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A Message From the Chairman

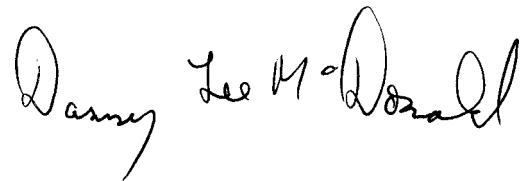
The year 2001 promises to be a challenging one at the FEC, particularly with respect to revised reporting regulations that become effective this year and new programs for promoting compliance with the law.

Mandatory electronic filing, election-cycle reporting for authorized committees, revised reporting forms, and the recent expansion of state filing waivers to Senate committees will make FEC disclosure more efficient and more timely. Additionally, our expanded Web site provides more flexible search options and makes the campaign finance data more accessible to the public.

Two new programs—the Administrative Fines Program and the Alternative Dispute Resolution Program—make our compliance process simpler and more responsive to the needs of the regulated community.

We welcome your questions and comments as we continue our efforts to help the regulated community successfully comply with the Federal Election Campaign Act. Please do not hesitate to call our 800 number (800/424-9530) for assistance. In addition, you can obtain our publications and other materials 24 hours a day through our Faxline, an automated fax-on-demand system (202/501-3413). Many of our materials are also available on our Web site at www.fec.gov.

I look forward to meeting the challenges and opportunities presented to this agency in the coming months. ♦



Regulations

Commission Approves Final Rules for General Public Political Communications Coordinated with Candidates and Party Committees; Independent Expenditures

On November 30, 2000, the Commission approved the final rules—and the Explanation and Justification—addressing coordinated communications and independent expenditures. The final rules, which were published in the December 6, 2000, *Federal Register*, will be transmitted to Congress at the beginning of the next Congress. They will take effect following the 30 legislative day Congressional review period.

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General Public Political Communications Coordinated with Candidates and Party Committees

Expenditures that are coordinated with a candidate or a party are considered in-kind contributions, subject to the limits, prohibitions and reporting requirements of the Federal Election Campaign Act (the Act). To clarify just what is meant by “coordinated expenditures,” the Commission is adding new section 100.23 to its rules. This section addresses coordinated communications made to the general public that refer to clearly identified candidates, are made for the purpose of influencing federal elections and are paid for by persons other than candidates, candidates’ authorized committees or party committees.¹ The new section limits the scope of these rules to apply to “general public political communications”² paid for by any person or committee *other* than candidates, candidate committees or party committees. They also state that coordinated expenditures are both expenditures and in-kind contributions subject to contribution limits under the Act. 11 CFR 100.23(a) and (b).

The new rules do not set a content standard; they do not require, for example, that the communication include “express

advocacy” communications.³ Instead, the new regulations define “coordinated general public political communications” according to the standard set by the district court in *FEC v. The Christian Coalition*. 52 F.Supp.2d 45, 85 (D.D.C.1999).⁴

Definition of Coordination.

Under 11 CFR 100.23(c), an expenditure for a general public political communication is considered to be coordinated with a candidate or party committee if the communication is paid for by any person other than the candidate’s authorized committee or a party committee and is created, produced or distributed:

- At the request or suggestion of the candidate, the candidate’s authorized committee, a party committee or their agents;
- After one of these persons or parties has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication; or
- After substantial discussion or negotiation between the purchaser, creator, producer or distributor of the communication and the candi-

¹ The Commission notes that not all coordinated expenditures constitute communications. In fact, they can include many other types of expenses incurred by candidates, including staff costs, polling and other services.

² The section defines the term “general public political communications” as communications made through a broadcasting station, newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, so long as the communication has an intended audience of over one hundred people. 11 CFR 100.23(e).

³ See 2 U.S.C. §431(9). The Commission may revisit the issue of a content standard for all coordinated communications when it considers the other portion of the rulemaking, which is being held in abeyance until the Supreme Court addresses the dollar limits on the amount party committees may spend in coordination with their candidates. This issue was raised in *Colorado Republican Federal Campaign Committee v. FEC* (Colorado II).

⁴ The Commission, however, is using the phrase “expenditures for general public political communications” in place of “expressive expenditure,” the term used by the Christian Coalition court, because it more precisely describes the types of communications covered by these rules. See 11 CFR 100.23(a)(1).

date, the candidate committee, the party committee or their agents that results in collaboration or agreement about the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of the communication.

