Record

August 2000 *Federal Election Commission* *Volume 26, Number 8*

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Electronic Filing

On June 15, the Commission approved the final rules on mandatory electronic filing. Beginning with the reporting periods that start on or after January 1, 2001, all persons required to file their reports with the FEC who receive contributions or make expenditures in excess of $50,000 in a calendar year, or who expect to do so, must submit their campaign finance reports electronically. Any filers who are required to file electronically, but who file on paper, will be considered nonfilers and may be subject to enforcement action.

The new rules, required by Public Law 106-58, provide faster disclosure of filed reports and streamline operations for both filers and the Commission. The Commission estimates, based on data from the 1996 and 1998 election cycles, that, with the $50,000 threshold, 96 to 98 percent of all financial activity reported to the FEC will be available almost immediately on the FEC's Web site.

Mandatory v. Voluntary Filing

The mandatory electronic filing regulations (11 CFR 104.18) apply to any political committee or other

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Commissioners

Smith Joins Commission

Bradley A. Smith was nominated to the Federal Election Commission by President Clinton on February 9, 2000, and confirmed by the U.S. Senate on May 24, 2000.

Prior to his appointment, Mr. Smith was Professor of Law at Capital University Law School in Columbus, Ohio, where he taught Election Law, Comparative Election Law, Jurisprudence, Law & Economics, and Civil Procedure. Commissioner Smith's writings on campaign finance and other election issues have appeared in the *Yale Law Journa*l, the *University of Pennsylvania Law Review*, the *Georgetown Law Journal*, the *Harvard Journal of Legislation*, the *Cornell Journal of Law & Public Policy* and other academic journals. As a law professor, Mr. Smith was a frequent witness before Congress on matters of campaign finance reform, and also a frequent guest on radio and television and a contributor to popular publications such as the *Wall Street Journal* and *USA Today*.

Before joining the faculty at Capital in 1993, he practiced with the Columbus law firm of Vorys, Sater, Seymour & Pease, served as

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person required to file reports, statements or designations with the FEC. This includes all filers except Senate candidate committees (and other persons who support only Senate candidates), who are required to file with the Secretary of the Senate.[1]

Since 1996, the Commission has encouraged voluntary electronic filing. For those individuals and political committees that do not exceed (or do not expect to exceed) the $50,000 threshold, voluntary electronic filing will still be encouraged.

Voluntary electronic filers must continue to file electronically for the remainder of the calendar year unless the Commission determines that unusual circumstances make continued electronic filing impractical. 11 CFR 104.18(b). No such waiver by the Commission, however, has been established for mandatory electronic filers.

[1] *Senate candidates, however, are encouraged to voluntarily file electronically an unofficial copy of their reports with the FEC to ensure faster disclosure.*

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Who Must File Electronically

Candidate Committees. All committees authorized by one candidate must file electronically if their combined total contributions or combined total expenditures exceed, or are expected to exceed, the $50,000 threshold.

PACs and Party Committees. By contrast, each unauthorized committee (PAC or party committee), whether or not it is affiliated, must file electronically if its total contributions or total expenditures exceed, or are expected to exceed, the threshold.

Joint Fundraising Representatives. A joint fundraising representative must file electronically if its total contributions or total expenditures exceed, or are expected to exceed, the $50,000 threshold.[2]

Independent Expenditures. Individuals and qualified nonprofit corporations whose independent expenditures exceed, or are expected to exceed, the $50,000 threshold must file electronically on FEC Form 5. Because Form 5 must be notarized, filers are required to submit a paper copy of Form 5 bearing the notarized seal and signature, or, if filing on diskette, attach a digital version of the seal and signature as a separate file when filing Form 5 electronically. 11 CFR 104.18(h) and 109.2(a).

[2] *For more information on joint fundraising, see 11 CFR 102.17 and the* Campaign Guides *for Congressional candidates and committees and for party committees.*

Calculating the Threshold

A committee (other than a Senate committee) must file electronically if:

- It has received contributions of more than $50,000 or made expenditures of more than $50,000 during any calendar year; or
- It has "reason to expect to exceed" the above threshold in any calendar year. 11 CFR 104.18(a)(1) and 104.18(a)(3)(i).

"Have Reason to Expect to Exceed." Once filers actually exceed the threshold, they have "reason to expect to exceed" the threshold in the following two calendar years. 11 CFR 104.18 (a)(3)(i). This means they must continue to file electronically for the next two years (January through December).

Exception for Candidate Committees. In some cases, a candidate committee that has exceeeded the threshold and filed electronically may not have to continue filing electronically. This exception applies to a candidate committee that:

- Has $50,000 or less in net debts outstanding on January 1 of the year following the election;
- Anticipates terminating prior to the next election year; and
- Supports a candidate who has not qualified for the next election and does not intend to become a candidate in the next election. 11 CFR 104.18 (a)(3)(i).

Persons With No History. New political committees or other persons with no history of campaign finance activity may rely on one of the following formulas to determine whether they will exceed, or should expect to exceed, the threshold:

- The filer receives contributions or makes expenditures that exceed one-quarter of the threshold

amount in the first calendar quarter of the calendar year; or
- The filer receives contributions or makes expenditures that exceed one-half of the threshold amount in the first half of the calendar year. 11 CFR 104.18 (a)(3)(ii).

Other Considerations. When a committee calculates whether it has exceeded, or expects to exceed, the $50,000 threshold, it should keep in mind the following:

- The calculation is based on either making $50,000 in expenditures or receiving $50,000 in contributions during the calendar year; it is not based on a combination of expenditures and contributions.
- Nonfederal funds are excluded from the calculation.
- Cash on hand and outstanding debt at the beginning of the calendar year are excluded from the calculation.

(Also, see chart at right: *Calculating the Electronic Filing Threshold*.)

Filing Reports and Statements

Validation of Report. Electronic filers (whether mandatory or voluntary) must file all their reports electronically. The reports must follow the FEC's Electronic Filing Specifications Requirements, available online or on paper from the FEC. 11 CFR 104.18(d). An electronic report is considered "filed" when it is received and validated by the Commission's computer system on or before 11:59 p.m. on the prescribed filing date. Incomplete or inaccurate reports that do not pass the FEC's validation program will not be considered filed. The Commission will notify the filer that the report has not been accepted. 11 CFR 104.18(e)(2).

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Calculating the Electronic Filing Threshold

Political committees should use the following formulas to determine if their total expenditures or total contributions are over $50,000 per calendar year:

CANDIDATE COMMITTEES

Total Contributions Received[1]
– Refunds of Contributions
Total Contributions (if over $50,000, must file electronically)

Total Operating Expenditures
+ Contributions Made
Total Expenditures (if over $50,000, must file electronically)

PACS

Total Contributions Received
– Refunds of Contributions
+ Transfers from affiliated federal committees
Total Contributions (if over $50,000, must file electronically)

Total Federal Operating Expenditures
+ Transfers to affiliated federal committees
+ Contributions Made
+ Independent Expenditures
Total Expenditures (if over $50,000, must file electronically)

POLITICAL PARTY COMMITTEES

Total Contributions Received
– Refunds of Contributions
+ Transfers from affiliated federal political party committees
Total Contributions (if over $50,000, must file electronically)

Total Federal Operating Expenditures
+ Transfers to affiliated federal political party committees
+ Contributions Made
+ Independent Expenditures
+ Coordinated Expenditures
Total Expenditures (if over $50,000, must file electronically)

[1] Including the outstanding balance of any loans made, guaranteed or endorsed by the candidate or other person.

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Filing an Amendment. To amend an electronically filed report, the filer must electronically resubmit the entire report, not just the amended portions. Additionally, the amendments must comply with the formatting rules contained in the FEC's Electronic Filing Specifications Requirements. 11 CFR 104.18(f).

