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Regulations

Final Rules on Nonfederal Funds or “Soft Money”

On June 22, 2002, the Commission promulgated new and revised rules based on provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) that restrict and, in some cases, ban the receipt, solicitation and use of nonfederal funds (sometimes called “soft money”). These rules:

- Prohibit national parties from raising or spending nonfederal funds;
- Require state, district and local party committees to fund certain “federal election activities” with federal funds and, in some cases, with money raised according to new limitations, prohibitions and reporting requirements (i.e., “Levin funds”¹), or with a combination of such funds; and
- Address fundraising by federal and nonfederal candidates and officeholders on behalf of party committees, other candidates and nonprofit organizations.

The new and revised soft money regulations do not affect the 2002

election cycle, nor do they apply to runoff elections, recounts or election contests resulting from the November 5 elections. In fact, while most of the soft money rules will take effect on November 6, 2002, some provisions, such as the increase in individual contribution limits to state party committees to \$10,000 per year, will not become effective until January 1, 2003. 11 CFR 110.1(c)(5) and 300.1(b).

The final rules and their Explanation and Justification were published in the July 29 *Federal Register* (67 FR 49064) and are available on the FEC web site at http://www.fec.gov/pdf/nprm/soft_money_nprm/fr67n145p49063.pdf.

Part I: General Information and Terminology

Organization. In order to implement the BCRA, the Commission has revised its existing regulations and added new 11 CFR part 300, which contains most of the rules governing party committees’ use of nonfederal funds and the so-called “Levin funds.” New part 300 contains five subparts, which address the use of nonfederal funds by each of the following entities:

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¹ See p. 4 for a full description of “Levin funds.”

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- National party committees;
- State, district and local party committees;
- Federal candidates and officeholders;
- State and local candidates; and
- Tax-exempt organizations.

The rules applicable to each of these entities are addressed in detail below, in Part II: Application.

Federal election activity. Many provisions of the BCRA are framed in terms of “federal election activities.” As used in 11 CFR part 300, “federal election activity” means any of the following activities:

1. Voter registration activity during the 120 days before a regularly-scheduled federal election and ending on the day of that election;

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2. Voter identification, generic campaign activities² and get-out-the-vote activities that are conducted in connection with an election in which one or more candidates for federal office appear on the ballot (regardless of whether state or local candidates also appear on the ballot);
3. A public communication³ that refers to a clearly-identified federal candidate and that promotes, supports, attacks or opposes any federal candidate (This definition applies regardless of whether a nonfederal candidate is also mentioned or identified in the communication and regardless of whether the communication expressly advocates a vote for or against a federal candidate.); and
4. Services provided by an employee of a state, district or local party committee who spends more than 25 percent of his or her compensated time during that month on activities in connection with a federal election. 11 CFR 100.24(b).

The Commission has also adopted regulations at 11 CFR 100.24(a) that define certain terms used in the above definition of “federal election activity”:

1. “In connection with an election in which a candidate for federal

² “Generic campaign activity” means a public communication that promotes or opposes a political party and does not promote or oppose a clearly-identified federal or nonfederal candidate. 11 CFR 100.25.

³ A “public communication” means any communication by means of television (including cable and satellite), radio, newspaper, magazine, billboard, mass mailing, telephone bank or any other form of general public political advertising. Communications over the Internet are not included in the definition of public communication. 11 CFR 100.26.

office appears on the ballot” means:

- In an even-numbered year, the period beginning on the day of the earliest filing deadline for primary election ballot access under state law—or on January 1 in states that do not hold primaries—and ending on the day of the general election or the general election runoff if a runoff is held; or
 - In an odd-numbered year, the period beginning on the day that the date is set for a special election in which a federal candidate appears on the ballot, and ending on the day of that election.
2. “Voter registration activity” means contacting individuals by telephone, in person or by other individualized means to assist them in registering to vote. This activity includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms and assisting individuals with completing and filing these forms.
 3. “Get-out-the-vote activity” means contacting registered voters by telephone, in person or by other individualized means in order to assist them in voting (unless the activity is undertaken by state or local candidates and/or officeholders, or an organization of such candidates or officeholders, and refers only to one or more state or local candidates). This activity includes, but is not limited to:
 - Providing individual voters, within 72 hours of an election, with information about when and where polling places are open; and
 - Transporting, or offering to transport, voters to polling places.
 4. “Voter Identification” means creating or enhancing voter lists by adding information about voters’ likelihood of voting in a

particular election or voting for a particular candidate (unless the activity is undertaken by state or local candidates and/or officeholders, or an organization of such candidates or officeholders, and refers only to one or more state or local candidates).

The regulations also identify activities that are *not* included in the definition of “federal election activity.” These are:

1. A public communication that refers solely to one or more clearly-identified candidate(s) for state or local office and does not promote, support, attack or oppose a clearly-identified candidate for federal office. A public communication would, however, be considered a federal election activity if it constituted voter registration, generic campaign activity, get-out-the-vote activity or voter identification;
2. A contribution to a candidate for state or local office, unless the contribution is designated for voter registration, voter identification activity, generic campaign activity, get-out-the vote activity, employee services for these activities or a public communication;
3. The costs of state, district or local political conventions, meetings or conferences; and
4. The costs of grassroots campaign materials that name or depict only a candidate for state or local office. 11 CFR 100.24(c).