Definition of "Substantial Discussion or Negotiation." Under 11 CFR 100.23(c)(2)(iii), substantial discussion or negotiation may include one or more meetings, conversations or conferences about the value or importance of a communication for a particular election. The Commission clarified that whether these discussions or negotiations qualify as "substantial" depends upon their substance—whether they contain specific information about how to communicate an issue in a way that is valuable to the campaign—rather than upon their frequency. For example, numerous conversations with a campaign about complex or controversial public issues would not be considered "substantial" under these rules. A brief conversation about how to phrase an issue or about which issue to emphasize, however, would be considered "substantial."

Exception: A candidate's or political party's response to an inquiry regarding the candidate's or party's position on legislative or public policy issues does not alone make a communication coordinated. 11 CFR 100.23(d).

Independent Expenditures

The definition of "independent expenditure" at 11 CFR 109.1 has been revised to conform with the new coordination rules at 11 CFR 100.23. Under the revised regulation defining an independent expenditure, an expenditure is not independent if it is a "coordinated general public political communication," as defined in 100.23. The revised rule deletes the former

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Commissioners

New Chairman and Vice Chairman Elected

On December 14, 2000, the Commission elected Danny L. McDonald as its Chairman and David M. Mason as Vice Chairman for 2001.

Chairman McDonald, a Democrat, now serves his fourth term as Chairman. Prior to his initial appointment by President Reagan in 1981, the Sand Springs, Oklahoma, native served as General Administrator of the Oklahoma Corporation Commission. Additionally, he served as secretary of the Tulsa County Election Board and as Chief Clerk of that Board. Chairman McDonald was also a member of the Advisory Panel to the FEC's National Clearinghouse on Election Administration.

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

Vice Chairman Mason, a Republican, was nominated to the Commission by President Clinton in 1998. Prior to his appointment, Mr. Mason served as Senior Fellow, Congressional Studies, at the Heritage Foundation. Before joining the Heritage Foundation, Vice Chairman Mason served as Deputy Assistant Secretary of Defense and also served on the staffs of Senator John Warner, Representative Tom Bliley and then-House Republican Whip Trent Lott.

Vice Chairman Mason attended Lynchburg College in Virginia and graduated *cum laude* from Claremont McKenna College in California. ♦

Staff

FEC General Counsel Resigns

Lawrence M. Noble, the FEC's General Counsel, has resigned from the agency in order to accept a position as the Executive Director and General Counsel of the Center for Responsive Politics, a nonpartisan, nonprofit research group. Mr. Noble, who joined the FEC in 1977 and served as the Commission's General Counsel from 1987 through 2000, left the Commission on January 1, 2001.

The Center for Responsive Politics tracks money in politics to evaluate its effects on elections and public policy. It conducts computer-based research on campaign finance issues for the news media, academics, activists, and the general public, with the goal of creating a more educated voter and a more responsive government.

In his new position, Mr. Noble will have the opportunity to bring his campaign finance legal analysis experience to the organization. "I want to build on the Center's outstanding reputation for nonpartisan research and its efforts to help

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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.

Staff

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the voters understand the connection between the money that is flowing through our campaign finance system and the legislation that impacts their lives on a daily basis," Mr. Noble said. "In addition, I want to explore adding a legal dimension to the Center's work, including helping the public understand the work of the FEC and how it impacts the campaign finance system."

Mr. Noble said that he has truly enjoyed his 23 years with the Commission. "I believe that the FEC has one of the most important and difficult jobs in government. Fortunately, the staff members and managers, especially in the Office of General Counsel, are among the most dedicated and talented people to be found in or out of government. It has been an honor and a pleasure to serve with them, and I am grateful to the Commissioners who have given me that opportunity." ♦

Lois Lerner Designated Acting General Counsel

Following the January 2001 resignation the FEC's General Counsel, Lawrence M. Noble, Lois G. Lerner became the Acting General Counsel of the Federal Election Commission. This appointment will last for a period of six months, during which time the Commission will conduct an open selection process to fill the General Counsel's position.

