

Record

December 2005

Federal Election Commission

Volume 31, Number 12

Table of Contents

	Court Cases
1	Shays v. FEC
6	CREW v. FEC (04-1672)
1	Advisory Opinions
	Regulations
6	Public Hearing on Electioneering Communications
7	Definition of “Solicit” and “Direct”
9	Final Rules on <i>De Minimis</i> Exemption for Levin Disbursements
9	Alternative Dispute Resolution
11	Administrative Fines
	Compliance
12	Union Contributions; Contributions in the Name of Another
13	Excessive and Prohibited Contributions, Reporting Errors
	Outreach
14	Tampa Regional Conference
15	Reporting and E-Filing Roundtables
15	Index

Court Cases

Shays Rehearing Denied; Rulemakings Expedited

On October 21, the U.S. Court of Appeals for the D.C. Circuit declined to rehear *en banc* the Commission’s appeal of an earlier D.C. Circuit decision in *Shays v. FEC* that upheld a district court remand of several of the Commission’s regulations. (See the September 2005 Record, page 1.) In response, the Commission has announced that it is moving forward aggressively to complete action on the affected regulations.

At the Commission’s November 3 open meeting, FEC Chairman Scott Thomas and Vice-Chairman Michael Toner said the agency is committed to completing action on all of the affected regulations by the end of February 2006. To accomplish that task, the Commission has scheduled two additional open meetings before the end of this year, and expects to meet frequently during January and February.

The Commission began work on the affected regulations shortly after the district court’s decision in September 2004. Chairman Thomas noted: “We, in fact, already have accomplished a good deal of the work needed on the 15 regulation topics at issue. The Commission has held

(continued on page 6)

Advisory Opinions

AO 2005-13 Nonconnected PAC’s Allocation of Expenses and Treatment of Solicitation Proceeds as Contributions

EMILY’s List, a nonconnected federal political action committee (PAC), must use federal funds to pay for at least half of its administrative and generic voter drive expenses, and communications that refer to a political party. Communications that refer to a clearly identified federal candidate must be financed exclusively with federal funds. In addition, EMILY’s List must treat as federal contributions the proceeds of any communication that indicates a portion of the funds received will be used to support the election of a clearly identified federal candidate.

Allocation of Administrative and Generic Voter Drive Expenses

EMILY’s List is a nonconnected PAC active in both federal and non-federal elections. During the 2006 election cycle, EMILY’s List plans to spend 65 percent of its “candidate budget” on nonfederal candidates. These expenses include, among other things, in-kind donations, polling, get-out-the-vote programs,

(continued on page 2)

Advisory Opinions

(continued from page 1)

fundraising and broadcast communications.

Commission regulations require nonconnected federal political committees to pay administrative and generic voter drive expenses with a minimum of 50 percent federal funds. 11 CFR 106.6(b)(1)(i), (b)(1)(iii) and (c). This allocation minimum recognizes that nonconnected PACs can be “dual purpose,” engaging in both federal and nonfederal election activity, but requires them to use the 50 percent federal minimum regardless of their activity. Therefore, even if EMILY’s List spends 65 percent of its budget on nonfederal candidates, it must pay for at least half of its administrative and generic voter drive expenses with federal funds.

Allocation of Expenses for Public Communications

Public communication that refers to a clearly identified federal candi-

Federal Election Commission
999 E Street, NW
Washington, DC 20463

800/424-9530
202/694-1100
202/501-3413 (FEC Faxline)
202/219-3336 (TDD for the
hearing impaired)

Scott E. Thomas, Chairman
Michael E. Toner, Vice Chairman
David M. Mason, Commissioner
Danny L. McDonald,
Commissioner
Ellen L. Weintraub, Commissioner

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

Published by the Information
Division

Greg J. Scott, Assistant Staff
Director
Carlin Bunch, Editor

<http://www.fec.gov>

date. EMILY’s List plans to make a public communication this election cycle in support of state legislative candidates. The communication will refer to a federal officeholder, Senator Debbie Stabenow, who represents Michigan in the US Senate, and is also up for re-election in 2006, and will feature a discussion of the Senator’s experiences earlier in her career as a candidate for state office. The communication will not be distributed in the Senator’s home state of Michigan, nor will it make reference the Senator’s candidacy for re-election or solicit funds for her campaign.

Commission regulations require nonconnected PACs to pay the costs of a public communication that refers to a clearly identified federal candidate, but does not refer to any nonfederal candidate, with 100 percent federal funds, regardless of whether the communication references a political party. 11 CFR 106.6(b)(2)(ii) and (f)(1)(i). Since EMILY’s List’s proposed communication references a clearly identified federal candidate, it must be paid for with federal funds.

The Commission noted that its analysis of the proposed communication would not change if a candidate for election in a year other than 2006 were substituted for Senator Stabenow. The Federal Election Campaign Act (the Act) and Commission regulations define a candidate as an individual seeking nomination for election, or election, to federal office and, who has received contributions or made expenditures aggregating in excess of \$5,000. See 2 U.S.C. 431(2)(A); 11 CFR 100.3(a)(1). Neither the Act nor regulations distinguish between candidates based on election date.

Public communication that refers to a political party. EMILY’s List also plans to make a public communication in support of state legislative initiatives and referenda that will refer to “Democrats,” but not to any federal or nonfederal candidate.

The communication will not be broadcast on radio or television.

Commission regulations require nonconnected PACs to pay for public communications that refer to a political party, but do not refer to any candidates, with at least 50 percent federal funds. 11 CFR 106.6(b)(1)(iv) and (c). In promulgating these rules, the Commission noted that references solely to a political party inherently influence both federal and nonfederal elections, and applying the 50 percent minimum federal funds requirement reflects the “dual nature” of the communication. Therefore, EMILY’s List must use federal funds to finance at least half the cost of its public communication referring to “Democrats.”

The result would not change even if EMILY’s List otherwise supports only nonfederal candidates in the state where the public communication is distributed. Commission regulations apply to public communications based upon the content of the communication, without regard to other activities of the person making the communication.

Treatment of Solicitation Proceeds as Contributions

Commission regulations treat as federal contributions any funds donated in response to a communication that indicates the funds received will be used to support or oppose the election of a clearly identified federal candidate. 11 CFR 100.57(a). As federal contributions, the funds must comply with the Act’s limits and prohibitions, and also count toward the recipient’s \$1,000 political committee registration threshold. 11 CFR 100.5(a).

EMILY’s List provided excerpts from three fundraising letters it plans to send that feature a federal candidate—Senator Stabenow—but do not reference any other clearly identified federal candidates. Each of the three excerpts indicates that the funds EMILY’s List receives in response will be used to support

candidates and implicitly to support their election to office. However, in evaluating the sample text, the determination as to whether the proceeds must be considered contributions, and as such comply with the amount limitations, source prohibitions and reporting requirements of the Act, depends upon whether the communication indicates that Senator Stabenow is among those supported candidates.

In two of the three excerpts, Senator Stabenow indicates some of the funds raised would be used to support her re-election.¹ As such, all of the funds received in response to those communications must be treated as federal contributions to EMILY's List. In contrast, the third excerpt indicates that the funds collected would be used on behalf of women seeking state office, which would not include Senator Stabenow as a federal candidate. As such, any of the funds received in response to that communication may be considered donations to the EMILY's List nonfederal account.

Date Issued: October 20, 2005;
Length: 7 pages

—Elizabeth Kurland

AO 2005-14 Affiliation of Regional Trade Associations Composed of Franchisee-Members

The Association of Kentucky Fried Chicken Franchisees, Inc. (AKFCF) is a federation of trade associations that is affiliated with regional trade associations composed of Kentucky Fried Chicken (KFC) franchisees. As a result of that affiliation, AKFCF may solicit contributions to its separate segregated fund (AKFCF PAC) from the owners and executive personnel of incorporated

franchisee-members of the domestic regional trade associations, as well as the individuals and unincorporated franchisees that are members of those regional associations.

