

Record

July 2000

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Regulations

Administrative Fines Program

Beginning with the July 15 quarterly reports, the Commission will implement a new program for assessing civil money penalties for violations involving:

- Failure to file reports on time;
- Failure to file reports at all; and
- Failure to file 48-hour notices.

The Administrative Fines program is based on amendments to the Federal Election Campaign Act (the Act) that permit the FEC to impose civil money penalties, based on schedules of penalties, for violations of reporting requirements that occur between January 1, 2000, and December 31, 2001.

If the Administrative Fines program had been in place for the April 2000 quarterly reports, approximately 90 committees would have faced civil money penalties ranging from \$275 to \$12,000.

How the Program Works

In the past, the FEC handled reporting violations (late filers, nonfilers and committees that failed to file 48-hour notices) under the same enforcement procedures it employs for other alleged campaign finance violations, culminating in agreement on a civil penalty or court

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Court Cases

FEC v. Colorado Republican Federal Campaign Committee

On May 5, 2000, the U.S. Court of Appeals for the 10th Circuit affirmed a district court decision that the coordinated party expenditure limits at 2 U.S.C. 441a(d)(3) are unconstitutional.

Background

This case—on remand from the U.S. Supreme Court—involves \$15,000 worth of expenditures the Colorado Republican Party made in 1986 for advertisements critical of Democratic Senate candidate Tim Wirth. The Commission argued that those ads contained an “electioneering message” relating to a clearly identified candidate, and therefore represented coordinated expenditures by the party. (The Commission further maintained that these expenditures, when aggregated with previous expenditures by the party, exceeded the statutory limits of 441(a)(d).) The party contended that the ads did not contain express advocacy and were not subject to the 441a(d) limits. The party further argued that the 441a(d) limits violated its First Amendment rights.

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Information

FEC Names ADR Director

The Commission has named Allan Silberman Director of its newly formed Alternative Dispute Resolution (ADR) Office. Mr. Silberman has twenty years of experience in the field of mediation and dispute resolution. He is a former Vice President of the American Arbitration Association and, most recently, operated a private consulting business that specialized in providing dispute resolution services and training to clients.

Mr. Silberman will oversee the development and implementation of the Commission's ADR program, as it pertains to campaign finance related complaints filed with the FEC. The program will offer respondents the option to resolve their cases through negotiation and/or mediation, rather than through the FEC's regular enforcement process, if the case meets the FEC's ADR criteria.

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The Commission's new program is part of a government-wide move toward ADR, but is among the first designed to promote compliance with federal regulations outside the personnel area. The *Record* will provide additional information on the program as it becomes available. ♦

Louisiana Elections

In Louisiana, in the absence of a runoff election in December, there will be only one election (the general election in November) with only one contribution limit.

As a result of a 1997 U.S. Supreme Court decision and subsequent Federal court decisions on remand, all candidates in Louisiana, regardless of party affiliation, participate in a general election held on the same day as the national general election.¹ (There is no primary.) If a candidate in that election receives a majority of the votes or is unopposed, he/she becomes the officeholder. If not, an additional runoff election is held in December.

Under this system, candidates are entitled to one contribution limit for the November general election. They are entitled to a second contribution limit for the December runoff only if they participate in that election. If the runoff election is not held, then it is not considered an election, and any contributions received for the runoff must be returned, redesignated or reattributed within 60 days after the general election. See 11 CFR 110.1(b)(5), 110.2(b)(5) or 110.1(k)(3). ♦

¹ *Foster v. Love*, 522 U.S. 67 (1997), *Love v. Foster*, No. 95-788-B-M (M.D.La. May 21, 1998), and *Love v. Foster*, 147 F.3d 383 (5th Cir. 1998). *These decisions rendered inoperative the conclusions stated in FEC Advisory Opinion 1984-54.*

Reports

Nonfilers

The Committee to Elect Farley 2000 and Joel Farley, as its treasurer, failed to file a pre-primary report in connection with the June 6 primary election in New Jersey. The report, which was due May 25, was to have included financial activity for the period April 1 - May 17.

In addition, the Jenerette for U.S. Congress committee and its treasurer, Van E. Jenerette, failed to file a pre-primary report in connection with the June 13 primary election in South Carolina. The report was due June 1, and was to have included financial activity for the period April 1 - May 24.

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. Note that, beginning with the July 15 quarterly reports, the Commission will institute an Administrative Fines program for late filing committees. For more information on that program, see p. 1. ♦

Need FEC Material in a Hurry?

Use FEC Faxline to obtain FEC material fast. It operates 24 hours a day, 7 days a week. More than 300 FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

Use a touch tone phone to dial **202/501-3413** and follow the instructions. To order a complete menu of Faxline documents, enter document number 411 at the prompt.

Regulations

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action. Under the new rules, if the Commission finds “reason to believe” that a committee violated the law, the Commission will provide written notification to the committee containing the factual and legal basis of its finding and the amount of the proposed civil money penalty. The committee will have 40 days from the date of the reason-to-believe finding to either pay the civil money penalty or submit to the Commission a written response, with supporting documentation outlining the reasons why it believes the Commission’s finding and/or penalty is in error. (The Commission strongly encourages respondents to submit their documents in the form of affidavits or declarations. Documents submitted in these forms are generally given more weight and credibility.) If the committee submits such a response, it will be forwarded to an impartial reviewing officer—someone employed by the FEC who was not involved in the original reason-to-believe finding.

After reviewing the Commission’s reason-to-believe finding and the committee’s written response, the reviewing officer will forward a recommendation to the Commission, along with the original reason-to-believe finding, the committee’s written response and any supporting documentation. Respondents will have an opportunity to submit a written response to the reviewing officer’s recommendation. The Commission will then make a final determination as to whether the committee violated 2 U.S.C. §434a and, if so, assess a civil money penalty based on the schedules of penalties.

