

# Record

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Federal Election Commission

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## Reports

### Commission Certifies Alaska and Iowa for State Filing Waiver

The Commission has certified that Alaska and Iowa qualify for a state filing waiver.<sup>1</sup> Consequently, federal committees and candidates in these states no longer have to file copies of their federal reports with the Alaska Lieutenant Governor's Office or the Iowa Ethics and Campaign Disclosure Board.♦

—Amy Kort

(continued on page 4)

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<sup>1</sup> The Commission has certified that the following states and territories qualify for filing waivers: Alabama, Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, 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, Virgin Islands, Virginia, Washington, West Virginia, Wisconsin and Wyoming. Committees that file their reports at the FEC need not file copies in these states.

## Regulations

### Independent Expenditure Reporting, Effective Date

The Commission's new rules regarding the reporting of last-minute independent expenditures became effective June 13, 2002. See *Federal Register* Announcement of Effective Date (67 FR 40586, June 13, 2002). This effective date also applies to the Commission's revised independent expenditure reporting forms, Form 5 and Schedule E of Form 3X.

The new rules reflect a statutory requirement that 24-hour notices disclosing last-minute independent expenditures of \$1,000 or more be received by the Commission or the Secretary of the Senate, as appropriate, within 24 hours of the time the independent expenditure is made. Filers may send 24-hour notices by fax or e-mail, unless the filer participates in the Commission's electronic filing program and is thus required to file all reports electronically. Under the new regulations, in lieu of notarization filers must self-verify, under penalty of perjury, the independence of the expenditure reported. Since notarization is no longer required, the Commission will no longer require a paper follow up of Schedule E and Form 5 for committees who file electronically.

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## Regulations

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### Additional Information

You may view the final rules as they appeared in the March 20, 2002, *Federal Register* (67 FR 12834) on the FEC web site at <http://www.fec.gov/register.htm>. Free copies are also available by fax—call the FEC Faxline at 202/501-3413 and request document 250. For a summary of the new rules, see the May 2002 *Record*, page 2. ♦

—Amy Kort

### Final Rules on Brokerage Loans and Lines of Credit

On May 23, 2002, the Commission approved final rules governing the use of brokerage loans and other lines of credit by candidates for federal office. The rules implement an amendment to the Federal Election Campaign Act (the Act) (PL 106-346) that excludes from the definition of contribution “a loan of

money derived from an advance on a candidate’s brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate.” The new rules, published in the June 4, 2002, *Federal Register* (67 FR 38353), will take effect following the 30 legislative day Congressional review period. The Commission will announce the effective date in the *Federal Register*.

### Endorsers, Guarantors and Co-signers of Candidate Loans

Under the new rules, candidates may use funds derived from an advance on their brokerage account or other line of credit to finance their campaigns, if the extension of credit is:

- In accordance with applicable law;
- Under commercially reasonable terms; and
- From persons who make these loans in the usual and normal course of their business. 11 CFR 100.7(b)(22).

When these conditions are met, the lending institution is not considered to have made a contribution to the campaign.

Generally, an endorser, guarantor or co-signer of a loan is considered a contributor for the amount that he or she is liable. However, when a candidate’s spouse is the endorser, guarantor or co-signer of an unsecured loan, the spouse is not considered a contributor if the candidate uses only one-half of the available credit in connection with the campaign or, in the case of secured loans, no more than the amount equal to the candidate’s share of the collateral. 11 CFR 100.7(b)(22)(ii)(B).

### Loans for Routine Living Expenses

The new rules also contain a provision permitting the use of loans derived from a candidate’s brokerage account or other line of credit for “routine living expenses.”

Examples of routine living expenses include but are not limited to:

- Household items or supplies, such as food, furniture and accessories;
- Funeral, cremation or burial expenses;
- Clothing, other than clothing purchased to attend campaign-related events or appearances;
- Tuition payments, other than those associated with training related to the campaign;
- Mortgage, rent, utilities and residential maintenance;
- Investment expenses, such as acquiring securities on margin, if no amount of the proceeds are used for the campaign;
- Charitable donations, unless the candidate receives compensation for services to the charitable entity that become personal funds of the candidate and then are used for the purpose of influencing the candidate’s election for Federal office; and
- Travel expenses unrelated to the campaign. 11 CFR 100.7(b)(22)(iii). See also 11 CFR 113.1.