Ms. Lerner joined the staff of the FEC's Office of General Counsel in 1981 and most recently served as the FEC's Associate General Counsel for Enforcement. Prior to joining the FEC, she was a staff attorney in the Criminal Division of the Department of Justice. She is a graduate of Northeastern University in Boston and received her Juris Doctor from Western New England College of Law in Springfield, Massachusetts. ♦

Reports

Reports Due in 2001

This article on filing requirements for 2001 is supplemented by the reporting tables on this and the following page.

It is the responsibility of the committee treasurer to file required reports on time. To assist treasurers, the Commission sends committees FEC reporting forms and notices of upcoming reporting deadlines.

For more information on reporting or to order extra forms, call the FEC at 800/424-9530 (press 1) or 202/694-1100. Most forms are available at the FEC's web site (<http://www.fec.gov>) and from FEC Faxline, the agency's automated fax system (202/501-3413). The 2001 Reporting Schedule is also available on the FEC's Web site (<http://www.fec.gov/pages/report.htm>).

Year-End Reports Covering 2000 Activity

All committees must file a 2000 year-end report due January 31, 2001. The coverage and reporting dates are found in Table 1 on page 5.

Reports Covering 2001 Activity

To find out which reports your committee must file in 2001, check the Guide to 2001 Reporting below. Then check the tables on page 5 for reporting dates. Please note that committees active in special elections in 2001 may have to file additional special election reports, as explained on page 6.

Waiver of State Filing

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

Guide to 2001 Reporting

Type of Filer	Reports			
	2000 Year-End	Semi-annual	Quarterly	Monthly
House and Senate Candidate Committees ¹	✓	✓		
Presidential Candidate Committees	✓		✓	or ² ✓
PACs and Party Committees	✓	✓	or ³	✓

¹ This category includes committees of candidates retiring debts from a previous election or running for a future election.

² Presidential committees may file on either a quarterly or a monthly basis. Those wishing to change their filing frequency should notify the Commission in writing.

³ PACs and party committees may file on either a semiannual or a monthly basis. Committees wishing to change their filing frequency must notify the Commission in writing when filing a report under the committee's current schedule. A committee may change its filing frequency only once per calendar year. 11 CFR 104.5(c).

political committees no longer have to file copies of their reports at the state level in the states that have received the waiver.¹ Committees in states that do not qualify for the waiver must continue to file copies of their reports with the appropriate state election office. The addresses for the federal offices (FEC and Secretary of the Senate) appear in the instructions for the Summary Page of FEC Forms 3 and 3X. A list of state filing offices is available from the Commission.

Where to File

Committee treasurers must file FEC reports with the appropriate federal and state filing offices. Please note that:

House Candidate Committees.
Principal campaign committees of House candidates file with the FEC. 11 CFR 105.1. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of the state in which the candidate seeks (or sought) election *only* if that state does *not* qualify for a waiver. 2 U.S.C. §439(a)(2)(B). See footnote 1, this column.

Senate Candidate Committees.
Principal campaign committees of Senate candidates file with the

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¹ The Commission has certified that the following states and territories qualify for filing waivers: Alabama, American Samoa, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, 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.

Table 1: 2000 Year-End Report

(Required of all committees.)

Report	Period Covered	Filing Date ¹
Year-End	Closing date of last report through December 31, 2000	January 31, 2001

Table 2: 2001 Semiannual Reports

Report	Period Covered	Filing Date ¹
Mid-Year	January 1 – June 30	July 31, 2001
Year-End	July 1 – December 31	January 31, 2002

Table 3: 2001 Monthly Reports

Report	Period Covered	Filing Date ¹
February	January 1 – 31	February 20
March	February 1 – 28	March 20
April	March 1 – 31	April 20
May	April 1 – 30	May 20
June	May 1 – 31	June 20
July	June 1 – 30	July 20
August	July 1 – 31	August 20
September	August 1 – 31	September 20
October	September 1 – 30	October 20
November	October 1 – 31	November 20
December	November 1 – 30	December 20
Year-End	December 1 – 31	January 31, 2002

Table 4: 2001 Quarterly Reports

(Option available to Presidential committees only.)