Registration Documents (FEC Forms 1 and 2)

If a committee has exceeded or expects to exceed the $50,000 threshold, its Statement of Organization (FEC Form 1) and Statement of Candidacy (FEC Form 2), and any amendments to either form, must be filed electronically. 11 CFR 102.2(a)(2) and 104.18(c). Note that all filers (whether electronic or paper) must include on their Statement of Organization the URL for their Web site, if they maintain one, and their e-mail address, if they have one. 11 CFR 102.2(a)(1)(vii).

Refiling Paper Reports

Filers will not be expected to refile any reports or statements that were correctly filed on paper earlier in the calandar year or election cycle. 11 CFR 104.18(a)(2).

Signature Requirements

A committee's treasurer (or other person responsible for filing designations with the FEC) must verify that all electronically filed documents have been examined by the treasurer and (to the best of that person's knowledge) are accurate and complete. Verification may be:

- Direct transmission of the filing, using the treasurer's personal password received from the FEC. (In order to receive a password, treasurers should call the electronic filing office at (202)208-5263); or
- If filing on diskette, a digitized copy of a signed certification sent, as a separate file on the diskette, with the electronically filed documents. 11 CFR 104.18(g).

Availability of Forms

FECFile software, available free from the FEC, currently generates FEC forms 3 and 3X for disclosure of financial information. The Commission anticipates that the software will generate Form 3P, Form 4 and Form 5 in the near future, and Form 1 and Form 2 by January 1, 2001, when the program takes effect.

Many commercially available software products also include electronic filing capabilities.

Nonfilers

Those filers who are required to file electronically and who file on paper instead, or who fail to file, will be considered nonfilers and may be subject to enforcement action by the Commission, including publication of their names or the imposition of civil money penalties under the new Administrative Fines Program.[3] 11 CFR 104.18(a)(2) and Part 111, Subpart B and 2 U.S.C §437g(a)(4) and (6)(A).

More Information

Free copies of the final rules, and their Explanation and Justification, as they appeared in the Federal Register (65 FR 38415, June 21, 2000) are available through the FEC Faxline (202/501-3413, document 227). For further information, see the FEC's Web site at http://www.fec.gov/electron.html. The FEC will be sending copies of the final rules to registered committees.✥

[3] *See the July 2000* Record.

Election Cycle Reporting for Candidate Committees

On July 5, 2000, the Commission approved new regulations requiring authorized committees of federal candidates to aggregate and report receipts and disbursements on an election-cycle basis rather than on a calendar-year basis, which is the current system. These revised regulations will affect reports covering periods that begin on or after January 1, 2001. The new rules do not affect unauthorized committees, such as PACs and party committees.

The change to election cycle reporting, required by Public Law 106-58, is intended to simplify recordkeeping and reporting. Under current regulations, candidate

Electronic Filing Training

To help committees understand and comply with the new rules mandating electronic filing, the FEC will offer weekly Electronic Filing Training Sessions beginning in September. Training sessions will focus on using the Commission's free FECFile 3 electronic filing software and will be held on Mondays—September 11, September 18 and September 25.

Topics for September include:

- FEC Form 3;
- FEC Form 3X, without H-schedules; and
- FEC Form 3X, with H-schedules.

All sessions will run from 9:00 to 12:00 and will be held in room 411 of the Federal Election Commission, located at 999 E Street, NW, Washington, D.C. 20436. These training sessions are provided free of charge. To register, contact Jeff Chumley at 202-694-1321.

committees monitor contribution limits on a per-election basis, but disclose their financial activity on a calendar-year-to-date basis. Under the new system, committees will report all of their receipts and disbursements on an election-cycle basis. 11 CFR 104.3. For example, campaigns must itemize a donor's contributions once they exceed $200 for the election cycle, rather than for the calendar year. Likewise, candidate committees must itemize disbursements to a person once they aggregate in excess of $200 within the election cycle.

Election Cycle

Under FEC regulations, an election cycle begins the day after the general election for a seat or office and ends on the day of the next general election for that seat or office. 11 CFR 100.3(b). The length of the election cycle, thus, depends on the office sought. For example, the election cycle is two years for House candidates, six years for Senate candidates and four years for Presidential candidates.

Transition to Election-Cycle Reporting

Since the new regulations will take effect after the close of post-general and year-end reporting periods for 2000, many candidates will have already reported receipts and disbursements related to the 2002, 2004 or 2006 election cycles under the current reporting system. Committees will need to include the total of this previously-disclosed activity in their election-cycle-to-date figures, beginning with their first report under the new system.[1] In some cases, the activity may span several years. For example, a Senate candidate for a 2002 election who has been receiving contributions and making disbursements since the 1996 election for that seat will need to include the aggregate of that activity in his or her election-cycle-to-date totals. The Commission is creating a one-time worksheet to help campaigns aggregate their election-cycle-to-date figures during this transition period.

More Information

Free copies of the final rules as they appeared in the Federal Register (65 FR 42619, July 11, 2000) are available through the FEC Faxline (202/501-3413, document 248) and on the FEC's Web site at http://www.fec.gov/pdf/cyclefinal.pdf. The FEC will be sending copies of the final rules to registered candidate committees.✦

[1] *For most campaigns, the first report under the new system will be the mid-year report, due July 31, 2001.*

Federal Register

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

Notice 2000-13
Mandatory Electronic Filing; Final Rules and Explanation and Justification—Transmittal to Congress; (65 FR 38415, June 21, 2000)

Notice 2000-14
Guidance to Candidates and Political Party Committees on Status of FEC Civil Enforcement Actions Pending Supreme Court Consideration of *FEC v. Colorado Republican Federal Campaign Committee* (65 FR 42365, July 10, 2000)

Notice 2000-15
Election Cycle Reporting by Authorized Committees (Candidate Committees); Final Rules and Explanation and Justification—Transmittal to Congress (65 FR 42619, July 11, 2000)

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Use of Internet

This article summarizes Commission advisory opinions (AOs) and one Matter Under Review (MUR) issued to date on the use of the Internet in connection with federal elections. Copies of the referenced advisory opinions are available via the FEC's Web site at http://herndon3.sdrdc.com/ao/ao.html.

The Internet as Public Political Advertising

In several advisory opinions the Commission said that the use of the Internet for *express advocacy*[1] communications or political fundraising constituted "general public political advertising." As a result, a Web site that contained *express advocacy* and/or solicited contributions in connection with a federal election had to contain the appropriate disclaimer stating who paid for the site and whether or not the communication was authorized by a candidate or candidate's committee. See 11 CFR 110.11 and AOs 1998-22 and 1995-9. Moreover, any e-mail containing express advocacy or a solicitation had to contain the appropriate disclaimer if it was sent to more than 100 separate e-mail addresses in a calendar year. AO 1999-37.

Support of Candidates Through Internet

Creation of Web Site. Fees associated with the creation and administration of a Web site may be subject to the federal election law. Specifically, the Commission said that the fee to secure registration of a domain name, funds invested in

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[1] *"Express advocacy" refers to a communication that unambiguously advocates the election or defeat of a clearly identified candidate. See 11 CFR 100.22.*

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hardware and utility costs associated with the creation of a Web site that supported or opposed a candidate were generally expenditures under the Federal Election Campaign Act (the Act) unless they fell within an exception to the Act's definitions of contribution or expenditure. AO 1998-22.

Exception for Web Sites Established by Campaign Volunteers. In another AO, the Commission said that costs incurred by a campaign volunteer who used his or her personal home computer to set up a Web site supporting a candidate fell within the Act's exception for the use of personal property by an individual volunteer. See 2 U.S.C. §431(8)(B)(ii). Therefore, costs incurred by a volunteer using a home computer were not contributions or expenditures under the Act. Such costs did not need to be reported by the campaign. This exception extended to the redistribution or other use of downloaded material from the campaign's Web site. AO 1999-17.

