conciliation agreement with both parties. DeLuca paid a $50,000 civil penalty. Mr. Norvell was cited for knowingly and willfully violating Commission statutes. He paid a $10,000 civil penalty. ✥

The FEC Takes Visa and Mastercard

FEC customers can pay for FEC materials with Visa or Mastercard. Most FEC materials are available free of charge, but some are sold, including financial statistical reports ($10 each), candidate indexes ($10) and PAC directories ($13.25). The FEC also has a 5¢ per page copying charge for paper documents and a 15¢ per page copying charge for microfilmed documents.

Paying by credit card has its advantages. For instance, since the FEC will not fill an order until payment is received, using a credit card speeds delivery by four to five days.

Visitors to the FEC's Public Records Office may make payments by credit card. Regular visitors, such as researchers and reporters, who in the past have paid for FEC materials out of their own pockets, may make payments with a company credit card.

The credit card payment system also reduces costs and paperwork associated with check processing, enabling FEC staff to better serve the walk-in visitor.

Information

FEC Launches Monthly Roundtable Sessions on Election Financing Topics

The FEC will begin conducting monthly roundtable sessions for the regulated community in February. The roundtables, limited to 10 participants per session, will focus on a range of topics from PAC fundraising fundamentals to advancing money to a campaign through personal funds. See the chart below.

Candidates, congressional staffers, lawyers, accountants, consultants and political committee staff are invited to register for the discussions, which will be held from 9:30 to 11 a.m. at the FEC, 999 E Street, NW, Washington, DC. FEC staff will facilitate the sessions.

Registration is $25 and payments will be accepted on a first-come, first-served basis, beginning January 4, up to the day before a roundtable takes place. Pre-payment is required. Organizations that have accounts set up with the FEC's Public Records Office may charge the fee to their accounts.

Mail or fax the registration form on the next page to sign up for a session. (The form is also available from Faxline, the FEC's automated fax system. Call 202/501-3413 and request document 590.) The FEC will maintain a waiting list in the event there are cancellations.

Any cancellation must be received in writing or by fax at least two days before the discussion. The FEC will not refund registration fees to individuals who cancel after that period or who fail to show up for a roundtable session.

For more information about the roundtable sessions, call the FEC's Information Division at 800/424-9530 (press 1) or 202/694-1100. In addition, log on to the FEC's web site—http://www.fec.gov—to stay abreast of future roundtable topics. Updates will also appear in the *Record*. ✥

FEC Monthly Roundtables

Date	Subject	Intended Audience
February 3 9:30-11 a.m.	**Trade Association PACs: Fundraising Basics for Newcomers** (Code #299)	• New Trade Association PACs • New PAC Staff of Trade Associations
March 3 9:30-11 a.m.	**Candidate Preparations for the Next Election Cycle** (Code #399)	• Candidates & Congressional Staff • Political Party Staff
April 7 9:30-11 a.m.	**Use of the Internet to Raise Funds** (Code #499)	• Candidates • Political Party Staff • Nonconnected PACs

FEC Monthly Roundtable Registration Form

Session Information

Subject of Monthly Roundtable You Wish to Attend: Code Number:

Date of Roundtable:

Registration Information

Name of Attendee:

Organization:

Mailing Address:

E-Mail:

Phone Number: Fax:

Payment (Check one box)

❒ Check (payable to the Federal Election Commission)

❒ Credit Card: ☐ Mastercard ☐ Visa

Account #__ __ __ __ - __ __ __ __ - __ __ __ __ - __ __ __ __ Expiration Date:__ __ / __ __

Name/Billing Address (if different from above):____

Signature:____

Note: Payment is required prior to the meeting. Refunds will be made only when a cancellation is received in writing or by fax at least two business days prior to the event. Those who fail to cancel by this deadline will NOT receive a refund.

Mail Form/Check To: Monthly Roundtables
Federal Election Commission
999 E Street, N.W., Rm. 232
Washington, DC 20463

Credit card orders may be submitted by fax (202/219-8504) or by telephone (202/694-1100).

Advisory Opinions

AO 1998-22
Including Disclaimer on Web Site

Leo Smith, a Connecticut resident, must include a disclaimer on a web site he constructed to advocate the election of former U.S. House candidate Charlotte Koskoff. Moreover, depending on how much Mr. Smith spends and whether his activity is independent, he may have to file reports.

