

# Record

June 2000

Federal Election Commission

Volume 26, Number 6

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## Regulations

### Election Cycle Reporting Proposed for Authorized Committees

On April 27, 2000, the Commission approved a Notice of Proposed Rulemaking (NPRM) that would require candidate committees to aggregate and report their receipts and disbursements on an election-cycle basis rather than on a calendar-year basis, which is the current system.

The proposed rules are based on Public Law 106-58, passed by Congress in 1999. The law requires the Commission to implement these new rules, beginning with the first reporting period after December 31, 2000.

The change to election cycle reporting is intended to simplify recordkeeping and reporting.<sup>1</sup> Under current regulations, candidate committees track contribution limits on a per-election basis, but report contributions on a calendar-year-to-date basis. Other receipts and disbursements are aggregated and

*(continued on page 4)*

<sup>1</sup> Please note that these changes do not apply to unauthorized committees, and the Commission does not expect to modify the rules applicable to those committees.

## Reports

### July Reporting Reminder

Committees filing on a quarterly basis must file their second quarterly report by July 15. Those filing on a monthly schedule have a report due on July 20.

Please note that, in addition to filing quarterly reports, committees of candidates active in 2000 primary and runoff elections must file pre-election reports and may have to file 48-hour notices. PACs and party committees filing on a quarterly basis may also have to file pre-election reports.

Committees of candidates who are not active in 2000 elections must file a mid-year report by July 31.

For more information on 2000 reporting, including reporting dates and when to file 48-hour notices, see the reporting schedules in the January and March 2000 *Records*. To order the 2000 reporting schedule handout, call 800/424-9530 or 202/694-1100. Or use Faxline: 202/501-3413 and request document 586. This information is also available at the FEC's Web page: <http://www.fec.gov/pages/report.htm>.

### Where to File Reports

With the exception of Senate campaign committees and committees that support only Senate

*(continued on page 3)*

## Nonfilers

The campaign committees listed in the top chart failed to file pre-primary reports in connection with the May 2 primary elections in Indiana and North Carolina. The reports, which were due April 20, were to include financial activity for the period April 1 - 12.

The second chart lists campaign committees that failed to file pre-primary reports in connection with the May 23 primary elections in Arkansas, Idaho and Kentucky. The reports covered the period April 1 - May 3, and were due May 11.

The bottom chart lists campaign committees that failed to file reports covering the first quarter of calendar year 2000. The reports were due April 15.

The FEC is required by law to publicize the names of nonfiling campaign committees. 2 U.S.C. 438(a)(7). The agency pursues enforcement action against nonfilers on a case-by-case basis. ♦

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999 E Street, NW  
Washington, DC 20463

800/424-9530  
202/694-1100  
202/501-3413 (FEC Faxline)  
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## IN and NC Pre-primary Report Nonfilers:

Candidate	Office Sought
Ron Gyure for Congress	House IN/02
Ward for Congress	House NC/04
Coble for Congress	House NC/06
Mike Taylor for Congress	House NC/08
Clement for Congress	House NC/09
Cass Ballenger for Congress Committee	House NC/10
Mel Watt for Congress Committee	House NC/12

## AR, ID and KY Pre-Primary Nonfilers:

Candidate	Office Sought
Jason Sutfin for Congress	House AR/01
Rod Martin for Congress	House AR/02
Linda Pall Congress 2000	House ID/01
Don Bell for Congress/2000	House KY/04

## Quarterly Report Nonfilers:

Candidate	Office Sought
Judy Smith for Congress	House AR/04
People for Royal Hart	House PA/04
Dick Stewart for Congress	House PA/19
People for Bellissimo	House PA/04

## Administrative Fines Program Begins in July

Beginning with the July reports, the Commission will implement an Administrative Fines program for late filing committees. For more information, see the [May Record](#), p. 1, and watch for further details in the July *Record*.

## Reports

(continued from page 1)

candidates, all committees file their reports with the Federal Election Commission. (Reports should never be filed with the Clerk of the House.)

Senate campaign committees continue to file their reports with the Secretary of the Senate.