Committee treasurers may be liable for civil money penalties if reports are not filed on time.

Challenging Commission Determinations

As noted above, the new rules allow committees to challenge the reason-to-believe finding of the Commission and to seek review by submitting documentation to a reviewing officer, who will make a recommendation to the Commission as to the final determination.

Should a committee fail to pay the civil money penalties or submit a challenge within the original 40 days, the Commission will issue a final determination with an appropriate civil money penalty. The committee will then have 30 days to pay the civil penalty or seek judicial review through a U.S. district court in the area where the committee resided or conducted business.¹

Reports Covered

All reports that committees are required to file are covered under the Administrative Fines program. This includes semi-annual, quarterly, monthly, pre-election, 30-day post-general and special election reports, as well as 48-hour notices that candidate committees are required to file for elections in which the candidate participates.

Calculating Penalties

The interaction of several factors will determine the size of the penalty:

1. Election sensitivity of the report;
2. Committee as late filer, including the number of days late, or nonfiler;
3. The amount of financial activity in the report; and
4. Prior civil money penalties for reporting violations.

One factor used to determine the amount of the civil money penalty is the *election sensitivity* of the report.

¹ The committee may also seek judicial review if it disagrees with a final determination made by the Commission after the committee submits a challenge.

Under the new rules, the following reports are considered election sensitive: the October quarterly, the October monthly and the pre-election reports for primary, general and special elections. All other reports are considered nonsensitive.

The Commission will also consider whether the committee is a *late filer* or a *nonfiler*. In the case of nonsensitive reports, a committee will be considered a late filer if it files its report within 30 days after the due date, and a nonfiler if it files its report later than that.

In the case of election-sensitive reports, a committee will be considered a late filer if it files a report after its due date, but more than four days before the applicable election; a committee that files later than that will be considered a nonfiler.

The third factor is the *amount of financial activity*—that is, the total amount of receipts and disbursements in the report.

The final factor is the existence of *prior civil money penalties* for reporting violations under the Administrative Fines program.

Schedules of Penalties

The schedules of penalties, included in the new regulations, are based on the factors described above.

For Reports Other Than 48-Hour Notices

The calculation of the civil money penalties for late filers and nonfilers of reports, other than 48-hour notices, has four components, as described below.

1. Base Amount for Late Filers.

In calculating the penalty, the Commission begins with the *base amount*, a prescribed figure that depends on the total amount of financial activity in the report and the election sensitivity of the report. For example, on an election-sensitive report, if the total amount

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of receipts and disbursements is \$80,000, the base amount will be \$600. Or, if the total amount of receipts and disbursements is \$500,000, the base amount will be \$3,750. The base amount ranges from \$100 to \$5,000 for nonsensitive reports and from \$150 to \$7,500 for election-sensitive reports.

2. Additional Set Amount for Late Filers.

The Commission then adds to the base amount a number that is calculated by multiplying a *set amount*, based on the financial activity in the report, by the number of days the report is filed late (up to 30 days). The set amount ranges from \$25 to \$200 per day, depending on the total amount of receipts and disbursements.

3. Base Amount for Nonfilers.

In the case of nonfilers, the Commission begins with a *base amount* that depends on both the election sensitivity of the nonfiled report and the estimated level of activity based on the average activity in the current or prior two-year election cycle. The base amount will range from \$900 to \$12,000 for nonsensitive reports and from \$1,000 to \$16,000 for election-sensitive reports.

4. Additional Premium for Previous Violation(s).

With regard to both late filers and nonfilers, the Commission adds a premium for prior civil money penalties assessed for failure to file timely reports. The premium is equal to 25 percent of the civil money penalty times the number of final civil money penalties assessed during the previous and current two-year election cycles under the Administrative Fines program.

For 48-Hour Notices

The calculation of the civil money penalties for committees that fail to file timely 48-hour notices is \$100 for each nonfiled notice plus 10 percent of the dollar amount of the contributions not timely reported. The civil money penalty increases by 25 percent for each

time a prior civil money penalty was assessed during the previous and current two-year election cycles under the Administrative Fines program.

The table below provides examples of how civil money penalties are calculated.

EXAMPLE 1: Late Filer of Election-Sensitive Report. A committee files its October quarterly report (an election-sensitive report) 10 days late. The level of financial activity on the report is \$105,000, and the committee has one prior violation in the current two-year election cycle.

Applicable formula:

$$\text{Penalty} = [\text{base amount} + (\text{set amount} \times \text{number of days late})] \times [1 + (.25 \times \text{number of previous violations})]$$

$$\text{Penalty} = [\$900 + (\$125 \times 10)] \times [1 + (.25 \times 1)]$$

$$\text{Penalty} = \$2687.50$$

EXAMPLE 2: Late Filer with Relatively Little Activity, No Prior Violations. A committee files its July quarterly report on August 4. The report contains \$500 in receipts and disbursements, and the committee has no prior violations.

Applicable formula:

$$\text{Penalty} = \text{The lesser of: the level of activity in the report; or} \\ [\text{base amount} + (\text{set amount} \times \text{number of days late})]$$

$$\text{Penalty} = \text{The lesser of: } \$500 \text{ or } [\$100 + (\$25 \times 20)]$$

$$\text{Penalty} = \text{The lesser of: } \$500 \text{ or } \$600$$

$$\text{Penalty} = \$500$$

EXAMPLE 3: Nonfiler of Nonelection-Sensitive Report. A committee fails to file its July quarterly report within 30 days of its due date. Based on its previous filings, the committee's estimated level of activity is \$50,000. The committee has one prior violation in the current two-year election cycle.