Agent. In most cases, regulations that apply to a party committee, a federal candidate or officeholder or a state or local candidate also apply to any “agent” acting on behalf of that individual or organization. For the purposes of 11 CFR part 300, the term “agent” is defined as any person who has “actual authority, either express or implied” to engage in specifically-listed activities on

behalf of another person or organization. 11 CFR 300.2(b).

Directly or indirectly established, maintained, financed or controlled. Most of the new regulations that apply to a party committee or a federal candidate or officeholder also apply to any entity “directly or indirectly established, maintained, financed or controlled” by the committee, candidate or officeholder. The new regulation at 11 CFR 300.2(c), which is based on the existing “affiliation” regulation at 11 CFR 100.5(g)(4), includes a series of factors that must be considered, in the context of an overall relationship, to determine whether the presence of one or more of these factors indicates that the individual or committee established, finances, maintains or controls the organization. An entity will not be considered to be directly or indirectly established, financed, maintained or controlled based solely upon activities undertaken before November 6, 2002.

Part II: Application

National Party Committees, Including National Congressional Campaign Committees

General prohibitions. Beginning on November 6, 2002, national party committees may not solicit,⁴ receive, direct to another person or spend

⁴ For the purposes of 11 CFR part 300, to “solicit” means to “ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether the contribution, donation, transfer of funds, or thing of value, is to be made or provided directly, or through a conduit or intermediary.” Merely providing information or guidance as to the requirement of a particular law does not constitute a solicitation. 11 CFR 300.2(m).

nonfederal funds, that is, funds that are not subject to the limits, prohibitions and reporting requirements of the Act.⁵ Moreover, such committees must use only federal funds to raise funds that are used, in whole or in part, for expenditures and disbursements for federal election activity. 11 CFR 300.10.

Tax-exempt organizations. National party committees may not solicit funds for, or make or direct donations to, tax-exempt 501(c) organizations, or an organization that has applied for this tax status, if the organization makes expenditures or disbursements in connection with federal elections, including federal election activity.⁶ 11 CFR 300.11(a). The committee may establish whether or not the organization makes expenditures or disbursements in connection with federal elections by obtaining a signed certification from an authorized representative of the organization. The certification should state that within the current election cycle the organization has not made, and does not intend to make, such expenditures and disbursements, including payments for debts incurred in an earlier cycle. 11 CFR 300.11(c).

National party committees may solicit funds for, or make or direct donations to, so-called “527 organizations” only if these organizations are:

- Political committees under Commission regulations; or
- State, district or local party committees or authorized campaign

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⁵ Commission regulations at 11 CFR 300.13(c) address interim reporting requirements between November 6 and December 31, 2002.

⁶ In no case is a committee prohibited from responding to a request for information about a tax-exempt group that shares the party’s political or philosophical goals. 11 CFR 300.11(f).

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committees of state or local candidates. 11 CFR 300.11(a)(3).

Office Building Funds. After November 5, 2002, national party committees may no longer accept funds into party office building accounts and may not use such funds for the purchase or construction of any office facility. Any funds remaining in an office building account on November 6 must be disgorged to the U.S. Treasury or returned to donors no later than December 31, 2002. Any refund check not cashed by February 28, 2003, must be disgorged to the Treasury by March 31. 11 CFR 300.12.

Transition rules. If a national party committee has nonfederal funds in its possession on November 6, 2002, it may use these funds to retire outstanding debts or other obligations relating to the 2002 elections, including runoff elections and recounts, until January 1, 2003. Any remaining nonfederal funds must be disgorged to the Treasury or returned to donors no later than December 31, 2002. Any refund checks not cashed by February 28, 2003, must be disgorged to the Treasury by March 31. The nonfederal accounts of national party committees must file termination reports with the Commission disclosing the disposition of all funds deposited in nonfederal accounts and building fund accounts. 11 CFR 300.12 and 300.13.

State, District and Local Party Committees and Organizations

Under the new regulations, state, district and local party committees that have receipts or make disbursements for federal election activity may maintain, as appropriate, up to four different types of accounts:

- Federal accounts, for deposit of funds that comply with the limita-

tions, prohibitions and reporting requirements of the Act;

- Nonfederal accounts, for deposit of funds that are governed by state law;
- Allocation accounts, which may be established to make allocable expenditures and disbursements; and
- Levin accounts, for deposit of a new category of funds, called "Levin funds," that comply with some of the limits and prohibitions of the Act and are also governed by state law.⁷

Levin funds. A state, district or local party committee may spend only those Levin funds that it raises for itself, and these funds can be used only for certain types of voter registration, voter identification, get-out-the-vote and generic campaign activity. Note that certain types of federal election activities may *not* be financed with Levin funds:

- Public communications that refer to a clearly-identified candidate; and
- The services of employees who devote more than 25 percent of their compensated time to activities in connection with a federal election.

