

# Record

October 2001

Federal Election Commission

Volume 27, Number 10

## Table of Contents

### 1 Advisory Opinions

#### Staff

- 1 Lawrence H. Norton Appointed General Counsel
- 3 Robert J. Costa Named Deputy Staff Director for Audit and Review

### 3 Public Appearances

#### Court Cases

- 3 New Litigation
- 3 On Appeal

#### Reports

- 4 South Carolina Special Election Reporting

#### Statistics

- 5 Midyear PAC Count Shows Slight Decrease from January 2001

#### Administrative Fines

- 5 Committees Fined for Late and Nonfiled Reports

#### Outreach

- 6 FEC Announces Regional Conference in San Francisco

### 6 Index

## Advisory Opinions

### [AO 2001-11](#)

#### **Late Transfer from Nonfederal to Federal Account of State Party Committee**

In order to resolve a bank account transfer problem, the Democratic Party of Virginia (the Party) may make a one-time transfer from its nonfederal account to its federal account outside the normal 70-day window for such transfers. 11 CFR 106.5(g)(2)(ii).

#### **Background**

On June 18, 2001, in accord with the Party's ordinary practice, Executive Director Alan Moore faxed a written request to the bank asking that \$43,679.88 be transferred from the Party's nonfederal account to its federal account. This transfer was to cover allocable administrative expenses for the period of April 20 through May 3, 2001. On July 12, 2001, the Party reviewed its June bank statements and discovered that the requested transfer had not been made. They immediately contacted the bank. Neither the bank nor the Party could locate any written record to confirm

(continued on page 2)

## Staff

### **Lawrence H. Norton Appointed General Counsel**

On September 17, 2001, Lawrence H. Norton, formerly an official with the Commodity Futures Trading Commission, became the FEC's General Counsel. Mr. Norton replaced former FEC General Counsel Lawrence M. Noble.

Before joining the FEC, Mr. Norton served as the Associate Director of the Division of Enforcement at the Commodity Futures Trading Commission and as an Assistant Director at the Federal Trade Commission. In addition, he was a frequent speaker on federal regulatory issues, a standing member of multi-agency task forces and an adjunct instructor with the National Institute of Trial Advocacy.

Before joining the federal government, Mr. Norton was an Assistant Attorney General in the Civil Litigation Division of the Maryland Attorney General's Office. He is a graduate of the University of Maryland School of Law.

—Amy Kort

(continued on page 3)

## Advisory Opinions

(continued from page 1)

the bank's receipt of the transfer request. However, Mr. Moore submitted a signed, sworn declaration to the Commission that he specifically remembered faxing the request to the bank and that, to the best of his knowledge, the bank received the request and failed to honor it.<sup>1</sup> The Party disclosed the disbursements for which the nonfederal portion was to be transferred in its pre-special election report, which was timely filed on June 7. A post-special election report, recording several transfers (but not the transfer requested on June 18), was filed on July 19.

### Analysis

Commission regulations require that a state party committee with separate federal and nonfederal accounts must pay the expenses of

<sup>1</sup> A copy of the written request to the bank was attached to the declaration.

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mixed federal and nonfederal activities, including administrative expenses such as rent, utilities, office supplies and salaries (except for such expenses directly attributable to a clearly identified candidate), from its federal account or a separate allocation account. 11 CFR 106.5(g)(1). The committee may transfer funds from its nonfederal account to its federal account solely to cover the nonfederal share of the allocable expense. Such a transfer must be made no more than 10 days before, and no more than 60 days after, the payments for the allocable expense. 11 CFR 106.5 (g)(2)(ii). Any transfer from the nonfederal account made outside this window is "presumed to be a loan or contribution from the nonfederal account to a federal account, in violation of the Act." 11 CFR 106.5(g)(2)(iii).

If the wire transfer had been made on June 18, it would have been timely for all of the disbursements covered in the amount of the transfer. The Commission relies upon the representations in the advisory opinion request, and in particular on Mr. Moore's declaration under penalty of perjury that he faxed the request to the bank, as truthful descriptions of the Party's actions with respect to the attempted transfer of funds. In past advisory opinions, the Commission has addressed situations where contribution monies were not received by a political committee, or deposited by it in a timely manner, because of circumstances outside the control of the committee or its agents. AO's 1999-23, 1993-5 and 1992-42. The Party's situation is analogous to those dealt with in previous advisory opinions in that the required action was not performed. The Commission also found significant that the Party:

- Made the transfer request in a timely manner, so that the relevant transfer would have been made between 46 and 59 days after the disbursements;

- Discovered that the transfer was not made and notified the bank of the discovery within 30 days after the requested transfer date and before the filing due date for the report that would have disclosed the transfer; and
- Expeditiously submitted this advisory opinion request to the Commission.