Applicable formula:

$$\text{Penalty} = \text{base amount} \times [1 + (.25 \times \text{number of previous violations})]$$

$$\text{Penalty} = \$2,700 \times [1 + (.25 \times 1)]$$

$$\text{Penalty} = \$3,375$$

EXAMPLE 4: Nonfiler of 48-Hour Notice. A House campaign committee fails to submit a 48-hour notice to disclose its receipt of a last-minute \$5,000 PAC contribution. The campaign has two prior violations in the current two-year election cycle.

Applicable formula:

$$\text{Penalty} = [\$100 + (.10 \times \text{amount of contribution(s) not timely reported})] \times [1 + (.25 \times \text{number of previous violations})]$$

$$\text{Penalty} = [\$100 + (.10 \times \$5,000)] \times [1 + (.25 \times 2)]$$

$$\text{Penalty} = \$900$$

Collecting Unpaid Penalties

When a respondent fails to pay the civil penalty, the Commission will transfer the case to the U.S. Department of the Treasury for collection.² Alternatively, the Commission may decide to file suit in the appropriate U.S. district court to collect owed civil money penalties, under 2 U.S.C. §437g(a)(6).

More Information

Copies of this article will soon be mailed to all political committees. Additional information is available on the Commission's home page (www.fec.gov). Click on the Administrative Fines graphic. Committees seeking additional information on the program may contact the FEC's Information Division, 202/694-1100 or toll free at 800/424-9530 (press 1, then 3).

Free copies of the final rules as they appeared in the *Federal Register* (65 FR 31787, May 19, 2000) are available through the FEC Faxline (202/501-3413, document 247) and on the FEC's Web site at <http://www.fec.gov/pdf/00%20Administrative%20Fines%20E&J.pdf>. ♦

² In compliance with the Debt Collection Improvement Act of 1996 (31 U.S.C. §3711(g)).

FECFile Help on Web

The manual for the Commission's FECFile 3 electronic filing software is now available on the FEC's web site. You can download a PDF version of the manual at <http://www.fec.gov/pdf/fecfile3.pdf>.

State Filing Waiver Rules Take Effect

The FEC's revised rules on filing copies of reports and statements with state officers—the State Filing Waiver program—took effect June 7, 2000. (65 FR 36053, June 7, 2000).

The rules implement a 1995 amendment to the Federal Election Campaign Act that gives the FEC authority to exempt states meeting certain criteria from the requirement to receive and maintain copies of FEC reports. 2 U.S.C. §439(c). To date, 45 states/territories have qualified for the exemption, referred to as a state filing waiver.²

The final rules appeared in the *Federal Register* on March 22, 2000 (65 FR 15221). For a summary of the rules, see the [April Record](#), p. 3.

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¹ The waiver program, itself, has been in place since October 1999.

² 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.

Court Cases

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Colorado I

In the first ruling on this case, the U.S. District Court for the District of Colorado concluded that the ads were not subject to the 441a(d) limits because they did not contain express advocacy. Having already ruled in the party's favor, the court did not address the party's constitutional challenge.

On appeal, the U.S. Court of Appeals for the 10th Circuit, agreeing with the FEC that a 441(a)(d) expenditure need only depict a clearly identified candidate and convey an electioneering message, reversed the district court's decision. The appeals court also held that the 441a(d) limits did not violate the party's First Amendment rights.

The U.S. Supreme Court agreed to hear the case principally to resolve the constitutional question. In its June 26, 1996, plurality decision, the Court concluded that the Party's expenditures had not been coordinated with a candidate, and were instead independent expenditures. The Court then also concluded that the 441a(d) limits were unconstitutional as applied to political parties' independent expenditures. The Court did not rule on the constitutionality of the limits as applied to coordinated party expenditures, but instead, remanded the case to the district court for further proceedings on that issue.

Colorado II

On remand, both sides compiled an extensive record focusing on the constitutional issue raised in Colorado I. On February 23, 1999, the district court ruled that the coordinated expenditure limits were unconstitutional. The court concluded the FEC had failed to offer

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evidence that there was a compelling need for limits on coordinated party expenditures. In its opinion, the court equated coordinated party expenditures with a candidate's own campaign expenditures which, based on the Supreme Court's ruling in *Buckley v. Valeo*, cannot be limited. (See the [April 1999 Record](#), p. 1.)

Current Decision

To support the constitutionality of the 441a(d) limits, the Commission offered three principal arguments that the limits prevent corruption or the appearance of corruption:

1. Section 441a(d)(3) limits the extent to which generous contributors to the party can influence the party "to either support or neglect those candidates who endorse or eschew the interests of the large contributor";
2. The cap on coordinated party expenditures reduces the ability of a small group of incumbent officeholders (the party elite) to exert improper pressure on the party's candidates by granting or withholding the use of party funds; and
3. The 441a(d) limits reinforce the Act's cap on individual contributions. Without them, individuals could try to circumvent the \$1,000 per candidate, per election contribution limit by giving the maximum \$20,000 per year contribution to the party with the expectation that the funds would be spent to support a particular candidate.

The court, in a 2-1 decision, rejected the first of these arguments by noting, in part, that—based on the Supreme Court's earlier ruling in this case—party committees can already make unlimited independent expenditures. The court refused to consider the potential corrupting influence of unregulated "soft

money" contributions, since those funds cannot legally be spent to influence federal elections.

With respect to the FEC's second argument, the court concluded that "there is nothing pernicious" about a party "shaping the views of its candidates." The court added that, "Parties are simply too large and too diverse to be corrupted by any one faction."

The court dismissed the Commission's final argument by noting that 2 U.S.C. 441a(a)(8) requires that contributions earmarked for a particular candidate (i.e., that pass through an intermediary) be treated as contributions from the original source to the candidate.