Web Sites Established by Non-Volunteer. In the case of an individual who was not a campaign volunteer and who set up and ran a Web site supporting or opposing a federal candidate, the campaign had no reporting obligation. AO 1999-17. In this AO, the Commission assumed that the campaign had not coordinated a particular Web site's activity with the non-volunteer and that the non-volunteer provided nothing of value to the campaign.

Provision of Web Space/Online Accounts to Federal Candidates. In another AO, the Commission concluded that a corporation could not provide online accounts (for which it normally charged a fee) to candidates free of charge. AO 1996-2. Such activity did not fall within the type of exemption afforded to news organizations covering election-related news stories (at 2 U.S.C. §431(9)(B)(i)) or to organizations engaging in nonpartisan efforts to encourage individuals to vote (at 2 U.S.C. §431(9)(B)(ii)).

Nonpartisan Web Sites. In AO 1999-25, the Commission said that two incorporated nonprofit organizations could jointly sponsor a Web site that provided information on federal candidates because the information fell within the exception for nonpartisan activity designed to encourage individuals to vote or to register to vote. (See 2 U.S.C. §431(9)(B)(ii) and 11 CFR 100.8(b)(3).) Similarly, in AO 1999-24**,** a for-profit limited liability company was permitted to sponsor a Web site promoting communication between voters and all candidates on a nonpartisan basis because the activities on the Web site also fell within the exemption for nonpartisan voter registration and voter drive activity. See 2 U.S.C. §431(9)(B)(ii) and 11 CFR 100.8(b)(3).

Hyperlinks. In Matter Under Review 4340, the Commission found that a link from a candidate's corporate Web site to his campaign Web site represented something of value and, consequently, was a prohibited corporate contribution.

By contrast, nonpartisan Web sites, such as those described above, have been permitted to establish hyperlinks to all candidate sites as part of exempt nonpartisan voter registration and voter drive activity. AOs 1999-25, 1999-24 and 1999-7.

On the other hand, in AO 1999-17, the Commission said that the provision of a hyperlink was a contribution in those cases where a Web site owner normally would have charged for a link to another site, but chose either not to charge the campaign for a link to the campaign's site or to charge less than it normally charged to a similarly situated nonpolitical organization or entity.

*Corporate/Labor/Trade Association Communication*s. A corporation, labor organization or trade association could endorse, or solicit contributions for a candidate via its Web site only if it used a method (such as passwords) to limit access to these messages to the organization's restricted class.[2] AO 1997-16. See also 2 U.S.C. §441b(b)(2)(A) and 11 CFR 114.3.

Independent Expenditures. The Commission said, in another AO, that a Web site containing express advocacy would be considered an independent expenditure if the activity was completely independent of the campaign. On the other hand, if the activity was done in cooperation, consent or concert with a campaign, it would be an in-kind contribution and, thus, reportable by the campaign. AO 1998-22. See also 2 U.S.C. §431(17) and 11 CFR Part 109.

In AO 1999-37, a PAC that created independent expenditures for electronic distribution through downloads and e-mail did not need to include the costs of Web site hosting, domain name registration or computer hardware and software in the valuation of its independent expenditures. Only the expenses of initially distributing the advertisements through e-mail represented the cost of the independent expenditure. Moreover, the PAC was not required to collect information on those individuals who downloaded the PAC's advertisements and used them for their own political activity.

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[2] *See the* Campaign Guide for Corporations and Labor Organizations *for a chart detailing the restricted classes of various organizations for communications purposes.*

E-Mail. In AO 1999-17, the Commission said that campaign volunteers could use their home computers to send e-mail supporting the campaign without making a contribution. This activity came under the law's exception at 2 U.S.C. §431(8)(B)(ii) for the use of personal property. The volunteers could also make isolated, incidental use of their corporate employers' computers, in connection with campaign activity, under 11 CFR 114.9(a).[3]

The Commission also noted, in AO 1999-37, that a PAC could e-mail communications that contained express advocacy to foreign nationals because the Act does not prohibit the distribution of such messages to foreign nationals.

[3] *Such use is defined as isolated and incidental if it does not exceed one hour per week or four hours per month or if it does not prevent the employee from carrying out the workload that the employee normally carries out during that period. 11 CFR 114.9(a) and (b).*

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.

Use of Internet for Fundraising

Recordkeeping. In AO 1995-9, the Commission said that a political committee using the Internet for fundraising had to comply with all of the Act's recordkeeping provisions.[4] The committee had to ensure that its electronic records were retrievable and that contributor data was maintained for three years after the date on which it reported the contributions.

In two AOs, the Commission said that committees using the Internet for fundraising had to use "best efforts" to obtain and report the identification of contributors who made more than $200 in contributions during a calendar year, including making follow-up requests to those contributors who failed to provide the requested information. 11 CFR 104.7. The follow-up request could take the form of an e-mail to the contributor. AOs 1999-17 and 1995-9.

Avoiding Prohibited Contributions. In several AOs, the Commission said that Web sites soliciting contributions in connection with a federal election were required to inform potential contributors of all of the Act's prohibitions, including the prohibitions on contributions from corporations, labor organizations, federal government contractors and foreign nationals,[5] and the restrictions at 11 CFR 110.1(i)(2) on contributions from minors. AOs 1999-22, 1999-9 and 1995-9 contain detailed examples of sample language and mechanisms for vetting contributors.

Acceptance of Funds Via Credit Cards and Electronic Checks. In several AOs, the Commission said that online contributions could be made via credit card. Such contributions were acceptable for publicly funded Presidential campaigns and were matchable provided that the correct documentation was provided to the Commission. See 11 CFR 9034.2(c)(8) and AOs 1999-22, 1999-9 and 1995-9.

In the same AOs, companies were permitted to administer online fundraising for political committees. The date the contributors sent the electronic confirmation of their contributions to the online company was the date "made," for contribution limitation purposes. See 11 CFR 110.1(b)(6) and AO 1995-9. The date of receipt, used for reporting purposes, was the date the committee received notice of the electronic confirmation from the contributor. Political committees were required to compensate the companies providing this service at the usual and normal rates. Funds paid to the companies were reportable as operating expenditures. AOs 1999-22, 1999-9 and 1995-9.

In AOs 1999-36 and 1999-22, the Commission provided detailed guidance to companies providing online fundraising services to federal candidates and political committees.

Fundraising for Corporate/Labor/Trade PACs. Under federal election law, any solicitation message for a corporate/labor/trade association PAC may only be directed to the organization's restricted class.[6] Accordingly, a corporate PAC could send a newsletter containing a PAC solicitation via e-mail to the secretaries of corporate executives, provided that the material was accompanied by a note informing the secretary that the

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[4] *See 2 U.S.C. §432 and 11 CFR 102.5, 102.8 and 102.9.*

[5] *See 2 U.S.C. §§441b, 441c and 441e.*

[6] *See 11 CFR 114.5(g), 114.7(a) and 114.8(c). Also, see the* Campaign Guide for Corporations and Labor Organizations *for a chart detailing the restricted classes of various organizations for solicitation purposes.*

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material was intended solely for the executive. AO 1995-33. Similarly, a corporation could maintain an electronic mail list serve (i.e., mailing list) to send PAC solicitations to members of the corporation's restricted class who had indicated an interest in the corporation's PAC. AO 2000-07.

Moreover, that corporation also could include a message on a company intranet site (available only to corporate employees) about the company's PAC if that message did not constitute a solicitation. For example, the corporation could post a statement that merely explained the legal requirements that applied to the PAC but did not encourage support for the PAC. The same message could include a link to a separate, password-protected site accessible only by members of the corporation's restricted class. Because access was limited to the restricted class, the password-protected Web site could contain a solicitation. It was also important that the page introducing the PAC Web site stated that federal law prohibits the PAC from soliciting donations from persons outside the restricted class and that any contribution received from a person outside the restricted class would be returned to the donor. AO 2000-07.