Mr. Smith created the web site in September 1998 to protest House Republican efforts against President Clinton. On the site, he advocated Ms. Koskoff's election and the defeat of her opponent, GOP Representative Nancy Johnson. The site offered visitors a choice of contributing money or volunteering time to the Koskoff campaign and included a link to the official Koskoff e-mail address.

Mr. Smith asserts that he spends no money in maintaining the web site, and that it cost him nothing to create it. He says the web site is run independently of Ms. Koskoff's campaign. The site includes a statement declaring that it is not affiliated with the Koskoff campaign. Nonetheless, staffers with the Koskoff campaign asked Mr. Smith to correct the spelling of the candidate's name on the web site and to remove references to the use of credit cards for making contributions to the Koskoff campaign. He complied with both requests.

Expenditures

The definition of expenditure includes anything of value made to influence a federal election. 2 U.S.C. §431(9). Mr. Smith's web site is considered something of value because it advocates the election of one federal candidate and the defeat of another. Thus, any costs associated with construction and maintenance of the web site are expenditures. (Note that, although the web site includes express advocacy, under 2 U.S.C. §431(9), a communication does not necessarily have to contain express advocacy in order to qualify as an expenditure.)

Whenever a person makes an expenditure to finance a communication that expressly advocates the election or defeat of a clearly identified candidate through general public political advertising, the communication must include a disclaimer. 2 U.S.C. §441d. The disclaimer must state who paid for the communication and, in the case of an advertisement that was not paid for by the candidate's committee, who authorized it. In five advisory opinions, the Commission has concluded that communication via a web site is a form of communication to the general public. AOs 1997-16, 1996-16, 1995-35, 1995-33 and 1995-9.

Thus, Mr. Smith's web site must include a disclaimer stating who paid for the communication and whether or not it was authorized by any candidate. Mr. Smith's current attempt at a disclaimer is insufficient. He only identifies himself as an "Independent voter in the Sixth District." He must use his full name in the disclaimer.

Reporting Obligation

The Commission also concludes that—contrary to Mr. Smith's assertion—there are costs associated with this web site. A portion of the overhead costs could be apportioned to each web site created by Mr. Smith. Those costs include the domain name registration fee, the amount invested in the hardware (computer and peripherals) that created the web site and the utility costs associated with creating and maintaining the site.

If Mr. Smith's web site activity on behalf of the Koskoff campaign was completely independent of the campaign, then he would be required to file independent expenditure reports with the Commission if the total value of the expenditures exceeded $250 in 1998. 2 U.S.C. §§431(17) and 434(c), 441a(a)(7)(B). If, however, Mr. Smith's web site activity was done in cooperation, consultation or concert with that campaign, then the campaign would be required to report the expenditure as an in-kind contribution from Mr. Smith. 2 U.S.C. §§431(8)(A)(i), 434(b)(2)(A) and 434(b)(3)(A).

Date Issued: November 20, 1998; Length: 5 pages. ✦

AO 1998-23
Status of State Party as State Committee of Political Party

The Maine Green Party Council meets both of the Commission's requirements for state committee status.

The Federal Election Campaign Act (the Act) defines a state committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. §431(15).

The definition of a state committee requires the existence of a political party. A political party is "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization." 2 U.S.C. §431(16).

In a number of Advisory Opinions, the Commission has identified two requirements necessary for state political committee status. First, the organization must have a state affiliate agreement that "delineates activities commensurate with the day-to-day operation" of a party at a state level. Second, the state affiliate must gain ballot access for its Presidential and other federal candidates. See AOs 1998-24, 1998-2, 1997-29, 1997-7, 1997-3 and 1996-51.

The Commission has made clear that a state political party can qualify as a state party committee without an affiliation with any national political party. The state party's candidate must qualify as a candidate under FEC regulations in order for the party to satisfy the second requirement.

The Maine Green Party Council meets both requirements. In addressing the first requirement, the party's bylaws set out a comprehensive organizational structure for the party from the statewide level down through local levels. These bylaws do indeed delineate activity commensurate with the day-to-day functions and operations of a political party on the state level.

