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A Message from the Chairman

The year 2000 promises to be an exciting and challenging one at the FEC, particularly with respect to the expanding role of computer technology in campaign finance.

Responding to political committees' growing interest in using the Internet for political advocacy and fundraising, the Commission has formally asked for public comment on the possible need for new rules specifically governing this type of activity (64 *Federal Register* 60360, November 5, 1999).

We have already taken advantage of the possibilities the Internet presents by giving the public access to campaign finance reports and our own publications through our Web site (www.fec.gov). And, since last August, we have made our advisory opinions available there also. In the final weeks of 1999, we redesigned our Web site, offering additional information in a more user friendly way.

This year, we will implement a legislative amendment to the Federal Election Campaign Act requiring political committees operating above a certain threshold of activity to file their FEC reports electronically. Publicly funded Presidential committees are already required to electronically file their reports. In addition, many other committees have already begun to file their reports electronically on a voluntary basis.

Questions will arise as we make these changes. When they do, call our 800 number (800/424-9530) for assistance. In addition, you can obtain our publications and other materials 24 hours a day through our Faxline, an automated fax-on-demand system (202/501-3413).

As we try to meet the challenges of the coming year, we welcome your comments and suggestions. ♦



State Filing Waivers Reduce Committees' Filing Obligations, see page 2.

Information

Most Committees No Longer File State Copies of Reports in Twelve States

On December 8, the Commission certified Arkansas, Florida, Idaho, Illinois, Kansas, Michigan, Nebraska, New York, North Dakota, South Dakota, Utah and Wisconsin as eligible for the State Filing Waiver Program. These states no longer have to receive and maintain paper copies of most FEC reports in their state's campaign finance records office.

As a result, beginning with the December 1999 monthly report, most political committees that used to file copies of their reports in these 12 states will no longer have to do so. Senate candidates, however, must continue to file copies of their reports with the states.¹

In the twelve states certified, the public will now be able to review and copy campaign reports of most

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federal candidates by accessing the FEC's Web site (www.fec.gov) on computers located at the state's campaign finance records office.

The FEC began posting disclosure reports filed by Presidential and House candidates, parties and political action committees on its Web site in 1997. It has since expanded the site to include electronic filings and a query system that allows for on-line searches of the campaign finance database. By accessing the FEC's Web site, the public in the certified states will be able to view PAC, party and Presidential reports filed since 1993 and House candidate reports filed since 1996.

The concept for the state waiver program originated in December 1995, when President Clinton signed Public Law 104-79, which exempts a state from receiving and maintaining paper copies of federal campaign finance reports provided that the state, "as determined by the Commission, has a system that permits electronic access to, and duplication of, reports and statements that are filed with the Commission."

On October 14, 1999, the Commission implemented the law by approving the State Filing Waiver Program. Under this program, the Commission requires states to submit a letter certifying that they have a computer system that allows the public:

- To electronically access the reports and statements that are filed with the Commission; and
- To duplicate them.

¹ *The law requires Senate candidate committees to file their reports and statements with the Secretary of the Senate. Because the Commission is unable at the present time to scan these reports, the reports are not currently available to the public through the Commission's Web site.*

To receive the FEC's state waiver certification, states:

- Must have at least one computer terminal that can electronically access the Commission's Web page, with at least one printer (connected either directly or through a network); and
- Must, to the greatest extent possible, allow anyone requesting federal campaign finance data to use the computer terminal at any time during regular business hours.

As more states request and receive FEC certification for the program, the Commission will announce their names in future issues of the *Record* and will post them on the FEC Web site (www.fec.gov).

For more information on the waiver, please see page 17 of the [December 1999 Record](#). ♦

Court Cases

Democratic Senatorial Campaign Committee, Inc., v. FEC, et al.

This case, which dates back to 1993, began when the Democratic Senatorial Campaign Committee (DSCC) filed an administrative complaint, alleging that the National Republican Senatorial Committee (NRSC) had circumvented the Federal Election Campaign Act's (the Act's) contribution limits by funneling soft money through nonprofit organizations, which then made expenditures on behalf of the NRSC.

In 1995, the DSCC filed suit in the U.S. District Court for the District of Columbia against the FEC, charging that the agency had failed to take action on its administrative complaint within a reasonable time. In April 1996, the court ruled that the FEC's inaction was

contrary to law. 2 U.S.C. §437g(a)(8). The court denied the DSCC's request for injunctive relief, however, because the FEC had recently found "reason to believe" that the NRSC had violated the Act. The court subsequently ordered the Commission to pay the DSCC's attorney's fees. A year later, the court again found that the Commission had acted contrary to law, this time because the FEC had not completed its investigation nor decided whether there was "probable cause to believe" that the NRSC had violated the Act. The court ordered the FEC to take action within 30 days. In June 1997, the FEC explained that it could not complete its work by that deadline, and it appealed the district court order. The FEC also appealed the previous court order to pay the DSCC's attorney's fees. On April 10, 1998, the U.S. Court of Appeals for the District of Columbia Circuit remanded these two cases to the district court after finding that the issue of whether the DSCC had standing under the Constitution to litigate its claims had not been resolved.

On October 18, 1999, the U.S. District Court concluded that the DSCC had constitutional standing to litigate these cases. However, in regard to the first case, the court decided that the DSCC did not qualify as a "prevailing party" as defined in the Equal Access to Justice Act, and therefore vacated its earlier decision to award the DSCC attorney's fees. The court did reconfirm its prior order in the second case that found the Commission to have unreasonably delayed taking action on the administrative complaint filed by the DSCC and required the Commission to conclude the matter within 30 days.

For previous *Record* articles, see page 4 of the [June 1998 issue](#) and page 7 of the [August 1998 issue](#). ♦

Renato P. Mariani v. USA, et al.

On December 15, 1998, Renato P. Mariani filed a civil action under 2 U.S.C. §437h, challenging the constitutionality of the Federal Election Campaign Act's (the Act's) prohibitions on corporate contributions and contributions in the name of others. 2 U.S.C. §§441b and 441f. Section 437h of Title 2 assigns the en banc court of appeals the role of decision maker on constitutional challenges to the Act's provisions. The district court is responsible for:

- Determining whether a constitutional challenge is frivolous and, if not,
- Making findings of fact and certifying the issues to be resolved by the appellate court.

The FEC successfully petitioned the U.S. District Court for the Middle District of Pennsylvania to intervene in this case and filed a motion to have the matter dismissed, which was denied by the district court on March 25, 1999.

Factual Findings

On October 27, 1999, the U.S. District Court for the Middle District of Pennsylvania came to the following factual conclusions:

- Mr. Mariani, a corporate executive, is being prosecuted in federal court for violating the Act's prohibitions on corporate contributions and contributions in the name of others by funneling funds through individuals to various federal campaign committees.
- The purpose of the corporate and conduit contribution bans is to avoid corruption and the appearance of corruption in the federal elective process that may occur when large and/or undisclosed contributions are made to candidates seeking federal office.

Commissioners

New Chairman and Vice Chairman Elected

On December 16, 1999, the Commission elected Darryl R. Wold as its Chairman and Danny L. McDonald as Vice Chairman for 2000.

Mr. Wold, a Republican, was nominated to the FEC by President Clinton on November 5, 1997, and confirmed by the Senate on July 30, 1998.

Prior to his appointment, Mr. Wold was in private law practice in Orange County, California. In addition to his own practice, he was counsel for election law litigation and enforcement matters to Reed and Davidson, a firm that practices election and political law.