Given the bank's of control over the means of transfer and the Party's actions with respect to the requested transfer, the Party may make the transfer, originally requested on June 18, from its nonfederal to its federal account. The transfer must occur within 15 days of the Party's receipt of this advisory opinion.

### Reporting

The transfer must be disclosed on the Party's next scheduled report. The Party must report the date the transfer actually occurred, and must include an explanatory note with the report stating that:

- The transfer was not made within the 70-day window of 11 CFR 106.5(g)(2)(ii) because of special circumstances; and
- The Commission expressly allowed the Party to make the transfer in this advisory opinion, which should be cited by number.

Date Issued: August 23, 2001;  
 Length: 5 pages. ♦

—Gary Mullen

## Advisory Opinion Requests

### [AOR 2001-13](#)

Status of Green Party as national committee of political party (Green Party of the United States, August 13, 2001)

### [AOR 2001-14](#)

Local party's allocation of payments for employee's salary, benefits and cell phone usage (Los Angeles County Democratic Central Committee, August 31, 2001) ♦

## Staff

(continued from page 1)

### Robert J. Costa Named Deputy Staff Director for Audit and Review

The Commission has appointed Robert J. Costa to be the agency's first Deputy Staff Director for Audit and Review. In this newly-created position, Mr. Costa will oversee both the Audit and the Reports Analysis Divisions.

Mr. Costa joined the FEC in 1975 and in 1977 became the Assistant Staff Director for the Audit Division, where he managed the Commission's Title 2 and Title 26 audit programs. Prior to joining the Commission, Mr. Costa worked for the General Accounting Office and the Senate Select Committee on Presidential Campaign Finance Activity. ♦

—Amy Kort

## Public Appearances

October 10  
George Washington University  
Washington D.C.  
George Smaragdis

October 15-16  
Hillsdale College  
Scottsdale, Arizona  
Commissioner Smith

October 19-20  
American Bar Association Standing  
Committee on Election Law  
Santa Fe, New Mexico  
Vice Chairman Mason

October 24  
Cumberland School of Law  
Federalist Society  
Birmingham, Alabama  
Commissioner Smith

October 31  
American University  
Washington D.C.  
Jim Wilson

## Court Cases

### New Litigation

#### Judicial Watch, Inc. v. FEC

On August 17, 2001, Judicial Watch, Inc., a nonprofit, public interest organization, asked the U.S. District Court for the District of Columbia to find that the Commission acted contrary to law when it failed to respond to the organization's administrative complaint. The April 10, 2001, administrative complaint alleged that Representative Tom DeLay and the National Republican Congressional Committee (NRCC) sold meetings with top Bush Administration officials in exchange for campaign contributions to the NRCC. Judicial Watch contended that the NRCC was required to report these meetings to the Commission as "offsets to contributions." 2 U.S.C. §434(b) and 11 CFR 104.3. Judicial Watch asked the Commission to investigate because it believed that the meetings had not been reported and would not be reported in the future.

In its request for declaratory relief, Judicial Watch alleges that the Commission did not act on the complaint within 120 days, as required by the Federal Election Campaign Act. Judicial Watch asks that the court:

- Declare the Commission's failure to act on the complaint contrary to law;
- Direct the Commission to act within 30 days; and
- Retain jurisdiction over this action.

U.S. District Court for the District of Columbia,  
1:01CV01747. ♦

—Amy Kort

### On Appeal

#### FEC v. NRA

On August 23, 2001, the Court of Appeals for the District of Columbia Circuit denied the Commission's petitions to have this case reheard by a panel of the court and heard *en banc*. The Commission had asked the court to revisit a portion of its June 29, 2001, ruling. The court had held that in 1980 the National Rifle Association (NRA) qualified for a limited exemption to the Federal Election Campaign Act's ban on corporate contributions and expenditures. This case was summarized in the [August 2001 Record](#), p. 3.

Although the court denied the FEC's petitions, it did—at the Commission's request—clarify that the NRA's 1980 exemption applied only to corporate independent expenditures and not to corporate contributions to candidates. ♦

—Jim Wilson

## Campaign Guides Available

For each type of committee, a *Campaign Guide* explains, in clear English, the complex regulations regarding the activity of political committees. It shows readers, for example, how to fill out FEC reports and illustrates how the law applies to practical situations.