Finally, in AO 2000-10, the Commission said that a trade association could use its Web site to seek prior approval from its corporate members under 11 CFR 114.8 so that the restricted class of those corporations could be subsequently solicited for contributions to the trade association's PAC.❖

Advisory Opinions

AO 2000-10

"Permission to Solicit Form" Placed on Trade Association Web Page

America's Community Bankers Community Campaign Committee (COMPAC), the separate segregated fund of America's Community Bankers (ACB), may use ACB's informational, "members only" Web page to obtain permission from corporate members to solicit contributions from their restricted classes. COMPAC may also place a notice on a publicly-accessible ACB Web page inviting inquiries about COMPAC and providing contact information.

ACB is an incorporated, national trade association. Under the Federal Election Campaign Act (the Act), the separate segregated fund (SSF) of a trade association may solicit the "restricted class" of its member corporations, but only after a representative of each corporation has provided written permission for the solicitations.[1] 11 C.F.R. 114.8(c). COMPAC plans to include a "permission to solicit form" on ACB's Web page. The corporate executive could print the form, sign it and return it to COMPAC by fax or mail.

COMPAC proposes to institute a series of safeguards to ensure that no prohibited contributions are received. First, the form would be available only on the "members only" Web page, which is inaccessible without a password. Second, the form would be accompanied by statements explaining:

- COMPAC's purpose;
- That participation is voluntary and contributions are not tax deductable;
- That COMPAC "can only solicit voluntary contributions from executive, administrative personnel and directors of member institutions"; and
- That member corporations can give such permission to only one trade association per calendar year.[2]

Finally, COMPAC plans to return immediately any contributions from individuals whose corporation has not given consent for the trade association solicitation or who are otherwise prohibited from contributing to COMPAC.

In addition to the "permission to solicit form" available on the "members only" Web page, COMPAC plans to place an informational notice on a portion of ACB's Web site that is accessible to the general public. This notice may result in inquiries about COMPAC.

Under the Act, a distinction can be drawn between a solicitation for contributions to a PAC and a request for corporate approval of a solicitation. AO 1980-65 and AO 1981-41. In this case, both COMPAC's notice and its consent form are permissible because neither communication solicits or encourages contributions. In addition, the Commission notes

[1] The "restricted class" includes stockholders and executive and administrative personnel as well as the families of these individuals.

[2] Under the law, a corporation may not approve solicitations by more than one trade association in a single calendar year, but it may grant permission in advance for a trade association to solicit its members for several years. In order to do so, the corporation must submit a signed statement for each year approved. These signatures and statements may all appear on a single form. 11 CFR 114.8 (d)(1) and (4); and Advisory Opinion 1984-61.

COMPAC's assertion that it will return checks from "improper" sources. (The Commission understands that "improper sources" includes individuals who may not be solicited for COMPAC contributions until the related corporation member of ABC has given the requisite approval described above.) Further, because these statements are not solicitations, they do not need disclaimers. The statements also do not qualify as in-kind contributions to COMPAC or to any candidate. 2 U.S.C. §441d.

COMPAC must, however, change the language of its consent form, which asks the corporate representative to provide the names of "executive, administrative personnel and directors employed by my institution." The Commission noted that directors are not considered members of a corporation's restricted class unless they are paid by salary or stipend or they qualify as stockholders or executive employees. 11 C.F.R. 114.5(g)(1) and AOs 1992-9 and 1985-35.

Issued: June 23, 2000; Length: 8 pages.✥

AO 2000-11
Misplaced Payroll-Deducted Contributions

The Georgia-Pacific Corporation's (Georgia-Pacific) separate segregated fund, G-P Employees Fund of Georgia-Pacific (the Fund), may accept new payroll deduction checks to replace those misplaced by its treasurer and report the contributions as having been made on the dates of the original payroll deductions. The Fund must amend each of its affected reports to reflect the dates the contributions were initially received.

Georgia-Pacific operates a payroll deduction plan through which eligible employees contribute to the Fund. Early in 2000, when a new treasurer assumed his position and reviewed the Fund's accounts, the Fund discovered that 14 checks issued to the Fund by the payroll department between 1997 and 1999, representing $125,809 in contributions made through payroll deduction, had not been deposited in the Fund's account or anywhere else. The former treasurer was able to find most of the undeposited checks in her office, but they were stale-dated and non-negotiable.

As the connected organization of the Fund, Georgia-Pacific may act as the Fund's collecting agent. A collecting agent receiving contributions through a payroll deduction system may deposit the funds in its treasury before forwarding them to the separate segregated fund (SSF) provided the collecting agent and the SSF follow FEC rules, such as forwarding funds in a timely manner and recordkeeping. 11 CFR 102.6(c)(4)(ii)(B). The date of the committee's receipt of a contribution is the date that the collecting agent obtains possession of the funds. In this case, the date of receipt is the date on which the funds were withheld from the employee's salary payment. 11 CFR 102.8(b)(2); AO 1999-33. Committee receipts must be deposited in the committee's depository within ten days of the committee treasurer's receipt. 11 CFR 103.3(a). Thus, a check that contained payroll-deducted contributions and was transmitted by a collecting agent to a committee must be deposited within ten days of the receipt of that check.

In this case, the Fund may accept replacement payroll checks despite its failure to deposit the original checks within the required time frame. The Commission based its decision on two factors. First, the failure to comply did not appear to have been intentional. Second, denying the SSF these funds would contradict the intentions of the contributors who had not only released control of the funds but also no longer had possession of the funds because they were in the collecting agent's account.

The Fund must, however, fully report the contributions as having been received on the dates of the deductions. As a monthly filer, the Fund must amend each of the previous monthly and other required reports covering the periods of these payroll deductions in order to disclose the contributions' dates of receipt. Each amended report should include revised totals on the summary page and detailed summary page, and the Schedule A of each report naming a contributor should also be amended. In addition, the Fund must provide a short statement with each report explaining the reasons for the amendments and making reference to this advisory opinion. These amended reports must be filed with the Commission within 30 days after the Fund receives the first replacement check from Georgia-Pacific.

Issued: June 23, 2000; Length: 6 pages.✥

AO 2000-13
Internet Video Coverage of Republican and Democratic National Conventions

iNEXTV Corporation (iNEXTV), through its affiliate, EXBTV, may provide gavel-to-gavel Internet video coverage of the Republican and Democratic national conventions without making a prohibited corporate contribution or expenditure. The proposed activities fall within the Federal Election Campaign Act's (the Act) exemption for news stories and commentary.

iNEXTV, a wholly-owned subsidiary of Ampex Corporation, controls a network of affiliates that webcast Internet video programming. For example, its Executive

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Advisory Opinions

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Branch Television Web site (EXBTV) features news and information about the federal government, including commentary and interviews. iNEXTV's Web sites are supported by the sale of public advertising.

This summer, iNEXTV plans to expand EXBTV's coverage of government affairs to include complete coverage of the Republican and Democratic national conventions, including interviews with political experts and candidates and commentary by EXBTV journalists.

The Federal Election Campaign Act (the Act) prohibits "any corporation whatever" from making a contribution or expenditure in connection with a federal election. 2 U.S.C. §441b(a). The Act, however, makes an exception for news media, exempting from the definition of "expenditure" any "news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U.S.C. §431(9)(B)(i).