Chairman Wold graduated cum laude from Claremont McKenna College in California and received a law degree from Stanford University. He is a member of the California bar, and is admitted to practice before the U.S. Supreme Court.

Vice Chairman McDonald, a Democrat, has previously served as both chairman and vice chairman. Prior to his initial appointment in 1981, Commissioner McDonald served as General Administrator of the Oklahoma Corporation Commission. Additionally, he served as secretary of the Tulsa County Election Board and as Chief Clerk of that Board. Commissioner McDonald was a member of the Advisory Panel to the FEC's National Clearinghouse on Election Administration. He is currently president of the American Council of Young Political Leaders.

Commissioner McDonald received a Bachelors degree from Oklahoma State University and attended the John F. Kennedy School of Government at Harvard University. He has served as a member of the JFK School Advisory Board for State and Local Government. ♦

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Court Cases

(continued from page 3)

- “Contributions or expenditures made on behalf of candidates for federal office are referred to [as] ‘hard money.’”
- Corporations have the ability to make large contributions to political parties and to fund “issue advocacy” communications. “Such contributions are referred to as ‘soft money.’”
- There are important theoretical distinctions between hard and soft money—distinctions that are “intended to avoid the corrupting influence of large contributors supporting a particular candidate.”
- Soft money is easier to raise than hard money because it can be donated in large sums and it can come from corporate treasuries.
- Soft money has grown from about \$19 million in 1980 to more than \$260 million in 1996.
- Soft money is used in part to fund “issue advocacy.” “While ‘issue advocacy’ is supposed to be distinguishable from ‘candidate advocacy,’ the distinction is often illusory.”
- “Issue advocacy” funded by soft money has increased substantially.
- “Sponsors of ‘issue advocacy’ are able to avoid the Act’s contribution limits and disclosure requirements applicable to candidate ads.”
- Candidates for federal office are involved in raising “soft money.” “Candidates raising soft money are often rewarded by having allocated to their campaigns all or part of the soft money they raise.”
- “Candidates for federal office know which corporations are large contributors of soft money.”
- “The contribution of corporate treasury funds secures corporate officials access to high government officials, including elected officials, as well as candidates for federal office.”

- “Access to candidates and high federal government officeholders is often the *quid pro quo* for large soft money contributions.”
- “Corporations are often motivated to make large soft money contributions by the access it buys.”
- “Access to candidates for federal office provided by soft money corporate contributions has the same appearance of corruption as would access provided by corporate hard money contributions to those same candidates.”
- “Soft money contributions from corporate treasuries can influence the outcome of federal elections.”
- Soft money contributions from corporate treasuries in connection with federal elections, by way of both donations to political parties and issue advocacy, “have the same ability to corrupt and give rise to the same appearance of corruption as would contributions from corporate treasuries to the campaign committees of candidates for federal office.”
- “The public does not perceive any meaningful distinction between hard money and soft money.”
- “Corporations are now able to make expenditures that influence the outcome of federal elections without the public having a clear understanding that a particular corporation is making substantial contributions with the intent to promote the chances of a particular candidate for federal office.”
- “Corporate soft money contributions enable corporations to do that which the corporate hard money contribution ban is intended to avoid: corporate support of candidates for federal elective office.”
- “Corporations are now able to make expenditures in connection with federal elections that have the ability to corrupt and cause an appearance of corruption that the

ban on corporate contributions to candidates for federal elective office was intended to avoid.”

Certified Issues of Law

Based on the above findings of fact, the district court certified the following issues of law for consideration by the appellate court:

- Whether the prohibition in 2 U.S.C. §441b on contributions by corporations from corporate treasury funds to candidates for federal office, in the context of the presently existing law that otherwise permits corporations to expend unlimited amounts of corporate treasury funds that influence the outcome of federal elections, violates the First Amendments.
- Whether the prohibition in 2 U.S.C. §441b on contributions by corporations from corporate treasury funds to candidates for federal office is overly broad and therefore unconstitutional on its face.
- Whether the prohibition in 2 U.S.C. §441f on contributions in the name of another to candidates for federal office violates the First Amendment.
- If the answer to the first two questions above is “yes” but the answer to the third is “no”: —Whether 2 U.S.C. §441f is unconstitutional when it prohibits conduit contributions of corporate funds to candidates for federal office; and —Whether 2 U.S.C. §441f is inseparable from 2 U.S.C. §441b and should therefore be invalidated in light of the unconstitutionality of the latter provision. ♦

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Reports

Reports Due in 2000

This article on filing requirements for election year 2000 is supplemented by accompanying reporting tables.

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 further information on reporting or to order extra forms, call the FEC: 800/424-9530 (press 1) or 202/694-1100. Additionally, most forms are available at the FEC's Web site (<http://www.fec.gov>) and from the agency's Faxline system (dial 202/501-3413).

Reports Covering 2000 Activity

To find out which reports your committee must file in 2000, check the Guide to Reporting chart on page 6. Please note that committees active in special elections in 2000 may have to file additional special election reports, as explained below.

Committees Active in Special Elections

Committees authorized by candidates running in any 2000 special election must file special 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 also may have to file pre- and post-election reports unless they file on a monthly basis. 11 CFR 104.5(c)(3) and 104.5(h). 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 in 2000.

Waiver of State Filing

On October 14, 1999, the Commission approved a state filing waiver program, relieving qualified states of the requirement to make paper copies of FEC reports available to the public.

As a result, beginning with the December 1999 monthly report, most political committees will no longer have to file copies of their reports at the state level in the states that have received the waiver.¹ The exception is Senate candidates. They must continue to file copies of their reports with the states.

All Committees: Year-End Reports Covering 1999 Activity

All committees must file a 1999 Year-End report due January 31, 2000. The coverage and reporting dates are found on page 7.

Authorized Committees of Candidates

2000 House and Senate Candidates. Authorized committees of 2000 House and Senate candidates file the following reports:

- Quarterly reports;²
- A pre-primary report;
- Pre- and post-general election reports (if the candidate participates in the general election); and
- 48-hour notices on contributions of \$1,000 or more received after the 20th day, but more than 48 hours, before the day of each election in which the candidate participates. These notices are due within 48 hours of the committee's receipt of the contribution. 11 CFR 104.5(a)(1) and (f).³

Note: Committees are required to file election reports and 48-hour notices even if the candidate is unopposed in the election. Moreover, these reporting requirements still apply even if a primary or general election is not held because the candidate is unopposed or received a majority of votes in the previous election. However, no report is required for a primary election that is not held because the candidate was nominated by a caucus or convention,⁴ for which a pre-election report would have already been filed. See 11 CFR 110.1(j).

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² Note that an authorized committee of a 2000 candidate must file on a quarterly basis in 2000 even if the candidate withdraws before participating in the primary. However, such a committee would not have to file a pre-primary report (or other election reports) unless the candidate's name remained on the ballot.

³ Since 48-hour notices do not have to be signed by the treasurer, they may be sent by mailgram, telegram or telefacsimile (fax) machine in order to meet the 48-hour requirement. AO 1988-32. Fax numbers for: the Secretary of the Senate--202/224-1851; FEC--202/219-0174. Note: Other reports and statements may not be faxed.

⁴ A pre-convention report is required only if the convention has authority to nominate. See 11 CFR 100.2(e).

¹ Currently twelve states have qualified for the state waiver: Arkansas, Florida, Idaho, Illinois, Kansas, Michigan, Nebraska, New York, North Dakota, South Dakota, Utah and Wisconsin.

Guide to 2000 Reporting

All committees must also file a 1999 Year-End Report, due January 31, 2000.