The FEC publishes four *Campaign Guides*, each for a different type of committee, and we are happy to mail your committee as many copies as you need, free of charge. We encourage you to view them on our Web site (go to [www.fec.gov](http://www.fec.gov), then click on "Campaign Finance Law Resources" and then scroll down to "Publications").

If you would like to place an order for paper copies of the *Campaign Guides*, please call 800-424-9530, press 1, then 3.

## Reports

### South Carolina Special Election Reporting

The Special Election to fill the U.S. House seat of the late Congressman Floyd Spence in the Second Congressional district of South Carolina will be held on December 18, 2001. The Special Primary will be October 30 and the Special Runoff, if needed, will be November 13. Committees involved in any of these elections should consult the accompanying chart for filing information.<sup>1</sup>

Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more between October 11 and October 27 for the Special Primary, between November 29 and December 15 for the Special General and between October 25 and November 10 for the Special Runoff, if that election is held.

Reports filed electronically must be submitted by midnight on the filing date. A committee required to file electronically that files instead on FEC paper reporting forms will be considered a nonfiler.

Reports filed on paper and sent by registered or certified mail must be postmarked by the mailing date; reports sent by any other means (including reports sent via first class mail) must be received by the Commission's close of business on the filing date.

For more information about any of these filing requirements, please call the FEC's Information Division at 800/424-9530 (press 1, then 3) or 202/694-1100. ♦

—Amy Kort

<sup>1</sup> These committees include authorized committees of candidates running in the election and other political committees (including PACs) that support these candidates and do not file monthly.

### South Carolina Special Election Reporting

For Committees Involved Only in the Special Primary Election:

	Close of Books	Reg./Cert. Mail Date	Filing Date
<b>Pre-Primary Report</b>	October 10	October 15	October 18
<b>Year-End Report</b>	December 31	January 31	January 31, 2002

For Committees Involved in Both the Special Primary and Special General If Only Two Elections are Held:

	Close of Books	Reg./Cert. Mail Date	Filing Date
<b>Pre-Primary Report</b>	October 10	October 15	October 18
<b>Pre-General Report</b>	November 28	December 3	December 6
<b>Post-General and Year-End Report<sup>1</sup></b>	January 7	January 17	January 17, 2002

For Committees Involved in Only the Special Primary and Special Runoff:

	Close of Books	Reg./Cert. Mail Date	Filing Date
<b>Pre-Primary Report</b>	October 10	October 15	October 18
<b>Pre-Runoff Report</b>	October 24	October 29	November 1
<b>Year-End Report</b>	December 31	January 31	January 31, 2002

For Committees Involved in the Special Primary, Special Runoff and Special General:

	Close of Books	Reg./Cert. Mail Date	Filing Date
<b>Pre-Primary Report</b>	October 10	October 15	October 18
<b>Pre-Runoff Report</b>	October 24	October 29	November 1
<b>Pre-General Report</b>	November 28	December 3	December 6
<b>Post-General and Year-End Report<sup>1</sup></b>	January 7	January 17	January 17, 2002

<sup>1</sup> Committees should file a consolidated Post-General and Year-End Report by the filing date of the Post-General Report. Note that PACs and parties, which must aggregate activity on a calendar-year basis, will be required to file this report on two separate forms—one form to cover the 2001 activity (labeled as the Year-End Report) and another form to cover only 2002 activity (labeled as the Post-General Report).



## Statistics

### Midyear PAC Count Shows Slight Decrease from January 2001

The FEC's semiannual PAC count reveals a small decrease in the number of PACs since the last count was taken in January 2001. The table at right shows the midyear and year-end PAC figures since 1995. To see a complete listing of PAC statistics dating back to 1975, visit the FEC's web site (<http://www.fec.gov>) or request a copy of the agency's August 21, 2001, press release (call 800/424-9530 and press 3 for the Public Records Office or press 2 for the Press Office).◆

## Administrative Fines

### Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 52 new Administrative Fine cases, bringing the total number of cases released to the public to 240.

Civil money penalties for late reports are determined by the number of days the report was late, the amount of financial activity involved and any prior penalties for violations under the administrative fine regulations. Penalties for nonfiled reports—and for reports filed so late as to be considered nonfiled—are also determined by the financial activity for the reporting period and any prior violations. Election sensitive reports, which include reports and notices filed prior to an election (i.e., 12 Day pre-primary, October quarterly and October monthly reports), receive