Report	Period Covered	Filing Date ¹
1st Quarter	January 1 – March 31	April 15
2nd Quarter	April 1 – June 30	July 15
3rd Quarter	July 1 – September 30	October 15
Year-End	October 1 – December 31	January 31, 2002

¹ Reports filed electronically must be submitted by midnight on the day that the report is due. Reports filed on paper and sent by registered or certified mail must be postmarked by the filing date; reports sent by any other means must be received by the Commission's close of business on the filing date. 11 CFR 104.5(e).

Reports

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Secretary of the Senate. 11 CFR 105.2. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of the state in which the candidate seeks (or sought) election *only* if that state does *not* qualify for a waiver. 2 U.S.C. §439(a)(2)(B). See footnote 1 on page 5, first column.

Presidential Committees. Principal campaign committees of Presidential candidates file with the FEC. 11 CFR 105.3. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of each state in which the committee makes expenditures *only* if that state does *not* qualify for a waiver. 11 CFR 108.2. See footnote 1 on page 5, first column.

Candidate Committees with More Than One Authorized Committee. If a campaign includes more than one authorized committee, the principal campaign committee files, with its own report, the reports prepared by the other authorized committees as well as a consolidated report (FEC Form 3Z or page 5 of FEC Form 3P, as appropriate). 11 CFR 104.3(f).

PACs and Party Committees. Generally, PACs and party committees file with the FEC. 11 CFR 105.4. However, committees supporting only Senate candidates, and the national Democratic and Republican senatorial committees, file with the Secretary of the Senate. 11 CFR 105.²

² PACs and party committees that support candidates running in states that do not qualify for the waiver, must simultaneously file copies of reports and statements with the Secretary of State.

Late Filing

The Federal Election Campaign Act does not permit the Commission to grant extensions of filing deadlines under any circumstances. Filing late reports can result in enforcement action by the Commission.

The agency pursues compliance actions against late-filers and nonfilers under the administrative fines program and on a case-by-case basis. For more information on the FEC's administrative fines program, see the July 2000 *Record*, page 1, or visit the FEC Web site at www.fec.gov and click on the administrative fines icon.

New Reporting Requirements

New reporting requirements, which will affect reports filed after January 31, 2001, became effective in 2001:

- Mandatory electronic filing—which affects committees, individuals and organizations that receive contributions or make expenditures in excess of \$50,000 in a calendar year—begins with the first report filed after the 2000 year-end report; and
- Election Cycle Reporting—which affects authorized candidate committees only—begins, in most cases, with the July 2001, semiannual report.

Committees Active in Special Elections

Committees authorized by candidates running in any 2001 special election must file pre- and post-election reports in addition to regularly scheduled reports. 11 CFR 104.5(h). They are also required to comply with the 48-hour notice requirement for contributions of \$1,000 or more (including loans) received shortly before an election. See 11 CFR 104.5(f).

Committees, other than Senate committees, may now file their 48-hour notices on line. For more information concerning on-line

filing, visit the FEC Web site at www.fec.gov and click on the Electronic Filing logo.

PACs and party committees supporting candidates running in special elections may also have to file pre- and post-election reports unless they file on a monthly basis, rather than semiannually. 11 CFR 104.5(c)(3) and 104.5(h). However, all PACs are subject to 24-hour reporting of independent expenditures made shortly before an election. See 11 CFR 104.4(b) and (c) and 104.5(g).

When timing permits, the *Record* will alert committees to special election reporting dates. ♦

Regulations

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definition of what is not an “independent expenditure” (former section 109.1(b)(4)), including two presumptions about when coordination occurs.⁵

Conforming Amendments. The regulation at 11 CFR 100.16, which defines “independent expenditure,” is amended so that the language more closely follows the language of the statute. Additionally, a new cross reference clarifies that the phrase “made with the cooperation

⁵ The presumption stated that an expenditure would be presumed to be made at the request or suggestion of, or in consultation or cooperation with, the candidate or the candidate's authorized committee or agents if it was:

- Based on information about the candidate's plans, projects or needs provided by the candidate, or candidate's agents, with a view toward having an expenditure made; or
- Made by or through any person who is or has been an officer of an authorized committee, has been receiving compensation or reimbursement from the candidate or candidate committee or is authorized by the candidate or committee to raise or spend funds. 11 CFR 109.1(b)(4).

of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate” is now governed by the definition of coordination at 11 CFR 100.23 and no longer by the former paragraph at 11 CFR 109.1(b)(4). The Commission is also making conforming amendments to 11 CFR 110.14, which governs contributions to and expenditures by delegates and delegate committees.