### State Copies of Reports Waived in Most States

Due to a new state waiver program, most committees no longer have to file copies of their FEC reports at the state level. Under this new program, committees based in, or supporting candidates in, 45 states/territories no longer have to file copies of their reports with the state because these states have qualified for the FEC's waiver. (See the footnote in the chart (to the right) for a list of the states/territories that have qualified for the waiver.) The Commission has granted waivers to these states and territories because they give the public access to FEC reports through a computer located at their campaign finance records office.

Note, however, for the present time, the waiver does not apply to reports filed by Senate campaign committees. They must continue to file copies of their reports with the state. (Images of Senate reports will soon be available on the Commission's Web site. Once this occurs, Senate campaigns will be able to take advantage of the state filing waivers. Senate campaign filers should check the [FEC's Web site](#) or consult their Reports Analyst for the most up-to-date information.)

Consult the chart (above right) for guidance on *where* to file FEC reports.

### Administrative Fines

Starting with the July reports, late filers, nonfilers and committees that fail to file 48-hour notices will be subject to administrative fines, ranging from \$125 to \$16,000. Read more about the new program in the upcoming July issue of the *Record*. ♦

## Filing with Federal and State Governments

Type of Committee	Federal Government: Where to File	State Government: Is Copy Required?
U.S. Senate Campaigns	Secretary of the Senate	Yes
U.S. House and Presidential Campaigns	FEC	Yes, unless waived*
PACs and Parties	FEC	Yes, unless waived*
PACs Supporting <u>Only</u> U.S. Senate Candidates	Secretary of the Senate	Yes

\* The Commission has certified that the following states and territories qualify for filing waivers: Alabama, American Samoa, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin and Wyoming. Committees that file their reports at the FEC need not file copies in these states.

Note, also, that 11 CFR 108.8 exempts the District of Columbia from the state filing requirement.

## Advisory Opinions

### Advisory Opinion Requests

#### AOR 2000-9

Application of FEC regulations and advisory opinions to commercial Web site that sells space to federal, state and local candidates and issue organizations. (Voter.com, Inc., May 2, 2000)

#### AOR 2000-10

Trade association PAC's use of Web site to request prior approval from corporate members. (America's Community Bankers PAC, May 15, 2000)

#### AOR 2000-11

Reissue of corporate checks for PAC contributions made through employee payroll deduction to replace original checks that PAC treasurer never deposited. (Georgia-Pacific Corporation, May 15, 2000)

## Federal Register

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

#### Notice 2000-6

Administrative Fines; Notice of Proposed Rulemaking (65 FR 16534, March 29, 2000)

#### Notice 2000-7

Electronic Filing of Reports by Political Committees; Notice of Proposed Rulemaking (65 FR 19339, April 11, 2000)

#### Notice 2000-8

Public Financing of Presidential Primary and General Election Candidates; Final Rule; Announcement of Effective Date (65 FR 20893, April 19, 2000)

#### Notice 2000-9

Election Cycle Reporting by Authorized Committees; Notice of Proposed Rulemaking (65 FR 25672, May 3, 2000)

## Audits

### Audit of Missouri Democratic Party

An FEC audit of the Missouri Democratic Party, approved by the Commission on April 5, 2000, found that the committee improperly allocated federal and nonfederal expenses, misreported the proceeds of joint fundraisers and received excessive contributions.

#### Federal/Nonfederal Allocation

The audit identified \$223,458 in payments from the party's nonfederal account that should have been allocated between the committee's federal and nonfederal accounts. The disbursements were for administrative and generic voter drive expenses such as contract services, travel reimbursements, salaries, bonuses, printing and voter registration. Based on the applicable allocation ratio (22 percent federal and 78 percent nonfederal), the party should have paid \$49,161 of these expenses with funds from its federal account. Furthermore, based on the FEC's allocation regulations, the party should have made the original payments to vendors from its federal account and transferred funds from the nonfederal account to the federal account to cover the nonfederal share of the expenses. 11 CFR 106.5(g).

#### Allocating Refunds and Rebates

The committee also erroneously deposited into its federal account \$39,584 in refunds and rebates related to shared federal/nonfederal expenses. The party failed to transfer the nonfederal share of those refunds and rebates (\$30,662) to its nonfederal account. The party did not provide evidence to refute these findings.