	Corporate	Labor	Trade/ Member/ Health	Coop- erative	Corp. w/o Capital Stock	Non- connected <sup>1</sup>	Total
Jul. '95	1,670	334	804	43	129	1,002	3,982
Dec. '95	1,674	334	815	44	129	1,020	4,016
Jul. '96	1,645	332	829	43	126	1,058	4,033
Dec. '96	1,642	332	838	41	123	1,103	4,079
Jul. '97	1,602	332	826	41	118	953	3,875
Dec. '97	1,597	332	825	42	117	931	3,844
Jul. '98	1,565	325	820	43	112	897	3,762
Dec. '98	1,567	321	821	39	115	935	3,798
Jul. '99	1,540	318	826	38	115	941	3,778
Jan. '00	1,548	318	844	38	115	972	3,835
Jul. '00	1,523	316	812	39	114	902	3,706
Jan. '01	1,545	317	860	41	118	1,026	3,907
Jul. '01	1,525	314	872	41	118	1,007	3,877

<sup>1</sup> Nonconnected PACs must use their own funds to pay fundraising and administrative expenses, while the other categories of PACs have corporate or labor "connected organizations" that are permitted to pay those expenses for their PACs. On the other hand, nonconnected PACs may solicit contributions from the general public, while solicitations by corporate and labor PACs are restricted.

### Committees Fined and Penalties Assessed

1. AAN-Nursery Industry PAC	\$950
2. American Academy of Emergency Medicine PAC	\$775
3. American Concrete Pavement Association PAC	\$900
4. American Meat Institute PAC	\$375
5. American Moving and Storage Association	\$750
6. Americans for Sound Energy Policy	\$1,800
7. ARPAC	\$900
8. Autonation Inc. Political Action Committee (Pre-General)	\$1,000
9. Autonation Inc. Political Action Committee (Post-General)	\$900
10. Azinger for Congress Committee	\$2,700 <sup>1</sup>
11. Campaign America Inc.	\$900
12. Clarke 2000	\$3,000 <sup>1</sup>
13. Dooley for Congress	\$5,500 <sup>1</sup>
14. Driscoll for Congress	\$250
15. Dunn Lampton for Congress	\$4,500
16. Eva Clayton Committee for Congress	\$3,100
17. Federal Independent Campaign Committee	\$775
18. First Health Group Corp.	\$500
17. Friends of John Conyers	\$3,500
20. Friends of John LaFalce	\$5,000
21. GAF Corporation and International Specialty Products Inc.	\$900

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

(continued on page 6)

## Administrative Fines

(continued from page 5)

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

The committees listed in the chart on page 5 and below, along with their treasurers, were assessed civil

money penalties under the administrative fine regulations.

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

—Phillip Deen

### Committees Fined and Penalties Assessed, Cont.

22. Gerald C. "Jerry" Weller for Congress	\$9,000
23. The Green/Green Party USA	\$575
24. Humane USA PAC	\$550
25. International Council of Cruise Lines PAC	\$3,375 <sup>1</sup>
26. Internet Leadership PAC	\$825
27. Kilian for Congress Committee	\$0 <sup>2</sup>
28. Lawyers for Better Government Fund-Federal	\$900
29. Libertarian Party of Illinois	\$2,700 <sup>1</sup>
30. McNary for Congress Committee	\$6,500 <sup>1</sup>
31. National Association of Mortgage Brokers PAC	\$2,700
32. National Community Pharmacists Association PAC	\$425
33. National Fisheries Institute Fisheries PAC	\$900 <sup>1</sup>
34. National Pest Control Association PAC	\$300
35. Park Place Entertainment Federal PAC Inc.	\$900
36. Paul Williams for Congress (October Quarterly)	\$1,800 <sup>1</sup>
37. Paul Williams for Congress (Post-General)	\$1,800 <sup>1</sup>
38. Political Action Council of Educators (United Teachers—Los Angeles)	\$900
39. Prairie Leadership Committee	\$900
40. Qwest Communications International Inc. PAC	\$900
41. Re-Elect Freshman of the Republican Majority (Reform PAC)	\$3,500
42. Reliant Energy Entex Citizenship Responsibility Group	\$475
43. Rite Aid PAC	\$2,700
44. Rod Martin for Congress, Inc.	\$475 <sup>1</sup>
45. Ryder Empls PAC	\$900
46. Services Group of America PAC	\$400
47. Southdown Inc. PAC (Pre-General)	\$1,000
48. Southdown Inc. PAC (Post General)	\$250
49. Transport Workers Union-Local 100 Political Contributions Committee	\$2,600
50. Troutt for Congress	\$2,700 <sup>1</sup>
51. Waddell & Reed Financial Inc. PAC	\$775
52. 1199 & 32 BJ/144 SEIU Homecare PAC	\$1,800

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

<sup>2</sup> Penalty reduced due to lack of activity on the report.