Loans used exclusively for routine living expenses do not need to be reported by the campaign. 11 CFR 100.7(b)(22)(iii)(A). If the proceeds of a loan are used partly for routine living expenses and partly for campaign purposes, the portion that is used for the campaign must be reported. However, if a third party, other than the candidate’s spouse, repays, guarantees, endorses or co-signs a loan for routine living expenses, the loan is subject to the limitations, prohibitions and reporting requirements of the Act and Commission regulations. 11 CFR 100.7(b)(22)(iii)(C).

### Repayment and Reporting

Under the new rules, the candidate’s authorized committee will have the option of repaying loans derived from a candidate’s brokerage account or other line of credit directly to the lending institu-

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tion or to the candidate. 11 CFR 100.7(b)(22)(iv). All such loans used in connection with the candidate's campaign must be reported by the committee. 11 CFR 100.7(b)(22)(iii)(D). The committee must report the loan from the candidate as a receipt and report repayment of the loan to the candidate as a disbursement. 11 CFR 104.3(a)(3)(vii)(B) and (b)(2)(iii)(A).

The candidate may choose to contribute rather than loan the proceeds to the authorized committee. In either case, the funds are reported as an itemized entry on Schedule A. If the funds are designated as a contribution, then the committee cannot repay the underlying loan to the financial institution. 11 CFR 113.2(d).

If the funds are designated as a loan, the committee's repayment to the lending institution or the candidate is reported as an itemized entry on Schedule B. The committee is not required to report repayments by the candidate to the lending institution. 11 CFR 104.9(f). The loan from the candidate to the authorized committee must also be continually reported on Schedule C or C-P until it is extinguished. In the report covering the period when the loan was obtained, the committee must also submit a Schedule C-1 or C-P-1 for the loan or line of credit.

Unlike other loans, when reporting loans derived from a brokerage account, credit card, home equity line of credit or other line of credit, the committee is not required to submit the loan agreements to the Commission. The candidate must, however, retain certain records relating to the loan for three years after the date of the election for which he or she was a candidate.

### Additional Information

The full text of the final rules appears in the June 4, 2002, *Federal Register* at 67 FR 38353. 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 <http://www.fec.gov/register.htm>. ♦

—Gary Mullen

### Notice of Proposed Rulemaking on Contribution and Expenditure Definitions

The Bipartisan Campaign Reform Act of 2002 removed the office facility exception for national party committees from the Federal Election Campaign Act's (the Act) definition of "contribution." U.S.C. §431(8)(B). The Commission proposes to amend its regulations to reflect this statutory change, and also to reorganize the regulations that define "contribution" and "expenditure" to make these definitions easier to locate and read.<sup>1</sup> On June 14, 2002, the Commission published a Notice of Proposed Rulemaking in the *Federal Register* (67 FR 40881), seeking comments on these proposed changes. The deadline for comments is July 12, 2002.

### Proposed Reorganization of 11 CFR 100.7 and 100.8

The Commission proposes to remove the current sections of its regulations that define contributions and expenditures—11 CFR 100.7 and 100.8—and replace them with four new subparts of 11 CFR part 100 that would separately describe:

- Items that are contributions;
- Items that are not contributions;
- Items that are expenditures; and
- Items that are not expenditures.

Except as noted below, no changes would be made to the current definitions of "contribution"

<sup>1</sup> The Commission published a separate rulemaking on May 20, 2002, to address the impact of this statutory change on state and local party committees. See "Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money" (67 FR 35654).

and "expenditure" as a result of the proposed reorganization.