Required Reports

Type of Filer	Semiannual	Quarterly	Monthly	Pre-Primary ¹	Pre-General	Post-General
House and Senate Campaigns of 2000 Candidates		✓		✓ required only if candidate runs in election	✓	✓
Other House and Senate Campaigns ²	✓					
Presidential Campaigns ³ Anticipating Activity of at Least \$100,000			✓		✓ required only if candidate runs in election	✓
Presidential Campaigns ³ With Activity Less Than \$100,000		✓		✓ required only if candidate runs in election	✓	✓
PACs and Party Committees Filing Monthly			✓		✓ filed in lieu of November and December monthly reports	✓
PACs and Party Committees Filing Quarterly ⁴		✓		✓ required only if committee makes contributions or expenditures in connection with election during the reporting period ⁵	✓	✓ required regardless of activity

¹ Category also includes pre-convention and pre-runoff reports.

² Special election candidates must file additional reports pertaining to their special elections. See periodic Record announcements.

³ Presidential committees that wish to change their filing frequency during 2000 should notify the Commission in writing.

⁴ PACs and party committees that filed on a semiannual basis in 1999 file on a quarterly basis in 2000. To avoid the need to file pre-primary and pre-runoff reports, these committees may change to monthly filing if they first notify the Commission in writing. Committees may change filing frequency only once a year. 11 CFR 104.5(c).

⁵ A reporting period begins with the close of books for the last report filed and ends with the closing date for the applicable report.

Other House and Senate Candidates. Committees authorized by House and Senate candidates who ran or intend to run in a year other than 2000 file on a semiannual basis. 11 CFR 104.5(a)(2).

Presidential Candidates. All committees authorized by Presidential candidates must file on either a monthly or a quarterly schedule. 11 CFR 104.5(b)(2).

A Presidential committee wishing to change its filing schedule should notify the Commission in writing.

Presidential committees active in the 2000 race that have received contributions or made expenditures aggregating \$100,000 or that anticipate this level of activity file on a monthly basis. If the candidate runs in the general election, the campaign must file pre- and post-general election reports in lieu of the November and December monthly reports.

Presidential committees active in the 2000 race with financial activity under \$100,000 file on a quarterly basis. They must also file pre- and post-election reports for the elections they run in.

Presidential committees retiring debts from previous campaigns may file on either a monthly or a quarterly schedule.

PACs and Party Committees

PACs (separate segregated funds and nonconnected committees) and party committees that filed on a semiannual basis during 1999 now file on a quarterly basis. Monthly filers continue on the monthly schedule. PACs and party committees may, however, change their filing schedule, as explained later in this section.

Note that all PACs, whichever schedule they follow, are subject to the 24-hour filing requirement for last-minute independent expenditures (also explained later).

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1999 Year-End Report

Note: All committees file this report.

Report	Period Covered	Filing Date¹
Year-End	Closing date of last report through 12/31/99	January 31, 2000

2000 Monthly Reports

Report	Period Covered	Filing Date¹
February	January 1-31	February 20 ²
March	February 1-29	March 20
April	March 1-31	April 20
May	April 1-30	May 20 ²
June	May 1-31	June 20
July	June 1-30	July 20
August	July 1-31	August 20 ²
September	August 1-31	September 20
October	September 1-30	October 20
Pre-General ³	October 1-18	October 26
Post-General	Oct. 19-Nov. 27	December 7
Year-End	Nov. 28-Dec. 31	January 31, 2001

2000 Quarterly Reports

Report	Close of Books	Filing Date¹
1st Quarter	March 31	April 15 ²
2nd Quarter	June 30	July 15 ²
3rd Quarter	September 30	October 15 ²
Year-End	December 31	January 31, 2001

Pre- and Post-Election Reports for November 7 General Election²

Report	Close of Books	Filing Date¹
Pre-General ³	October 18	October 26
Post-General	November 27	December 7

¹ Reports sent by registered or certified mail must be postmarked by the filing date (except in the case of the pre-general election report; see footnote 2). Reports sent by other means must be received by the filing date. 11 CFR 104.5(e).

² Note that the filing date falls on a weekend. Filing dates are not extended when they fall on nonworking days.

³ If sent by registered or certified mail, the pre-general must be postmarked by October 23.

Quarterly Filers. A PAC or party committee that files on a quarterly basis must additionally file a post-general election report. 11 CFR 104.5(c)(1)(i) and (iii).

Quarterly filers may also have to file pre-convention, pre-primary, pre-runoff and pre-general election reports. The requirement to file a pre-election report is triggered if the committee makes a contribution or expenditure in connection with the election during the applicable reporting period. 11 CFR 104.5(c)(1)(ii). A reporting period begins the day after the close of books for the last report filed and continues through the close of books for the pre-election report.

Note that, although the FEC sends committees notices of upcoming reporting deadlines for quarterly reports and general election reports, the agency does not send PACs or party committees pre-election reporting notices for Congressional conventions, primaries or runoffs.

Monthly Filers. Unlike quarterly filers, PACs and party committees filing on a monthly basis do not file pre-election reports for conventions, primaries or runoff elections. They must, however, file pre- and post-general election reports in lieu of the November and December monthly reports. Monthly filers must also file a Year-End report. 11 CFR 104.5(c)(3).

Changing the Filing Schedule. PACs and party committees filing on a quarterly schedule may change to a monthly schedule in order to avoid having to file pre-convention, pre-primary and pre-runoff reports. The committee must first notify the Commission in writing. The notification should accompany a report filed under the committee's current reporting schedule. A committee may change its filing frequency only once a year. 11 CFR 104.5(c).

24-Hour Reports on Independent Expenditures. Any PAC (including a monthly filer) that makes indepen-

dent expenditures in connection with any election (convention, primary, runoff, general) may have to file a 24-hour report. This report is required when a committee makes independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the day of the election. The report must be filed within 24 hours after the expenditure is made. For more information on the 24-hour reporting requirement, see 11 CFR 104.4(b) and (c) and 104.5(g). See also "Where to File" (below) for special filing requirements.

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 to 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).⁵

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 Candidate Committees. Principal campaign committees of Presidential candidates file

with the FEC. 11 CFR 105.3. The principal campaign committee must also file a copy of each report and statement with the filing office of each state in which the committee makes expenditures. 2 U.S.C. §439(a)(2)(A); 11 CFR 108.2.⁵

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. There are, however, exceptions:

- Committees supporting only Senate candidates file with the Secretary of the Senate; and
- PACs file 24-hour notices disclosing independent expenditures on behalf of House and Senate candidates with the FEC and the Secretary of the Senate as appropriate. 11 CFR 104.4(c) and 104.5(g).

PACs and party committees must simultaneously file copies of reports and statements with the Secretary of the State (or equivalent officer) as follows⁵:

- 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); 11 CFR 108.3.

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⁵ Please see article on the waiver of state office filings on page 2.

Pre-Election Reporting Dates: 2000 Primary and Runoff Elections

State or Territory	Election Day	Close of Books [†]	Registered/Certified Mailing Date [‡]	Filing Date [‡]
Alabama	June 6 Runoff: June 27	May 17 June 7	May 22 June 12	May 25 June 15
Alaska	August 22	August 2	August 7	August 10
American Samoa	November 7 Runoff: November 21	October 18 November 1	October 23 November 9 ¹	October 26 November 9
*Arizona	September 12	August 23	August 28	August 31
Arkansas	May 23 Runoff: June 13	May 3 May 24	May 8 May 29 ²	May 11 June 1
*California	March 7	February 16	February 21 ²	February 24
Colorado	August 8	July 19	July 24	July 27
*Connecticut	September 12	August 23	August 28	August 31
*Delaware	September 9	August 20	August 25	August 28
District of Columbia	May 2	April 12	April 17	April 20
*Florida	September 5 Runoff: October 3	August 16 September 13	August 21 September 18	August 24 September 21

* States holding 2000 Senate elections.