Background

AKFCF is an incorporated non-profit trade association. Its membership is composed of ten separately incorporated regional associations (seven domestic and three international)¹, the members of which are KFC franchisees. Under the bylaws of AKFCF and its domestic regional associations, franchisee-members select regional leaders who comprise the majority of AKFCF's highest governing body. AKFCF's bylaws further specify that its principal officers must be past or current officers of one of the regional associations.

Federation Status and Affiliation

The Commission has concluded in past advisory opinions that an entity is a federation of trade associations when a significant portion of its board of directors consists of representatives of regional trade associations, and the trade associations participate as principal or important units in the governance of the federation. See AOs 1998-19, 1995-17 and 1977-44. Consistent with those opinions, the Commission determined that AKFCF is a federation of trade associations.

Additionally, based on facts leading to the conclusion that AKFCF is a federation, the regional trade associations are considered affiliated with AKFCF. Specifically, their relationship with AKFCF meets several of the affiliation factors listed in the Commission's regulations, including the ability to direct or participate in AKFCF's governance, the overlap in directors and officers between AKFCF and its regional associations, and the establishment of AKFCF

by the regional associations. See 11 CFR 100.5(g)(4).

Soliciting the Solicitable Class of Corporate Members of Regional Associations

Under 114.8(g)(1), a federation of trade associations may solicit PAC contributions from the members of its regional, state or local affiliates or members, provided that they qualify as affiliated entities (as explained above). A trade association or a trade association federation (or its PAC) may not solicit contributions from member-corporations themselves, but may solicit contributions from the stockholders and executive and administrative personnel, and their families, ("solicitable class") of the member-corporations that separately and specifically approve the solicitations for a calendar year and have not approved a solicitation by any other trade association for that year. 11 CFR 114.8(c). Because AKFCF and its regional associations are affiliated, AKFCF and its PAC may solicit PAC contributions from the solicitable class of the incorporated franchisee-members of the domestic regional associations that have given AKFCF such prior approval on an annual basis. 11 CFR 114.8(g)(2).²

Soliciting Unincorporated and Individual Members of Regional Associations

AKFCF and its PAC may also solicit unincorporated franchisee-members for contributions to the PAC, and need not obtain prior approval to do so. 11 CFR 114.7(a) and (c). For members that are unincorporated business entities (e.g., partnerships or LLCs that elect tax treatment as partnerships and do not have publicly-traded shares), AKFCF may address its PAC solicitation

(continued on page 4)

¹ The statements of support for Senator Stabenow include, "support candidates, who like me, could never succeed as women in politics," and "[Senator Stabenow] need your help.

¹ The request stated that members of the international regional associations would not be solicited for contributions to AFKCF PAC.

² The requirements for properly requesting prior approval from a corporate member of a trade association are described at 11 CFR 114.8(d) and (e).

Advisory Opinions

(continued from page 3)

tations to the one or two individuals who normally represent the business in its dealings with AKFCF or a regional association, but the solicitation may ask for contributions only from the unincorporated entity itself, not from the one or two representatives or from the stockholders or executive or administrative personnel of the member. AKFCF may also solicit contributions from franchisee-members who are individuals, and the families of those individuals.

AKFCF may also solicit contributions from the executive and administrative personnel (and families) of its regional associations. 11 CFR 114.8(i)(2).

Date Issued: October 20, 2005;
Length: 8 pages.

—Dorothy Yeager

AO 2005-15 Termination and Reorganization of State Party Committee

The Republican State Executive Committee of West Virginia may terminate and create a new state party committee incorporated as a non-profit corporation solely to limit liability. The Committee may terminate only after it has settled its outstanding debt or assigned its debt to the new incorporated state party committee.

Background

The Republican State Executive Committee of West Virginia (“the Committee”) is a state party committee registered with the Federal Election Commission. The Committee plans to terminate and re-establish itself as a non-profit corporation that would not be subject to the prohibition on contributions and expenditures in connection with federal elections. 2 U.S.C. §441b and 11 CFR §114. In connection with the plan, the Committee asked the Commission whether it may:

- Create a new state party committee incorporated for liability purposes (the “incorporated committee”); and
- Terminate as a committee and transfer funds in its account to the new incorporated state party committee.

Incorporating for Liability

Federal law and regulations allow a political committee to incorporate for liability purposes only without being subject to the prohibition on corporate contributions and expenditures. 11 CFR 100.5 and 114.12(a). Accordingly, the Commission determined that the Committee may create a new state party committee incorporated for liability purposes only without being subject to the corporate prohibition.

Transfer of Funds and Termination

Federal law and regulations permit unlimited transfers of funds between party committees of the same political party. 11 CFR 110.3(c)(1). Because the Committee and the newly established incorporated committee would be considered to be affiliated party committees, the Committee may transfer any remaining funds to the new incorporated committee before terminating.

Prior to making such a transfer, the Committee must satisfy the requirements for termination. The Committee must file a termination report on FEC Form 3X. In accordance with FEC regulations, a committee may not terminate if it has outstanding debts or obligations. Because the Committee currently has outstanding debts, it cannot terminate at this time. AO 1994-35. Instead, the Committee may assign all of its debts to the new incorporated committee, then terminate. In this case, the new incorporated committee would report the transferred debts on Schedule D of its next FEC report. The Commission noted that the Committee is not required to

terminate in order to incorporate for liability purposes.

The Commission expressed no opinion regarding the application of the Internal Revenue Code or West Virginia law to the Committee’s proposal, as those topics are not within the Commission’s jurisdiction.

Date Issued: October 20, 2005;
Length: 5 pages.

— Gary Mullen

AO 2005-17 Membership Organization/ Trade Association Affiliation

The Red River Valley Sugarbeet Growers Association, Inc. (the Association) qualifies as a trade association under Commission regulations, and is affiliated with the American Crystal Sugar Company (American Crystal), a cooperative membership organization. As a result, both American Crystal and the Association may solicit contributions to American Crystal PAC from the stockholders and executive and administrative personnel (and families thereof) of the incorporated members of the Association that have given approval for such solicitation.

Background

The Association. The Association is a North Dakota non-profit corporation that is tax-exempt as a “labor, agricultural, or hulticultural organization” under 2 U.S.C 501(c)(5). Its purpose is to advance the interests of sugarbeet growers, to address problems of sugarbeet growing, to aid members in working with regulatory agencies and to assist in the development of policies that are relevant to sugarbeet production. The Association is governed by a member-elected board of directors, and includes 2,859 individuals, partnerships, corporations, limited liability companies, estates and trusts among its members. No member, employee or officer receives monetary gain or profit from the Association’s operations, nor may assets, income

or profit inure to their benefit. The Association does not have its own separate segregated fund.

American Crystal. Membership in American Crystal is offered to any entity or person that:

- Is a sugarbeet farm operator in the territory covered by the cooperative;
- Agrees to purchase securities of the cooperative and abide by its rules; and
- Is approved by American Crystal's board of directors.

The cooperative has 2,873 members that include individuals, corporations and unincorporated entities. Each member owns one share of common stock in American Crystal and is entitled to cast one vote regarding the cooperative's affairs, including the board of directors. No one else holds stock in or has voting authority in American Crystal. American Crystal has established and maintained American Crystal PAC as its separate segregated fund (SSF).