Advisory Opinions Superseded

The Commission has in the past issued advisory opinions (AOs) that relied on a broader definition of coordination than that stated in the new rules. As a result, the following AOs are superseded to the extent that they are inconsistent with these new rules: AOs 1999-17, 1998-22, 1996-1, 1993-18, 1982-20, 1980-116 and 1979-80.

The full text of the final rules appears in the December 6, 2000, *Federal Register* at 65 FR 76138. This document is available from the FEC’s Public Disclosure Office (call 800/424-9530, press 3), through FEC Faxline (dial 202/501-3413 and request document 246) and on the FEC’s Web site at www.fec.gov (go to the Campaign Finance Law Resources link and then click on “[Recent Federal Register Notices](#)”).◆

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.

Electronic Filing

Mandatory Electronic Filing Begins January 1, 2001

Mandatory electronic filing requirements became effective as of January 1, 2001. Accordingly, any committee that receives contributions or makes expenditures in excess of \$50,000 in the current calendar year, or that has reason to expect to do so,¹

¹ *Once filers actually exceed the threshold, they have “reason to expect” to exceed the threshold in the following two calendar years. 11 CFR 104.18 (a)(3)(i). This means they must continue to file electronically for the two years (January through December) following the year in which they exceeded the threshold. Filers with no historic data on which to base their calculations should expect to exceed the threshold if they either receive contributions or make expenditures that exceed one-quarter of the threshold amount in the first quarter of the calendar year, or they receive contributions or make expenditures that exceed one-half of the threshold amount in the first half of the calendar year. 11 CFR 104.18 (a)(3)(ii). The regulations allow an exception to the requirement of filing for the following two calendar years for candidate committees:*

- *That have \$50,000 or less in net debts outstanding on January 1 of the year following the election;*
- *That anticipate terminating prior to the next election year; and*
- *Whose candidate has not qualified as a candidate for the next election and does not intend to become a candidate in the next election. 11 CFR 104.18 (a)(3)(i).*

While all committees must file electronically in the year in which they exceed the threshold, authorized candidate committees meeting these requirements do not “expect to exceed the threshold” in the following two calendar years and, therefore, need not file electronically during those years unless they actually exceed the threshold.

must submit its reports electronically. The rules take effect for reporting periods beginning on or after January 1, 2001.² Any filers who are required to file electronically, but who file on paper, will be considered nonfilers and may be subject to enforcement action under the administrative fine program. The mandatory electronic filing provisions (11 CFR 104.18) apply to any political committee or other person required to file reports, statements and designations with the FEC. This includes all filers except Senate candidate committees (and other persons who support Senate candidates only), who file with the Secretary of the Senate.³

Application of the \$50,000 Threshold.

Each unauthorized committee (PAC or party committee) must file electronically if the total contributions or total expenditures of that committee exceed, or are expected to exceed, the \$50,000 threshold. The threshold is calculated on a per-committee basis, and each committee calculates its own contributions and expenditures separately and files separately, even if it is affiliated with another committee.

By contrast, all committees authorized by one candidate must file electronically if their *combined* total contributions or *combined* total expenditures exceed, or are expected to exceed, the threshold.

Individuals and qualified non-profit corporations whose independent expenditures exceed, or are expected to exceed, the \$50,000 threshold must also file electronically.

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² *These regulations do not apply to the 2000 year-end report due January 31, 2001.*

³ *Senate candidates, however, are encouraged to voluntarily file an unofficial copy electronically with the FEC to ensure faster disclosure.*

Electronic Filing

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Voluntary Electronic Filing.

Committees that are not required to file electronically are strongly encouraged to do so voluntarily. Once a committee begins to file its reports electronically, on a voluntary basis, it must continue to file electronically for the remainder of the calendar year unless the Commission determines that extraordinary and unforeseeable circumstances make continued electronic filing impractical. 11 CFR 104.18(b). No such waiver by the Commission, however, has been established for mandatory electronic filers.