National party committees may not raise or spend Levin funds.

When a party committee receives a donation of Levin funds, this donation:

⁷ An organization may also deposit Levin funds in a nonfederal account that must function as a nonfederal and Levin account. In order to make a disbursement of Levin funds from such an account, the organization must be able to show through a reasonable accounting method approved by the Commission that the organization had received into this account sufficient federal contributions or Levin donations to make the disbursement. 11 CFR 300.30(c)(3)(ii).

- Must be permissible under the laws of the state in which the party committee raising and spending the funds is organized;
- May be solicited from some sources that cannot contribute under the Act (e.g., corporations, unions and federal government contractors) so long as the donation is not from foreign nationals or from sources that are impermissible under state law;
- Is limited to \$10,000 in a calendar year from any person, including any entity established, maintained, financed or controlled by that person (if state law limits donations to an amount less than

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 2002-11](#)

Final Rules on Prohibited and Excessive Contributions: Nonfederal Funds or Soft Money (67 FR 49064, July 29, 2002).

[Notice 2002-12](#)

Final Rules on Reorganization of Regulations on "Contribution" and "Expenditure" (67 FR 50582, August 5, 2002).

[Notice 2002-13](#)

Notice of Proposed Rulemaking on Electioneering Communications (67 FR 51131, August 7, 2002).

[Notice 2002-14](#)

Notice of Proposed Rulemaking on Contribution Limitations and Prohibitions (67 FR 54366, August 22, 2002).

\$10,000, then the lower limit applies); and

- Must be raised using only federal funds or Levin funds to pay the direct costs of the fundraising (including expenses for the solicitation of funds and for the planning and administration of actual fundraising activities and programs) if any portion of the funds will be used for federal election activity. 11 CFR 300.31 and 300.32(a)(4).

Each state, district and local party committee has a separate Levin fund donation limit, and such committees are not considered to be affiliated for the purposes of determining Levin fund donation limits. Levin funds expended or disbursed by a given state, district or local party committee must be raised solely by that particular committee, and these committees cannot raise Levin funds through joint fundraising efforts or accept transfers of Levin funds from other committees. Additionally, these committees cannot accept or use as Levin funds any funds that come from, or in the name of, a national party committee, federal candidate or federal officeholder. 11 CFR 300.31 and 300.34(b).

Levin fund expenditures and disbursements. As a general rule, state, district and local party committees must use federal funds to make expenditures and disbursements for federal election activity.⁸ 11 CFR 300.32(a)(2). However, as long as certain conditions are met, a state, district, or local party committee may use Levin funds to

pay for all or part of the following types of federal election activity:⁹

- Voter registration activity during the period that begins 120 days before the date of a regularly-scheduled federal election and ends on the day of that election; and
- Voter identification, get-out-the vote activities or generic campaign activity conducted in connection with an election in which a federal candidate appears on the ballot (regardless of whether a state or local candidate also appears on the ballot). 11 CFR 300.32(b).

Levin funds may *not* be used, however, to pay for any part of a federal election activity if:

- The activity refers to a clearly-identified federal candidate; or
- Any portion of the funds will be used to pay for a television or radio communication, other than a communication that refers solely to a clearly-identified state or local candidate. 11 CFR 300.32(c).

Levin funds may be used to pay for the entirety of permissible federal election activity disbursements only if the party committee's disbursements do not exceed \$5,000 in the aggregate in a calendar year. Disbursements and expenditures that aggregate in excess of \$5,000 per year must be paid entirely with federal funds or allocated between federal funds and Levin funds, according to the minimum allocation percentages described below. 11 CFR 300.33(a).

Allocating expenses. State, district and local party committees that allocate federal election activity expenses between federal and Levin funds must allocate to their federal account one of following minimum

percentages, depending on the composition of the ballot for that year:

1. If a Presidential candidate, but no Senate candidate, appears on the ballot, then at least 28 percent of the expenses must be allocated to the federal account.
2. If both a Presidential candidate and a Senate candidate appear on the ballot, then at least 36 percent of the expenses must be allocated to the federal account.
3. If a Senate candidate, but no Presidential candidate, appears on the ballot, then at least 21 percent of the expenses must be allocated to the federal account.
4. If neither a Presidential nor a Senate candidate appear on the ballot, at least 15 percent of the expenses must be allocated to the federal account.

An organization must make payments for allocable expenses either from a federal account or from an allocation account. If payments are made from a federal account, Levin funds may be transferred to this account, during the 70-day window for such transfers, in order to cover the Levin-fund portion of the expense. 11 CFR 300.33(d).