Having found no persuasive evidence that coordinated party expenditures corrupt, or appear to corrupt, the electoral process, the appeals court upheld the district court's decision. The court concluded that "441a(d)(3)'s limit on party spending . . . constitutes an 'unnecessary abridgment' of First Amendment freedoms." The court stated explicitly that its analysis and holding apply only to party spending in connection with Congressional races.¹

In dissent, Chief Judge Seymour found the "majority opinion fundamentally flawed in several respects." In her view, the panel majority "substitute[d] its judgment for that of Congress on quintessentially political matters the Supreme Court has cautioned courts to leave to the legislative process. In so doing, the majority creates a special category for political parties based on its view of their place in American politics, a view at odds with history and with legislation drafted by politicians."

U.S. Court of Appeals for the 10th Circuit (99-1211). ♦

FEC Statement on the Colorado Decision¹:

"In a split decision, the United States Court of Appeals for the Tenth Circuit recently held that 2 U.S.C. §441a(d)(3), which limits the amount of a political party's coordinated expenditures in congressional elections, violates the First Amendment. *FEC v. Colorado Republican Federal Campaign Committee*. The Solicitor General has decided to seek review of that decision by the United States Supreme Court. Until the Supreme Court resolves the case, the Federal Election Commission will not file any action in the courts in the Tenth Circuit to enforce section 441a(d)(3). The Commission will, however, generally continue the administrative processing of matters concerning section 441a(d)(3).

Only the Tenth Circuit has found section 441a(d)(3) unconstitutional, and its decision is not controlling outside that court's geographic jurisdiction. Furthermore, if the United States Supreme Court overrules the Tenth Circuit, the Court's decision upholding section 441a(d)(3) will apply retroactively to any activities in the interim that violate section 441a(d)(3), even in the Tenth Circuit. See *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529 (1991); *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86 (1993). Therefore, anyone who chooses to act in contravention of section 441a(d)(3)—within or without the Tenth Circuit—before the Supreme Court rules in *Colorado* could be subject to liability for violating the statute if the *Colorado* decision is reversed."

¹ Approved June 21, 2000.

¹ See footnote 1 of the court's opinion.

Renato P. Mariani v. USA

On May 18, 2000, the U.S. Court of Appeals for the Third Circuit rejected constitutional challenges to the Federal Election Campaign Act's (the Act's) prohibitions on corporate contributions and contributions in the name of another. 2 U.S.C. §§441b and 441f.

Renato P. Mariani brought the challenges under 2 U.S.C. §437h, which permits individual voters to challenge the constitutionality of any provision of the Act in district court. The district court certifies the constitutional questions to the circuit court of appeals, which hears the cases sitting en banc.

Mr. Mariani is currently the subject of criminal prosecution concerning the very provisions he challenged in this case.

Corporate Contributions

Mr. Mariani argued that the development of issue advocacy and the increasing role of unregulated "soft money" in the electoral process "has so eroded the theoretical distinction between hard and soft money" that §441b's prohibition against corporate contributions has become "fatally underinclusive." As such, he asserted, it should be struck down. He also challenged the ban as a violation of corporations' First Amendment rights.

In response, the court acknowledged that "[t]he practical distinctions between hard and soft money may have diminished in the past decade with the rise of issue advocacy, but not to such an extent that there is no practical distinction between the two." The court went on to note, "If hard and soft money were equivalent, it would be hard to imagine why Mariani would have gone to the lengths he allegedly went to in order to give hard money instead of soft." Noting that Congress can act incrementally—and referencing legal precedents—the court concluded that the corporate ban "is not fatally underinclusive."

The court also rejected the First Amendment challenge, citing the U.S. Supreme Court's decisions in *FEC v. National Right to Work Committee*, *FEC v. National Conservative PAC* and *Austin v. Michigan Chamber of Commerce*. Though the court stated that none of these cases directly addressed the constitutionality of the corporate ban, their "strong implications" led the court "to reject Mr. Mariani's facial challenge to §441b(a)."

Contributions in the Name of Another

Mr. Mariani argued that §441f's ban on contributions in the names of others violates the First Amendment by failing to advance a compelling government interest and is underinclusive because it does not apply to soft money donations.

The appeals court found the 441f challenges "patently without merit." The court noted that the Supreme Court, in *Buckley v. Valeo*, specifically held that the Act's disclosure requirements were constitutional absent a "reasonable probability" that disclosure would result in "threats, harassment, or reprisals" for contributors. Since contributions in the names of others undermine disclosure, the court rejected Mr. Mariani's First Amendment challenge.

The court also rejected Mr. Mariani's underinclusiveness argument. The court concluded that "Congress was free to determine that disclosure of hard money donations was the most important form of disclosure, and to limit the regulation to that area."

U.S. Court of Appeals for the Third Circuit, No. 99-3875. ♦

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PACronyms, Other PAC Publications Available

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

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

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

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

- An alphabetical list of all registered PACs showing each PAC's identification number, address, treasurer and connected organization (\$13.25).
- A list of registered PACs arranged by state providing the same information as above (\$13.25).
- An alphabetical list of organizations sponsoring PACs showing the PAC's name and identification number (\$7.50).

The Disclosure Division can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St., N.W.

Court Cases

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On Appeal

John Jay Hooker v. FEC (3-99-0794)

On May 11, 2000, John Jay Hooker appealed this case to the U.S. Court of Appeals for the Sixth Circuit. He seeks review of a district court order dismissing his constitutional challenges concerning interstate campaign contributions and the Presidential Primary Matching Payment Act. See the [June 2000 Record](#), p. 9. ♦

Reform Party of USA v. Russell J. Verney **Reform Party of USA v. John J. Gargan**

Former Reform Party leaders John J. Gargan and Ronn Young have appealed this case to the U.S. Court of Appeals for the Fourth Circuit. They seek review of a district court decision that upheld their removal as chairman and treasurer of the Reform Party. See [May 2000 Record](#), p. 9. ♦

The FEC Takes Visa and Mastercard

FEC customers can pay for FEC materials with Visa or Mastercard. Most FEC materials are available free of charge, but some are sold, including financial statistical reports (\$10 each), candidate indexes (\$10) and PAC directories (\$13.25). The FEC also has a 5¢ per page copying charge for paper documents and a 15¢ per page copying charge for microfilmed documents.