The second requirement of ballot access for a federal candidate also has been satisfied. The party's 1992 federal candidate, Jonathan Carter, attained ballot access and satisfied FEC requirements for establishing himself as a federal candidate under 2 U.S.C. §431(2). It makes no difference that Mr. Carter was a bona fide candidate more than six years ago because the party continued to pursue its political objectives through the most recent election cycle (1997-1998) by placing candidates on the Maine ballot for state races.

Date Issued: November 16, 1998; Length: 4 pages. ✥

Advisory Opinion Request

Advisory opinion requests are available for review and comment in the Public Records Office.

AOR 1998-26

Candidate committee's acceptance of loan repayment from contested election trust fund that contains funds loaned to it by candidate (The Friends of Mary Landrieu, Inc., December 9, 1998; 7 pages) ✥

800 Line

Use of Campaign Funds for Swearing-in Reception

Can campaign funds be used to pay for a reception to celebrate the swearing-in ceremony of a newly elected U.S. Representative or Senator? The Commission has said yes because the reception costs are not considered to be a "personal use" of campaign funds.

The Federal Election Campaign Act prohibits the use of excess campaign funds to pay for personal expenses. Under Commission regulations at 11 CFR 113.1(g), "personal use" is any use of 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 responsibilities as a federal officeholder. If an expense results from campaign or officeholder activity, then it falls outside the personal use ban, and can be paid for with campaign funds. On the other hand, if the expense would exist even in the absence of the candidacy, or even if the officeholder were not in office, then the personal use ban applies, and campaign funds cannot be used.

In Advisory Opinion 1981-2, the Commission permitted a member of Congress to use campaign funds to pay the costs of a reception for constituents on the day of his swearing-in ceremony. The Commission viewed them as "ordinary and necessary expenses associated with the duties of a federal officeholder." The Commission also said that, if the reception were held to thank campaign workers or encourage their assistance in a reelection campaign, the expenses could be regarded as campaign-related expenditures, and could be covered with campaign funds. ✥

Preparing for the Next Election Cycle

This article examines issues that candidates and their ongoing[1] committees need to pay special attention to **now,** as they begin to plan for the next election cycle:

- Fundraising
- Registration
- Reporting

Fundraising and Contribution Limits

Undesignated Contributions. Candidates and their committees need to be aware that contributions made at this time, unless otherwise designated in writing by the contributor, automatically count against the donor's limit for the candidate's next election. The date a contribution is made is important because it determines which election limit it counts against. FEC regulations specify that a hand-delivered contribution is considered made on the date it is delivered to the campaign, while a mailed contribution is made on the date of the postmark. 11 CFR 110.1(b)(6). For example, an undesignated contribution to a House candidate postmarked after the 1998 general election of November 3 counts against the 2000 primary election limit.

Debt Retirement for a Previous Election. A campaign may accept contributions after an election to retire election debts provided that it satisfies the following requirements:

- The contribution is designated **in writing, by the contributor,** for a specific election (since an undesignated contribution made

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[1] *An ongoing committee is any committee that plans to continue to raise funds and make expenditures (other than for the purposes of paying winding down costs and retiring past election debts in preparation for termination as a campaign committee). See 11 CFR 116.1(a) and (b).*

800 Line

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after an election counts toward the limit for the candidate's upcoming election). For example, a donor should label a contribution to retire the 1998 general election debt as "1998 general debt."[2]

- The contribution does not exceed the contributor's limit for the designated election; and
- The campaign has net debts outstanding for the designated election on the day it receives the contribution. (A campaign's net debts outstanding consist of unpaid debts incurred with respect to the election minus cash on hand.)

11 CFR 110.1(b)(3).

Registration by Candidates and Their Committees

Individuals running for federal office must designate a principal campaign committee within 15 days of becoming a "candidate." 11 CFR 101.1(a) and 102.12(a). This requirement applies to all candidates, including incumbents who qualify as candidates for a future election (see paragraph below).

Definition of Candidate. An individual becomes a "candidate" when the individual or persons authorized to conduct campaign activity on his or her behalf receive over $5,000 in contributions or make over $5,000 in expenditures. 11 CFR 100.3(a)(1) and (2). Unauthorized campaign activity on behalf of a candidate may also trigger candidate status unless the individual disavows the activity by writing a letter to the FEC within 30 days after being notified by the agency that unauthorized activity reported to the FEC has exceeded $5,000. 11 CFR 100.3(a)(3) and 102.13(a)(2).