Relationship between the Association and American Crystal. The Association was formed in 1926 by growers in the Red River Valley when the American Beet Sugar Company (the precursor of American Crystal) established its first sugar refinery in the Valley. In 1973, under the leadership of the Association, the Association's members founded an agricultural cooperative that then purchased and merged with the existing American Crystal Sugar Company.

Legal Analysis

Membership/Trade Association Status. FEC regulations define the term "membership organization" to include a cooperative with bylaws that provide for members, some of whom operate or administer the organization. Members include all persons who satisfy requirements for membership, affirmatively accept the invitation to become a member and have either significant financial or

organizational attachment or pay annual membership dues. See 11 CFR 114.1(e)(1) and (2). Based on the representations in the request, the Commission determined that American Crystal qualifies as a membership organization.

A trade association is, "...generally a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of which inures to the benefit of any member." 11 CFR 114.8(a). The Explanation and Justification for 11 CFR 114.8(a) states: "The general definition of a trade association is based on the treatment in the tax code of business associations. See Regulation Section 501(c)(6) of the Internal Revenue Code of 1954."¹ Based on details provided in the request, the Commission determined that the Red River Valley Sugarbeet Growers Association qualifies as a trade association even though it is tax exempt under section 501(c)(5), rather than under 501(c)(6).

Affiliation. According to Commission regulations, SSFs that are established, financed, maintained or controlled by the same corporation, person, or group of persons, including any parent or subsidiary organization, are affiliated. See 11 CFR 100.5(g)(2) and 110.3(a)(1)(ii). Sponsoring organizations are also considered to be affiliated with each other when they meet those criteria. See 11 CFR 100.5(g)(4) and 110.3(a)(3). In the absence of *per se* affiliation as set out in 11 CFR 100.5(g)(3), the Commission may examine various factors

¹ Section 501(c)(6) provides tax exemption for "[b]usiness leagues, chambers of commerce [and other organizations]...not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual." See 26 CFR 1.501(c)(6).

in the context of the relationship between sponsoring organizations to determine whether those entities are affiliated. 11 CFR 100.5(g)(4); 110.3(a)(3).

The Commission determined that the Association and American Crystal are affiliated based on the following facts:

- The Association played a significant role in the founding of American Crystal.
- The organizations have a 99.5 percent overlap in membership.
- Each organization has the ability to exert some control over the governance and personnel of the other organization.
- American Crystal collects and transmits dues to the Association that constitute almost all of the Association's revenue.

PAC Solicitations. A membership organization may solicit contributions to an SSF from its own executive and administrative personnel, and their families, from members who are individuals (and their families), and from unincorporated entities. A trade association may solicit contributions to an SSF from that same group and from the stockholders and executive and administrative personnel (and the families thereof) of those incorporated members that provide separate and specific approval to the trade association for the making of such solicitations during a calendar year and have not approved a solicitation by any other trade association for that calendar year. 11 CFR 114.8(c) and (d).

A corporation, including a membership organization, may solicit contributions to its separate segregated fund, from the solicitable class of its affiliates. In addition, a corporation that is affiliated with the connected organization of an SSF may pay solicitation costs for the SSF or perform actual solicitation functions. However, the Commission

(continued on page 6)

Advisory Opinions

(continued from page 5)

has not addressed in previous AOs the ability of a non-trade association membership organization to solicit contributions to its PAC from the owners and personnel of an affiliated trade association's incorporated members.

Under the affiliation provisions of the Act and regulations, contributions made to or by affiliated SSFs are considered to have been made to or by a single committee, and thus such committees share contribution limits. 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2) and 110.3(a)(1). Hence, affiliated SSFs may make unlimited transfers of Federally permissible funds to each other. 11 CFR 102.6(a)(1) and 110.3(c)(1). Therefore, if the Association were to establish its own SSF receiving Federally permissible contributions, that SSF could transfer such funds in an unlimited amount to American Crystal PAC, even if such funds were derived from contributions by persons that could not be solicited for contributions to American Crystal PAC under the rules for non-trade association membership organization PACs.

Based upon the principals underlying the affiliation rules, the Commission concluded that the Association need not take the extra step of forming its own SSF. After an incorporated member of the Association has granted separate and specific written approval to the Association under 11 CFR 114.8(c) and (d), either American Crystal or the Association, or both, may solicit contributions to American Crystal PAC from that member's stockholders and executive and administrative personnel, and their families. Similarly, either organization or both may pay for and perform the solicitation.

Date issued: November 4, 2005;
Length: 7 pages.

— Michelle Ryan

Court Cases

(continued from page 1)

hearings on proposals for modifying 12 of the regulations, which has moved us to the final stage of the process for those rulemakings. We appreciate the numerous written comments and oral testimony, all of which we are carefully evaluating in reaching decisions on final rules and developing the detailed written explanations required by law."

Additional information regarding Commission rulemakings will appear in the *Record* and on the FEC's web site at http://www.fec.gov/law/law_rulemakings.shtml.

Citizens for Responsibility and Ethics in Washington v. FEC (04-1672)

On October 27, 2005, the US District Court for the District of Columbia granted the parties' joint motion to dismiss this case, which challenged the Commission's refusal to provide documents relating to an ongoing enforcement matter.

Citizens for Responsibility and Ethics in Washington (CREW) had filed a Freedom of Information Act (FOIA) request with the FEC in 2004 seeking access to documents concerning the agency's ongoing investigation of Westar Energy, Inc.. The Commission denied the request, citing the confidentiality provisions of 2 U.S.C. 437g(a)(12)(A). CREW challenged that decision in court, but in May 2005 the district court upheld the agency's response. (See the July 2005 *Record*, page 3.) CREW immediately asked the court to reconsider.

On August 18, 2005, the FEC closed its enforcement case against Westar and publicly released the documents CREW had sought, thereby rendering the request for reconsideration moot.

US District Court for the District of Columbia, 04-1672 (RMU).

Advisory Opinion Request

AOR 2005-19

Application of electioneering communications restrictions to a radio talk show that discusses and interviews federal candidates. (Emil Franzi, October 19, 2005)

Regulations

Public Hearing on Proposed Rules for "Electioneering Communication"

On October 20, 2005, the Commission held a public hearing to receive testimony on proposed rules regarding "electioneering communications." The proposed changes would modify the definition of "publicly distributed" and the exemptions to the definition of "electioneering communications," consistent with the U.S. District Court for the District of Columbia's ruling in *Shays v. FEC*. In that decision the court ruled that the regulation limiting electioneering communications to communications publicly distributed "for a fee" exceeded the Commission's statutory authority to create exemptions and that the regulation exempting section 501(c)(3) organizations was not properly promulgated under the Administrative Procedure Act (APA). For more information on the NPRM see the October 2005 issue of the *Record*, page 6.

Seven witnesses, representing election law practitioners, tax law practitioners, campaign reform groups and section 501(c)(3) organizations testified before the Commission.

Distributed for a Fee

Elizabeth Kingsley, from Harmon, Curran, Spielberg & Eisenberg LLP, testified that eliminating "for a fee" from the definition of "publicly distributed" may limit the ability of nonprofit organizations to cre-

ate Public Service Announcements (PSAs). According to Ms. Kingsley, the nonprofit organizations that produce PSAs cannot control when broadcasters air the ads. Under the proposed rules, a PSA has the potential to become an “electioneering communication” if it is broadcast during the 30- or 60-day electioneering communications windows. Given that fact, Ms. Kingsley argued that the result of the proposed rules would be a reduction in officeholders’ ability to promote worthy causes through PSAs. She urged the Commission to consider an exemption for communications that are not distributed for a fee and do not promote, attack, support or oppose (PASO) a federal candidate. She also recommended that the Commission provide some definition of PASO to accompany this exemption.