### Proposed Amendments to the Definitions of "Contribution" and "Expenditure"

Currently, Commission regulations state that anything of value given to a national party committee for the purpose of constructing or purchasing an office facility is not a contribution or expenditure. 11 CFR 100.7(b)(12) and 100.8(b)(13). The proposed rules would make clear that this exception to the definitions of "contribution" and "expenditure" no longer applies to national party committees. The rules would then state that anything of value given to a nonfederal account of a state, local or district party committee to purchase or construct an office facility is not a contribution or expenditure, provided that these funds are subject to Commission regulations governing the use of nonfederal funds.

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### Federal Register

Federal Register notices are available from the FEC's Public Records Office, on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline, 202/501-3413.

#### [Notice 2002-8](#)

Final Rules on Brokerage Loans and Lines of Credit (67 FR 38353, June 4, 2002).

#### [Notice 2002-9](#)

Notice of Proposed Rulemaking on Reorganization of Regulations on Contributions and Expenditures (67 FR 40881, June 14, 2002).

#### [Notice 2002-10](#)

Announcement of Effective Date on Independent Expenditure Reporting (67 FR 40586, June 13, 2002).

## Regulations

(continued from page 3)

In addition, the proposed regulations would incorporate another recent amendment to the Act, which exempted from the definition of contribution a loan derived from an advance on a candidate's brokerage account, credit card, home equity line of credit or other available line of credit.

### Additional Information

The full text of the notice is available on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline, 202/501-3413. Public comments must be submitted, in either written or electronic form, to Rosemary C. Smith, Assistant General Counsel. Comments may be sent by:

- E-mail to [reorganization@fec.gov](mailto:reorganization@fec.gov) (e-mailed comments must include the commenter's full name, e-mail address and postal address);
- Fax to 202/219-3923 (send a printed copy follow-up to ensure legibility); or
- Overnight mail to the Federal Election Commission, 999 E Street NW, Washington, DC 20436. ♦

—Amy Kort

## Reports

(continued from page 1)

### Iowa Convention Reporting

On June 14, 2002, the Iowa Republican Party officially announced that, because the results of the primary election proved inconclusive, it will now hold a district convention on June 29, 2002, to select its general election nominee in the 5<sup>th</sup> Congressional District. Given the late announcement of the convention date, the Commission is requiring committees involved in the convention to disclose all of their convention-related activity on their July 15 quarterly report. ♦

—Amy Kort

## Advisory Opinions

### AO 2002-6

#### Status of State Party as State Committee of Political Party

The Green Party of California satisfies the requirements for state committee status.<sup>1</sup>

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). In order to achieve state committee status under Commission regulations, an organization must meet two requirements. It must have:

- Bylaws or a similar document that “delineates activities commensurate with the day-to-day operation” of a party at a state level; and
- Ballot access for at least one federal candidate who has qualified as a candidate under Commission regulations.

The Green Party of California meets both requirements. It satisfies the first requirement because its bylaws set out an identifiable organizational structure with varying responsibilities. The bylaws delineate activity commensurate with the day-to-day functions of a political party on the state level and are consistent with the state party rules of other political organizations that the Commission has found to

<sup>1</sup> The Green Party of California is affiliated with the Green Party of the United States, which is a national committee of a political party. See AO 2001-13.

satisfy this requirement for state committee status.<sup>2</sup>

The Party satisfies the second requirement—ballot access for a federal candidate—in that Ralph Nader and Susan Benjamin gained ballot access in the 2000 California elections as the Party's Presidential and Senatorial candidates, respectively. Both candidates meet the requirements for becoming a federal candidate under 2 U.S.C. §441a(d).<sup>3</sup>

Date Issued: May 16, 2002;

Length: 3 pages. ♦

—Amy Kort

## Advisory Opinion Requests

### AOR 2002-7

Political fundraising services provided by Internet Service Provider (ISP) (Careau & Co. and Mohre Communications, May 6, 2002)

### AOR 2002-8

Return of funds transferred from candidate's federal campaign committee to his state exploratory committee (David Vitter for Congress, June 7, 2002) ♦

<sup>2</sup> In previous advisory opinions determining state committee status, the Commission considered either the bylaws or other governing documents of a state party organization. AOs 2000-39 and 2000-35. In reviewing state party affiliates of qualified national party committees, the Commission considered a state affiliate agreement or correspondence from the national party that attested to the role the state affiliate played “commensurate with the day-to-day operation of [a political party] on a State level.” See AOs 1999-26 and 1992-30.