In this case, the Commission concluded that iNEXTV and EXBTV meet the three criteria for the exemption for news media. First, they qualify as press entities both in their purpose and in their function:

- iNEXTV operates news and information sites, which can be characterized as "webcast video periodicals";
- EXBTV provides a news function for its viewers, similar to that offered by other televised news programming by offering direct access to government and business news events (similar to C-SPAN) and reports and commentary of its prominent journalists; and
- The Web sites are viewable by the general public and akin to a periodical or news program distributed to the general public (AO 1982-58).

Second, iNEXTV and EXBTV are not owned by any political party, political committee or candidate and, third, they would be acting in their capacity as press entities in undertaking this media coverage.[1]

Issued: June 23, 2000; Length: 4 pages.✥

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.

Advisory Opinion Requests

AOR 2000-12

Effective date to revise state party ballot composition ratio for allocation of administrative and generic voter outreach expenses when there are unexpected vacancies in state offices.

(Republican Party of Florida, June 26, 2000)✥

[1] See also AO 1988-17, 1996-48, 1996-41, and 1996-16.

Compliance

Pilot Alternative Dispute Resolution Program

Goals of the Program

In a closed session[1] held on July 25, the Commission approved an Alternative Dispute Resolution (ADR) program, set to begin this Fall. The pilot program is designed to promote compliance with the Federal Election Campaign Act and FEC regulations by encouraging settlements outside the enforcement context. By expanding the tools for resolving complaints and Title 2 audit referrals,[2] the program aims to:

- Resolve complaints and audit referrals faster;
- Increase the number of complaints and referrals processed;
- Reduce costs for respondents;[3]
- Ensure greater satisfaction for the respondents involved; and
- Enhance FEC enforcement efforts by freeing up resources from less compelling complaints and Title 2 audit referrals.

Overview of the ADR Process

The ADR program aspires to bring complaints and Title 2 audit referrals to resolution expeditiously through both direct and, when necessary, mediated negotiations

[1] The Commission meets in closed sessions weekly to discuss matters that, by law, must remain confidential.

[2] Title 2 audit referrals are those matters that are referred, by the Audit Division, from an audit for cause conducted pursuant to 2 U.S.C. §438 (b).

[3] A respondent is the person (an individual, a committee or other group) against whom a complaint has been filed or who is the subject of a Title 2 audit referral from the Audit Division to the Office of General Counsel.

between the parties. The speed with which each case will be settled will be contingent upon:

- The availability of resources;
- The willingness of respondents to engage and cooperate in the process; and
- The complexity of the case in question.

Taking account of these contingencies, it is expected that complaints and Title 2 audit referrals will be processed, on average, within five months following the receipt of the complaint or the referral.

When a complaint or Title 2 audit referral is filed with the Commission, the Office of the General Counsel (OGC) will provide the respondent with information about the ADR option. Additionally, OGC will make an initial determination as to whether the case is suitable for the ADR program.

OGC — or the Commission — will refer cases to the ADR office. The ADR office will then review and evaluate them to determine whether they meet the requirements for the ADR program. In order to have a case considered for treatment within the ADR program, the respondent must:

- Express a willingness to engage in the ADR process;
- Agree to set aside the statute of limitations while the complaint is pending in the ADR Office; and
- Agree to participate in bilateral negotiations and, if necessary, mediation.

After the Commission concurs that the case can be dealt with through ADR procedures, the ADR office will notify the respondent and forward an agreement to engage in bilateral negotiation and/or mediation. Upon receipt of the agreement from the respondent, negotiations will begin.

The ADR Process

Bilateral Negotiations. The bilateral negotiation phase involves direct negotiations between the respondent and a representative from the ADR office of the FEC. Bilateral negotiation offers:

- The possibility for a speedy resolution of the complaint;
- The chance to fashion a settlement that is focused on correcting behavior and the activities that gave rise to the complaint; and
- The opportunity for both parties to clarify the disputed issues, should the case be brought to mediation at a later time.

The negotiations are oriented toward reaching an expedient resolution of the complaint or Title 2 audit referral in a way that is both satisfying to the respondent and in compliance with the Federal Election Campaign Act (the Act). While compliance with the Act will be stressed in the negotiations, the negotiated resolution may not always entail an admission of guilt on the part of the respondent. Any resolution reached in negotiations will be submitted to the Commission for final approval. If a resolution is not reached in bilateral negotiations, the case will proceed to mediation.

Mediation. The mediation phase begins with the selection of a mediator[4] agreed upon by the respondent and the representative from the ADR office. The Commission will pay for all mediation costs, unless the respondent desires to split the mediation costs with the ADR Office. Before the mediation sessions begin, both the respondent and ADR office representative must submit a written synopsis of the case to the mediator. For the sake of cost efficiency, the ADR office will not require or recommend the filing of formal briefs for mediation.

The mediator will meet with the parties both jointly and separately as needed. In accord with Section 574 of the ADR Act and 2 U.S.C. §437g (a) (4) (B) and (a) (12) (A), information disclosed in mediation will remain strictly confidential. Information discussed in closed "caucus" meetings between the mediator and a single party cannot be shared with the other party unless that party has given the mediator express permission to do so. Nor can such information be used in a later enforcement proceeding. In those instances when no agreement is reached, the case will be returned to OGC for processing.

If an agreement is reached in mediation related to the case, the ADR office will send the agreement to the Commission for approval. All approved agreements will be a matter of public record, which will state that the agreement was negotiated and that it cannot serve as a precedent for the settlement of future cases. ✥

[4] *The mediators will be chosen from a list of senior, experienced mediators from the private sector.*

Need FEC Material in a Hurry?

Use FEC Faxline to obtain FEC material fast. It operates 24 hours a day, 7 days a week. More than 300 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.

Court Cases

Akins v. FEC

On May 31, 2000, James Akins, et al. (Akins) asked the District Court of the District of Columbia to require the Federal Election Commission (the Commission) to reconsider its March 2000 dismissal of Akins's administrative complaint against the American Israel Public Affairs Committee (AIPAC).[1] Akins alleges that AIPAC failed to register and report as a political committee with the Commission.

Akins's administrative complaint, filed in 1989, had alleged that AIPAC, an incorporated, tax-exempt lobbying group, had violated the campaign finance law in two respects. First, AIPAC had made prohibited corporate expenditures in the form of campaign-related communications and activities directed at an audience beyond its membership.[2] Second, AIPAC had failed to register and report as a political committee once these expenditures exceeded $1,000 in a calendar year. 2 U.S.C. §431(4)(A).

In its March 2000 dismissal of the administrative complaint, the Commission found that AIPAC did not qualify as a political committee. Instead, the Commission determined that AIPAC was a membership organization and that, based on recently revised regulations defining "member," supporters receiving AIPAC's communications were members of the organization. Communications from a membership organization to its members are not considered to be "contributions" under the Federal Election Campaign Act (the Act). 2 U.S.C. §441b(2). Such communications are permissible under the Act, and any costs involved do not count toward the $1,000 registration requirement threshold for political committees.

Akins I

In 1992, the Commission originally dismissed Akins's 1989 complaint, having found that AIPAC was not a political committee because its "major purpose" was not to influence federal elections. Thus, the Commission concluded, AIPAC did not need to register and report as a political committee even though it had made contributions totaling more that $1,000 a year. The "major purpose test" derives from the Supreme Court's *Buckley v. Valeo* decision, in which the Court ruled that the definition of political committee "need only encompass organizations that are under the control of the candidate or the major purpose of which is the nomination or election of a candidate."

Although the Commission found that AIPAC had most likely made communications to individuals who did not qualify as "members," it voted to take no further action against AIPAC. The Commission cited the ambiguity of its regulatory definition of "member"[3] and the fact that AIPAC had "come close to meeting the 'spirit' of the Commission's membership criteria." July 27, 1992, Statement of Reasons, pages 1-2. Thereafter, the Commission initiated a rulemaking to reconsider the regulatory definition of "member."