Designation of Committee. Candidates must designate a principal campaign committee by filing a Statement of Candidacy on FEC Form 2 (or a letter containing the same information) within 15 days after becoming a "candidate." 11 CFR 101.1(a).

Registration by Principal Campaign Committee. Within 10 days after it has been designated by the candidate, the principal campaign committee or other authorized committee must register by filing a Statement of Organization on FEC Form 1. 11 CFR 102.1(a). Please note that the name of the committee must include the candidate's name. 11 CFR 102.14(a).

Ballot Access. Registration with the FEC does not mean that the individual has qualified for the ballot. State law governs ballot access requirements for federal offices; for information, consult the appropriate state authority (generally, the secretary of state's office).

Candidates Who Ran in Previous Elections

A candidate who ran in 1998 or another previous election must file a new FEC Form 2 (Statement of Candidacy) within 15 days after qualifying as a "candidate" (as defined above) for the 2000 election cycle or another future election. The candidate may either designate a new principal campaign committee or redesignate his or her previous principal campaign committee (if it has not terminated). A newly designated committee will receive a new FEC identification number, while a redesignated committee retains its original number.

If the candidate redesignates an existing committee, the committee need only amend its Statement of Organization if there has been any change in the information on it (e.g., a change in the committee's name, address or treasurer). The committee must file the amendment within 10 days of the change in information, either by using FEC Form 1 or by writing a letter noting the changes. 11 CFR 102.2(a)(2).

Where to File Forms 1 and 2

U.S. House candidates and their principal campaign committees file their statements and amendments directly with the FEC; U.S. Senate candidates and their principal campaign committees file with the Secretary of the Senate. 11 CFR Part 105.

Campaigns must also file copies of statements and amendments with state officers. House and Senate campaigns file in the state in which the candidate seeks election. 2 U.S.C. §439(a)(2)(B).

Other Authorized Committees

In addition to designating a principal campaign committee, a candidate may designate other authorized committees to receive contributions and make expenditures on his or her behalf, using the following steps:

- The candidate designates the authorized committee by filing an FEC Form 2 (or letter) with the principal campaign committee. 11 CFR 101.1(b) and 102.13(a)(1).
- Within 10 days of being designated by the candidate, the authorized committee must register by filing an FEC Form 1 with the candidate's principal campaign committee. 11 CFR 102.1(b). (The name of the committee must include the candidate's name. 11 CFR 102.14(a).)
- The principal campaign committee, in turn, files both forms with the appropriate federal and state offices, as explained above.

Reporting Issues

Upcoming FEC Reports. All campaign committees must file their next regular FEC report on January 31, 1999, disclosing activity through December 31, 1998. In 1999, campaign committees file on a semi-annual basis, with reports due

[2] *The donor may make the written designation using the memo line of his or her check; alternatively, the donor may sign a note accompanying the check.*

July 31, 1999, and January 31, 2000, covering the preceding six months.

Disclosing Contributions for Two Election Cycles in One Report. A candidate who has received both 1998 general election debt retirement contributions and 2000 primary election contributions must disclose information on both cycles in the same FEC report. On the Summary Page of Form 3 (Reports of Receipts and Disbursements), the campaign may indicate that the report contains activity for both the primary and general elections by checking the applicable boxes.

When itemizing contributions on Schedule A, campaigns should check the primary or general election box when itemizing contributions for the current (2000) election cycle. By contrast, campaigns should check the "other" box when itemizing contributions for the 1998 or other previous election cycle, and note the specific election to which the contribution applies.

Disclosing Debts from a Previous Election Cycle. Redesignated campaign committees must continue to report outstanding loans and debts remaining from the 1998 or other previous elections on Schedules C and D. 11 CFR 104.11. For information on debt settlement and related issues, consult the Campaign Guide for Congressional Candidates and Committees, Chapter 13. 11 CFR 116.2(b).

Where to Obtain Forms and More Information

Call the FEC's Information Division (800/424-9530, press 1, or 202/694-1100). Staff are also available to answer questions.

Alternatively, dial the automated FEC Faxline at 202/501-3413 and request documents 801 (Form 1) and 802 (Form 2). ✥

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The first number in each citation refers to the "number" (month) of the 1999 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "1:4" means that the article is in the January issue on page 4.

PACronyms, Other PAC Publications Available

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

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

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

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

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

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

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