<sup>3</sup> 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. 2 U.S.C. §432(e)(1) and 11 CFR 101.1.

## Court Cases

### Graham v. FEC

On April 25, 2002, the U.S. District Court for the Eastern District of Arkansas, Western Division, granted the plaintiffs' motion to dismiss this complaint with prejudice. The complaint, filed September 14, 2001, had appealed a civil money penalty the Commission imposed on the Dwayne Graham for Congress Committee (the Committee) and Everett Martindale, as the Committee's treasurer, for failure to file the Committee's 2000 October Quarterly Report. See the December 2001 *Record*, page 3.

U.S. District Court for the Eastern District of Arkansas, Western Division, 4-01-CV-00635 (SWW).◆

—Amy Kort

### New Litigation

#### FEC v. Democratic Party of New Mexico

On April 2, 2002, the Commission filed a complaint in the U.S. District Court for the District of New Mexico alleging that the Democratic Party of New Mexico (the Party) and its treasurer, Judy Baker, violated the Federal Election Campaign Act (the Act) by:

- Making excessive contributions and excessive coordinated expenditures on behalf of the Friends of Eric Serna Committee (the Serna Committee) (2 U.S.C. §§441a(a)(2)(A), 441a(d)(3));
- Using nonfederal funds to influence a federal election (2 U.S.C. §441b and 11 CFR 102.5(a)(1)(i)); and
- Failing to report expenditures that were coordinated with the Serna Committee (2 U.S.C. §434(b)).

On May 15, 2002, the Commission amended its complaint to include allegations that the Serna

Committee violated the Act by knowingly accepting direct and in-kind contributions that exceeded the limits of the Act.<sup>1</sup> 2 U.S.C. §441a(f).

*Background.* On May 13, 1997, a special election was held in New Mexico to fill a vacant seat in the House of Representatives. No other governmental office was included on the ballot. The Commission's complaint alleges that the Party assigned an employee to work with the Serna Committee during its campaign to win the special election seat, and that this employee attended Serna Committee staff meetings, met regularly with its campaign manager to discuss the campaign's plans and needs and developed the field campaign plan for both the Serna Committee and the Party.

The Party was entitled to spend \$36,800 on behalf of the Serna Committee—the coordinated party expenditure limit in 1997 for House candidates in New Mexico was \$31,810, and the Party could also make \$5,000 in direct contributions to a candidate committee. 2 U.S.C. §§441a(a)(2)(A) and 441a(d)(3)(B). The complaint alleges that the Party's expenditures during the special election campaign totaled approximately \$217,311, and that these expenditures were coordinated with the committee and were for activities that urged the public to vote for the only Democratic candidate running in that election. According to the complaint, the expenditures by the Party were coordinated with the Serna Committee, and thus were in-kind contributions subject to the Act's contribution limits. The Party, however, reported only approximately \$15,127 as being coordi-

<sup>1</sup> The Commission began its investigation of the Party and the Serna Committee in response to an administrative complaint. After attempting for at least 30 days to reach a conciliation agreement with the defendants, the Commission filed this court complaint. 2 U.S.C. §437g(a)(4)(A)(i).

nated with the Serna Committee and reported the rest, approximately \$202,184, as spending relating to both federal and nonfederal elections. It funded \$173,800 of this amount from its nonfederal account.

*Relief.* The Commission asks that the court:

- Permanently enjoin the Party and the Serna Committee from violating these provisions in the future;
- Order the Party to transfer \$173,800 from its federal to its nonfederal account and to file corrected reports that accurately describe its coordinated expenditures for the 1997 special election; and
- Assess appropriate civil penalties against the Party and its treasurer and against the Serna Committee.