[†] This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

[‡] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

¹ The mailing date is the same as the filing date because the computed date falls one day before the primary date.

² Federal holiday. For registered/certified mailing date, the report should be postmarked before that date.

State or Territory	Election Day	Close of Books [†]	Registered/Certified Mailing Date [‡]	Filing Date [‡]
Georgia	July 18 Runoff: August 8	June 28 July 19	July 3 July 24	July 6 ³ July 27
Guam	September 2	August 13	August 18	August 21
*Hawaii	September 23	September 3	September 8	September 11
Idaho	May 23	May 3	May 8	May 11
Illinois	March 21	March 1	March 6	March 9
*Indiana	May 2	April 12	April 17	April 20
Iowa	June 6	May 17	May 22	May 25
Kansas	August 1	July 12	July 17	July 20
Kentucky	May 23	May 3	May 8	May 11
Louisiana	November 7 Runoff: December 9	October 18 November 19	October 23 November 24	October 26 November 27
*Maine	June 13	May 24	May 29 ²	June 1
*Maryland	March 7	February 16	February 21 ²	February 24
*Massachusetts	September 19	August 30	September 4 ²	September 7
*Michigan	August 8	July 19	July 24	July 27
*Minnesota	September 12	August 23	August 28	August 31

* States holding 2000 Senate elections.

[†] This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

[‡] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

² Federal holiday. For registered/certified mailing date, the report should be postmarked before that date.

³ The July Quarterly report is waived for committees filing the Georgia pre-primary report. See 11 CFR 104.5(a)(1)(iii)(C) and (c)(1)(i)(C).

State or Territory	Election Day	Close of Books [†]	Registered/Certified Mailing Date [‡]	Filing Date [‡]
*Mississippi	March 14 Runoff: April 4	February 23 March 15	February 28 March 20	March 2 March 23
*Missouri	August 8	July 19	July 24	July 27
*Montana	June 6	May 17	May 22	May 25
*Nebraska	May 9	April 19	April 24	April 27
*Nevada	September 5	August 16	August 21	August 24
New Hampshire	September 12	August 23	August 28	August 31
*New Jersey	June 6	May 17	May 22	May 25
*New Mexico	June 6	May 17	May 22	May 25
*New York	September 12	August 23	August 28	August 31
North Carolina	May 2 Runoff: May 30	April 12 May 10	April 17 May 15	April 20 May 18
*North Dakota	June 13	May 24	May 29 ²	June 1
*Ohio	March 7	February 16	February 21	February 24
Oklahoma	August 22 Runoff: September 19	August 2 August 30	August 7 September 4 ²	August 10 September 7
Oregon	May 16	April 26	May 1	May 4
*Pennsylvania	April 4	March 15	March 20	March 23
Puerto Rico	November 14, 1999	October 25, 1999	October 30, 1999	November 2, 1999
*Rhode Island	September 12	August 23	August 28	August 31
South Carolina	June 13 Runoff: June 27	May 24 June 7	May 29 ² June 15 ¹	June 1 June 15

* States holding 2000 Senate elections.

[†] This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

[‡] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

¹ The mailing date is the same as the filing date because the computed mail date would fall one day before the primary is held.

² Federal holiday. For registered/certified mailing date, the report should be postmarked before that date.

State or Territory	Election Day	Close of Books [†]	Registered/Certified Mailing Date [‡]	Filing Date [‡]
South Dakota	June 6 Runoff: June 20	May 17 May 31	May 22 June 8 ¹	May 25 June 8
*Tennessee	August 3	July 14	July 19	July 22 ⁴
*Texas	March 14 Runoff: April 11	February 23 March 22	February 28 March 27	March 2 March 30
*Utah	June 27	June 7	June 12	June 15
*Vermont	September 12	August 23	August 28	August 31
*Virginia	June 13	May 24	May 29 ²	June 1
Virgin Islands	September 9	August 20	August 25	August 28
*Washington	September 19	August 30	September 4 ²	September 7
*West Virginia	May 9	April 19	April 24	April 27
*Wisconsin	September 12	August 23	August 28	August 31
*Wyoming	August 22	August 2	August 7	August 10

* States holding 2000 Senate elections.

[†] This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

[‡] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

¹ The mailing date is the same as the filing date because the computed mailing date would fall one day before the primary was held.

² Federal holiday. For registered/certified mailing date, the report should be postmarked before that date.

⁴ Note that the filing date falls on a weekend. Filing dates are not extended when they fall on nonworking days.

- 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.
- Committees making independent expenditures on behalf of Presidential candidates (including those disclosed in 24-hour notices) file in the state in which the expenditure is made. 11 CFR 104.4(c)(1), 104.5(g) and 108.2.

Late Filing

The 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. ♦

Court Cases

(continued from page 4)

Simon C. Fireman, et al. v. USA

In October 1999, the parties in this case signed a settlement agreement, which did not constitute an admission of liability on the part of either party.

The plaintiffs, Simon C. Fireman and Aqua-Leisure Industries, Inc. (Aqua-Leisure), brought this action to recover from the government illegal campaign contributions they had made to the Dole for President Committee, which had disgorged the illegal contributions to the U.S. Treasury.

In 1996, Mr. Fireman pleaded guilty to making contributions in the names of others and making excessive contributions to two 1996 Presidential campaign committees of former Senator Bob Dole. The U.S. District Court for the District of Massachusetts ordered him to pay a \$1 million fine and sentenced him to one year of probation. Upon learning that the contributions were likely impermis-

sible, Mr. Dole's primary and compliance committees disgorged \$69,000 to the U.S. Treasury.

Mr. Fireman alleged that FEC regulations mandate that a contribution that does not appear impermissible at the time it is made, but later is found to be from a prohibited source, be refunded to the contributor within 30 days. 11 CFR 103.3(b)(2). He also alleged that Commission advisory opinions concluding that a campaign committee could also refund impermissible contributions to the U.S. Treasury are beyond the Commission's authority and contrary to its regulations.

On October 26, the USA agreed to settle the matter in full by paying Mr. Fireman \$69,000. The payment fully discharges the USA of all claims and demands made by Mr. Fireman. The parties entered into the agreement solely for the purpose of settling this action and all disputes between the parties involved. The agreement should not be cited or otherwise referred to, in any proceeding, whether judicial or administrative.

U.S. Court of Federal Claims, 99-17C, October 26, 1999. ♦

A Great Idea in 2000... becomes a requirement in 2001!

In the months to come, electronic filing thresholds will be announced. Any committee that exceeds or expects to exceed these thresholds in 2001 will be required to file its 2001 reports electronically. While the Commission has not yet determined the thresholds, it is expected that approximately two thousand committees will be required to file electronically.

What does electronic filing mean for your committee? It means start electronic filing now! Changing or upgrading your software systems and becoming comfortable with them are easily done over the course of a year, but not so easily done just a few days or weeks before a filing deadline. Starting early has the added benefit of minimizing data entry, which saves time and decreases the possibility for errors.

If you have questions concerning electronic filing, call 800/424-9530 (press 5) or 202/694-1100. To order the FEC's electronic filing software, go to page 22.

On Appeal?

FEC v. Public Citizen, Inc., et. al.