Exemption for 501(c)(3) Organizations

Ms. Kingsley also argued against the proposal to repeal the Commission’s current rule exempting 501(c)(3) organizations from the definition of electioneering communications. According to her testimony, most 501(c)(3) organizations are concerned about complying with IRS laws and are not aware that they must comply with FEC regulations. Ms. Kingsley said that repealing the 501(c)(3) exemption would create a “chilling effect,” inhibiting 501(c)(3) organizations from free expression for fear of violating FEC laws.

Karl Sandstrom, representing OMB Watch, and Tim Mooney, from Alliance for Justice, also urged the Commission not to repeal the exemption. Mr. Sandstrom and Mr. Mooney both emphasized the importance of 501(c)(3) organizations’ non-political lobbying abilities. Mr. Sandstrom warned that repealing the 501(c)(3) exemption would infringe upon the organizations’ First Amendment right to petition government through grassroots lobbying. Mr. Mooney and Ms. Kingsley

emphasized that it is already unlawful for 501(c)(3) organizations to support or oppose candidates under the IRS rules on exempt organizations. The IRS rules, however, do allow 501(c)(3) organizations to support or oppose legislation.

Donald J. Simon, representing Democracy 21, testified in support of repealing the exemption. He argued that the IRS rules on 501(c)(3) organizations’ activities lack clarity and that combining those rules with the Commission’s existing exemption has allowed ostensibly charitable 501(c)(3) organizations to become interventionists in elections. He and Paul Ryan, from the Campaign Legal Center, called on the Commission to repeal the 501(c)(3) exemption.

Similarly, Frances Hill, Professor of Law and Director of the Graduate Program in Taxation at the University of Miami School of Law, testified that a blanket exemption for 501(c)(3) organizations places the responsibility of regulation on the IRS, which is not equipped to handle the responsibility of regulating the political activity of 501(c)(3) organizations.

Exempting Ads Promoting Films, Books and Plays

In response to a related Petition for Rulemaking, the Commission proposes to exempt from its electioneering communications rules ads promoting movies, books or plays, as long as they are run according to normal business practices and the communications do not PASO a federal candidate.

Mr. Sandstrom argued that ads for political films, books and plays do, in fact, PASO federal candidates. He thought it inappropriate to create an exemption for the advertising of political films, books and plays, while eliminating the 501(c)(3) exemption that allowed for *bona fide* grassroots lobbying.

On the other hand, Robert Bauer, from Perkins Coie LLP, expressed his support for an exemption.

However, Mr. Bauer argued that the PASO requirement in the exemption was redundant and unnecessary because the Commission has the authority to decide that the exempted activities will not PASO.

Mr. Simon argued that an exemption for ads promoting political films, books and plays is not an exemption for the work of art, but an exemption for the promotion of the work of art. He advocated a *bona fide* commercial activity test for the ads relating to political movies, books and plays.

Additional Information

The full text of the NPRM and public comments submitted to the Commission are available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml.

—Carrie Hoback

Notice of Proposed Rulemaking on the Definition of “Solicit” and “Direct”

On November 15, 2005 the Commission held a public hearing concerning proposed changes to its definitions of the terms “solicit” and “direct” as they relate to the raising and spending of federal and nonfederal funds. The rulemaking stems from court decisions in *Shays v. FEC* that invalidated the existing regulatory definitions of those terms.

Background

In promulgating regulations to implement provisions of the newly enacted Bipartisan Campaign Reform Act of 2002 (BCRA), the Commission defined “to solicit” as “to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.” The Commission defined “to direct” as “to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution,

(continued on page 8)

donation, or transfer of funds, or to provide that thing of value.”

The primary House sponsors of the BCRA—Representatives Shays and Meehan—successfully challenged those definitions (and several other BCRA regulations) in court. In its decision upholding the district court’s invalidation of the rules, the Court of Appeals held that the Commission’s definitions of “to solicit” and “to direct” were invalid because they violated Congress’s intent. As to the term “solicit,” the Court of Appeals concluded that by limiting “solicit” to explicit, direct requests for money, and thus permitting indirect requests for funds, the Commission’s definition allows candidates and parties to circumvent BCRA’s prohibitions and restrictions on nonfederal funds and thereby violates “Congress’s intent to shut down the soft-money system.” As to the term “direct,” the Court of Appeals held that the Commission’s definition of “direct” was invalid because it effectively defined “direct” as “ask” and thus, like the definition of “solicit” and contrary to Congress’s intent, limited “direct” to explicit requests for funds.

Proposed Revisions to the Definition of “Solicit”

To comply with the court decisions in Shays, the Commission published a Notice of Proposed Rulemaking (NPRM) on September 28, 2005. (70 FR 56599) The proposed rules would revise the definition of “solicit” to mean “to ask, suggest or recommend that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether it is to be made or provided directly or through a conduit or intermediary. A solicitation is a written or oral communication, whether explicit or implicit, construed as a reasonable person would understand it in context.” See proposed 11 CFR 300.2(m). By including the terms

“suggest” and “recommend” and by incorporating a reasonable person standard into the revised definition, “solicit” would cover not only communications that explicitly and directly request contributions or donations, but also communications that implicitly or indirectly attempt to motivate another person to make a contribution or donation.

The Commission sought comment on whether it should modify the proposed definition of “solicit” to include solicitations conveyed largely through conduct.

The NPRM also invited comments on several alternatives to the proposed definition of “solicit.” One alternative would adopt the definition proposed in the NPRM but without a “reasonable person standard.” Another would start from the current definition and modify it to make clear that the regulation applies not only to explicit requests or communications but also to indirect, implied requests for contributions or donations. A third alternative would preserve the current definition of “solicit” but would revise the Explanation and Justification (E&J) for the rules to clarify that the current definition includes communications that are implicit or indirect requests for contributions or donations. Yet another alternative would leave the term “to solicit” undefined and allow the meaning to develop on a case-by-case basis through the advisory opinion and enforcement processes.

Fundraisers

The Commission also invited comments as to whether advisory opinions that allow a federal candidate or officeholder to attend and participate (with various restrictions and disclaimer requirements) at fundraising events (other than events held by a state, district or local party) where nonfederal funds are being raised are inconsistent with BCRA’s language or Congressional intent. See Advisory Opinions 2003-03, 2003-05 and 2003-36.

Examples of Solicitation

The Commission is also considering whether to incorporate into the E&J or the regulation a set of examples describing communications that would and would not be considered solicitations.

Proposed Revisions to the Definition of “Direct”

The Commission proposes to revise 11 CFR 300.2(n) by defining “to direct” as “to guide a person who has expressed an intent to make a contribution, donation, transfer of funds, or otherwise provide anything of value, by identifying a candidate, political committee or organization, for the receipt of a contribution, donation, transfer of funds, or thing of value. The contribution, donation, transfer or thing of value may be made or provided directly or through a conduit or intermediary.” Under the proposed rule, “direct” would encompass situations where a person has already expressed an intent to make a contribution or donation that would advance a particular interest, but lacks the identity of an appropriate candidate or organization to which to make that contribution or donation. The act of direction would consist of providing the contributor with the identity of an appropriate recipient for the contribution or donation.

Public Hearing

At its November 15 public hearing, the Commission heard testimony from witnesses supporting and opposing the proposed rules.

Joseph Sandler, representing the Democratic National Committee, testified in favor of the proposed definitions of “solicit” and “direct.” Mr. Sandler urged the Commission to make clear in the regulation that merely expressing support or praise for an organization or entity does not, by itself, constitute soliciting funds for that entity. Mr. Sandler cautioned against including non-verbal conduct in the definition of solicit.