Electronic filing software is available from the FEC at no cost to the filer. Many software companies that serve the filing community have included electronic filing in their software packages as well. To download the FEC software or to view a partial list of software vendors, go to www.fec.gov and click on the [Electronic Filing](#) icon. Or go to <http://www.fec.gov/electron.html>. ♦

Alternative Dispute Resolution

Frequently Asked Questions About ADR

Alternative Dispute Resolution (ADR) is a series of constructive and efficient procedures for resolving disputes through the mutual consent of the parties involved. Unlike the more formal procedures of the enforcement process, ADR encourages the parties to engage in negotiations that promptly lead to the resolution of their dispute.

In the course of processing cases through the ADR program, the ADR office has received a number of

inquiries, some of which are addressed below.

Q: How can a committee find out about the ADR option and whether its case might qualify for the program?

A: Campaign and party committees can learn about the ADR program through the FEC's brochure "Alternative Dispute Resolution Program," which describes how cases qualify for the program. The brochure is now available to the public on the FEC's Web site at www.fec.gov—go to the Campaign Finance Law Resources link and look under Publications. Individuals may also order the free brochure by mail by calling 800/424-9530 (press 1 and then 3) or 202/694-1100.

Q: What is the difference between negotiations and mediation as applied to the ADR program?

A: Negotiations at the FEC involve direct, bilateral discussions between the respondent (and/or their representative) and a representative of the FEC's ADR office. The negotiations are aimed at resolving the complaint. Mediation involves the same two parties, but with the addition of a neutral, impartial third party—the mediator—who assists the parties in resolving the complaint. The mediator does not have the authority to resolve the matter himself or herself, but works with the parties to facilitate their discussions and guide them in their negotiations.

Q: Is the mediator a member of the FEC staff?

A: No. The mediator is selected from a list of independent, nongovernmental, neutral mediators who work outside the Federal Election Commission.

Q: Are negotiations and mediation ever held simultaneously?

A: No. Mediation is initiated only if the negotiations between the parties are unsuccessful.

Q: Why is it necessary for the respondent to suspend the statute of limitations in order to participate in the ADR program?

A: Requiring the respondent to suspend the statute of limitations:

- Ensures that the respondent is committed to the program and a speedy resolution of the dispute;
- Protects the integrity of the Commission's regular enforcement program in the event the case needs to be returned to the Office of General Counsel (OGC) for final resolution; and
- Reminds the respondent that no benefit can be derived from delaying the resolution of the complaint.

Q: Will the complainant be involved in either the negotiations or mediation stage when the case is being processed by the ADR office?

A: No.

Q: What is the time frame for reaching an agreement during the FEC's negotiations or mediation processes?

A: The ADR office is committed to resolving issues within five months from the date the Commission concurs that the case should be processed by the ADR office.

Q: How will the schedule for negotiations be set?

A: The schedule for the negotiations and, if necessary, mediation will be set by mutual consent between the respondent and the representative of the FEC's ADR office.

Q: Will there be a "standard form" for the agreement once it is negotiated?

A: No. The agreement will be tailored to address the issues raised

in the complaint or audit referral and will be shaped by the terms of the settlement negotiated with the respondent.

Q: How do the ADR office's negotiations and final accord compare with the standard "conciliation agreement" traditionally used to settle an FEC enforcement case (MUR)?

A: The ADR program's negotiation process is similar to the procedures used by the Commission's Office of General Counsel (OGC) to obtain a conciliation agreement, but there are some important differences. Both processes aim to arrive at a mutually agreeable settlement. A conciliation agreement, however, usually includes civil penalties, whereas the ADR-negotiated settlement may or may not contain a monetary penalty, but is likely to include other terms negotiated by the parties. Moreover, an admission of having violated the Federal Election Campaign Act (the Act) is usually included in a conciliation agreement, whereas the ADR-negotiated settlement may modify—or exclude—that admission.

Q: What happens to documents used during negotiations and mediation sessions, and will those documents be used by OGC in subsequent proceedings if the parties fail to reach an agreement?

A: In the event that the parties do not achieve a settlement through negotiations or mediation, and the case is returned to OGC for processing, the ADR office will remove from the file internal documents used during the mediation process. None of these documents may be used or will be available to OGC for any subsequent efforts, including possible litigation.