New Litigation

Committee for a Unified Independent Party v. FEC

The Committee for a Unified Independent Party and other plaintiffs (collectively “the Committee”) ask the U.S. District Court for the Southern District of New York to find that the FEC’s debate regulations are not authorized by the Federal Election Campaign Act (the Act) and violate the First and Fifth Amendments to the U.S. Constitution.

The regulations in question, 11 CFR 110.13 and 114.4(f), permit nonprofit corporations to stage candidate debates and to accept donations from corporations and labor unions to defray the costs of those debates. This exemption from the general prohibition against corporate and union contributions and expenditures is based on a statutory provision that permits “nonpartisan activity (by corporations or unions) designed to encourage individuals to vote or to register to vote.” 2 U.S.C. §431(9)(B)(ii).

The Committee argues that debates are not “nonpartisan activity designed to encourage individuals to vote or to register to vote” and are therefore not authorized by the Act. Further, even if debates were considered exempt nonpartisan activity, the FEC’s regulations unlawfully expand the statutory exemption to permit debates that are neither nonpartisan nor designed to encourage voting. Rather, the debate regulations permit corporations and unions to make prohibited contributions to influence federal elections.

The Committee further contends that the debate regulations “tilt the electoral playing field so as to put minor parties . . . and persons and organizations seeking to promote a democratic multiparty electoral process, at a competitive disadvantage” in violation of the First and Fifth Amendments to the U.S. Constitution.

U.S. District Court for the Southern District of New York, 00-CIV-3476, May 8, 2000. ♦

Advisory Opinions

AO 2000-05

Contributions by Indian Tribe

The Oneida Nation of New York (the Nation) may make contributions in support of federal candidates totaling in excess of \$25,000 in a calendar year.

The Nation, an Indian tribe located in central New York state, is a non-corporate entity.

Under the Federal Election Campaign Act (the Act), no “person” may contribute in excess of \$1,000 per candidate, per election. The Act defines the term “person” as including an “individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons....” 2 U.S.C. 431(11). As indicated in AO 1999-32, the Nation falls under the category of “any other organization or group of persons.” Thus, the Nation is a person and its contributions are subject to the \$1,000 per election, per candidate limit.

By contrast, the Nation is not subject to the \$25,000 annual contribution limit prescribed under 2 U.S.C. §441a(a)(3). That limit applies only to “individuals,” prohibiting them from contributing more than \$25,000, in aggregate, per calendar year. Although the Nation is a person, it is not an individual. Therefore, it is not subject to the \$25,000 limit.

The Nation said that the source of its funds for its political contributions was its general treasury funds. These funds included revenue generated by several incorporated businesses that it owns, but the Nation explained that it had sufficient permissible funds in its general treasury (i.e., funds that comply with the Act’s limitations and prohibitions) to make its contributions.

Since the Nation did not request an advisory opinion on the source of funds that may be lawfully used, the Commission did not issue an opinion on that issue.

Date Issued: May 16, 2000;
Length: 3 pages. ♦

AO 2000-06

Use of Federal Convention Funds

The Reform Party may use federal convention funds to pay for the development of a voter data base and balloting system to choose the party's presidential candidate.

As part of the Reform Party's nominating process, a national vote is held through which the presidential candidate is chosen. According to the Reform Party's nomination rules, those who can participate in the national vote include all members of the Reform Party, others who want to participate in the Reform Party organization in their state and those who sign a nominating petition for a Reform Party candidate. The party will compile the names of these people and put them into a voter data base. The national vote will take place when these voters cast their ballots by telephone, mail or e-mail during July 2000. The party will then tabulate the ballots and announce the results at the Reform Party National Convention in August 2000.

The Reform Party has qualified as a minor party by meeting the criteria at 11 CFR 9002.7. Under 26 U.S.C. §9008(b)(2), the national committee of a minor party is entitled to federal funding for its presidential nominating convention to pay for convention expenses. Commission regulations list examples of permissible convention expenses at 11 CFR 9008(a)(4), but the list does not include anything specific to the Reform Party's plan. However, Commission regulations make clear that the list is not

exhaustive. As stated in the Explanation and Justification to the original regulations, "the national committee is . . . not limited to using its public funds only for the expenses listed but may also use public funds to defray any other expense with respect to the convention." 44 FR 83036 (November 1, 1979).

The costs of the voter data base and balloting system are acceptable convention expenses because they are integral to the convention process. It is the use of the data base and balloting procedure which results directly in the choice of the presidential candidate, who is later announced at the convention. Therefore, the Reform Party may pay for them with federal convention funds. By contrast, payments made to help candidates attain ballot access and thus qualify for the primary would not be a permissible use of public convention funding.

Date Issued: May 31, 2000;
Length: 5 pages. ♦

AO 2000-07

Use of Corporate Web Sites to Provide PAC Information and Solicit Contributions

Alcatel USA, Inc., may post on its government relations intranet Web site (which is accessible to all employees at Alcatel) certain messages referring to Alcatel PAC because the messages do not constitute a solicitation; they do not encourage contributions; and they include a statement that Alcatel will not accept contributions from those outside the restricted class.¹ Additionally, Alcatel PAC may use electronic mail to communicate with the restricted class and to solicit it for PAC contributions.

¹ The restricted class includes the executive and administrative class, stockholders and the families of both groups. 11 CFR 114.1(j).

Although neither the Federal Election Campaign Act nor Commission regulations specifically address the issue of what makes a corporate communication a solicitation, previous Commission advisory opinions offer guidance on this matter. See AOs 1999-6, 1991-3, 1988-2 and 1983-38.