Don Simon, representing Democracy 21, Larry Noble, representing the Center for Responsive Politics, and Paul Ryan, representing the Campaign Legal Center, also testified in support of the Commission's proposed definition of "solicit" but asked the Commission to incorporate the "conduct" element proposed in the NPRM. Mr. Ryan urged the Commission to include in the E & J the examples of communications that would and that would not constitute a solicitation from the NPRM but to revise these examples to also reflect the elements of context and conduct. As to the definition of "direct," Mr. Ryan suggested that the proposed definition be modified by deleting the phrase "who has expressed an intent."

Marc Elias, representing the Democratic Congressional Campaign Committee and the Democratic Senatorial Campaign Committee, William McGinley, representing the National Republican Senatorial Committee and Donald McGahn, representing the National Republican Congressional Committee, filed joint comments supporting the proposed definition of "direct" but opposing the proposed definition of "solicit." All three testified in support of an alternative contained in the NPRM that would retain the current definition of "solicit" but clarify in the E & J that the Commission will apply the rule to indirect and implied requests as well. All three opposed the inclusion of non-verbal conduct in the definition of "solicit."

Both the NPRM and the comments it generated are available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml.

—Amy Pike

Final Rules Eliminate *De Minimis* Exemption for Levin Fund Disbursements

On November 10, 2005, the Commission voted to remove from its regulations an exemption allowing state, district and local party committees and organizations to use only Levin funds¹ to pay for certain types of federal election activity (FEA) aggregating \$5,000 or less in a calendar year.

Background

On July 29, 2002, the Commission promulgated regulations at 11 CFR 300.32(c)(4) requiring any state, district or local party committee that spends more than \$5,000 for allocable Type 1 and Type 2 FEA² in a calendar year either to pay for such expenses entirely with federal funds or to allocate between federal and Levin funds. Under the so-called "*de minimis* exemption," any state, district or local party committee that spent \$5,000 or less for those types of FEA in a calendar year could finance the activity entirely with Levin funds.

In *Shays v FEC*, the district court held that the *de minimis* exemption was inconsistent with Congressional intent. The Commission appealed the court's ruling, but also issued

¹ *Levin funds, a type of nonfederal funds raised only by state, district or local political party committees, are limited to donations of \$10,000 per calendar year and may be raised from sources otherwise prohibited by the Federal Election Campaign Act (except foreign nationals). 11 CFR 300.31.*

² "*Allocable Type 1 and Type 2*" FEA is: 1) voter registration activity 120 days before a federal election; and 2) voter identification, get-out-the-vote activity or generic campaign activity in connection with an election in which a candidate for federal office appears on the ballot. Neither type of activity may be allocated if it refers to a clearly identified federal candidate. 11 CFR 100.24.

a Notice of Proposed Rulemaking (NPRM) to eliminate the exemption. (See the March 2005 *Record*, page 6.) On July 15, 2005, the Court of Appeals for the D.C. Circuit affirmed the district court's opinion.

Final Rules

In light of the appeals court's decision, and after considering public comments, the Commission decided to eliminate the \$5,000 *de minimis* exemption. The revised rules require state, district and local committees and organizations of political parties to pay for all allocable Type 1 and Type 2 FEA either entirely with federal funds or with an allocation of federal and Levin funds without regard to their total amount of annual disbursements.

The final rules appeared in the *Federal Register* on November 17. See 70 FR 69631.

—Michelle L. Ryan

Alternative Dispute Resolution

ADR Program Update

The Commission recently resolved 16 additional cases under the Alternative Dispute Resolution (ADR) program. The respondents, the alleged violations of the Federal Election Campaign Act (the Act) and the final disposition of the cases are listed below. Cases marked with an asterisk were internally generated.

1-5. The Commission rejected the consolidated settlement agreement for LeSueur for Congress '04 and its treasurer Eddie "Edie" D. Ingram, regarding the committee's alleged excessive salary payments thus resolving four ADR cases and closed the files. Statements of Reasons were issued by Chairman Thomas and Commissioners Mason, Smith and Weintraub. The Commission

(continued on page 10)

ADR

(continued from page 9)

also dismissed a complaint against LeSueur for Congress '04 as it was a duplicate. (ADRs 196, 198, 199, 200, and 213/MURs 5433/5435/5457/5459/5596)

6. The Commission reached agreement with the National Right to Life PAC, and its treasurer, Amarie C. Natividad, regarding their failure to disclose all of the Committee's receipts on its 2003 Year-end Report. The respondents acknowledged reporting errors and agreed to pay a \$5,000 civil penalty. In addition, the committee has taken steps to ensure complete disclosure reports are filed timely. In an effort to avoid similar errors in the future, respondents agree to send the director of records maintenance to an FEC seminar within 12 months of the effective date of this agreement. (ADR 225*)

7. The Commission reached agreement with Peter Hort for Congress, and its treasurer, Tal Weitzman. Respondents acknowledge that some inadvertent reporting omissions may have occurred due to their inexperience, but denied allegations of excessive or prohibited contributions and failure to include required disclaimers on public communications (i.e., the committee website). Respondents, in an effort to resolve this matter, agree to work with Commission staff to terminate the committee. (ADR 238/MUR 5529)

8. The Commission closed a failure to file case against the Committee to Elect Gabriel Pearse for Congress 2004, and its treasurer, Emmanuel Roy. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR 266/MUR 5551)

9. The Commission closed the case against Gordon S. and Eileen Harang for failure to file a 24-Hour Report of Independent Expenditures made. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR 269/MUR 5603)

10. The Commission reached agreement with the Committee to Elect John Barker, and its treasurer, Alicja Barker, regarding the failure to accurately disclose a loan, operating expenses and an excessive contribution on the committee's 12-Day Pre-Primary Report. The respondents acknowledged reporting errors and agreed to pay a \$500 civil penalty. Respondents also acknowledged that a loan from the candidate's daughter should have been reported as a contribution and that it represented an excessive contribution to the committee. An amended report was subsequently filed and respondent John Barker reported a payment of \$25,000 recently made to his daughter to cover the aforementioned loan. (ADR 176*)

11. The Commission reached agreement with the Mike Thompson for Congress Committee, and its treasurer, Tom Hannigan, regarding the committee's failure to disclose a \$65,115 disbursement. The respondents agreed to pay a \$2,500 civil penalty, but attributed the omission to an inadvertent failure to record a wire transfer made to a media company, exacerbated by subsequent staff changes. After discovering the error, respondents filed an amended report with the Commission. Additionally, respondents explained that they have instituted procedural changes to ensure that wire transfers are properly recorded by the committee as disbursements, in order to prevent a repetition of this reporting error. Additionally, respondents agree to send their assistant treasurer to an FEC seminar on federal election campaign reporting requirements. (ADR 261*)

12-13. The Commission reached agreement with the National Italian American PAC, and its treasurer, Anthony N. Mallace, regarding the failure to accurately report expenditures, accepting excessive contributions and failure to file disclosure reports. The respondents acknowledged the inadvertent reporting

violations occurred due to the inexperience of a volunteer staff and agreed to pay a \$10,000 civil penalty. After discovering the reporting violations and prohibited contributions/loans, the Committee initiated corrective actions. In an effort to avoid similar errors in the future, respondents agree to employ an election law compliance officer within 30 days of the effective date of this agreement; send the treasurer and compliance officer to a FEC seminar appropriate for PACs within 12 months of the effective date of this agreement; and work with a RAD analyst to ensure that all required reports are filed within 90 days of the effective date of this agreement.