On August 12, 1992, Akins filed a lawsuit against the Commission, focusing on the Commission's finding that AIPAC was not a political committee. Akins took issue with the Commission's application of the "major purpose test" to the AIPAC case.

The U.S. District Court for the District of Columbia and the Court of Appeals (three-judge panel) upheld the Commission's application of the major purpose test. But, in December 1996, the appeals court, sitting en banc, found that the Commission should have considered only the Act's definition of a political committee and not the major purpose test in a case like AIPAC's where an organization makes contributions to federal candidates rather than independent expenditures. The Act defines a political committee as any committee, association or other group that receives contributions or makes expenditures in excess of $1,000 during a calendar year to influence federal elections. 2 U.S.C. §431(4)(A).

On June 1, 1998, the U.S. Supreme Court vacated the ruling of the court of appeals and referred the matter back to the Commission to determine whether AIPAC's expenditures were for "membership communications," which are not considered contributions under the Act.[4]

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[1] *Plaintiffs include James E. Akins, Richard Curtiss, Paul Findley, Robert J. Hanks, Andrew Killgore and Orin Parker.*

[2] *The Federal Election Campaign Act (the Act) prohibits corporations from using their general treasury funds to make contributions or expenditures in connection with federal elections. 2 U.S.C. §441b(a).*

[3] *At the time of the Commission's decision, "member" was defined as a person who both paid dues and had voting rights within the organization or who had a significant financial attachment to the organization (other than dues). 100.8(b)(4)(iv)(B) and 114.1(e). This definition was superseded by new regulations in November 1999.*

[4] *While this case was pending, the Commission promulgated new regulations defining "member." However, the D.C. Court of Appeals in* Chamber of Commerce v. FEC, *found that these regulations were unduly restrictive as applied to the U.S. Chamber of Commerce and the American Medical Association.* Chamber of Commerce v. FEC, *1994 WL 615786 (Oct. 28, 1994); No. 94-5339 (D.C. Cir. Nov. 14, 1995). On November 2, 1999, new FEC regulations defining membership went into effect.*

Under the earlier regulations, the Commission had found that supporters receiving AIPAC's communications had too few rights to participate in the governance of the organization and did not, therefore, qualify as members. Under the revised regulations, however, these supporters did qualify as members. 11 CFR 114.1(e)(2)(i)-(iii). Consequently, they could receive from AIPAC the communications meant to influence federal elections without such expenses being considered contributions. Having reached this determination, the Commission found no reason to revisit the "major purpose" issue in this case and dismissed Akins's administrative complaint.

Akins II

In its most recent court complaint, Akins challenges the Commission's finding that AIPAC is a membership organization and argues that the Commission did not thoroughly investigate whether or not AIPAC was a political committee under the Act. Akins contends the Commission failed to consider the "type and intent of AIPAC's activities, viewed as a whole."

According to Akins, were the Commission to conclude that AIPAC was organized primarily for the purpose of influencing a federal election, AIPAC would not be considered a membership organization and those who received its communications would not qualify as members. In that case, Akins alleges, AIPAC's communications would count toward the $1,000 political committee registration threshold.

Akins further argues that, even if AIPAC is a membership organization, it is still in violation of the federal election law. Akins contends that AIPAC spent in excess of $2,000 in one year on membership communications that expressly advocated the election of federal candidates, but it did not report these disbursements to the Commission. The Act requires that corporations (including incorporated membership organizations) disclose the costs of distributing express advocacy communications to their restricted class once those costs exceed $2,000 per election. 2 U.S.C. §431(9)(B)(iii).

Plaintiffs ask the court to:

- Declare that the FEC's decisions in Akins's administrative complaint were contrary to law and arbitrary and capricious (2 U.S.C. §437g(a)(8)); and
- Remand the matter to the FEC and order the Commission to remedy either the deficiencies in its investigation of AIPAC's status as a political committee or the deficiencies in its investigation of whether AIPAC, functioning as a membership organization, failed to disclose its disbursements for membership communications that contained express advocacy.

U.S. District Court for the District of Columbia, 92-1864 JLG, May 31, 2000.❖

Becker v. FEC

Independent voter Heidi Becker, candidate Ralph Nader, the Green Party and others (collectively, "Becker") have filed a lawsuit asking the court to find that the Federal Election Commission's regulations concerning debates, at 11 CFR 110.13 and 114.4(f), are unlawful.

The Commission's regulations allow a nonprofit corporation to stage a debate among federal candidates and to "use its own funds" and "accept funds donated by corporations or labor organizations" as long as certain guidelines are followed. 11 CFR 110.13 and 114.4(f).

Becker argues that these regulations exceed the Commission's statutory authority because the Federal Election Campaign Act (the Act) prohibits corporations from making contributions or expenditures "in connection with" a federal election, and the statute does not make an exception for corporate activity that helps stage federal candidate debates. 2 U.S.C. §441b(a). Becker further argues that Commission regulations allow corporations to fund debates between the major party candidates that exclude independent and ballot-qualified third party candidates. Becker alleges that the Commission's regulations deprive the plaintiffs of their right to participate in presidential elections that are free of the corrupting influence of illegal corporate contributions.

Becker asks the court to:

- Enter a declaratory judgment that 11 CFR 110.13 and 114.4(f) exceed the Commission's statutory authority;
- Enter a declaratory judgment that the Act does not permit a debate staging organization to use its own corporate funds or accept funds donated by corporations or labor organizations; and
- Preliminarily and permanently enjoin the Commission from relying on 11 CFR 110.13 and 114.4(f) and require it to enforce the Act's prohibition against the use of corporate funds in the staging of federal candidate debates.

U.S. District Court for the District of Massachusetts, 00-CV-11192 MLW, June 19, 2000. ❖

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Court Cases

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FEC v. Arlen Specter '96

On June 22, 2000, the Federal Election Commission filed suit asking the U.S. District Court for the Eastern District of Pennsylvania to find that the following defendants violated the Federal Election Campaign Act (the Act): Arlen Specter '96, the principal campaign committee of Senator Specter's campaign for the Republican presidential nomination; Paul S. Diamond, the treasurer of the committee; and Koro Aviation, Inc. (Koro). The Commission argues that Specter '96 (the Committee) accepted prohibited corporate contributions from Koro in the form of reduced charges for air transportation in violation of 2 U.S.C. §441b. The Commission also charges that the Committee accepted contributions from individuals that exceeded the contribution limits. 2 U.S.C. §441a(a)(1)(A).

Between November 1994 and November 1995, the Committee used Koro for campaign-related flights. Under Commission regulations, a committee must pay the normal charter fare a commercial charter carrier charges its customers. By contrast, in the case of air travel contracted from a carrier *not* licensed to provide commercial charter air service (e.g., a private corporate jet) a committee may pay the normal first class air fare, if the travel is between cities linked by regular commercial service. 11 CFR 114.9(e).

In this suit, the Commission alleges that, although Koro was in the business of providing commercial charter air service, the Committee paid the first class air fare, rather than the "usual and normal" rate charged by a commercial charter service. As a result, the Commission states, the Committee paid $233,768 less for air transportation than it would have paid had it paid Koro's normal charter rate. Under FEC regulations, the difference between the usual cost of a service and the amount paid by a candidate or committee represents an in-kind contribution. 11 CFR 100.7(a)(1)(iii)(A). Thus, the Commission argues that the Committee's payment at the first class commercial rate resulted in a $233,768 prohibited corporate contribution from Koro.

Additionally, during its post-election audit of the Committee's records, the Commission found that Mr. Diamond and the Committee had accepted $83,749 in contributions from persons who had exceeded their contribution limits. 2 U.S.C. §441a(a)(1)(A).