Government Relations Intranet Site

Alcatel's government relations site, which is accessible by all employees at Alcatel, does not contain a solicitation. The intranet Web site states that Alcatel supports Alcatel PAC, and it briefly describes the functions of any PAC and the rules that govern PACs. Although the site also states that employees may contact the PAC for information on their eligibility and the PAC's activities, this statement merely conveys information that might encourage an inquiry; it does not encourage contributions.

A second Web page (also viewable by all employees) introduces the PAC Web site and repeats the statement about contacting the PAC. This page, however, discourages attempts to contribute by stating:

"Federal law prohibits the Alcatel USA Political Action Committee from soliciting donations from other than stockholders, executive and administrative personnel and the families of such individuals. Any contribution received from any other person will be returned to the donor."

Given the content of the government relations web page and the statement that Alcatel will not accept contributions from those outside the restricted class (contained on the page introducing the PAC site), the messages on the government relations site and the Web page introducing the PAC site do not, either separately or taken together, constitute a solicitation.

(continued on page 10)

Advisory Opinions

(continued from page 9)

PAC Site

The PAC Site is available only to the restricted class through the use of a password. Those who qualify for access to the site (the restricted class only) will likely receive PAC contribution solicitations once they enter the site. By providing only the restricted class with a password to the PAC site, Alcatel ensures that solicitations for contributions to the PAC comply with the restrictions of 2 U.S.C. §441b(b)(4)(A)(i) and 11 CFR 114.5(g).

E-Mail List

Alcatel also may use an electronic mailing list containing only the e-mail addresses of those in the restricted class to communicate with the restricted class and to solicit contributions to the PAC. See AO 1995-33.

Date Issued: May 31, 2000;
Length: 6 pages. ♦

Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* starting with January 1996 are available through the Internet as PDF files. Visit the FEC's World Wide Web site at <http://www.fec.gov> and click on "What's New" for this issue. Click "Campaign Finance Law Resources" to see back issues. Future *Record* issues will be posted on the web as well. You will need Adobe® Acrobat® Reader software to view the publication. The FEC's web site has a link that will take you to Adobe's web site, where you can download the latest version of the software for free.

Advisory Opinion Requests

AOR 2000-12

Use of campaign funds by withdrawn, and "winding down" publicly funded Presidential candidates to pay for convention-related expenses (Bill Bradley for President, Inc. and McCain 2000, Inc., May 24, 2000)

AOR 2000-13

Application of "press exemption" to corporation's internet video coverage of Republican and Democratic national conventions (Ampex Corporation and iNEXTV Corporation, May 31, 2000)

AOR 2000-14

Qualification as state committee of political party (New York State Committee of the Working Families Party, May 31, 2000)

AOR 2000-15

State credit union league's use of payroll deduction to collect contributions from executive employees for SSF of affiliated federation of trade associations (Credit Union National Association, Inc., New York State Credit Union League, Inc., and Credit Union Legislative Action Committee, June 1, 2000)

AOR 2000-16

Research study of young voters to determine effect of Internet campaign ads in 2000 elections on their voting participation (Third Millennium: Advocates for the Future, Inc., June 9, 2000)

AOR 2000-17

Proposed formation and administration of SSF by US subsidiary of foreign corporation (Extendicare Health Services, Inc., June 9, 2000)

AOR 2000-18

Close of period to claim Federal matching funds for Presidential candidate seeking nomination by new political party (Nader 2000 Primary Committee, Inc., June 12, 2000) ♦

Statistics

Congressional and Party Receipts Increase

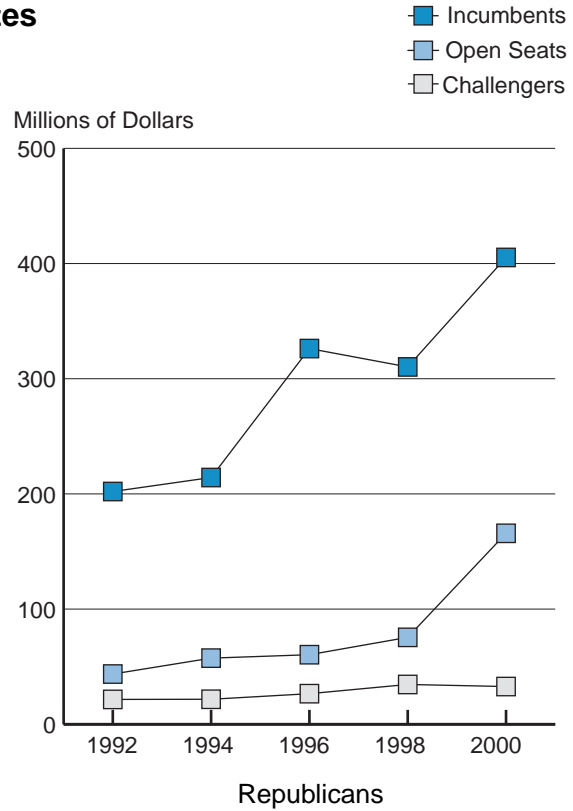
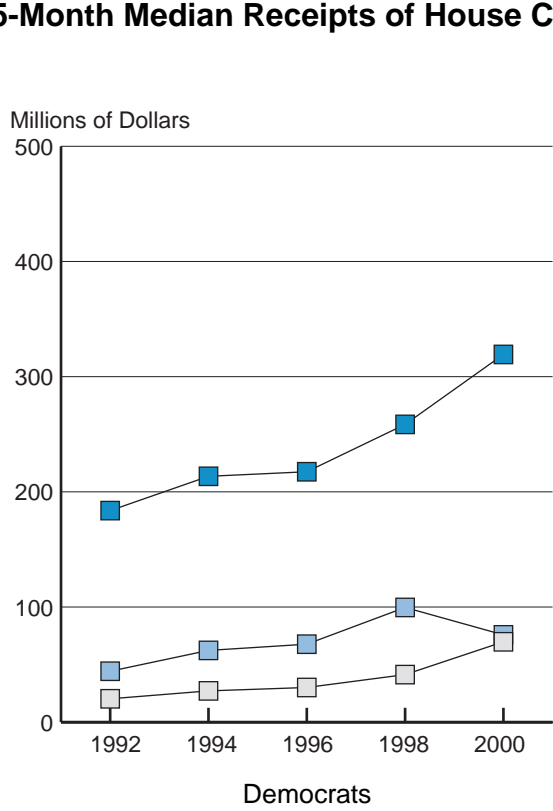
Congressional candidates raised nearly \$125 million more during the first 15 months of the 2000 election cycle than during the same period in 1997-98. In total, House and Senate candidates raised \$462.8 million and spent \$252.4 million between January 1, 1999, and March 31, 2000. See the chart at the top of page 11 for an historical view of median receipts by House candidates.