On November 10, 1999, the FEC appealed this case to the U.S. Court of Appeals for the Eleventh Circuit. The U.S. District Court for the Northern District of Georgia, Atlanta Division, had ruled in favor of the defendants against the FEC's claims that Public Citizen, Inc., and its separate segregated fund had violated the Act by failing to indicate whether a television advertisement and a set of flyers were authorized by a candidate or candidate committee. See page 2 of the [November 1999 Record](#). ♦

Federal Register

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

Notice 1999-27

General Public Political Communications Coordinated with Candidates; Supplemental Notice of Proposed Rulemaking (64 FR 68951, December 9, 1999)

Regulations

Commission Seeks Comments on General Public Political Communications Coordinated with Candidates

On December 2, the Commission approved a Notice of Proposed Rulemaking (NPRM) on coordinated communications made in support of or in opposition to clearly identified candidates that are paid for by persons other than candidates, candidates' authorized committees and party committees. The Commission is also seeking comment on whether these same rules, or a different standard, should apply to expenditures made by party committees that are coordinated with the parties' candidates. The last day to submit comments on this NPRM is January 24, 2000. The Commission will hold a hearing on these proposed rules on February 16, 2000, if sufficient requests to testify are received.

The proposed rules, which define the term "coordinated general public political communications," would be located in a new section of the Commission's rules, 11 CFR 100.23. The proposed section largely follows the language of the *Christian Coalition* decision.¹ See [September 1999 Record](#), page 4.

Definitions

The Commission is proposing to define the term "general public political communications"² to include those communications that are made through a broadcasting station, including cable television,

¹ *FEC v. The Christian Coalition*, 52 *F.Supp.2d* 45, 85 (D.D.C. 1999)

² *The Commission proposes using this phrase in place of the term "expressive expenditure," which the court used in the Christian Coalition decision.*

newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet and the World Wide Web. The term would be limited to those communications with an intended audience of over one hundred people, which would be consistent with the disclaimer rules at 11 CFR 110.11(a)(3). Those rules exempt direct mailings of one hundred pieces or less from the disclaimer requirements.

The proposed rules would also be limited to communications that include a "clearly identified candidate," as defined in 11 CFR 100.17 and 2 U.S.C. §431(17). Thus, they would include instances where the candidate's name, nickname, photograph or drawing appears, or where the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic Presidential nominee" or "the Republican candidate for Senate in the State of Georgia."

Coordination Standard

Proposed paragraph 11 CFR 100.23(c) contains the text of the coordination standard. The Commission is seeking comments on alternative language at two places in this paragraph.

Introduction: Alternatives I-A and I-B. Under Alternative I-A, a communication would be considered to be coordinated if the communication was paid for by persons other than the candidate, the candidate's authorized committee, or a party committee, and was created, produced or distributed in accordance with the provisions discussed below.

Alternative I-B would include the additional qualification that, to be considered coordinated with a candidate or party committee, the communication would have to be distributed primarily in the geo-

graphic area in which the candidate was running. Alternative I-B would also ensure that, when the costs of national legislative campaigns that refer to clearly identified candidates are endorsed by or designed by one or more of the named candidates, the communication would not be considered expenditures on behalf of those candidates' campaigns. For example, under Alternative I-B, expenditures made in connection with a national campaign to support the so-called "Shays-Meehan" campaign finance legislation would not be considered contributions to Representatives Shays or Meehan, even if the group distributing the advertisement had consulted with them to design the campaign and had referred to it as the "Shays-Meehan bill" in the advertising.

One potential concern with the geographic limitation language proposed in Alternative I-B is that in many parts of the country the media market may cover several adjacent states. Thus, political advertisements broadcast from a station in these areas may not be "distributed primarily in the geographic area in which [a] candidate [is] running." For example, television and radio advertisements made in connection with New Hampshire elections are aired over Boston broadcast media because there is no other major city from which to air these broadcasts. Such broadcasts would not be considered coordinated under Alternative I-B.

The net effect of Alternative I-B would also be to exclude from the definition communications in which a candidate in one state solicits funds on behalf of a candidate in another, as long as contributors were asked to send their contributions directly to the candidate on whose behalf the solicitations were made. Similarly, Alternative I-B would not cover an outside organization's solicitations on behalf of a candidate if these were made primarily outside the geographic area in which the

candidate was running, and if the outside organization did not collect and forward the contributions to the candidate.

Communications Suggested or Requested by Campaign or Party: Alternatives 2-A and 2-B. The Commission is also seeking comment on two alternatives of a provision to be located in 11 CFR 100.23(c)(1), which addresses communications made at the request or suggestion of a candidate or campaign. Alternative 2-A would state that coordination occurred when a communication was created, produced or distributed at the request or suggestion of, or when authorized by, a candidate, a candidate's authorized committee, a party committee or the agent of any of the foregoing. Alternative 2-B would limit such coordination to only those instances where, in addition to the foregoing, the parties discussed the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which was collaboration or agreement between the campaign and the person paying for the communication.

Communications Controlled by the Campaign or Party. Proposed 11 CFR 100.23(c)(2) would treat communications as coordinated after the candidate or the candidate's agent, or a party committee or its agent, exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of the communication.

Substantial Discussion or Negotiation. Under proposed 11 CFR 100.23(c)(3), a communication would be considered coordinated if it was made after substantial discussion or negotiation between the creator, producer or distributor of the communication, or person paying for the communication, and a candidate, a candidate's authorized

committee or a party committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which was collaboration or agreement. It would further provide that substantial discussion or negotiation could be evidenced by one or more meetings, conversations or conferences regarding the value or importance of that communication for a particular election.

Exception. The proposed rules at 11 CFR 100.23(d) would provide that a candidate's or political party's response to an inquiry regarding its position on legislative or public policy issues would not alone make the communication coordinated.

The proposed rules state at 11 CFR 100.23(b) that any general public political communication that includes a clearly identified candidate and is coordinated with that candidate, an opposing candidate or a party committee supporting or opposing that candidate is both an expenditure under 11 CFR 100.8(a) and an in-kind contribution under 100.7(a)(1)(iii). As such, it is subject to the contribution limits of 2 U.S.C. §441a, and it must be reported as a contribution and an expenditure, as required at 2 U.S.C. §434.

The NPRM also seeks comments on the application of the proposed rules to two hypothetical situations.

Coordinated Party Expenditures

The Commission has an ongoing rulemaking addressing coordinated party expenditures, i.e., political party expenditures that are coordinated with particular candidates and subject to the limits set out at 2 U.S.C. §441a(d). The details of those proposals, which include several alternatives, can be found in the NPRM published on May 5, 1997. 62 *Federal Register* 24367 (May 5, 1997); see page 1 of the *June 1997 Record*. That rulemaking

has been on hold because the issues are involved in ongoing litigation. However, the Commission welcomes comments on whether the standard for coordination proposed in this supplemental NPRM should be applied to party expenditures for general public political communications that are coordinated with particular candidates. If not, why should a different standard be applied to coordinated party expenditures, and what should that different standard be?

The NPRM is available from the Public Records Office at 800/424-9530 (press 3) or 202/694-1120; through the FEC's Faxline at 202/501-3413 (document 246); and at the FEC's Web site—<http://www.fec.gov>. The notice was published in the December 9, 1999, *Federal Register* (64 FR 68951, December 9, 1999).

All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Persons wishing to testify at the February 16, 2000, hearing should so indicate in their written or electronic comments. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Faxed comments should be sent to 202/219-3923, with a printed copy follow-up to insure legibility. Electronic mail comments should be sent to coordnprm@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. No oral comments can be accepted. The deadline for comments is January 24, 2000. ♦

Public Funding

Public Funding for Reform Party Convention

On November 22, the FEC certified the Reform Party 2000 Convention Committee as eligible to receive \$2,468,921 in public funds.