Expenses that may not be allocated. Certain costs of federal election activity are not allocable:

- Expenditures for public communications that refer to a clearly-identified federal candidate and that promote, support, attack or oppose any federal candidate must be paid entirely with federal funds.
- Salaries and wages for employees who spend more than 25 percent of their compensated time per month on federal election activities, or on activities in connection with federal elections, must be paid entirely with federal funds. Salaries and wages for employees who

⁸ Additionally, an association or similar group of state or local candidates or officeholders must use only federal funds to make expenditures or disbursements for federal election activity. 11 CFR 300.32(a)(1).

⁹ Levin funds may also be used for any purpose that is not federal election activity as long as this use is lawful in the state in which the committee is organized. 11 CFR 300.32(b)(2).

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spend 25 percent or less of their compensated time in this manner must be paid with funds that comply with state law.

- The direct costs of raising funds to be used for federal election activities must be paid with federal funds or, if Levin funds are being raised, with Levin funds. Fundraising costs may not be allocated and no nonfederal funds may be used. 11 CFR 300.33(c).

Office buildings. Under the amended Act and regulations, a state, district or local party committee may spend federal funds or nonfederal funds (including Levin funds) to purchase or construct a party office facility, so long as the funds are not contributed or donated by a foreign national. If a committee chooses to use nonfederal funds or Levin funds, the funds are subject to state law, and the Act will not preempt state law except to prohibit donations by foreign nationals. Moreover, if nonfederal or Levin funds are used, the office facility must not be purchased or constructed for the purpose of influencing the election of any federal candidate in any particular election. If federal funds are used to purchase or construct the facility, the Act will preempt the limits and prohibitions of state law. 11 CFR 300.35(a) and (b).

Additionally, a state, district or local party committee may generate income by leasing out a portion of its office building at the usual and normal charge. If the building is purchased in whole or in part with nonfederal funds, then all rental income must be deposited in the committee's nonfederal account and used only for nonfederal purposes. The rental income and its use must also comply with state law. If the building is purchased entirely with federal funds, then the rental income may be deposited in the committee's federal account. Any such income

must be disclosed in the committee's reports to the Commission. 11 CFR 300.35(c).

Reporting and recordkeeping for organizations that are not political committees. A state, district or local party committee (or an association of state or local candidates or officeholders) that is not a political committee under the Act is not required to file reports, but must be able to demonstrate through a reasonable accounting method that it has enough funds on hand that comply with the limits and prohibitions of the Act to cover any payment of federal funds (or Levin funds) that it makes for federal election activity. The organization must keep records to this effect and make these records available to the Commission upon request. Payments by such organizations for federal election activity are not "expenditures" for the purpose of determining whether an organization qualifies as a political committee with registration and reporting requirements, unless the payment otherwise qualifies as an expenditure under 2 U.S.C. §431(9).¹⁰ 11 CFR 300.36(a).

*Reporting and recordkeeping for political committees.*¹¹ A state, district or local party committee (or an association of state or local candidates or officeholders) that is a political committee under the Act must file on a monthly schedule and

¹⁰ Certain organizations that make "expenditures," as defined at 11 CFR 100.8(a), in excess of \$1,000 in a calendar year become political committees under the Act and must register and report with the Commission. 11 CFR 100.5. In a separate rulemaking, the Commission has reorganized 11 CFR 100.7 and 100.8. See related article on page 9.

¹¹ These requirements added by the BCRA are in addition to the Act's existing requirements to report expenditures of federal funds. 2 U.S.C. §434 and 11 CFR part 104.

report all receipts and disbursements of federal funds for federal election activity, including the federal portion of allocated expenses. 11 CFR 300.36(b)(1) and (b)(2). See also 11 CFR 100.5.

A state, district or local party committee that is a political committee but that has less than \$5,000

Public Appearances

September 4, 2002
American University
Washington, D.C.
George Smaragdis

September 4-6, 2002
Tribunal Superior de Justicia Electoral
Republica del Paraguay
Asuncion, Paraguay
Commissioner Toner

September 13, 2002
American University
Washington, D.C.
Commissioner Toner

September 19, 2002
The Campaign Disclosure Project
San Francisco, CA
Robert Biersack

September 21-22, 2002
California Political Attorneys Association
Marina del Rey, CA
Commissioner Sandstrom

September 25, 2002
American University
Washington, D.C.
George Smaragdis

September 30, 2002
American University
Washington, D.C.
Gary Mullen

of aggregate receipts and disbursements for federal election activity per calendar year—and any association of state or local candidates or officeholders that is a political committee—must report all receipts and disbursements of federal funds. (The party committee need not report receipts and disbursements of Levin funds.) Such a committee or association of candidates and officeholders should not report federal funds or Levin funds disbursed for federal election activity as “expenditures” on their reports, unless the disbursement otherwise qualifies as an expenditure.¹² 11 CFR 300.36(b)(1) and 300.36(c)(1). See also 2 U.S.C. §421(9) and 11 CFR 100.8.

A state, district or local party committee that has \$5,000 or more of aggregate receipts and disbursements for federal election activity per calendar year must disclose its activity in greater detail, including receipts and disbursements of federal funds and of Levin funds used for federal election activity. 11 CFR 300.36(b)(2) and 300.36(c)(1). Such a committee must also report the allocation percentages used.