Q: What documents will be made a part of the public record when a negotiated or mediated settlement

is reached under the ADR program?

A: The public record will only include:

- The final settlement agreement;
- The written summary statements initially prepared by the respondent and the ADR office; and
- The correspondence between the respondent and the FEC's ADR office prior to the commencement of negotiations and mediation (if it occurs).

If the parties submit "position papers" during the course of a mediation, they will remain confidential, will not become a part of the public record and will not be forwarded to OGC, should the case be returned to that office.

Q: Can the respondent select a mediator other than one listed on the FEC's mediator panel?

A: No. The mediators on the FEC's Mediator panel have received training on the requirements of the Act and the role and responsibilities of the Federal Election Commission.

Q: What role does precedent play in the settlements that are concluded under the ADR program?

A: Neither a negotiated settlement nor a mediated settlement will provide a precedent for resolving subsequent matters that come before the Commission, including those matters handled through enforcement by OGC. ♦

Advisory Opinions

[AO 2000-32](#)
Reporting Uncollectable Loan

The Matthew Martinez Congressional Committee (the Committee) may end its reporting of an uncollectable loan it made to a

nonfederal campaign in 1991. The \$5,000 loan was a permissible use of excess campaign funds under the Federal Election Campaign Act (the Act). 2 U.S.C. §439a and 11 CFR 113.2(d).¹

At the time the Committee made the payment, it reported the funds as a loan on Schedule C, and it has continued to do so.² The Committee has since been unable to collect this debt, and the California statute of limitations has expired for collection purposes.

Given that the loan is uncollectable, the Committee may "charge off" the debt as detailed under 11 CFR 104.3(d). In its next reporting period following the issuing of this opinion, the Committee should file a Schedule C that:

- Lists the loan;
- Lists an outstanding balance of zero as of the close of the reporting period; and
- Discloses in parenthesis, in the column provided to show payments made during the reporting period, an amount indicating that the loan is forgiven and, thus, paid in full.

Finally, the Committee should include a memo entry that cites this advisory opinion and explains that the statute of limitations has expired, thus making collection legally unenforceable. The memo entry should also state that the Committee will no longer list this transaction on its Schedule C.

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(continued on page 10)

¹ Neither the Act and Commission regulations nor this advisory opinion, however, supersedes any state or local laws that might regulate the making or reporting of contributions to local or state candidates.

² The payment was made to the Committee to Elect Charles Calderon Supervisor.

Advisory Opinions

(continued from page 9)

AO 2000-35

Status of State Party as State Committee of Political Party

The Green Party of Washington State (the Washington State Party) satisfies the requirements for state committee status even though it is not formally affiliated with either of the two national Green Party organizations.

The Federal Election Campaign Act (the Act) defines a state committee as “the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission.” 2 U.S.C. §431(15).

The Washington State Party is not formally affiliated with either of the two national Green Party organizations. In past advisory opinions, however, the Commission has said that a state political party could qualify as a state committee even if it was not affiliated with any national party organization as long as the organization:

- Had bylaws or a similar document that “delineates activities commensurate with the day-to-day operation” of a party at a state level;
- Had gained ballot access for at least one Congressional candidate; and
- Had supported a candidate who qualified as a candidate under FEC regulations. AOs 2000-21, 2000-14, 1998-27 and 1998-23.

The Washington State Party meets all three requirements. It satisfies the first requirement because its bylaws set out a comprehensive organizational structure for the party from the statewide level down through local levels, and the bylaws clearly identify the role of the Washington State Party.

The Washington State Party satisfies the second requirement—ballot access for a congressional

candidate—in that Joseph Szwaja was its nominee in 2000 and gained ballot access as the Washington State Party’s candidate on the Washington ballot.¹ Finally, the committee meets the third criterion because Mr. Szwaja satisfies the requirements for becoming a federal candidate under 2 U.S.C. §441a(d).²

Date Issued: December 1, 2000;
Length: 5 pages.◆

Alternative Disposition of Advisory Opinion Requests

AOR 2000-33

On December 8, 2000, the requester withdrew his request for this advisory opinion. The request, submitted on October 17, 2000, sought the Commission’s opinion on the reporting of a disputed and unenforceable debt from the 1992 election cycle.◆

Advisory Opinion Requests

AOR 2000-40

Donating excess campaign funds by one Member of Congress to legal expense fund of another Member (U.S. Representative Jim McDermott, December 6, 2000)◆

¹ The Commission has also granted state committee status to a state affiliate of a qualified national party committee where its only federal candidates, as defined under the Act, were the Presidential and Vice-Presidential candidates of the national party. AO 1997-3.