Federal election law permits all eligible national committees of major and minor parties to receive public funds to pay the official costs of their Presidential nominating conventions. The National Committee of the Reform Party, USA, and its convention committee qualify as a minor party under the Presidential Election Campaign Fund Act for purposes of convention financing and eligibility. A minor party is defined as a political party whose candidate for the Presidency in the preceding Presidential election received more than 5 percent, but less than 25 percent, of the total popular votes cast. In the 1996 general election, the Reform Party candidate, Ross Perot, received 8.4 percent of the popular vote. Accordingly, the Reform Party is entitled to partial convention funding for 2000.

In exchange for public funding of the conventions, committees must agree to certain requirements, including spending limits, the filing of periodic disclosure reports and detailed audits by the FEC.

The public funding portions of Presidential elections are financed by the Presidential Election Campaign Fund, which receives funds through dollars voluntarily “checked off” by taxpayers on federal income tax forms. ♦

Publications

Updated List of Federal PACs

The Commission has published the 1999 edition of *PACronyms*, a list of the acronyms, abbreviations and common names of federal 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 Public Records Office at 800/424-9530 (press 3) or 202/694-1120. *PACronyms* is also available on diskette for \$1 and can be accessed for 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 Public Records Office. 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 that sponsor PACs, showing the PAC’s name and identification number (\$7.50).

The Public Records Office 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. ♦

Corrections

Advisory Opinion 1999-23.
The December 1999 *Record* incorrectly identified the requester as the American Bankers, Inc., PAC. The correct name of the requester was the Arkansas Bankers, Inc., PAC.

USA v. Kanchanalak, et al. The December 1999 *Record* contained an incorrect citation to the Federal Election Campaign Act on page 4, which read 2 U.S.C.41e. The cite should have read 2 U.S.C. §441e.

Waiver of State Office Filings.
The December 1999 *Record* stated that, “the waiver would not apply to reports filed by the campaigns for U.S. Senate candidates and other political committees that support only U.S. Senate candidates.” This statement requires the following qualification: The Democratic Senatorial Campaign Committee (DSCC) and the National Republican Senatorial Committee (NRSC) are exceptions to this rule. Although they file with the Secretary of the Senate, the FEC receives paper copies of their reports and subsequently places them on its Web site where the public can access and duplicate them. Consequently, the DSCC and the NRSC do not have to file copies of their reports with the 12 states that have qualified for the waiver.

Public Appearances

January 12, 2000
Public Affairs Council
Fort Lauderdale, Florida
George Smaragdis
Public Affairs Specialist
Information Division

Outreach

FEC Conducts Monthly Roundtable Sessions

FEC roundtable sessions, limited to 12 participants per session, focus on a range of topics. See the table below for dates and topics.

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. The [registration 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 or 202/694-1100. ♦

Roundtable Schedule

Date	Subject	Intended Audience
February 2 9:30 - 11 a.m.	Soliciting Funds For Corporate/Labor/Trade PACs Using Newsletters and Web Sites (Code #200)	<ul style="list-style-type: none"> • Corporate/Labor/Trade Association PAC staff • Lawyers and Consultants to Above
March 1 9:30 - 11 a.m.	Reporting Basics for Corporate/Labor/Trade Association PACs (Code #300)	<ul style="list-style-type: none"> • Corporate/Labor/Trade Association PAC staff • Lawyers and Consultants to Above

FEC Conference Schedule

The FEC continues its series of conferences on campaign finance. See below for details. To register for any conference, call Sylvester Management at 800/246-7277 or send an e-mail to tsylvester@worldnet.att.net. For program information, call the FEC's Information Division at 800/424-9530 or 202/694-1100. A regularly updated schedule for the conferences and a downloadable invitation/registration form appear at the FEC's Web site. Go to <http://www.fec.gov/pages/infosvc.htm> for the latest information.

Candidate Conference

Date: February 10-11, 2000
Location: Washington, DC
(Hyatt Regency on Capitol Hill)
Registration: \$265

Regional Conference (includes candidate, corporate/labor and party workshops)

Date: March 8-10, 2000
Location: Miami, FL
(Sheraton Biscayne Bay)
Registration: \$240

Corporate and Labor Conference

Date: April 6-7, 2000
Location: Washington, DC
(Hyatt Regency on Capitol Hill)
Registration: To be determined

Membership and Trade Association Conference

Date: May 16-17, 2000
Location: Washington, DC
(Hilton Crystal City)
Registration: To be determined

Advisory Opinions

AO 1999-24 Web Site Sponsored by LLC Featuring Information on Candidates

Election Zone LLC (EZone) may operate a Web site providing a means of communication between candidates and voters on a nonpartisan basis, without making an expenditure.

EZone is a limited liability company (LLC) organized under Colorado law and treated as a partnership for tax purposes.¹ It is "a nonpartisan company, not affiliated with any political candidate, political party, political action committee or advocacy group." EZone seeks to "expand democracy" through the Internet by operating its Web site, "ElectionZone.com," which will serve as a channel for communication between voters and candidates.

The Proposal

The key feature of the Web site will be the "Q & A Zone," where viewers submit questions to the candidates in a selected political race. EZone will transmit the questions to each of the race's participating candidates for his or her response. Once the question is answered, EZone will post the question and answers on the Web site. EZone will screen incoming questions from voters based on the following criteria:

- Questions must rationally relate to the selected race;
- Questions may not repeat previously posed questions;

(continued on page 18)

¹ As an LLC with partnership status for income tax purposes, EZone may not make contributions in excess of \$1,000 per election to a federal candidate. 2 U.S.C. §§431(11) and 441a(1)(1)(A); 11 CFR 110.1(g)(2) and 110.1(e).

Advisory Opinions

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- Questions must be addressed to all participating candidates in a race;
- Questions may not request that candidates offer opinions about the other candidates; and
- Questions must be limited to a specified length.

If a question does not abide by these restrictions, the questioner will be encouraged to resubmit the question in accordance with these criteria.

With regard to the candidates' responses, they will be limited to a specified length, and they must answer the question that was posed. If a response does not comply with the restrictions, the candidate will be allowed to re-issue the response, but EZone will not edit a candidate's response on its own.

Candidates will be able to avail themselves of two other features as well. The first is a "Candidate Chat Zone," where each candidate will have an equal opportunity to have a live, on-line discussion with his or her voting constituency. The second feature is the "On-Line Debate Zone," available for each race covered by EZone. All participating candidates in a race will be invited to debate, but a debate will be conducted only if two or more candidates in the particular race agree to debate.

EZone is considering hyperlinks to candidate sites through the Q & A Zone. If it includes hyperlinks to political parties, it will offer the same opportunity to every political party.

EZone will not charge viewers for use of the site, nor will it charge candidates for participation in the site. It will seek and accept sponsorship or advertising revenues from commercial entities only. The Web site may contain hyperlinks to the Web sites of the sponsors or advertisers.

Legal Analysis

The Federal Election Campaign Act (the Act) and Commission regulations define expenditures and contributions to include, in part, any gift or payment of money or anything of value "made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. §431(8)(A)(i) and (9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1). In past advisory opinions, the Commission has concluded that the costs associated with creating and maintaining a Web site could be considered an expenditure or in-kind contribution, depending upon the content of the site and whether certain exceptions are applicable. Advisory Opinions 1999-25, 1999-7, 1998-22 and 1997-16. At the same time, however, the Act provides that the term "expenditure" does not apply to "nonpartisan activity designed to encourage individuals to vote or register to vote." 2 U.S.C. §431(9)(B)(ii).