Contributions and expenditures of federal funds for federal election activity apply toward the \$50,000 threshold for determining whether a committee must file its reports electronically under the Commission’s mandatory electronic filing program. Receipts and disbursements for federal election activity that do not qualify as contributions and expenditures (including Levin fund receipts and disbursements) do not, however, count toward this threshold. 11 CFR 104.18 and 300.36(c)(2). See also 11 CFR 100.7 and 100.8.

¹² *Associations, or other similar organizations, of state or local candidates may spend federally-permissible funds for federal election activity, but they cannot raise or spend Levin funds.*

Tax exempt organizations. Like national party committees, state, district and local party committees may not solicit funds for, or make or direct donations to, tax-exempt 501(c) organizations, or to organizations that have applied for tax-exempt status, if the organization makes expenditures or disbursements in connection with federal elections, including federal election activity.¹³ Committees may solicit funds for, or make or direct donations to, so-called “527 organizations” only if these organizations are:

- Political committees under Commission regulations;
- State, district or local party committees;
- Authorized campaign committees of state or local candidates; or
- A political committee under state law that supports only state or local candidates and that does not make expenditures or disbursements in connection with federal elections, including expenditures or disbursements for federal election activity.

In order to establish whether or not an organization makes expenditures or disbursements in connection with federal elections, party committees may obtain a signed certification from an authorized representative of the organization. The certification should state that within the current election cycle the organization has not made, and does not intend to make, such expenditures and disbursements, including payments for debts incurred from making such expenditures and disbursements in an earlier cycle. 11 CFR 300.37.

¹³ *In no case is a committee prohibited from responding to a request for information about a tax-exempt group that shares the party’s political or philosophical goals. 11 CFR 300.37(f).*

Fundraising by Federal Candidates and Officeholders

The new regulations restrict and, in some cases, prohibit the solicitation and use of nonfederal funds by federal candidates and federal officeholders,¹⁴ including agents acting on their behalf and entities that are directly or indirectly established, maintained, financed or controlled by one or more federal candidate or officeholder. 11 CFR 300.60 and 300.61.

Federal elections. Under the Act and regulations, federal candidates and officeholders can only solicit, receive, direct, transfer, spend or disburse federal funds in connection with a federal election or for federal election activity. 11 CFR 300.61.

Nonfederal elections. Federal candidates and officeholders can only solicit, receive, direct, transfer, spend or disburse funds in connection with a nonfederal election in amounts and from sources that are both consistent with state law and not in excess of the Act’s limits and prohibitions. However, if a federal candidate or officeholder is also a candidate for state or local office, then he or she may raise and spend nonfederal funds that only comply with state law, so long as the solicitation, receipt and spending of funds refers only to the state or local candidate and/or another state or local candidate. Individuals simultaneously running for federal and nonfederal office may only raise and spend federal funds for the federal election. 11 CFR 300.62 and 300.63.

Attending, speaking or appearing as a featured guest at a fundraising event. A federal candidate or

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¹⁴ *The new regulations at 11 CFR 300.2(o) define an “Individual holding Federal office” as an individual elected to or serving in the office of the U.S. President or Vice President, or in the U.S. Congress.*

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officeholder may attend, speak or be a featured guest at a fundraising event for a state, district or local committee of a political party, including a fundraising event at which nonfederal funds or Levin funds are raised. The committees may advertise, announce or otherwise publicize that a federal candidate or officeholder will attend, speak or be a featured guest at the fundraising event. Candidates and federal officeholders may speak at such an event without restriction or regulation. 11 CFR 300.64.

Tax-exempt organizations. A federal candidate or officeholder may make a general solicitation on behalf of a tax-exempt organization, without limits on the source or amount of funds, if the organization does not make expenditures or disbursements in connection with federal elections, including the federal election activities listed below. Moreover, a candidate or office holder may make a general solicitation on behalf of an organization that conducts activities in connection with an election if:

- The organization's principal purpose is not to conduct election activities, including the federal election activities listed below; and
- The solicitation is not to obtain funds for election activities in connection with a federal election, including federal election activities. 11 CFR 300.65(a) and (c).

Under certain circumstances, a federal candidate or officeholder may also make a specific solicitation explicitly to obtain funds to pay for federal election activities conducted by a tax-exempt organization whose principal purpose is to undertake such activities. The federal election activities for which such a specific solicitation may be made are:

- Voter registration activity during the period that begins 120 days before the date of a regularly-scheduled federal election and ends on the day of that election; and
- Voter identification, get-out-the vote activity or generic campaign activity conducted in connection with an election in which a federal candidate appears on the ballot (regardless of whether a state or local candidate also appears on the ballot). 11 CFR 300.65(c).

Such solicitations are permissible, however, only if they are made solely to individuals and the amount solicited does not exceed \$20,000 during any calendar year. 11 CFR 300.65(b) and (c).