U.S. District Court for the Eastern District of Pennsylvania, CVOO3167, June 22, 2000.✥

FEC v. Friends for Fasi

On June 6, 2000, the U.S. District Court for the District of Hawaii granted in part and denied in part Frank F. Fasi's and Friends for Fasi's (Fasi) motion to dismiss the Federal Election Commission's (the Commission) civil complaint. The Commission's complaint had alleged that Fasi accepted prohibited contributions from foreign nationals. The court found that the Commission could pursue its civil enforcement suit against Fasi, but the complaint could only address alleged violations occurring after January 12, 1995.

On January 12, 2000, the Commission filed a complaint alleging that Mr. Fasi, a former Mayor of Honolulu and gubernatorial candidate in Hawaii, and his campaign committee, Friends for Fasi, had accepted prohibited contributions in the form of reduced rent for space that was owned, managed and/or controlled by foreign nationals. The Federal Election Campaign Act (the Act) prohibits foreign nationals from making "any contribution of money or other things of value . . . in connection with an election to any political office." 2 U.S.C. §441e(a). The Commission asked the court to declare that Fasi had violated the Act, enjoin them from accepting further contributions prohibited by 2 U.S.C. §441e and assess appropriate civil penalties.

Subsequently, Fasi filed a motion to dismiss the Commission's complaint, arguing three major points:

- First, 2 U.S.C. §441e does not apply to contributions for non-federal elections because the statute defines "contribution" as anything of value given "for the purpose of influencing any election for Federal office" (2. U.S.C. §431(8)(A)(i));
- Second, because the reductions in rent began prior to 1995, the Commission's January 12, 2000, complaint was filed after the 5-year statute of limitations had expired and, thus, was time-barred (28 U.S.C. §2462); and
- Third, the Commission's request for injunctive relief was "improper and unauthorized by law" because there was no basis to allege that the defendants were "about to commit" a violation of the Act.

The court rejected Fasi's argument—that §441e only applies to federal elections. Although the court found the language of the statute to be ambiguous in this regard, it concluded that the Commission's interpretation of §441e—as expressed in its own regulations and advisory opinions—was consistent and reasonable. The court said that the Commission has express authorization to "elucidate statutory policy in administering FECA" unless the court finds the Commission's interpretations "demonstrably irrational or clearly contrary to the plain meaning" of the Act. *United States v. Kanchanalak*, 192 F.3d at 1049; *Nevitt v. United States*, 828 F.2d at 1406-07.

The court granted in part and denied in part Fasi's motion to dismiss based on Fasi's second argument that the Commission had filed its suit after the statute of limitations had expired. The court agreed that any claims based on alleged violations that occurred before January 12, 1995, were barred by the statute. The court also found, however, that the reduced rent constituted a "continuing violation" and that each month that Fasi was allowed to rent space at a reduced rate marked a new and separate contribution. The court reached this decision both because the Act makes each contribution a separate violation of 441(e) and because, in the absence of a long-term rental agreement or a fixed rental rate, the court concluded that Fasi had rented on a month-to-month basis. Thus, the court ruled that the Commission could only file claims based on alleged violations occurring between January 13, 1995, and November 1996, after which Fasi allegedly stopped receiving prohibited contributions.

Finally, the court refused, at this time, to dismiss the FEC's motion to enjoin Fasi from future violations of the law.

U.S. District Court for the District of Hawaii, 00-00024 DAE.✥

Hooker v. All Contributors, et al.

On June 7, 2000, John Jay Hooker filed a lawsuit broadly challenging the constitutionality of all campaign contributions. Mr. Hooker alleges that campaign contributions are both a "backdoor property qualification" for voting rights and bribes of public officials and are, thus, illegal.

Mr. Hooker requests that the court:

- Grant a preliminary injunction against all who contribute, receive contributions or otherwise participate in the solicitation and expenditure of campaign funds;
- Declare that the solicitation and acceptance of campaign contributions, the Federal Election Campaign Act, and public "matching funding" for presidential elections (26 U.S.C. §§9001 and 9031)are unconstitutional;
- Order that neither Congress nor the States have the power to authorize campaign contributions; and
- Order that all contributions in the 1998 and 2000 elections be returned to contributors.

U.S. District Court for the Middle District of Tennessee, Nashville Division, 3-00-0496, June 7, 2000.✥

Commissioners

(continued from page 1)

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, where he managed the organization's political action committee.

Commissioner Smith received his B.A. *cum laude* from Kalamazoo College in Kalamazoo, Michigan, and his J.D., *cum laude,* from Harvard Law School. ✥

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 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.

Legislation

Disclosure by 527 Political Organizations

On July 1, 2000, the President signed into law an amendment to the Internal Revenue Code, requiring certain "527 political organizations" to disclose descriptive information and information on their political activities to the Internal Revenue Service (the IRS).[1] Pub. L. 106-230. Depending on the nature or activities of the particular organization, a 527 organization may have to file three reports with the IRS:

1. Notice of Section 527 Status;
2. Periodic Reports of Contributions and Expenditures; and
3. Annual Returns.

Note that 527 organizations that qualify as political committees under the Federal Election Campaign Act (FECA) and are required to file reports with the Federal Election Commission (or the Senate)[2] do *not* have to file either the Notice or the Report with the IRS. They must, however, continue to file their FEC reports.

Description of 527 Organizations

Named after their tax-exempt designation under section 527 of the Internal Revenue Code, 527 organizations include parties, committees, associations, funds or other organizations that are organized and operated "primarily for the purpose of directly or indirectly accepting contributions or making expenditures" for the purpose of influencing "the selection, nomination, election, or appointment of any individual to Federal, State, or local public office or office in a political organization, or the election of Presidential... electors...." 26 U.S.C. §527(e)(1)-(2).

While not all 527 organizations qualify as political committees under FECA, political committees under FECA qualify as 527 organizations. Such organizations have several tax advantages. For example:

- 527 organizations are not required to pay taxes on contributions or dues; and
- Contributions to 527 organizations are exempt from the gift tax.

Notice of Section 527 Status

Pub. L. 106-230 generally requires a 527 organization to notify the IRS that it is a 527 organization, within 24 hours of its establishment.[3] The Notice requirement, however, does **not** apply to:

- A political committee required to report under the Federal Election Campaign Act of 1971 (2 U.S.C. §431 et seq.);
- "An organization that reasonably expects its annual gross receipts to always be less than $25,000";[4] or
- A tax-exempt organization described in section 501(c) (of the U.S. Internal Revenue Code) that is treated as having political organization taxable income under section 527(f)(1).

Covered organizations must disclose their status by filing (with the IRS) IRS Form 8871, "Political Organization Notice of Section 527 Status," both electronically and in writing.

A political organization that does not file a timely Notice will not be treated as a 527 organization by the IRS. This means that its taxable income will include "exempt function" income (e.g., contributions and dues), otherwise excluded by section 527 of the Internal Revenue Code, until such time as it files the Notice.

The IRS must make the Notices (IRS Form 8871) filed by 527 organizations available to the public. A list of organizations filing IRS Form 8871 will be available on the IRS Web site by August 15, 2000. Once the list is posted, the IRS must include an organization on the list within five business days after the IRS has received a notice from that organization.

Report of Contributions and Expenditures

Beginning July 1, 2000, 527 organizations that accept contributions or make expenditures to influence the election or appointment of any individual to any public office or an office in any political organization, or any Presidential elector, must disclose to the IRS:

- Expenditures that exceed $500 in the aggregate to one person, per calendar year; and
- Contributions that amount to $200 in the aggregate from one person, per calendar year.