In a recent advisory opinion, the Commission examined an online project known as Democracy Network (DNet), which was created and sponsored by two 501(c)(3) tax-exempt corporations that operated a Web site containing certain features that were similar to EZone's proposed Web site. AO 1999-25.

In that opinion, the Commission determined, based upon an analysis of the nature of DNet and its sponsors and upon the purposes and functions of the Web site, that the activity was permissible under the nonpartisan activities exception cited above.

In this case, although EZone is a for-profit company, not tax exempt under 26 U.S.C. §501(c)(3), its expenditures for the proposed Web site would similarly be exempt from the definition of expenditure, under 2 U.S.C. §431(9)(B)(ii), based on the facts and the assumptions made by the Commission, as discussed below. Moreover, the activity

would not be considered a contribution in-kind to any candidate.

Composition and Purpose of EZone. EZone is not affiliated with any candidate, political party, PAC or advocacy group. It has been created for the purpose of "expanding democracy" by serving as a channel between candidates and voters on a nonpartisan basis.

Standards for Inviting Candidates and Degree of Candidate Participation. With regard to the proposed Q&A activity between the public and candidates, EZone will invite each ballot-qualified candidate, other than a Presidential general election candidate, to participate.² (The limitation with respect to Presidential candidates in the general election conforms to the voter guide regulations at 11 CFR 114.4(c)(5)(ii)). EZone will pose the same questions to all participating candidates, and candidate responses will be subject to the same word limits and the same criteria.

With respect to the Chat Zone, the Commission assumes that time will be apportioned equally to candidates and that time slots for candidates' use of the Chat Zone will be allotted on a basis that ensures that no candidate is purposely given a more active or more popular time slot than another.

As to the On-line Debate Zone, the Commission assumes that these same characteristics will apply to the time period allotted, the scheduled order of response and the time limits on responses during the candidate exchanges.³ Moreover, if hyperlinks

² This is the same standard approved in Advisory Opinion 1999-7, which was issued to the State of Minnesota.

³ Although this exchange is characterized as a candidate "debate," the debate-staging regulations at 11 CFR 110.13(a) and 114.4(f) are not applicable because the Debate Zone is part of a multifaceted program to present candidate views in several different ways.

to candidates' Web sites are posted, they will be created for all participating candidates with a Web site.

Audience. The EZone Web site will be available for viewing and interaction by the general public. No effort will be made to determine the political party or candidate preference of the viewers. See 11 CFR 110.8(b)(3). As such, the Web site will not encourage participation or voting by any selected group of persons of a particular party or other group. Moreover, EZone is applying objective standards for participation (e.g., posing questions) by viewers.

Hyperlinks. Each political party will have an opportunity to post its Web site. Moreover, EZone will not seek advertising revenue or other payments from political parties, PACs, interest group advocates or other social, political or ideological sources. By contrast, it will solicit and accept advertising from commercial entities alone.

The EZone site will have commercial advertisements and, possibly, hyperlinks to the advertisers' Web sites. If EZone's Web site activity conforms to the cited nonpartisan exception, the payments for the ads or sponsorship references will not be contributions for the purpose of influencing a federal election.

Coordination Between EZone and Campaigns. EZone will communicate with the candidates (or their campaigns) in order to invite and arrange their participation in the various features of the Web site; to pose viewers' or the moderator's questions to all the candidates; and to inform them when a response does not meet EZone's criteria and afford them a chance to reformulate their responses. The Commission assumes that those communications with the candidates that pertain to the substance of the candidates' statements (e.g., issue positions) will be made only to ensure that the candidates "strictly answer the question posed." The Commission also assumes that, in engaging in the

proposed communications, EZone will not discuss the candidate's plans, projects or needs. Under these facts and assumptions, EZone's communications with the candidates will be limited to those necessary for the effective operation of the Web site. Consequently, EZone's communication with a campaign will not constitute acting in cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate, his or her committee, or his or her agent. See 2 U.S.C. §§431(17) and 441a(1)(7)(B)(i); 11 CFR 100.16, 109.1(a) and (b)(4)(i)(A). As such, EZone's efforts to provide candidates with an opportunity to participate in the Web site would not constitute an in-kind contribution by EZone to those candidates.

EZone's Views. EZone itself will not score or rate the candidates or make any statements expressly advocating the election or defeat of a clearly identified candidate or of the candidates of a political party. Moreover, EZone will function in such a way that none of the statements made by candidates can be attributed to EZone.

Based on the above discussion of the nature of EZone and the Web site itself, EZone's proposed activity is exempt from the definition of "expenditure" at 2 U.S.C. §431(9)(B)(ii) and is therefore permissible under the Act.⁴

Date Issued: November 15, 1999;
Length: 8 pages. ♦

⁴ A Web site does not need to be identical to the EZone site, either as to the kinds of information presented or as to the technology used on the Web site, in order to fall within the exception to the definition of "expenditure" at 2 U.S.C. §431(9)(B)(ii). Although all factors considered by the Commission in reaching its decision were relevant, different facts with respect to particular factors may or may not lead to a conclusion that a Web site's activities are permissible.

AO 1999-29 Fundraising Exemption from State Limits for Direct Mailing by Presidential Committee

Bill Bradley for President, Inc. (the Committee) must count the costs incurred for its mass mailings to addresses in a given state against the overall national spending limit, as increased by 20 percent for exempt fundraising expenses. Expenses for a mass mailing sent to addresses in a given state and made more than 28 days before a primary or caucus in that state do not, however, count against the state limit. Moreover, the 50 percent exemption for fundraising expenses applies to the actual amount of expenditures that are made by the Committee and allocable to the relevant state's limit.

Mr. Bradley, a Democratic candidate for the Presidency, has agreed to comply with the spending limits of the Matching Act and has, accordingly, qualified to receive public funds. The Committee plans to send mass mailings to addresses in the state that is scheduled to hold the first presidential primary or caucus in January 2000. The mailings would be made more than 28 days before the date of the primary or caucus.

Both the Federal Election Campaign Act (the Act) and the Matching Fund Act place limits on the amount of campaign expenditures that may be made by publicly financed Presidential candidates. 2 U.S.C. §441a(b)(1)(A) and 26 U.S.C. §9035(a). The cited provisions include both a national (or overall) expenditure limit, as well as limits for expenditures "in any one state." 2 U.S.C. §441a(b)(1)(A). The Act further provides, however, that costs incurred by a publicly

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Advisory Opinions

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funded candidate “in connection with the solicitation of contributions on behalf of” that candidate are excluded from the expenditure limit, but only in an amount equal to 20 percent of the expenditure limit. 2 U.S.C. §431(9)(B)(vi). Commission regulations refer to these costs as “exempt fundraising expenses.”

The regulations clarify and interpret this fundraising exclusion, both generally and in the specific context of the state expenditure limits. 11 CFR 106.2(b)(21)(iii), 110.8(c)(2); see 11 CFR 106.2(b)(1), 9035(c) and 9035(c)(2). Basically, the regulations provide that a covered Presidential candidate need not count exempt fundraising costs against any state limit, but must count them against the national (overall) expenditure limit. This limit is, however, adjusted upwards by 20 percent. With respect to the state limits, the regulations require that certain specified categories of expenditures be allocated to each relevant state limit (e.g., print and broadcast media expenses, mass mailings and other campaign materials, overhead expenses for state and regional campaign offices, special telephone programs, public opinion polls). 11 CFR 106.2(b)(1), (b)(2)(i)—(v), (b)(3). Exempt fundraising expenses are, however, excepted from all these categories. 11 CFR 106.2(b)(1) and 11 CFR 110.8(c)(2). Furthermore, as long as a mass mailing is mailed more than 28 days before a state’s primary election (or convention or caucus), the associated costs qualify as fundraising expenses that are 100 percent exempt from the state expenditure limit. The costs, however, are still subject to the overall (or national) expenditure limit.