*(continued on page 6)*

## Regulations

*(continued from page 1)*

reported on a calendar-year-to-date basis. Under the proposed new rules, authorized candidate committees will itemize and report contributions, other receipts and disbursements on an election-cycle basis.

Under current regulations, an election cycle begins the day after the general election for the office or seat that the candidate seeks and ends on the day of the next general election for that seat or office. 11 CFR 100.3(b). The length of the election cycle depends on the office sought—a two-year cycle for House candidates, six years for Senate candidates and four years for Presidential candidates. Campaign finance reports are due monthly or quarterly, depending on the committee, with a pre- and post-election report, and a year-end report due on January 31 of the following year. Under this definition of election cycle, either the post-general election report or the year-end report (for authorized candidate committees not required to file a post-election report) covers two election cycles.

The Commission seeks comments on two alternatives to this definition of election cycle, neither of which is actually included in the proposed rules. Under the first alternative, for reporting purposes only, the election cycle would begin on January 1 of the year following the general election for a seat or office and would end on December 31 of the calendar year in which the next general election for that seat or office is held. This approach would require fewer changes to current reporting practices and would avoid the need to include separate election-cycle-to-date figures for two different election cycles in post-general reports (or year-end reports where no post-general report is filed). However, under this alternative, post-general-election contribu-

tions received before January 1 would be included in the current election cycle totals, even though these contributions might count toward the limits for a different election.

Under the second alternative, which would apply to both reporting and contribution limits, the election cycle would begin on the 21<sup>st</sup> day after the general election for the seat or office the candidate is seeking (the day after the end of the post-general election reporting period) and would end on the 20<sup>th</sup> day after the next general election for the seat or office the candidate is seeking (the day the post-general reporting period ends for that election). In addition, this alternative would amend the regulations at 11 CFR 110.1 and 110.2 to extend the cut-off date for attributing undesignated contributions. Under current rules, undesignated contributions made after the general election count toward the next upcoming election. Under this alternative, undesignated contributions made through 20 days after the general election would continue to be attributed to the recently held general election. As a result, the post-general election report would not cover two election cycles. However, year-end reports filed by candidates who do not participate in the general election (and therefore do not file a post-general election report) would cover the entire post-election period through December 31 and, thus, two election cycles.

Certain changes to FEC Forms 3 and 3P (used by House and Senate campaigns and by Presidential campaigns, respectively) will be necessary under any of the three alternative approaches. For example, in instances where a single report (either the post-general or year-end) covers financial activity from two election cycles, the Commission seeks comments on how best to segregate that activity on the reporting form.

Since the new regulations will take effect after the post-general and year-end reporting periods for 2000 have closed, many candidates will have already reported receipts and disbursements related to the 2002, 2004 or 2006 election cycles. To account for this, the Commission is creating a one-time worksheet to help these campaigns aggregate their election-cycle-to-date figures.

In addition to the changes directly related to election cycle reporting, the NPRM also proposes conforming amendments to the Commission’s “best efforts” regulations at 11 CFR 104.7. These amendments would replace references to the \$200 per *calendar year* itemization threshold with a \$200 per *election cycle* threshold.

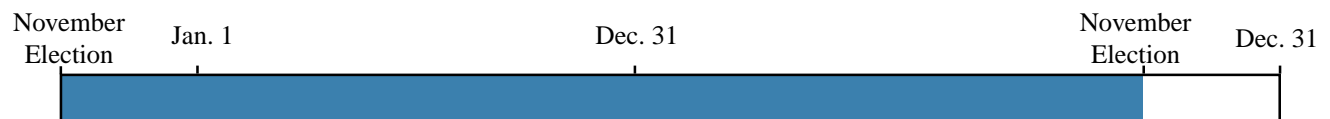
The NPRM is available from the Public Records Office at 800/424-9530 (press 3) or 202/694-1120; through the FEC’s Faxline at 202/501-3413 (document 248); and on the FEC’s Web site—<http://www.fec.gov>. The notice was published in the Federal Register on May 3 (65 FR 25672, May 3, 2000).