The Commission and respondents initially determined that an appropriate civil penalty to resolve these matters was \$35,000. However, by respondents consenting to certain terms and conditions, the Commission agrees to a special arrangement. Respondents will pay \$10,000 of the civil penalty within 60 days of the effective date of this agreement. In the event that the terms of this agreement are violated, or the respondents fail to comply with the requirements of the Act during the 24 months following the effective date of this agreement, the unpaid balance of the civil penalty of \$35,000 shall be due immediately to the Commission. (ADR 223* & 256* / OAR 1130, 1325, 1386)

14. The Commission reached agreement with Rick for Congress, and its treasurer, Doreen Penberthy, regarding the failure to file disclosure reports electronically and in a timely manner. The respondents acknowledged they misunderstood the Commission's reporting requirements and agreed to pay a \$1,500 civil penalty. In order to avoid similar errors in the future, respondents agree to send a representative to a FEC seminar on federal election campaign finance reporting requirements. (ADR 237/MUR 5521)

15. The Commission reached agreement with Independent Action, Inc., and its treasurer, Ralph Santora, regarding the failure to file disclosure reports. The respondents acknowledged that staff turnover and unfamiliarity with the Commission's reporting requirements led to delays in submitting the required reports and agreed to pay a \$12,000 civil penalty. Respondents also agree to send a representative to a FEC seminar on campaign reporting requirements within 15 months of the effective date of this agreement and to prepare and maintain guidelines that will assist their staff in complying with FEC reporting requirements. (ADR 246*)

16. The Commission reached agreement with Community Action Program PAC, and its treasurer, Cathy Hoskins, regarding the failure to disclose receipts in a timely manner. In an effort to avoid similar errors in the future, respondents agree to contract with an accounting firm, familiar with the Commission's reporting requirements, to oversee and regularly review the Committee's reports prior to their filing with Commission; to establish and maintain a file of FEC regulations and Commission materials to guide their staff in complying with the Act's reporting requirements; and to send the Director of Administration to a FEC seminar on reporting requirements. (ADR 276*)

— Elizabeth Kurland

Administrative Fines

Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 111 new Administrative Fine cases, bringing the total number of cases released to

(continued on page 12)

Committees Fined and Penalties Assessed

1. Ada M. Fisher for Congress	\$975 ¹
2. Al Green for Congress 30 Day Post-General 2004	\$6,500
3. Al Green for Congress Year End 2004	\$3,300
4. Albert Robles for Congress	\$1,350 ¹
5. American Academy of Nurse Practitioners PAC	\$300
6. American PAC	\$1,800
7. American Psychiatric Association Political Action Committee	\$900 ¹
8. Americans for Democratic Action Inc. PAC	\$250
9. Americans for Democratic Action Inc. PAC Year End 2004	\$115 ¹
10. Blue Shield of California PAC	\$500
11. Broyhill for Congress	\$11,000
12. Byron for Congress	\$140
13. Campaign for Florida's Future (FKA Betty Castor for US Senate)	\$17,847
14. Campbell for Senate	\$5,250
15. Calumet PAC	\$500
16. Charlie Melancon Campaign Committee, Inc.	\$3,050
17. Chase Committee	\$100
18. Chris Jennings for Congress	\$250
19. Christensen 4 Congress	\$4,500 ¹
20. Clay for Congress.com	\$250
21. Cody Robert Judy U.S. Senate Looking Good Campaign 2004	\$1,400 ¹
22. Colonial Bancgroup Inc. Federal PAC (Colonial Fed PAC) 30 Day Post-General 2004	\$1,350
23. Colonial Bancgroup Inc. Federal PAC (Colonial Fed PAC) Year End 2004	\$1,575
24. Committee to Elect William Vaden for Congress	\$500
25. Committee to Re-Defeat the President	\$480
26. Congressional Black Caucus PAC (CBC-PAC) 30 Day Post-General 2004	\$9,000
27. Congressional Black Caucus PAC (CBC-PAC) Year End 2004	\$10,125
28. Constitutional Party of Pennsylvania	\$500
29. Contra Costa United Democratic Campaign AKA CCUDC	\$420
30. Crowson for Congress	\$500 ¹
31. Democratic Party of Orange County Fed PAC	\$1,400
32. Diageo North America Inc. Employees' Political Participation Committee	\$190
33. Empire District Electric Company PAC	\$200
34. Fleming for Congress 2004	\$312 ^{1,2}
35. Friends of Chris Dodd	\$6,300
36. Friends of Jeff Seemann for Congress 12 Day Pre-General 2004	\$3,000 ¹
37. Friends of Jeff Seemann for Congress 30 Day Post-General 2004	\$2,700 ¹
38. Friends of Jeff Seemann for Congress Year End 2004	\$3,375 ¹
39. Friends of Jeff Smith	\$5,500 ¹
40. Friends of Paul DeWeese for Congress	\$3,500
41. Friends of Richard Hoffman	\$150 ²
42. Gary Nolan for President October Monthly 2004	\$625 ¹
43. Gary Nolan for President December Monthly 2004	\$625 ¹
44. Gary Nolan for President Year End 2004	\$750 ¹

¹ This civil money penalty has not been collected.

² This civil money penalty was reduced due to the level of activity on the report.

Committees Fined and Penalties Assessed, cont.

45. Graphic Communications International Union Political Contributions Committee	\$500
46. Honest Abe Hirschfeld for United States Senate April Quarterly 2004	\$11,000 ¹
47. Honest Abe Hirschfeld for United States Senate July Quarterly 2004	\$13,750 ¹
48. Honest Abe Hirschfeld for United States Senate October Quarterly 2004	\$21,000 ¹
49. Honest Abe Hirschfeld for United States Senate 12 Day Pre-General 2004	\$21,000 ¹
50. Honest Abe Hirschfeld for United States Senate 30 Day Post-General 2004	\$16,500 ¹
51. Honest Abe Hirschfeld for United States Senate Year End 2004	\$22,000 ¹
52. Independence Party of Minnesota	\$230
53. Independent Action Inc. October Quarterly 2004	\$4,000 ¹
54. Independent Action Inc. 30 Day Post-General 2004	\$4,375 ¹
55. Independent Action Inc. Year End 2004	\$625 ^{1,2}
56. International Chiropractors Association—PAC	\$520
57. Italian American Democratic Leadership Council	\$300
58. IUOE Local 542 Operating Engineers Political Action Fund	\$1,295
59. James A. Garner Congressional Committee 30 Day Post-General 2004	\$4,500 ¹
60. James A. Garner Congressional Committee Year End 2004	\$4,500 ¹
61. Jack Davis for Congress	\$11,200
62. John Kennedy for U. S. Senate Inc.	\$560
63. John McKinnis for Congress Inc. Year End 2004	\$0 ²
64. John McKinnis for Congress Inc. 30 Day Post-General	\$900
65. John McConnel Wolfe Jr. for Congress	\$0 ²
66. Kelly Services Inc. PAC (KELLYPAC)	\$900
67. Kennebunkport Democratic Committee	\$300
68. Keyspan Energy PAC (KEYPAC)	\$130
69. LaFarge North America Inc. PAC	\$195
70. Liffrig for Senate	\$4,500 ¹
71. Lincoln Club of Riverside County	\$625 ²
72. Mac Collins for Senate	\$1,475
73. Metro-Goldwyn-Mayer PAC	\$500
74. Metro-Goldwyn-Mayer PAC Year End 2004	\$118
75. McKenna Long and Aldridge LLP PAC	\$155
76. Michels for U.S. Senate	\$22,292
77. Monterey County Republican Central Committee Fed.	\$550
78. Morris Meyer for Congress	\$900 ¹
79. Northside Democrats United	\$1,800 ²
80. Pat Neal for Congress	\$0 ²
81. Pipefitters' Local Union No 522 Political Action Fund	\$120
82. Plumbers Local 519 PAC	\$250
83. Randy Camacho for Congress 2004	\$2,250
84. Robinson for Congress	\$4,170
85. Salazar for Senate	\$5,500
86. Saull for Senate	\$0 ²

¹ This civil money penalty has not been collected.