Accordingly, the Bradley Committee’s expenses for mass mailings sent to addresses in a given

state more than 28 days prior to a primary or caucus in that state would be counted against the aggregate or overall national limit, as increased by 20 percent for exempt fundraising expenses. These expenses would, however, not count against any state limit.

Similarly, the 50 percent exemption for fundraising expenses applies to the actual amount of expenditures that are made by the Committee and are allocable to the relevant state’s limit, as opposed to 50 percent of that state’s limit. The following example may illustrate the operation of the exemption.

Assume a state has a limit of \$1 million and that the Committee proposed to spend \$2 million on broadcast media expenditures that are required to be allocated to that state’s limit. See 11 CFR 106.2(b)(2)(i)(B). Assume further that the Committee proposed to spend an additional \$3 million for a mass mailing that would be sent to addresses in that state more than 28 days before its Presidential primary. Only 50 percent (or \$1 million) of the allocable broadcast media expenditures would have to be attributed to the state limit. This would also be the result whether the state limit were greater or less than \$1 million. By contrast, the full \$3 million for the described mass mailing would be exempt fundraising expenses and would not need to be attributed to the state limit. This \$3 million plus the \$2 million on broadcast media expenditures would be attributed to the overall expenditure limit.

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AO 1999-30

Application of Allocation Ratio in State with Single House Legislature

When using the ballot composition method to calculate the appropriate allocation of expenses between its federal and nonfederal account, the Nebraska State Democratic Party (NDP) may take only one nonfederal point with respect to the state legislative office.

The NDP, as a state party committee with separate federal and nonfederal accounts, must allocate its administrative and generic voter drive costs between those accounts using the “ballot composition method.” 11 CFR 106.5 and 104.10(b)(1). Normally, state party committees can avail themselves of two nonfederal points, one for each house in a bicameral legislature. See 11 CFR 106.5(d). Unlike every other state legislature, the Nebraska legislature consists of only one house. The individual members of the legislature each hold the office of State Senator, and one-half of the seats are up for election every two years. The NDP has therefore been using only one nonfederal point with respect to the legislative office represented.

The ballot composition method uses a ratio of federal offices expected on the ballot to total federal and nonfederal offices expected on the ballot in the next general election to be held in the state. This ratio is determined by the number of categories of federal and nonfederal offices on the ballot. 11 CFR 106.5(d)(1)(i). The offices of President, U.S. Senator and U.S. Representative each count as one federal point, and the offices of Governor, State Senator and State Representative each count as one nonfederal point, if these offices are expected on the ballot in the next general election. 11 CFR 106.5(d)(1)(ii).

Based on the reasons given below, the NDP can count only one point for the office of state legislator. First, the concept of using an “average ballot” approach—mentioned in the Explanation and Justification (E & J) for the allocation regulations¹—does not provide a basis for allowing the NDP to use two nonfederal points. In its discussion of the addition of a nonfederal point for every state and local party committee, the E & J notes that the ratio “was never anticipated to precisely reflect all state and local party activity in all states in all election cycles.”

Second, Commission regulations are explicit, allocating one point per state legislative office on the ballot.

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AO 1999-31 Application of One-Third Rule to Prizes and Premiums Used in Connection with Payroll Deduction

The Oshkosh Truck Corporation (Oshkosh) and its separate segregated fund (SSF), the Oshkosh Truck Corporation Employees’ Political Action Committee (OTCEPAC), may utilize the one-third rule for the purchase of prizes and premium gifts used in connection with payroll deduction.

Description of Plan

Prior to its annual PAC luncheon, OTCEPAC will announce that it will give door prizes to employees who participate in the payroll deduction plan during the period between the announcement of the 1999 luncheon and the date of the

¹ Methods of Allocation Between Federal and Nonfederal Accounts; Payments; Reporting, 55 Federal Register 26058, 26064 (June 26, 1990).

event.¹ The aggregate value of the door prizes will be approximately \$400. The amount of PAC contributions linked to the door prizes awarded at the 1999 luncheon will be based upon the total payroll-deducted contributions received by OTCEPAC between the date the PAC luncheon is announced and the date it is held.

OTCEPAC will announce at the 1999 luncheon that those who contribute to the PAC through payroll deduction during the 12 months between the 1999 and 2000 luncheons will be eligible for a grand door prize valued at approximately \$2,500. The aggregate value of door prizes for the 2000 luncheon will thus be approximately \$2,900.

In addition, OTCEPAC will create a premium gift program to encourage employees to sign up their fellow eligible employees for the payroll deduction plan. The value of the gift premium will vary according to the number of eligible employees that the employee successfully encourages to enlist.

Legal Analysis

Under 2 U.S.C. §441b, corporations are expressly prohibited from making contributions or expenditures in connection with any federal election. However, 2 U.S.C. §441b(b)(2)(C) provides an exception to this prohibition by permitting corporations to pay for the costs incurred in the establishment, administration and solicitation of contributions to a separate segregated fund (SSF or PAC). See also 11 CFR 114.1(a)(2)(iii). Commission regulations at 114.5(b)(2)

¹ The described payroll deduction program may only be utilized by personnel who qualify as members of the “restricted class” of Oshkosh. 11 CFR 114.1(c), (h) and (j). In addition, all contributions made through the payroll deduction must be voluntary. See 11 CFR 114.1(i), 114.5(a).

permit corporations to utilize a raffle or a prize, so long as state law permits it and the prize is not disproportionately valuable compared to the funds raised. The regulation further provides that, when using raffles to raise funds, a reasonable practice to follow is for the SSF to reimburse the corporation for costs that exceed one-third of the money it raises. This is referred to as the “one-third rule.” In this case, door prizes are indistinguishable from a raffle, and the one-third rule can be utilized as a guide to avoid a money trading situation,² for both the small prizes and the grand prize. The length of time in which the individuals can earn chances to win the prizes is immaterial.

OTCEPAC should compare the cost of all the prizes to be awarded at the 2000 luncheon with the total amount of all the contributions received through payroll deduction during the 12-month period preceding it.

OTCEPAC may also use the one-third rule when determining the reimbursement for costs of the premium gift program. Because this program is linked to Oshkosh’s other efforts to boost participation in its payroll deduction program during the period between the 1999 and 2000 events, OTCEPAC may aggregate the costs and resulting contributions from the premium gift program with those of the 2000 luncheon, when applying the one-third rule.

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² The Commission developed this rule to avoid a situation where prizes may be so numerous or disproportionately valuable in relation to the cost of the raffle tickets that the raffle becomes, in effect, a money trading situation. See Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 107 (1977).

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Advisory Opinion Requests

AOR 1999-38

Amending FEC report to eliminate disputed debt amounts erroneously disclosed on previous reports (Ken Calvert for Congress, November 22, 1999)

Alternative Disposition of Advisory Opinion Request AOR 1999-21

The requester withdrew this request for an advisory opinion. Submitted on July 7, the AOR sought the Commission's opinion on the qualification of an incorporated membership organization as a federation of trade associations and whether its membership categories described members for purposes of the Federal Election Campaign Act. ♦



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