The Commission seeks comments on the proposed revisions to 11 CFR 104.3, 104.7, 104.8 and 104.9, on the alternative definitions of election cycle discussed above, and on any other issues raised by the new statutory requirements regarding election cycle reporting. All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or

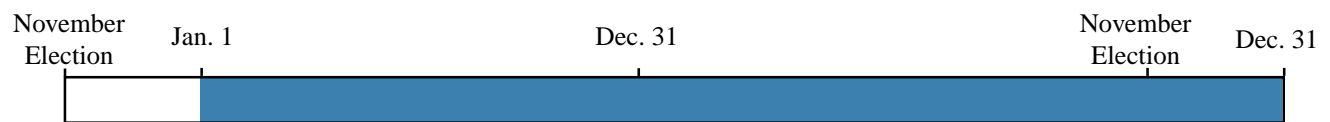
electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Faxed comments should be sent to 202/219-3923, with a printed copy follow-up to ensure legibility. Electronic mail comments should be sent to [ecyclereport@fec.gov](mailto:ecyclereport@fec.gov). Those sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. No oral comments can be accepted. The deadline for comments is June 2, 2000.◆

### Election Cycle for Congressional Candidates

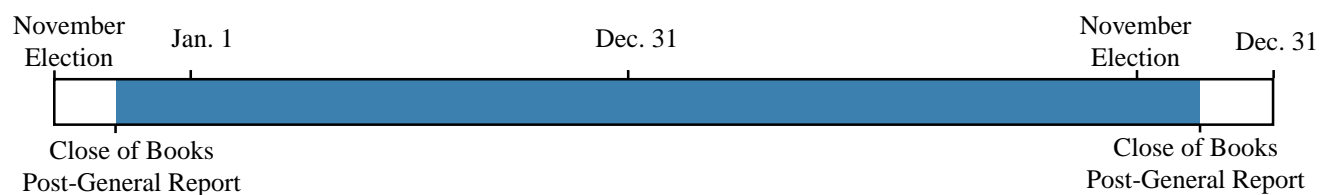
Current Definition of Election Cycle:



Alternative 1:



Alternative 2:\*



\*Note that this alternative would also amend the contribution aggregation rules at 11 CFR 110.1 and 110.2.

## Audits

(continued from page 4)

### Joint Fundraising

The party participated in three joint fundraisers from which it received \$150,582 in net proceeds. The committee disclosed these net receipts on its FEC reports, but failed in some cases to itemize the individual contributions included in its share of the gross proceeds from the fundraisers. Nor did it maintain proper records with respect to the fundraisers. In response to the interim audit report, however, the committee filed the required memo Schedules A, itemizing the contributions, and provided copies of the necessary records.

### Excessive Contributions

The audit identified 18 excessive contributions totaling \$80,250. The committee transferred nine of the contributions to its nonfederal account, and reattributed four others to spouses. The committee did not, however, provide evidence that it had:

- Informed contributors that it had transferred their funds to the nonfederal account;
- Informed the contributors of their option to receive refunds; or
- Retained the donors' authorization to reattribute their contributions to spouses. 11 CFR 110.1(b), 110.1(k) and 110.2(b).

In response to the Commission's interim audit report, the committee refunded three contributions totaling \$25,250, received authorization to transfer or reattribute 13 others, and took no action on the two remaining excessive contributions identified in the audit. However, since the committee did not receive the authorizations to transfer or reattribute the contributions within 60 days of the treasurer's initial receipt of the contributions (as required by FEC regulations), that option was not available to the committee.

This audit was conducted pursuant to 2 U.S.C. 438(b), which authorizes the Commission to conduct audits of any political committee that fails to meet the threshold level of compliance set by the Commission. Subsequent to a final audit report, the FEC may choose to pursue unresolved issues in an enforcement matter. ♦

### Audit of Michigan Republican Party

An FEC audit of the Michigan Republican State Committee (MRSC), approved on April 13, 2000, revealed possible impermissible expenditures on behalf of federal candidates, shared federal/nonfederal (allocable) expenses erroneously paid from nonfederal accounts, misstatements of financial activity and reporting errors and omissions.