## Outreach

### FEC Announces Regional Conference in San Francisco

On February 5-7, 2002, the FEC will hold a conference in San Francisco for candidates, political action committees (PACs) and party committees. The conference will consist of a series of workshops presented by Commissioners and experienced FEC staff, who will explain how the requirements of the federal election law apply to candidate committees, parties and PACs. The conference will be held at the Grand Hyatt hotel, located on Union Square. More specific information about this conference will be made available in future issues of the *Record*.◆

—Amy Kort

## Index

The first number in each citation refers to the "number" (month) of the 2001 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "1:4" means that the article is in the January issue on page 4.

### Advisory Opinions

- Alternative disposition of 2001-5, 5:6
- 2000-24: Preemption of state election law mandating fixed allocation ratio for administrative and voter drive expenses, 2:2
- 2000-27: Status of party as state committee, 3:6
- 2000-28: Disaffiliation of trade associations and their PACs, 2:3
- 2000-30: Nonconnected PAC's receipt and use of securities, 5:1
- 2000-32: Reporting uncollectable loan, 1:9
- 2000-34: Name and acronym of SSF, 2:5

- 2000-35: Status of party as state committee, 1:10
- 2000-36: Disaffiliation of nonconnected PACs, 2:5
- 2000-37: Use of campaign funds to purchase and present Liberty Medals, 2:6
- 2000-38: Registration of party committee due to delegate expenses, 2:7
- 2000-39: Status of party as state committee, 2:8
- 2000-40: Donations to legal defense fund of Member of Congress, 3:7
- 2001-1: Use of political party's office building fund to pay building renovation costs and fundraising expenses of building fund, 4:5
- 2001-2: Status of party as state committee, 4:6

### *PACronyms Available*

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

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

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

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

- 2001-3: Use of campaign funds to purchase an automobile for campaign purposes, 5:5
- 2001-4: Use of electronic signatures for PAC contributions by payroll deduction, 6:6
- 2001-6: Status of party as state committee, 6:7
- 2001-7: Nonaffiliation of LLC PAC with SSFs of member companies of the LLC, 8:6
- 2001-8: Campaign committee's purchase of candidate's book for distribution to contributors, 8:9
- 2001-9: Former Senator's use of excess campaign funds to pay expenses resulting from media inquiries made after his term expired, 9:1
- 2001-10: Employment of candidate's spouse by campaign committee, 9:4
- 2001-11: Late transfer from nonfederal to federal account of state party committee after bank transfer problem, 10:1

### **Compliance**

- Committees fined under Administrative Fines Program, 2:6, 4:7, 5:7, 6:5, 7:8, 9:6, 10:5
- MUR 4594: Prohibited Foreign National Contributions, 6:8
- MUR 4762: Prohibited union contributions and other violations, 2:9
- MUR 5029: Contributions in the name of another made by corporation and government contractor, 2:10

### **Court Cases**

- \_\_\_\_\_ v. FEC
  - AFL-CIO and DNC Services Corp./DNC, 9:8
  - Beaumont, 2:8, 3:2, 5:6, 6:9
  - Buchanan, 1:10
  - Cunningham, 8:4
  - DNC, 2:8, 3:2
  - Dole, 5:6
  - Judicial Watch, 10:3
  - Kieffer, 7:7
  - Miles for Senate, 3:3
  - Nader, 4:8, 6:9
  - Natural Law Party of the United States of America, 1:10, 2:8, 3:2

- FEC v. \_\_\_\_\_
  - Colorado Republican Federal Campaign Committee, 8:1
  - Friends for Fasi, 6:8
  - NRA, 8:3, 10:3
  - Toledano, 7:8

### **Other**

- Hooker v. All Campaign Contributors, 1:10
- Hooker v. Sundquist, 4:8

### **Regulations**

- Advance Notice of Proposed Rulemaking on definition of "political committee," 4:1
- Notice of Proposed Rulemaking on brokerage loans and lines of credit, 9:1
- Notice of Proposed Rulemaking on reporting of independent expenditures and last-minute contributions, 6:1
- Final rules for general public political communications coordinated with candidates and party committees; independent expenditures, 1:2, 6:3

### **Reports**

- Amendments to Statements of Organization, 2:1
- Arkansas special election, 9:5
- Arizona state filing waiver, 6:10
- California special election, 3:5
- Committees required to file tax returns, 3:4
- Florida special election, 7:4
- July reporting reminder, 7:1
- Massachusetts special election, 7:6
- Nevada state filing waiver, 2:2
- Pennsylvania special election, 4:5
- Reports due in 2001, 1:4
- South Carolina special election, 10:4
- Virginia special election, 5:6

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