Because the BCRA permits limited solicitations by federal candidates and officeholders only for the specific federal election activities listed above, these individuals *must not* make any solicitations on behalf of a 501(c) organization, or an organization that has applied for this tax status, for other types of election activities, such as public communications promoting or supporting federal candidates.

Determining "principal purpose." A federal candidate or officeholder may determine a tax-exempt organization's "principal purpose" by obtaining a signed certification from an authorized representative of the organization stating that:

- The organization's principal purpose is not to conduct election activities, including the federal election activities listed above; and
- The organization does not intend to pay debts incurred from making federal election disbursements and expenditures (including debts for federal election activity) in a prior election cycle. 11 CFR 300.65(e).

State and Local Candidates

The new regulations prohibit a state or local candidate or officeholder, or any agents acting on his or her behalf,¹⁵ from spending nonfederal funds on a public communication that refers to a clearly-identified federal candidate (regardless of whether a state or local candidate is also identified) and that promotes, supports, attacks or opposes a federal candidate. This prohibition applies whether or not the communication expressly advocates a vote for or against a federal candidate.

Tax-Exempt Organizations

The Commission has also added a subpart to 11 CFR 300, subpart C, which addresses the BCRA's limits and prohibitions on the use of soft money from the perspective of certain tax-exempt organizations. The regulations under this subpart contain the restrictions on fundraising and donations by national party committees and state, district and local party committees and fundraising by federal candidates and officeholders that are also addressed in the subparts devoted to each of these types of entity. 11 CFR 300.50, 300.51 and 300.52.

Advisory Opinions Superseded

These new and revised rules partially supersede the following advisory opinions relating to party office building funds: AOs 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1993-9, 1991-5 and 1986-40. Other advisory opinions may no longer be relied upon to the extent that they conflict with the BCRA. ♦

—George Smaragdis
and Amy Kort

¹⁵ For example, this prohibition would apply to an individual who is both a federal office holder and a state candidate. The regulations at 11 CFR 300 subpart E do not apply to an association of state or local candidates or officeholders.

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., NW.

Final Rules on Contribution and Expenditure Definitions

On August 5, 2002, the Commission published in the *Federal Register* the final rules, and Explanation and Justification, revising Commission regulations that define "contribution" and "expenditure" (67 FR 50582). The revised regulations:

- Reorganize former 11 CFR 100.7 and 100.8, which define "contribution" and "expenditure," in order to make the definitions easier to locate and read;
- Remove the office facility exception for national party committees, in order to reflect a statutory change made by the Bipartisan Campaign Reform Act of 2002 (BCRA); and
- Incorporate another recent statutory change that exempts 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 line of credit available to a candidate.

Reorganization of Definitions

In the revised rules, the Commission removed and reserved 11 CFR 100.7 and 100.8 and replaced them with four new subparts within 11 CFR part 100 that separately describe:

- Items that are contributions (subpart B);
- Items that are not contributions (subpart C);
- Items that are expenditures (subpart D); and
- Items that are not expenditures (subpart E).

Except as noted below, the revised rules do not make substantive changes to the definitions.

Office Building Exemption

The new rules state that contributions to and expenditures by a national party committee for the purpose of constructing or pur-

chasing an office facility are "contributions" and "expenditures" under the Federal Election Campaign Act. 11 CFR 100.56 and 100.114. The rules further clarify that anything of value given to a nonfederal account of a state, local or district party committee to purchase or construct an office building or facility is not a contribution or expenditure, subject to the provisions of 11 CFR 300.34.¹ 11 CFR 100.84 and 100.144.

Brokerage Loans and Lines of Credit

The new rules include as exceptions to the definitions of "contribution" and "expenditure" a loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit or other available line of credit.² 11 CFR 100.83 and 100.144.

Additional Information

The full text of the of the final rules and Explanation and Justification, which include a distribution table showing where each section of the old regulations is located in the revised regulations, is available on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline, 202/501-3413. The rules will become effective on November 6, 2002. ♦

—Amy Kort

(continued on page 10)

¹ In a separate rulemaking the Commission has added new 11 CFR part 300 to address the BCRA's restrictions, prohibitions and reporting requirements for the use of nonfederal funds. See related article on page 1.

² These revisions reflect the language in the "Brokerage Loans and Lines of Credit" final rules published in the June 4, 2002, Federal Register (67 FR 38353). See the July 2002 Record, page 2.

Regulations

(continued from page 9)

Notice of Proposed Rulemaking on Electioneering Communications

On August 1, 2002, the Commission approved a Notice of Proposed Rulemaking (NPRM) seeking comments on proposed regulations concerning electioneering communications. These regulations implement provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) that prohibit corporations and labor organizations from financing certain communications in close proximity to an election, and require those who do finance such communications to file special disclosure reports. The proposed rules:

- Define “electioneering communication”;
- Establish reporting requirements; and
- Clarify who may fund electioneering communications.

The NPRM was published in the August 7, 2002, *Federal Register* (67 FR 51131). The Commission held a public hearing on the proposed rules August 28-29, 2002.