² This civil money penalty was reduced due to the level of activity on the report.

Administrative Fines

(continued from page 11)

the public to 1,216, with \$1,641,132 in fines collected by the FEC during the four years that the program has been in place.

Civil money penalties for late reports are determined by the number of days the report was late, the amount of financial activity involved and any prior penalties for violations under the administrative fines regulations. Penalties for 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-election, October quarterly and October monthly reports), receive higher penalties. Penalties for 48-hour notices that are filed late or not at all are determined by the amount of the contribution(s) not timely reported and any prior violations.

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

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

Closed Administrative Fine case files are available through the FEC Press Office and Public Records Office at 800/424-9530.

Compliance**MUR 5386: Union Contributions; Contributions in the Name of Another**

The Commission has entered into a conciliation agreement with the International Association of

Committees Fined and Penalties Assessed, cont.

87. Scott for Congress	\$250 ²
88. Simon Pristoop for Congress Committee	\$195
89. Sitter for Congress Year End 2004	\$312
90. Sitter for Congress October Quarterly 2004	\$900
91. Smith for Congress LLC	\$250 ²
92. Socas for Congress	\$7,830 ¹
93. Socas for Congress Year End 2004	\$11,875 ¹
94. Southeast Anesthesia Associates PAC 30 Day Post-General 2004	\$425
95. Southeast Anesthesia Associates PAC Year End 2004	\$375
96. Stace Williams for U. S. Congress	\$1,350 ¹
97. Stephanie Summers O'Neal for U.S. Congress October Quarterly 2004	\$5,250 ¹
98. Stephanie Summers O'Neal for U.S. Congress Year End 2004	\$7,875 ¹
99. Steven Reifman for Congress	\$250 ¹
100. Sugar Cane Growers Cooperative of Florida	\$181 ¹
101. Teamsters Local Union No 688 PAC	\$155
102. Trover Solutions Inc.	\$440
103. Uniformed Firefighters Association PAC	\$690
104. United Brotherhood of Carpenters/Joiners of America New England Reg. Carpenters Legis. Emp. Cmte.	\$193
105. U.S. Immigration Reform PAC	\$135
106. Virgil Yanta for Congress	\$3,375 ¹
107. WAWA Inc. Political Action Committee 12 Day Pre-General 2004	\$600 ¹
108. WAWA Inc. Political Action Committee 30 Day Post-General 2004	\$240 ¹
109. Whit for Congress	\$250
110. Women's Alliance for Israel (WAI-PAC)	\$218
111. WV Republican State Executive Committee	\$6,600

¹ This civil money penalty has not been collected.

² This civil money penalty was reduced due to the level of activity on the report.

Machinists and Aerospace Workers (IAMAW) District Lodges 141, 141-M and 142, Local Lodge 1487, IAMAW's PAC (MNPL) and the PAC's treasurer. In the agreement, the respondents admit to violating the Federal Election Campaign Act (the Act) by using union treasury funds to reimburse union member contributions to IAMAW's PAC. This conciliation agreement prohibits future misconduct by the respondents and requires them to pay a \$151,000 in civil penalty.

Background

The Act prohibits unions from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. Additionally, under the Act, it is illegal to reimburse any person for their contributions to any federal political committee. Therefore, a union may not reimburse its members, directly or indirectly, for any contributions they make to a political committee. ² U.S.C. §§441b and 441f.

Between 2000 and 2003, IAMAW District Lodges 141, 141-M and 142 and Local Lodge 1487 held at least 20 conventions and conferences at which delegates voted, according to longstanding practice, to donate their registration fees to IAMAW's PAC, MNPL. The union used its treasury funds to reimburse many of the delegates' registration fees. Additionally, IAMAW officers and MNPL representatives at each district and local lodge were aware that registration fees were being contributed to MNPL.

Conciliation Agreement

The IAMAW respondents admitted in their conciliation agreement to using union treasury funds to reimburse union member contributions to the IAMAW's PAC. The respondents agreed to pay a joint civil penalty of \$151,000 and to cease and desist from further such violations of the Act.

Additional Information

For additional information on this case, please visit the Commission's Public Records Office or consult the Enforcement Query System on the FEC's web site and enter case number 5386.

—Kathy Carothers

MUR 5611: Missouri Democratic Party

The Missouri Democratic State Committee has agreed to pay a \$110,000 civil penalty for violations of the Federal Election Campaign Act (FECA) during the 1999-2000 election cycle.

Background

Having noted irregularities in the committee's financial reports, the Commission audited the Missouri Democratic State Committee after each election cycle from 1996 through 2002. Those audits uncovered multiple FECA violations during the 1999-2000 election cycle, leading to this enforcement action.

(continued on page 14)

According to the conciliation agreement, the Missouri Democratic State Central Committee violated the law during the 2000 election cycle by:

- Failing to report the receipt and transfer to the party's nonfederal account of \$176,125 in excessive contributions, \$159,500 in prohibited corporate and labor contributions and an otherwise permissible \$5,000 contribution;
- Accepting \$69,500 in prohibited contributions;
- Misreporting its receipts, disbursements and cash-on-hand; and
- Failing to disclose outstanding debts totaling over \$620,000.

The reporting failures regarding excessive contributions stemmed from the committee's practice of depositing excessive contributions to its federal account, transferring the excessive portions to its non-federal account, and reporting only the allowable portion that remained in the federal account. The committee treated some of the prohibited contributions it received in similar fashion. This practice caused the committee to misreport receipts, disbursements, and cash-on-hand.

Conciliation Agreement

Under terms of the conciliation agreement, the committee will not only pay a \$110,000 civil penalty, but also retain outside consultants to review the party's compliance procedures and train committee staff and volunteers. Additionally, within 90 days of the agreement, the committee will file amendments to its 2004 election cycle reports, and maintain and submit to the FEC, upon request, detailed documentation supporting those amendments. The committee also agreed to retain an independent firm to audit its compliance with federal campaign finance laws in 2005 and 2006. The committee agreed to maintain documentation for all future transfers of excessive or prohibited contributions and to develop procedures for han-

dling contributions by check where the payor is not an individual.

Additional Information

For additional information on this case, please visit the Commission's Public Records Office or consult the Enforcement Query System on the FEC's web site and enter case number 5611.

Outreach

February Conference in Tampa

In February the Commission will hold a regional conference in Tampa for House and Senate campaigns, political party committees and corporations, labor organizations, trade associations, membership organizations and their respective PACs. The conference will consist of a series of workshops where Commissioners and experienced staff conduct a variety of technical workshops on federal campaign finance law. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law.

The Tampa conference will be held February 1-2 at the Wyndham Harbour Island Hotel. The registration fee for this conference is \$375, which covers the cost of the conference, a reception, materials and meals. A \$10 late fee will be added to registrations received after January 6. For additional information, or to register for the conference, please visit the FEC web site at http://www.fec.gov/info/conference_materials/2006/tampa/tampa_06.shtml.

The Wyndham Harbour Island is located in downtown Tampa at 725 South Harbour Island Boulevard. A room rate of \$169 (single or double) is available to conference attendees who make reservations on or before January 2. To make your hotel reservations, please visit <http://www.wyndham.com/groupevents/867FEC/main.wnt>, or call 1-813-229-5000 or 1-800-WYNDHAM and indicate that you are attending the FEC conference. The FEC suggests that you wait to make your hotel and air reservations until you have received confirmation of your conference registration.