These disclosure rules do not apply:

- To political committees required to report under the Federal Election Campaign Act of 1971 (2 U.S.C. §431 et seq.);
- To state and local committees of political parties;
- To campaign committees of state and local candidates;
- With respect to independent expenditures made in support of, or in opposition to, federal candidates;
- To organizations that reasonably expect their annual gross receipts to always be less than $25,000; or

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[1] *The IRS has sole authority to administer this law. The Federal Election Commission is providing this information merely as a service to its readers.*

[2] *Senate committees file their reports with the Secretary of the Senate. 2 U.S.C. §432(g)(1).*

[3] *Organizations formed prior to July 31, 2000, were required to file by July 31.*

[4] *IRS Form 8871, General Instructions, p. 3. See also 26 U.S.C. §527, new subsection (i)(a)(5)(B), which states that these requirements do not apply to any organization "which reasonably anticipates that it will not have gross receipts of $25,000 or more for any taxable year."*

• To tax-exempt organizations described in section 501(c) (of the Internal Revenue Code) that are treated as having political organization taxable income under section 527(f)(1).

The information must be disclosed on IRS Form 8872, "Political Organization Report of Contributions and Expenditures." With regard to reportable transactions, that form requires organizations to disclose the names, addresses, employers and occupations of contributors and those persons to whom expenditures are made. The IRS will make these disclosure reports available to the public at the discretion of the Secretary of the Treasury, and it will penalize those 527 organizations that fail to disclose this information at an amount equal to the highest corporate tax rate (35 percent) multiplied by the amount not disclosed.

Annual Returns

For taxable years beginning after June 30, 2000, political committees that file with the FEC (or the Senate) will have to file an annual Return with the IRS if they have either taxable income (of any amount) or gross receipts exceeding $25,000.[5] This requirement applies to all 527 organizations. These Returns will also be made available to the public by the IRS.

Forms and Information

IRS Forms 8871 and 8872 are available electronically at the IRS Web site, www.irs.gov, in the "Forms and Pubs" section. IRS Form 8871 can be filed electronically at www.irs.gov/bus_info/eo/pol-file.html.

Contact the IRS for more information by calling 1-877-829-5500.✥

[5] *Note that, for taxable years beginning before June 30, 2000, former tax requirements still apply. See 26 U.S.C. §6012(a)(6).*

Outreach

FEC Roundtables

The Commission will host roundtable sessions in August and September.

FEC roundtables, limited to 12 participants per session, focus on a range of subjects. See the table for dates and topics. All roundtables are conducted at the FEC's headquarters in Washington, DC.

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 of your choice. Prepayment is required. Theregistration form is available at the FEC's Web site—http://www.fec.gov—and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call 800/424-9530 (press 1, then 3) or 202/694-1100.✥

Roundtable Schedule

Date	Subject	Intended Audience
August 2 9:30 - 11 a.m. Filled! Waiting List Only	**Update on New and Proposed FEC Reporting Regulations** • State Filing Waiver • Mandatory Electronic Filing • Administrative Fines for Reporting Violations • Election Cycle Reporting	• PACs • House and Senate Campaigns • Political Party Committees • Lawyers, Accountants and Consultants to Above
September 13 9:30 - 11 a.m.	**Pre-Election Reporting Tune-Up** • October Deadlines • Last-Minute Notices • Problems to Avoid • Your Questions Answered	• PACs • House and Senate Campaigns • Political Party Committees • Lawyers, Accountants and Consultants to Above

Change of Address

Political Committees

Treasurers of registered political committees automatically receive the Record. A change of address by a political committee (or any change to information disclosed on the Statement of Organization) must, by law, be made in writing on FEC Form 1 or by letter. The treasurer must sign the amendment and file it with the Secretary of the Senate or the FEC (as appropriate) and with the appropriate state office.

Other Subscribers

Record subscribers who are not registered political committees should include the following information when requesting a change of address:

• Subscription number (located on the upper left corner of the mailing label);
• Subscriber's name;
• Old address; and
• New address.

Subscribers (other than political committees) may correct their addresses by phone as well as by mail.

Public Funding

Nader Eligible for Matching Funds

On June 30, 2000, Green Party presidential candidate Ralph Nader became eligible for public matching funds for his primary election campaign.

To establish eligibility, a candidate must raise $100,000 by collecting $5,000 in matchable contributions in at least 20 different states. Only contributions received from individuals, and only up to $250 of a contributor's total, are matchable by the federal government.

Eligible candidates must agree to limit their spending, use funds for campaign-related expenses only, keep financial records and submit their records to an FEC audit.

Once declared eligible, candidates can submit additional contributions for matching funds on the first business day of every month. The U.S. Treasury began paying out the FEC-certified amounts in January 2000. Currently, the maximum amount a 2000 Presidential primary candidate can receive in matching funds is calculated at $16.75 million.

Matching fund submissions are available at the FEC's Web site — http://www.fec.gov—as downloadable FTP files. Go to "Financial Information About Candidates, Parties and PACs" and follow the links. Instructions are on the Web site.

Copies of submissions are also available from the FEC's Public Records Office. Call 800/424-9530 (press 3) or 202/694-1120.✥

June Matching Fund Payments

On June 30, 2000, the Commission certified Ralph Nader eligible for $100,000 in matching funds. The Commission also approved an additional $1,783,397.48 in matching fund payments to seven other Presidential candidates.

With these latest certifications, the FEC has now declared ten candidates eligible to receive a total of $57,897,483.48 in federal matching funds for the 2000 election.

Previously, due to a shortfall in the Presidential Election Campaign Fund, the U.S. Treasury Department made partial payments to the qualified candidates, based on the Commission's certifications.

Now, with the deposit of tax dollars (for tax year 1999), the Presidential Fund has sufficient funds to make full payments to candidates. By June 15, 2000, the Treasury Department had paid the balance of the entitlements and will continue to match candidates' monthly certifications in full. The chart lists the most recent certifications and cumulative payments for each candidate. ✥

Matching Funds for 2000 Presidential Candidates: June Certification

Candidate	Certification June 2000	Cumulative Certifications
Gary L. Bauer (R) [1]	$96,782.18	$4,771,139.94
Bill Bradley (D) [2]	$0.00	$12,462,047.69
Patrick J. Buchanan (Reform)	$110,562.22	$3,852,250.41
Al Gore (D)	$672,879.40	$15,317,874.13
John Hagelin (Natural Law)	$65,541.00	$314,135.00
Alan L. Keyes (R)[3]	$422,598.54	$3,325,344.36
Lyndon H. LaRouche, Jr. (D) [4]	$283,036.92	$1,184,375.85
John S. McCain (R) [5]	$131,997.22	$14,467,791.10
Ralph Nader (G)	$100,000.00	$100,000.00
Dan Quayle(R) [6]	$0.00	$2,102,525.00

[1] Gary L Bauer publicly withdrew from the race on February 4, 2000.

[2] Bill Bradley publicly withdrew from the race on March 9, 2000.

[3] Alan L. Keyes became ineligible for matching funds on April 20, 2000.

[4] Lyndon H. LaRouche, Jr. reestablished eligibility for matching funds on May 23, 2000, by receiving more than 20 percent of the vote in the Arkansas primary.

[5] John S. McCain publicly withdrew from the race on March 9, 2000.

[6] Dan Quayle publicly withdrew from the race on September 27, 1999 .

Reports

Nonfilers

The campaign committees of the candidates listed at right failed to file required campaign finance disclosure reports. The list is based on recent FEC news releases. The FEC is required by law to publicize the names of nonfiling campaign committees. 2 U.S.C. §438(a)(7). The agency pursues enforcement actions against nonfilers on a case-by-case basis.✥

Candidate	Office Sought	Report Not Filed
Brown, Henry E., Jr.	House SC/01	Pre-Primary
Giordano, Philip A.	Senate CT	Pre-Convention
Kingston, John H.	House GA/01	Pre-Primary
Limehouse, H.B., Jr.	House SC/01	Pre-Primary
Warren, Charles F.	House GA/07	Pre-Primary

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