#### Impermissible Expenditures

MRSC used its salaried staff to operate a get-out-the-vote phone bank on behalf of the 1996 Presidential and Vice Presidential nominees and three nonfederal candidates. Because MRSC used salaried staff, rather than volunteers, the phone bank did not qualify for the regulatory exception that permits a state or local party committee to finance a volunteer-operated phone bank on behalf of Presidential and Vice Presidential nominees without considering its payments expenditures. 11 CFR 100.8(b)(18)(v). Instead, the audit concluded that the party had made a \$5,794 contribution to or independent expenditure on behalf of Dole/Kemp '96. MRSC neither accepted nor refuted this finding.

#### Shared Federal/Nonfederal Expenses

MRSC used an "administrative account," which was a nonfederal account, to defray certain expenses that it considered to be non-cam-

paign related. The party did not disclose the receipts and disbursements of this account on its federal or state disclosure reports. The audit identified approximately \$413,573 in expenses that the party paid from this "administrative account" that should have been allocated between its federal and nonfederal accounts. 11 CFR 106.5. These expenses related to the State Convention, State Committee meetings, Republican National Committee meetings/conferences, as well as the day-to-day operations of MRSC.

Similarly, MRSC's "Republican National Convention" account—also a nonfederal account—paid \$78,538 in apparent allocable expenses associated with the 1996 Presidential nominating convention, and its nonfederal "operating account" paid \$10,951 for allocable get-out-the-vote activity.

In light of these findings, the interim audit report recommended that MRSC transfer \$183,353 from its federal account to its nonfederal accounts to pay for the federal share of the allocable expenses and file memo Schedules H4 to disclose the activity.

In response, MRSC reimbursed its nonfederal account \$21,402 for the federal share of expenses it acknowledged were allocable. The party also demonstrated that \$7,173 of the alleged allocable expenses identified in the audit were solely nonfederal. MRSC further contended that payments from its convention account were for social functions that did not relate to federal elections.

Ultimately, the final audit report concluded that MRSC should transfer \$154,778 from its federal account to its nonfederal account to cover the federal share of allocable expenses. This figure took into account the \$21,402 transfer the party had already made and the \$7,173 in expenses that were solely nonfederal.

### Misstatement of Financial Activity

A comparison of MRSC's reported activity to its bank records revealed misstatements of beginning cash, total receipts and total disbursements disclosed on the committee's 1995 and 1996 reports.

In response to the interim audit report, MRSC filed amended reports to correct the misstatements.

### Reporting Errors and Omissions

MRSC's reports contained a number of errors and omissions. Among the errors, the committee failed to itemize and report:

- Payroll disbursements of \$284,919 (and related transfers from the nonfederal account to the federal account) on Schedules H3 and H4;
- Transfers of \$634,239 from the nonfederal operating account to the federal allocation account for the nonfederal share of payments to vendors;
- Bank charges and disbursements to vendors totaling \$756,462;
- Transfers of \$13,500 to the nonfederal account; and
- An \$80,842 independent expenditure on behalf of a federal candidate.

In response, MRSC filed all schedules as recommended. ♦

## Public Funding

### Presidential Compliance Manual Available

The 2000 edition of the *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing* is now available. The manual helps publicly funded Presidential campaigns manage their accounting, reporting and recordkeeping, in compliance with the federal election laws.

The manual includes the Commission's revised "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding" (CMMR). The CMMR sets forth technical standards designed to ensure the compatibility of magnetic media, provided for Commission use during the matching fund submission process, and mandatory audits of these publicly funded campaign committees.

Copies of the manual are available from the FEC's Public Records office at 800/424-9530 (press 3) or 202/694-1120. The manual is also available on the Commission's Web site, as a PDF file, at <http://www.fec.gov/pdf/Compliance2000.pdf>. ♦

### April Matching Fund Payments

On April 28, 2000, the Commission approved an additional \$5,415,234.76 in matching fund payments to seven Presidential candidates. With these latest certifications, the FEC has now declared nine candidates eligible to receive a total of \$54,514,698.57 in federal matching funds for the 2000 election.