Definition of “Electioneering Communication”

Under the proposed rules, an electioneering communication is any broadcast, cable or satellite communication that:

- Refers to a clearly identified federal candidate;
- Is publicly distributed 30 days before a primary or 60 days before a general election; and
- Reaches 50,000 or more people in the state or district in which the election is held (except for communications made within 60 days of the general election for the offices of President and Vice-President).

Under the proposed rules, “electioneering communication” does not include any communication that:

- Is publicly distributed through a means other than broadcast, cable or satellite;
- Appears in a news story, commentary or editorial distributed through broadcast, cable or satellite systems, unless the facilities are owned or controlled by a political party, political committee or candidate;¹
- Is otherwise reported as an expenditure, coordinated party expenditure or independent expenditure;
- Is made by a federal officeholder’s authorized campaign committee;
- Constitutes a candidate debate or forum or promotes said debate or forum; or
- Refers to a bill or law by its popular name where that name includes the name of a federal candidate, provided that it is the sole reference to the federal candidate.

The Commission also offered a series of possible exemptions for communications regarding legislative or executive matters which do not also constitute communications about federal candidates.

Who may make Electioneering Communications

Electioneering communications may be made by individuals, political committees, unincorporated 527 organizations, unincorporated 501(c)(3) organizations and unincorporated entities such as partnerships, LLCs and some trade associations and membership organizations, provided that they do not use corporate or labor funds to pay for the communications.

¹ Even if the facilities are owned or controlled by a committee or candidate, they may fall under the news exemption at 11 CFR 100.132(a) and (b).

Corporations and labor organizations are prohibited from making electioneering communications to individuals beyond their restricted class.² Corporations and labor organizations cannot provide funds for another person to make an electioneering communication.

² The restricted class comprises those individuals within a corporation or labor organization who may be solicited for contributions to the organization’s separate segregated fund at any time and who may receive communications containing express advocacy from the organization. In the case of corporations, the restricted class is their executive and administrative personnel, stockholders and the families of each. For labor unions, the restricted class is their executive and administrative personnel, union members and the families of each.

FEC Expands Acceptance of Credit Cards

The Federal Election Commission now accepts American Express, Diners Club and Discover Cards in addition to Visa and MasterCard. While most FEC materials are available free of charge, some campaign finance reports and statements, statistical compilations, indexes and directories require payment. Walk-in visitors and those placing requests by telephone may use any of the above-listed credit cards, cash or checks. Individuals and organizations may also place funds on deposit with the office to purchase these items. Since pre-payment is required, using credit cards or funds placed on deposit can speed the processing and delivery of orders. For further information, contact the Public Records Office at 800/424-9530 (press 3) or 202/694-1120.

Persons who receive funds from a corporation or labor organization must be able to establish that no such funds have been used to pay for their electioneering communications.

However, 501(c)(4) organizations may make electioneering communications if they are qualified non-profit corporations. 11 CFR 114.10(c). If one of these corporations makes electioneering communications that aggregate over \$10,000 in a calendar year, it must certify in its report that it qualifies for the nonprofit exemption from the prohibitions against corporate expenditures.

The Wellstone amendment to the BCRA removes the exemption for 527 and 501(c)(4) corporations in the case of targeted communications. Because the Wellstone amendment defines targeted communications to include all electioneering communications, this would imply that all incorporated entities are prohibited from making electioneering communications, even qualified nonprofit corporations. The Commission sought comment on this point.

Reporting Requirements

Any person who makes a disbursement or contracts to make a disbursement for the direct costs of an electioneering communication that aggregate to over \$10,000 in a calendar year must file a report with the Commission within 24 hours.

Direct costs include production studio time, staff salaries, the cost of recording media and talent and the cost of airtime to broadcast the communication.

The full text of the NPRM is available on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline, 202/501-3413. The Commission expects to adopt final rules in late September. ♦

—Phillip Deen

Notice of Proposed Rulemaking on Contribution Limitations and Prohibitions

On August 15, 2002, the Commission approved a Notice of Proposed Rulemaking (NPRM) seeking comments on proposed changes to its regulations regarding contribution limitations and prohibitions. The proposed rules would implement provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) that:

- Increase the contribution limits for individuals and political committees;
- Prohibit certain contributions and donations by minors; and
- Strengthen the current statutory prohibitions on contributions and donations by foreign nationals.

The NPRM also includes proposed changes to Commission regulations regarding the redesignation and reattribution of excessive contributions, as well as committees' recordkeeping requirements.

The NPRM was published in the August 22, 2002, *Federal Register* (67 FR 54366) and is open to public comments until September 13, 2002.

Increases in Contribution Limits

Under the BCRA, the contribution limits for individuals and non-multicandidate committees will increase, as of January 1, 2003, to \$2,000 per election to federal candidates and to \$25,000 per year to national party committees. 2 U.S.C. §§441a(a)(1)(A) and 441a(a)(1)(B). Moreover, the BCRA replaces the \$25,000 annual individual contribution limit with a new bi-annual limit of \$95,000. This amount includes up to \$37,500 in contributions to candidate committees and up to \$57,500 in contributions to any other committees. The \$57,500 portion of the bi-annual limit contains a further restriction, in that no more than \$37,500 of this amount may be given to committees

that are not national party committees. 2 U.S.C. §§441a(a)(3)(A) and (B). For each two-year election cycle, these limits will be indexed for inflation, as described below.