For the major national party committees, federal receipts increased by 18 percent over 1997-98, and soft money receipts rose by 66 percent. The Republicans raised more in both hard and soft money than the Democrats. The Republican national committees raised \$129.2 million in hard dollars, compared to the Democrats' \$77 million. In soft money, the Republicans collected \$86.4 million to the Democrats' \$80.2 million. See the chart on the bottom half of page 11.

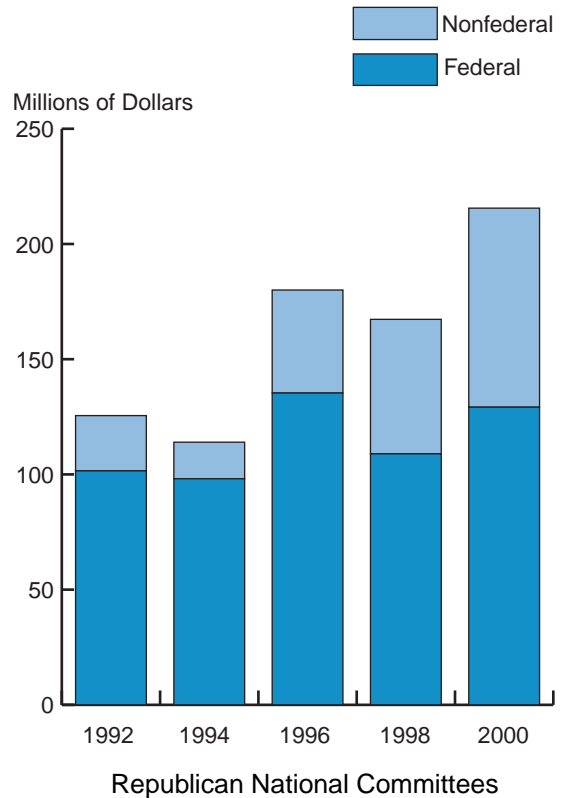
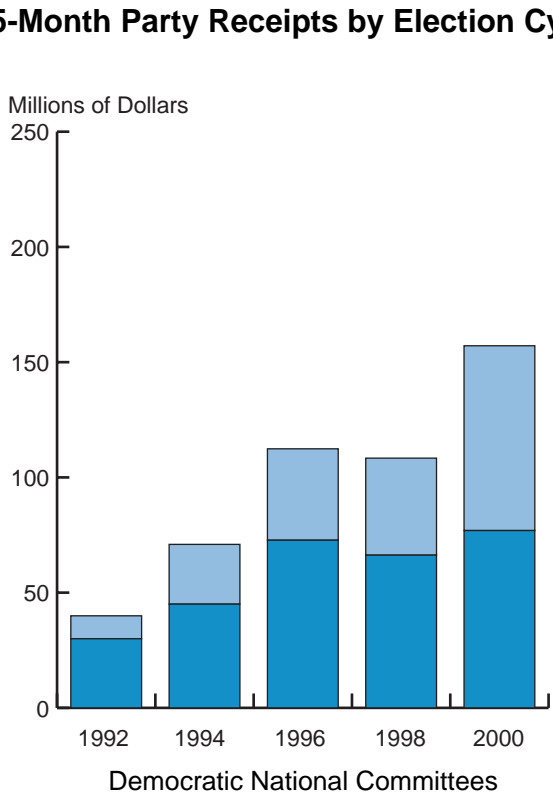
Additional details are available in two news releases dated June 5, 2000. The releases, which include statistical information dating back to the 1988 election cycle, are available:

- On the FEC Web site at <http://www.fec.gov/news.html>;
- From the Public Records Office (800/424-9530, press 3) and the Press Office (800/424-9530, press 5); and
- By fax (call the FEC Faxline at 202/501-3413 and request documents 612 and 613). ♦

15-Month Median Receipts of House Candidates



15-Month Party Receipts by Election Cycle



Outreach

FEC Roundtables

The Commission will host roundtable sessions in August and September.

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

Registration is \$25 and will be accepted on a first-come, first-served basis. Please call the FEC before registering or sending money to be sure that openings remain in the session of your choice. Prepayment is required. 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. ♦

800 Line

Membership Organization vs. Trade Association: Which One Are You?


Membership organizations and trade associations share many of the same characteristics. Trade associations are, in fact, a type of membership organization. However, specific criteria set trade associations apart from other kinds of membership organizations.