Due to a shortfall in the Presidential Election Campaign Fund, the U.S. Treasury Department has been making partial payments to the qualified candidates, based on the Commission's certifications. The chart below lists the most recent certifications and cumulative payments for each candidate. ♦

### Matching Funds for 2000 Presidential Candidates: April Certification

Candidate	Certification March 2000	Cumulative Certifications
Gary L. Bauer (R) <sup>1</sup>	\$ 68,422.52	\$ 4,618,611.55
Bill Bradley (D) <sup>2</sup>	\$ 277,762.50	\$12,390,505.77
Patrick J. Buchanan (Reform)	\$ 117,809.16	\$ 3,447,936.19
Al Gore (D)	\$ 996,715.38	\$14,122,762.38
John Hagelin (Natural Law)	\$ 134,910.00	\$ 234,910.00
Alan L. Keyes (R) <sup>3</sup>	\$ 359,607.58	\$ 2,592,093.75
Lyndon H. LaRouche, Jr. (D) <sup>4</sup>	\$0.00	\$901,338.93
John S. McCain (R) <sup>5</sup>	\$3,360,007.62	\$14,004,015.00
Dan Quayle (R) <sup>6</sup>	\$0.00	\$2,102,525.00

<sup>1</sup> Gary L. Bauer publicly withdrew from the race on February 4, 2000.

<sup>2</sup> Bill Bradley publicly withdrew from the race on March 9, 2000.

<sup>3</sup> Alan L. Keyes became ineligible for matching funds on April 20, 2000.

<sup>4</sup> Lyndon H. LaRouche, Jr. became ineligible for matching funds on April 6, 2000.

<sup>5</sup> John S. McCain publicly withdrew on March 9, 2000.

<sup>6</sup> Dan Quayle publicly withdrew from the race on September 27, 1999.

## Court Cases

### FEC v. Freedom's Heritage Forum

On April 28, 2000, the U.S. District Court for the Western District of Kentucky granted in part and denied in part the Freedom's Heritage Forum's motion to dismiss certain portions of the FEC's complaint against it.

#### Background

The Forum, a political committee that promotes pro-life and other social issues, made expenditures in connection with the planning and holding of a political meeting and the mailing of several political flyers during the 1994 Republican primary in Kentucky.

In its complaint, the Commission alleged that the Forum had violated sections §§441(a)(1)(A), 434(b) and 441d(a) of the Federal Election Campaign Act (the Act) by making excessive contributions, failing to report contributions and failing to include disclaimers on its communications. Specifically, the Commission maintained that the Forum had made coordinated expenditures (which are considered in-kind contributions) on behalf of a federal candidate that exceeded the Act's contribution limits, and that the Forum had distributed communications (seven flyers) containing express advocacy without the required disclaimers.

On September 29, 1999, the court ruled that the Forum's expenditures were permissible independent expenditures—not coordinated expenditures (not contributions). The court also maintained that only one of the four flyers it reviewed (exhibit 2) contained express advocacy and, thereby, required a disclaimer. For a summary of the decision, see the [December 1999 Record](#), p. 6.

On February 4, 2000, the Court denied an FEC motion to reconsider its decision with respect to express advocacy and disclaimers.

#### Current Decision: Express Advocacy

The court's most recent decision relates to the Forum's motion to dismiss Count VII of the Commission's Second Amended Complaint. In Count VII, the FEC had alleged that seven flyers the Forum had distributed in connection with the 1994 elections—including the four on which the court had already ruled—contained express advocacy, but lacked the disclaimers required by 2 U.S.C. §441d(a).

Having already ruled on four of the flyers, the court concluded that two of the three remaining flyers contained express advocacy and should have had disclaimers.

The first of them was a "Congressional Candidate Report" that compared one candidate's positions on certain issues to those of his opponents. It contained in a highlighted box: "IMPORTANT! Registered Democrats and Republicans can vote for [the named candidate] who actively opposes the liberal Clinton agenda. Vote November 8, 1994, 6 a.m. to 6 p.m." The court found that this statement was an exhortation to vote for the named candidate and therefore was express advocacy.

The second express advocacy flyer was a sample ballot that readers were to take to the polls on election day. It "explicitly urge[d] the reader to vote for the 'pro-family' candidates identified."

The other flyer was an invitation that included the statement: "We have the Pro-Abortionists right where we want them, divided and fighting each other. Now [the named candidate] can win with only 40% of the vote!" Because the flyer lacked Lacking an explicit exhortation to vote, the court concluded that

the statement was merely a "comment on the status of the election," not express advocacy.