² An individual becomes a candidate for the purposes of the Act once he or she receives contributions aggregating in excess of \$5,000, or makes expenditures in excess of \$5,000. Federal candidates must designate a principal campaign committee within 15 days after qualifying as a candidate, and the committee also becomes subject to registration and reporting requirements. 2 U.S.C. §§432(e)(1) and 434(a); 11 CFR 101.1, 102.1 and 104.1.

Court Cases

John J. Hooker v. All Campaign Contributors, et al.

On October 18, 2000, the U.S. District Court for the Middle District of Tennessee, Nashville Division, granted the defendants’ request to dismiss this case. The court found that:

- The Presidential Election Campaign Fund Act and the Matching Payment Act, 26 U.S.C. §9001-9043, are constitutional under *Buckley v. Valeo*;
- The plaintiff lacked standing to challenge Congress’s authority to regulate federal elections;
- The plaintiff’s challenges to political contributions in federal elections failed to state a claim for relief; and
- The plaintiff’s claims challenging federal election statutes are precluded by the plaintiff’s prior lawsuits.

U.S. District Court for the Middle District of Tennessee, Nashville Division, 3:00-0496.◆

Natural Law Party of the United States of America, et al. v. FEC

On November 21, 2000, the plaintiffs and the defendant stipulated and agreed to dismiss this case with prejudice and without costs.

U.S. District Court for the District of Columbia, 98-1025 (ESH).◆

Patrick J. Buchanan, et al. v. FEC (00-5337)

On November 30, 2000, the U.S. Court of Appeals for the District of Columbia Circuit granted the motion by Buchanan et al. to dismiss their appeal. The FEC did not oppose the motion.

U.S. Court of Appeals for the District of Columbia, 00-5337.◆

Outreach

FEC Roundtables

The Commission will host roundtable sessions in January and February. See the table below for more details.

FEC roundtables, limited to 12 participants per session, are conducted at the FEC's headquarters in Washington, DC.

The registration fee is \$25, and participants 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.

Public Appearances

January 19, 2001
Chapman University Law Review
Orange, California
Commissioner Smith

January 24, 2001
Public Affairs Council
Marco Island, Florida
Commissioner Smith
George Smaragdis

Prepayment is required. The registration form is available at the FEC's Web site—<http://www.fec.gov/pdf/rndtabl.pdf>—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. ♦

Publications

Updated List of Federal PACs

The Commission has published the 2000 edition of *PACronyms*, a list of the acronyms, abbreviations and common names of federal political action committees (PACs).

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

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

To order a free copy of *PACronyms*, call the FEC's Public Records Office at 800/424-9530 (press 3) or 202/694-1120. *PACronyms* is also available on diskette for \$1. *PACronyms* can also


be accessed for free on the FEC's Web site at www.fec.gov. Click on the "FEC Services" icon and look under "Political Action Committees," or click on the "Guide to Researching Public Records" icon.

Other PAC indexes, described below, may be ordered from the Public Records Office. Prepayment is required.

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

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

Roundtables

Date	Subject	Intended Audience
<p>January 10, 2001 9:30 - 11:00 a.m.</p> 	<p>The New Electronic Filing Rules and FEC Forms for PACs Explanation and Q/A about the new electronic filing requirements and the new forms used by paper filers</p>	<ul style="list-style-type: none"> • Corporate/Labor/Trade Association PACs • Nonconnected PACs • Lawyers and consultants to PACs
<p>February 7, 2001 9:30 - 11:00 a.m.</p>	<p>Candidate Preparations for the Next Election Cycle</p> <ul style="list-style-type: none"> • New election-cycle reporting rules • New electronic filing rules for campaigns • Candidate registration • Contribution limits and prohibitions 	<ul style="list-style-type: none"> • House and Senate campaigns • Lawyers, consultants and party staff who advise campaigns

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