Definition of Membership Organization

Generally, a membership organization (of any type, including a cooperative, a labor organization and a trade association) is defined by the following traits:

- It provides for members in its articles and bylaws;

Roundtable Schedule

Date	Subject	Intended Audience
August 2 9:30 - 11 a.m. 	Update on New and Proposed FEC Reporting Regulations <ul style="list-style-type: none"> • State Filing Waiver • Mandatory Electronic Filing • Administrative Fines for Reporting Violations • Election Cycle Reporting 	<ul style="list-style-type: none"> • PACs • House and Senate Campaigns • Political Party Committees • Lawyers, Accountants and Consultants to Above
September 13 9:30 - 11 a.m.	Pre-Election Reporting Tune-Up <ul style="list-style-type: none"> • October Deadlines • Last-Minute Notices • Problems to Avoid • Your Questions Answered 	<ul style="list-style-type: none"> • PACs • House and Senate Campaigns • Political Party Committees • Lawyers, Accountants and Consultants to Above

- It seeks members;
- It acknowledges the acceptance of members (e.g., by distributing membership cards); and
- Is not organized primarily for the purpose of influencing the election of an individual for federal office.

Definition of Trade Association

Following are the more specific criteria that distinguish a trade association from other membership organizations:

- The membership of a trade association is comprised of persons and/or companies engaged in a similar or related line of commerce or business; and
- A trade association is organized to promote and improve the business conditions of its members, but the organization itself does not make a profit, and its net earnings do not benefit any members.

Unique Solicitation Rules for Trade Associations

When raising funds for their PACs, no membership organization

of any type may solicit its corporate members.¹

Trade associations, however, are permitted to solicit the *restricted class*² of their corporate members, provided they first obtain the approval of the corporate members. 11 CFR 114.8(c). Other types of membership organizations may not solicit the restricted class of their corporate members.

For more information regarding trade association solicitations and the special rules on seeking prior corporate approval, see the [Campaign Guide for Corporations and Labor Organizations](#), Appendix C.

(continued on page 13)

¹ Membership organizations are permitted to solicit their noncorporate members, their executive and administrative personnel and the families of both groups.

² The restricted class consists of a corporation's executive and administrative personnel, stockholders and the families of both groups.

800 Line

(continued from page 12)

Definition of Federation of Trade Associations

A federation of trade associations is an organization representing trade associations involved in the same or an allied line of commerce. 114.8(g)(1). A federation may solicit contributions from the restricted class of a member corporation of a trade association that is a member of the federation.

Examples of Trade Associations and Federations of Trade Associations

Through various advisory opinions, the Commission has cited some examples of a trade association and a federation of trade associations.

- The Credit Union National Association (CUNA) was a trade association federation composed of state credit union leagues. [AO 1998-19](#).
- The Commercial Finance Association (CFA) and its affiliated regional chapters were all characterized as trade associations. [AO 1999-16](#).
- The Michigan State Chamber of Commerce could not be considered a federation of trade associations because its membership consisted of individuals, corporations and local chambers of commerce that were not necessarily involved in the same or allied line of commerce. [AO 1985-37](#).
- The Association of Trial Lawyers of America (ATLA) qualified as a trade association. [AO 1977-44](#) and [AO 1996-1](#), footnote 1.

Public Funding

Adjusted Payment for Reform Party Convention

On May 25, the Commission approved an additional public funding payment of \$53,769 for the Reform Party's 2000 presidential nominating convention. This additional payment reflects an adjustment based on the consumer price index. With this payment, the Reform Party 2000 Convention Committee has received its full public funding entitlement of \$2,522,690. ♦

May Matching Fund Payments

On May 31, 2000, the Commission approved an additional \$1,599,387.43 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 \$56,014,086.00 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 lists the most recent certifications and cumulative payments for each candidate. ♦

Matching Funds for 2000 Presidential Candidates: May Certification

Candidate	Certification May 2000	Cumulative Certifications
Gary L. Bauer (R) ¹	\$55,746.21	\$4,674,357.76
Bill Bradley (D) ²	\$71,541.92	\$12,462,047.69
Patrick J. Buchanan (Reform)	\$293,752.00	\$3,741,688.19
Al Gore (D)	\$522,232.35	\$14,644,994.73
John Hagelin (Natural Law)	\$13,684.00	\$248,594.00
Alan L. Keyes (R) ³	\$310,652.07	\$2,902,745.82
Lyndon H. LaRouche, Jr. (D) ⁴	\$0.00	\$901,338.93
John S. McCain (R) ⁵	\$331,778.88	\$14,335,793.88
Dan Quayle(R) ⁶	\$0.00	\$2,102,525.00

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

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

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

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

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

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

Publications

Updated Summary of State Campaign Finance Laws


The FEC recently published *Campaign Finance Law 2000*, which summarizes the campaign finance laws of each state and includes state code citations. The volume was produced for the FEC by INGroup of Indianapolis with support from state election officials.

For quick reference, a series of charts lists each state's reporting requirements, contribution restrictions, solicitation restrictions and expenditure limits. These charts are available on the FEC's Web site at <http://www.fec.gov>.

Campaign Finance Law 2000 is available for purchase from the U.S. Government Printing Office at 202/512-1800, 202/512-2250 (FAX) or on-line at https://orders.access.gpo.gov/su_docs/sale/prf/prf.html (Stock Number: 052-006-00062-7; Cost: \$67.00). A limited number of free copies are available from the Commission's Public Records Office at 800/424-9530 (press 3) or 202/694-1120. ♦

Public Appearances

July 26-28, 2000
Elections Manitoba
Winnipeg, Canada
Lawrence Noble



FECFile Order Form

Do you want to file your FEC reports electronically? The FEC will mail you a copy of the latest version of its free electronic filing software—FECFile. Mail or fax this form to the address/number below. Or, download the software from the FEC's web site at <http://www.fec.gov>. FECFile requires a PC with Windows 95, 98 or NT, and approximately 8 MB of free disk space.

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Committee Name _____

Electronic Filing Contact Name _____

Address: Street 1 _____

Address: Street 2 _____

City _____

State _____

Zip Code _____

Phone Number _____

Fax Number _____

E-mail Address _____

Federal Election Commission
Data Division—Room 431
999 E Street, NW
Washington, DC 20463
Fax: 202/219-0674

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