U.S. District Court for the District of New Mexico, 02-0372.◆

—Amy Kort

## Audits

### Audit of Rod Grams for U.S. Senate Committee

On May 31, 2002, the Commission approved the final audit report on the Rod Grams for U.S. Senate Committee (the Committee). The report found that between January 1, 1999, and December 31, 2000, the Committee accepted excessive contributions and failed to correctly document redesignations and reattributions.

The Federal Election Campaign Act (the Act) prohibits individuals and unregistered organizations from making contributions to any federal candidate that exceed \$1,000 per election. 2 U.S.C. §441a(a)(1)(A). If a campaign receives an excessive contribution, the treasurer may ask the contributor to redesignate the excessive portion to another election, or may ask the donor if the

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## Audits

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contribution was intended to be a joint contribution attributable to more than one person. 11 CFR 110.1. In the event that the committee does not receive a written redesignation or reattribution within 60 days, it must refund the money to the contributor. 11 CFR 103.3(b)(3). Redesignations and reattributions must be correctly reported on the committee's Form 3, and the treasurer must keep records of the transaction. If a committee does not retain a written record of a redesignation or reattribution, then it is not effective and the original designation or attribution controls. 11 CFR 110.1(l)(5).

During the period in question, the Committee received excessive contributions totaling \$157,378 from 237 individuals—\$138,924 for the primary election and \$18,454 for the general election. In addition, the Committee received eight excessive contributions from unregistered organizations, totaling \$2,975, all of which were for primary activity.

The Committee indicated on its FEC reports that it had redesignated or reattributed many of the excessive contributions it received, but the Commission found that the Committee did not have written documentation supporting such redesignations and reattributions. Of the \$138,924 that the Committee received in excessive contributions for the primary, \$27,743 represented untimely redesignations and reattributions, \$26,882 represented untimely refunds and \$84,299 represented contributions that lacked adequate redesignation and reattribution documentation. Of the \$18,454 in excessive general contributions, there were \$1,500 in untimely redesignations and reattributions, \$600 in untimely refunds and \$16,354 in contributions lacking adequate redesignation and reattribution documentation.

The Audit staff also determined that the Committee paid for primary election expenses with contributions that, according to the Committee's database, had been designated for the general election.

The Committee noted that staff turnover and malfunctioning electronic filing software contributed to its difficulties in keeping accurate records. The Commission recommended that the Committee refund \$100,653 to the individual contributors, \$2,975 to the unregistered organizations and provide evidence of the refunds. The Committee has since proven that it made refunds of \$4,415 to individuals, leaving the remaining discrepancies unresolved. ♦

—Kate Miller

## Alternative Dispute Resolution

### ADR Program Update

The Commission recently resolved twelve additional cases under the Alternative Dispute Resolution (ADR) program. The respondents, the alleged violations of the Federal Election Campaign Act (the Act) and the penalties assessed are listed below.

- The Commission reached agreement with John Carroll, the Carroll 2000 Committee and its treasurer, Brian Yomono, concerning a complaint alleging the personal use of campaign funds. The ADR Office concluded that the violation alleged in the complaint was unsubstantiated. The Commission concurred by dismissing this matter. (ADR 019; MUR 5157)
- The Commission reached agreement with Ferren for Congress and its treasurer, J. Richard Gear, concerning a complaint alleging disclaimer requirement violations and the failure to file disclosure

reports. The respondents agreed to work with Commission staff to terminate the committee. (ADR 023; MUR 5022)