Civil Action No. 3:98CV-549-S, U.S. District Court for the Western District of Kentucky at Louisville, April 28, 2000. ♦

### FEC v. Heckman and Fund for a Conservative Majority

On April 28, 2000, the U.S. District Court for the Eastern District of Virginia granted the FEC's motion to hold Robert Heckman and Fund for a Conservative Majority (FCM) in contempt of court for failing to pay a court-imposed civil penalty and for failing to file disclosure reports, as the court had ordered.

The court ordered Mr. Heckman and FCM to pay the outstanding civil penalty plus interest (amounting to \$5,540); to pay a \$5,000 contempt fine; and to file all outstanding disclosure reports. If Mr. Heckman and FCM fail to comply with the court's orders within 10 days, the court will impose additional contempt fines of \$100 per day until they do so.

### FEC Issues 1999 Annual Report

The FEC's *Annual Report 1999* is now available. The report describes the agency's actions during the last calendar year and includes the package of legislative recommendations the Commission recently transmitted to the President and Congress.

Free copies of are available by calling the FEC's Information Division at 800/424-9530 or 202/694-1100. It is also available through the FEC's Web site at <http://www.fec.gov/pdf/ar99.pdf>.



For more information, see the *Record*, [January 1997](#), p. 5, and [November 1997](#), p. 1.

Civil Action No. 96-1567-A, U.S. District Court for the Eastern District of Virginia, Alexandria Division, April 28, 2000. ♦

### **FEC v. Al Salvi for Senate Committee**

On March 8, 2000, the U.S. Court of Appeals for the Seventh Circuit affirmed a district court order dismissing a civil enforcement action the FEC had brought against the Al Salvi for Senate Committee and its treasurer.

In its original suit, filed on March 3, 1998, the Commission had asked the U.S. District Court for the Northern District of Illinois to find that the Salvi committee had misreported and failed to report in a timely manner more than \$1.1 million in contributions and loans. (See the [April 1998 Record](#), p. 4.)

The district court dismissed the case on technical grounds: The court held that the FEC had failed to obtain local counsel to process papers and handle emergencies.<sup>1</sup> The Commission refiled the suit. On November 30, 1998, the district court dismissed the Commission's second suit because it was identical

<sup>1</sup> *The Commission has had a long-standing policy of asking courts to waive the requirement to use local counsel when the agency is involved in cases outside the Washington, DC, area. Rather than relying on a local U.S. attorney (with the U.S. Department of Justice), the Commission has preferred to provide its own counsel in an effort to ensure the agency's complete independence. In the vast majority of cases, district court judges have routinely waived the requirement to use local counsel. In this case, the judge chose not to grant the Commission's request for the waiver.*

to the first, which the court had dismissed with prejudice.

After learning that the court's initial dismissal had been with prejudice, the Commission filed motions to vacate that dismissal and thereby permit consideration of the second suit, and to alter or amend the court's judgment in the second suit. Both motions were denied, and the Commission filed an appeal.

The appeals court affirmed the district court's decisions.

U.S. Court of Appeals for the Seventh Circuit, 99-1508 and 99-2183. ♦

### **Hooker v. FEC (3-99-0794)**

On April 12, 2000, the U.S. District Court for the Middle District of Tennessee granted the FEC's motion to dismiss John Jay Hooker's constitutional challenges concerning interstate campaign contributions and the Presidential Primary Matching Payment Act.

Mr. Hooker had alleged that the Federal Election Campaign Act preempts state laws that prohibit interstate campaign contributions, which he believes are unconstitutional. The court barred this challenge because Mr. Hooker had raised and litigated the same issue in prior cases that were dismissed.

Mr. Hooker had also contended that the Presidential Primary Matching Payment Act was unconstitutional because Congress lacked the power to enact it and because it violated the Guarantee Clause of the Constitution. The court dismissed this challenge for lack of standing.

For more information, see page 5 of the [October 1999 Record](#).

Case No. 3-99-0794, U.S. District Court for the Middle District of Tennessee, Nashville Division, April 12, 2000. ♦

### **FEC v. NRA (85-1018)**

On April 3, 2000, the U.S. District Court for the District of Columbia ordered the National Rifle Association (NRA) and its lobbying organization, the NRA America Institute for Legal Action, to pay a \$25,000 civil penalty for violating the ban on corporate contributions and expenditures. 2 U.S.C. §441b(a). The court levied an identical penalty against the NRA Political Victory Fund, the NRA's political action committee.