Please direct all questions about conference registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; e-mail: tonis@sylvestermanagement.com). For questions about the conference program, call the FEC's Information Division at 1-800/424-9530 (press 6) (locally at 202/694-1100), or send an e-mail to Conferences@fec.gov.

—Dorothy Yeager

2006 Conference Schedule

Conference for Campaigns, Parties and Corporate/Labor/Trade Assn. PACs

February 1-2, 2006
Wyndham Harbour Island
Tampa, FL

Conference for House and Senate Campaigns and Political Party Committees

March 15-16, 2006
(CORRECTION)
Omni Shoreham
Washington, D.C.

Conference for Corporations and their PACs

April 25-26, 2006 (tentative)
Capitol Hilton (tentative)
Washington, D.C.

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

May 25-26, 2006
Hyatt Regency on Capitol Hill
Washington, D.C.

Reporting and FECFile Help

The Commission will kick-off the election year by hosting reporting and electronic filing workshops on January 18, 2006. The reporting workshops will address common filing problems and respond to questions committees may have as they prepare to file their January 31 year-end reports. The electronic filing sessions will provide hands-on instruction for committees that use the Commission's FECFile software and will address questions filers may have concerning electronic filing.

Attendance is limited to 30 people per session for reporting workshops, and 16 people per session for the electronic filing workshops. The registration form is available on the FEC web site at <http://www.fec.gov/info/outreach.shtml#roundtables> and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call the Information Division at 800/424-9530, or locally at 202/694-1100.

Roundtable Schedule

Date	Subject	Intended Audience
January 18 9:30-11 a.m. Reception 11-11:30 a.m.	Reporting for PACs and Party Committees, plus "Meet Your Analyst" reception	Individuals responsible for filing FEC reports for PACs and Party Committees (Up to 30 may Attend)
January 18 1:30-3 p.m.	Hands-on Help with FECFile and E-filing for PACs and Party Committees	PACs and Party Committees that use FECFile and/or have questions about electronic filing (Up to 16 may Attend)
January 18 1:30-3 p.m. Reception 3-3:30 p.m.	Reporting for Candidates and Their Committees, plus "Meet Your Analyst" reception	Individuals responsible for filing FEC reports for Candidate Committees (Up to 30 may Attend)
January 18 9:30-11 a.m.	Hands-on Help with FECFile and E-filing for Candidates and their Committees	Campaigns that use FECFile and/or have questions about electronic filing (Up to 16 may Attend)

Index

The first number in each citation refers to the "number" (month) of the 2005 *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

- 2004-40: Status of state party as state committee of political party, 1:8
- 2004-41: Non-affiliation of SSFs, 2:4
- 2004-42: LLC as connected organization for SSF, 2:7
- 2004-43: Discounted sale of ad time not a contribution, 4:6
- 2004-45: Accounting method to determine excess contributions under Millionaires' Amendment, 3:7
- 2005-1: Indian tribe not a federal contractor, 5:8
- 2005-2: Fundraising for nonfederal committees by federal officeholder who is nonfederal candidate, 6:7

- 2005-3: Affiliation of membership organizations, 6:8
- 2004-4: Reporting court-ordered restitution owed to campaign committee, 6:9
- 2005-5: Federal candidate/officeholder's use of funds from nonfederal exploratory committee, 7:8
- 2005-6: Former officeholder may give campaign funds to charity, 8:5
- 2005-7: Coordinated commentaries and editorials result in prohibited in-kind contributions, 10:3
- 2005-9: Campaign may pay travel expenses for federal candidate/officeholder's minor children, 10:5
- 2005-10: Candidates/Officeholders fundraising for ballot initiatives, 10:5
- 2005-11: Using campaign funds for legal expenses, 11:1
- 2005-12: Federal candidate's non-federal exploratory activity, 11:3
- 2005-13: Allocation and solicitation rules for nonconnected PAC, 12:1
- 2005-14: Affiliation of regional trade associations, 12:3
- 2005-15: State party's termination and reorganization, 12:4
- 2005-17: Affiliation between membership and trade groups, 12:4

Compliance

- Administrative fines assessed, 2:13; 6:13; 9:9; 12:11
- ADR program update, 1:9; 2:12; 4:9; 5:7; 6:10; 9:12; 12:9
- MUR 5020: Corporate facilitation, 4:6
- MUR 5386: Contributions in the name of another and union contributions, 12:12
- MUR 5405: Contributions in the name of another and corporate contributions, 6:5
- MUR 5428: Excessive and prohibited contributions, improper allocation and reporting violations, 6:6
- MUR 5183: Corporate contributions, 7:4
- MURs 5428 and 5623: "Millionaires' Amendment," 9:10
- MUR 5611: Excessive and prohibited contributions, reporting errors, 12:13

Court Cases

____ v. FEC

- Alliance for Democracy, 4:4
 - Augusti and Augusti for Congress, 1:12; 10:3
 - Citizens for Responsibility and Ethics in Washington (04-2145), 2:10
 - Citizens for Responsibility and Ethics in Washington (04-1672), 7:3; 12:6
 - Cooksey, 10:3
 - EMILY's List, 3:1; 4:1
 - Hagelin, 8:4
 - Judicial Watch, 4:3
 - Kean for Congress, 4:3
 - Shays and Meehan, 9:1; 12:1
 - Sykes, 6:5
 - Wisconsin Right to Life, 7:1
- FEC v. ____
- Democratic Party of New Mexico, 6:1
 - Friends of Lane Evans, et. al., 8:1
 - Odzer, 9:3

Regulations

"Agent" definition for coordinated and independent expenditures and nonfederal funds rules, NPRM, 3:4; public hearing, 5:5; 7:6

BCRA technical revisions, final rules, 1:6
 Candidate solicitation at state, district and local party committee fundraisers, NPRM, 4:4; public hearing, 5:5; 7:6; Revised E&J, 8:1

Civil penalties inflation adjustment, 7:5
 Contributions by minors to candidates and party committees, final rules, 3:3
 "De minimis" exemption for Levin fund disbursements by state, district and local party committees, NPRM, 3:6; Final rules, 12:9

Electioneering Communications definition, NPRM, 10:6; public hearing 12:6
 "Federal Election Activity" definition, Notice of Proposed Rulemaking, 6:1; public hearing scheduled, 8:3; public hearing held, 9:4; comment period extended, 10:8

Filing by Priority Mail, Express Mail and overnight delivery, NPRM, 2:1; final rules, 5:4

Internet communications, Notice of Proposed Rulemaking, 5:1; Hearing on proposed rules, 8:2

Party committee donations to certain tax-exempt organizations and politi-

cal organizations, Notice of Proposed Rulemaking, 1:7; final rules, 5:4
 Payroll deductions for contributions to trade association SSF, NPRM, 2:2; public hearing scheduled, 5:5; public hearing, 7:6; final rules, 9:1
 Salaries and wages paid by state, district and local party committees, Notice of Proposed Rulemaking, 6:3; public hearing scheduled, 8:3; public hearing held, 9:4; comment period extended, 10:8
 Solicit/Direct definition, NPRM and public hearing 12:7
 Travel rules for certain Presidential candidates, effective date, 7:6

Reports

April reporting reminder, 4:1
 California special election reporting, 2:3; 9:6
 Due in 2005, 1:3
 Electronic filing software, FEC Form 3X, updated, 2:1
 July reporting reminder, 7:1
 October reporting reminder, 10:1
 Ohio special election, 6:14

FEDERAL ELECTION COMMISSION
 999 E Street, NW
 Washington, DC 20463

Official Business
 Penalty for Private Use, \$300