- The Commission decided to exercise its prosecutorial discretion and dismiss the matters concerning Florio for Senate and its treasurer, George R. Zoffinger, Friends for George Fallon and its treasurer, F. Schindlar, and the Camden County Democratic Committee and its treasurer, Christopher T. Morris. (ADR 028 and 029; MURs 5064 and 5065)
- The Commission reached agreement with the Becker for Congress Committee and its treasurer, Robert G. Moyer, concerning a complaint alleging disclaimer requirement violations and the failure to report contributions. The respondents acknowledged their failure to include a disclaimer on a handout and their responsibility for monitoring the committee's campaign material. In order to better understand the requirements and responsibilities placed on federal election campaign committees, the respondents agree to attend an FEC-sponsored seminar for campaign committees. (ADR 039; MUR 5096)
- The Commission reached agreement with Cynthia McKinney for Congress and its treasurer, Elyria Mackie, concerning a complaint alleging the failure to report contributions and the violation of U.S. House of Representatives ethics regulations. The ADR Office concluded that the alleged violations of the Federal Election Campaign Act (the Act) were unsubstantiated. The Commission concurred by dismissing this matter. (ADR 043; MUR 5149)
- The Commission reached agreement with Lazio 2000, Inc., and its treasurer, Anthony J. Picirillo, concerning a complaint alleging the failure to pay for services rendered to the campaign and to accurately report disbursements. The ADR Office found nothing to

substantiate a violation of the Act as alleged in the complaint. The Commission concurred by dismissing this matter. (ADR 048; MUR 5174)

- The Commission reached agreement with Susan Bass Levin for Congress and its treasurer, Patrick Brennan, concerning a complaint alleging the failure to file timely a Statement of Candidacy and a Statement of Organization. The ADR Office concluded that the violations alleged in the complaint were unsubstantiated. The Commission concurred by dismissing the matter. (ADR 049; MUR 4966)
- The Commission reached agreement with the Livingston County Republican Central Committee and its treasurer, Sylvia Bashore, and Friends of Tim Johnson and its treasurer, James Bray, concerning a complaint alleging excessive contributions. The Livingston County Republican Central Committee and its treasurer obtained a refund and agreed to adopt and maintain guidelines, including FEC regulations, governing committee contributions to federal campaigns. They also agreed to participate in a roundtable discussion on the relevant provisions and requirements of the Act. The Friends of Tim Johnson and its treasurer refunded the contribution, acknowledged accepting the contribution and agreed to send a representative to a Commission-sponsored seminar. (ADR 050; MUR 5139)
- The Commission reached agreement with Lazio 2000, Inc., and its treasurer, Anthony J. Picirillo, concerning a complaint alleging the failure to pay for services rendered to the campaign and to accurately report debt. The ADR Office found nothing to substantiate a violation of the Act as alleged in the complaint. The Commission concurred by dismissing this matter. (ADR 053; MUR 5179)

- The Commission reached agreement with the Mike Bilirakis for Congress Committee and its treasurer, Anthony C. Samarkos, concerning a complaint alleging the personal use of campaign funds. The ADR Office concluded, following a review of the complaint and the response, that the complaint should be dismissed. The Commission agreed to dismiss this matter. (ADR 056; MUR 5200)
- The Commission reached agreement with the Democratic Party of Illinois concerning corporate contributions. The respondent agreed to pay a \$1,500 civil penalty and acknowledged that it could not demonstrate compliance with the Act because it lacked documentation showing that each contribution in question was from permissible individual funds and not corporate funds. The respondent did produce documentation showing that all the contributions at issue were refunded to the contributors or disgorged to the U.S. Treasury. (ADR 057)◆

—Amy Kort

## Compliance

### Nonfilers

The following committees failed to file pre-primary reports for the primary elections held on June 4, 2002, in Alabama, Mississippi, Montana, New Jersey and New Mexico:

1. Committee for Andy Kissner;
2. Friends of Roger Wicker 2002;
3. Gordon for Congress;
4. Montana for Johnson; and
5. Ross for Congress.

On April 29, 2002, the Commission notified committees involved in these primaries of their potential filing requirements. Committees that failed to file reports by the May 23 due date were notified on May 24

that their reports had not been received and that their names would be published if they did not respond within four business days.

The Federal Election Campaign Act requires the Commission to publish the names of principal campaign committees if they fail to file 12 day pre-election reports and the quarterly report due before the candidate's election. 2 U.S.C. §§437g(b) and 438(a)(7). The agency may also pursue enforcement actions against nonfilers and late filers under the Administrative Fine program on a case-by-case basis.◆

—Amy Kort

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