The violations related to the use of corporate funds for electioneering activities in connection with federal elections in 1978, 1980 and 1982. Specifically, the NRA and its lobbying arm, the NRA Institute for Legislative Action, spent treasury funds to support federal candidates and were subsequently reimbursed by the NRA Political Victory Fund.

On April 24, 2000, the NRA appealed the district court's decision to the U.S. Court of Appeals for the District of Columbia Circuit.

Case No. 85-1018 (JGP), U.S. District Court for the District of Columbia, April 3, 2000. ♦

### **New Litigation**

#### **FEC v. James Toledano**

On April 17, 2000, the FEC filed suit asking the U.S. District Court for the Central District of California to find that James Toledano, former Chair of the Orange County Democratic Central Committee (Orange County Party), violated 2 U.S.C. §432(b) by failing to forward two \$5,000 contributions to the treasurer of the Orange County Party within 10 days after receiving them.

The contributions in question were made by Debra and Paul LaPrade in early 1996. At the time, Ms. LaPrade's brother, James M. Prince, was a candidate for the

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Democratic nomination for Congress in California's 46th congressional district.

The LaPrades, who had already given the maximum to the Prince campaign, contributed to the Orange County Party. Upon receipt of the funds, Mr. Toledano opened a new bank account in the name of the party, with only his own signature required for withdrawals, and deposited the LaPrades' \$10,000 check into the account. He then spent the money to finance a slate mailer that advertised the California Democratic Party's endorsement of Mr. Prince.

Unaware of the contributions and expenditures, the Orange County Party's treasurer was unable to fulfill the Orange County Party's registration and reporting obligations under the federal election law. The treasurer learned of the LaPrades' contributions and the existence of the new bank account only one day before the primary.

The Commission learned of Mr. Toledano's actions through a letter sent by the Orange County Party itself, and a complaint filed by another individual. After finding probable cause to believe that Mr. Toledano had violated §432(b), the Commission attempted, but failed, to reach a conciliation agreement with him.<sup>1</sup> Unable to resolve the matter, the Commission voted to authorize this suit.

SACV-00-376-DOC (ANx), U.S. District Court for the Central District of California (Southern Division), April 17, 2000.◆

<sup>1</sup> In MURs 4389 and 4652, both related to this case, the LaPrades (the contributors) and the Prince for Congress Committee entered into conciliation agreements with the Commission.

## Outreach

### FEC Roundtables

The Commission will host roundtable sessions in June and August.

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

Registration is \$25 and will be accepted on a first-come, first-served basis. Please call the FEC before registering or sending money to be sure that openings remain in the session of your choice. Prepayment is required. The registration form is available at the FEC's Web site—<http://www.fec.gov>—and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call 800/424-9530 (press 1, then 3) or 202/694-1100.◆

### Roundtable Schedule

Date	Subject	Intended Audience
<b>June 7</b> 9:30 - 11 a.m.	<b>Partner/Partnership Federal Election Activity</b>	<ul style="list-style-type: none"> <li>Partnerships</li> <li>Lawyers, Accountants and Consultants to Above</li> </ul>
<b>August 2</b> 9:30 - 11 a.m.	<b>Update on New and Proposed FEC Filing Regulations</b> <ul style="list-style-type: none"> <li>State Filing Waiver</li> <li>Mandatory Electronic Filing</li> <li>Administrative Fines for Reporting Violations</li> <li>Election Cycle Reporting</li> </ul>	<ul style="list-style-type: none"> <li>PACs</li> <li>House and Senate Campaigns</li> <li>Political Party Committees</li> <li>Lawyers, Accountants and Consultants to Above</li> </ul>

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June 1, 2000  
Investigative Reporters and Editors  
New York, New York  
Bob Biersack

June 2, 2000  
The Urban Institute  
Washington, D.C.  
Commissioner Mason  
Commissioner Thomas  
Louise Wides

June 2, 2000  
Campaigns for People  
Austin, Texas  
Bob Biersack

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