The BCRA also raises the limits for contributions to Senate candidates by the Republican and Democratic Senatorial campaign committees or the national committees of a political party, or any combination of these committees, to \$35,000 per six-year cycle as of January 1, 2003. This limit will also be indexed. The proposed rules reflect these increases in the contribution limits. 2 U.S.C. §441a(h).

Indexing. The NPRM seeks comments on proposed methods of indexing these limits for inflation. Under the proposed rules, the base contribution limit—for instance, \$2,000 per candidate, per election—would be adjusted for each election cycle according to the Consumer Price Index (CPI). The Commission proposes that the limits would be adjusted only in odd-numbered years, and would be increased by the percentage difference between the CPI during the 12 months preceding the beginning of that calendar year and the CPI during the base period, which is 2001. The NPRM also includes a rounding formula governing the indexing of contribution limits, so that, for instance, the limits would be rounded to the nearest \$100.

The adjusted limit would be in effect from the day after the general election to the day of the next general election. Thus, for example, an increase in the limit made in January 2005 would be effective from November 3, 2004, to November 7, 2006.¹ The Commission also seeks comments on whether to

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¹ Under the proposed rules, in every odd-numbered year the Commission would publish the contribution limits in the *Federal Register* and on its web site.

Regulations

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adjust the limits in January 2003, or to wait until January 2005.

Additionally, the NPRM seeks comments on whether the time period for aggregating contributions for the bi-annual contribution limit should be determined on a calendar year basis or on an election cycle basis.²

Prohibition on Contributions by Minors

The BCRA prohibits individuals under 18 years old from making a contribution to a federal candidate or a contribution or donation to a political party committee. See 2 U.S.C. §441k. The NPRM proposes regulations to implement these prohibitions. The proposed regulations prohibit minors from making contributions to a federal candidate's authorized committees and to any entity directly or indirectly established, maintained, financed or controlled by one or more federal candidates. The proposed regulations also prohibit minors from making contributions or donations to national, state, district and local political party committees and to any entities directly or indirectly established, maintained, financed or controlled by such committees. The Commission seeks comments on whether to prohibit minors from:

- Making donations to the nonfederal account of a political party committee;

² The BCRA also contains a so-called "millionaires' amendment," which raises the contribution limits for candidates whose opponents finance their campaigns with large amounts of personal funds. Individual contributions made under this provision will not be subject to the overall bi-annual limit. The Commission will address the millionaires' amendment in a future rulemaking.

- Making contributions to political action committees if those funds are earmarked for a particular candidate, political committee or organization to which the individual is otherwise barred from contributing; and/or
- Making contributions to federal political action committees at all.

The proposed rules also clarify that individuals under 18 may participate in volunteer work for campaigns and committees.

Prohibition on Contributions and Donations from Foreign Nationals

The BCRA extends the Federal Election Campaign Act's ban on contributions by foreign nationals to contributions and donations solicited or made directly or indirectly to candidates for state, local and federal office.³ 2 U.S.C. §441e(a)(2). Furthermore, it extends the prohibition to disbursements for electioneering communications⁴ and to expenditures and independent expenditures. The NPRM seeks comments on proposed regulations to implement this ban, including such issues as:

- How, or whether, to interpret or define "indirectly";
- How, or whether, to define "donation"; and
- Whether foreign-controlled U.S. corporations, including a domestic subsidiary of a foreign corporation, should be prohibited from making corporate donations and/or from making federal contributions from their political action committees.

³ The BCRA also prohibits Presidential inaugural committees from accepting donations from foreign nationals. The proposed rules reflect this prohibition. 36 U.S.C. §510.

⁴ Commission regulations governing electioneering communications are under consideration in a separate rulemaking. See related article, page 10.

Additionally, the Commission seeks comments on regulations addressing the degree of knowledge, if any, that a person soliciting, accepting or receiving a contribution or donation must have had about the status of a contributor or donor before that person can be considered to have violated the foreign national ban. The NPRM proposes a knowledge requirement with three alternative standards of knowledge, any one of which would establish knowledge:

- Actual knowledge;
- Awareness of certain facts that would lead a reasonable person to conclude that there is a substantial possibility that the contribution came from a foreign source; or
- Failure to inquire into the status of a contributor or donor in a situation where an individual becomes aware of facts that should have led any reasonable person to make such an inquiry.

The Commission requests comments on whether these standards of knowledge are appropriate or should be expanded. The NPRM also seeks comments on when political committees and their treasurers should have an affirmative duty to investigate contributions and donations to confirm that they do not come from foreign sources.

Resignations and Reattributions

The Commission is considering streamlining its rules for designating contributions for a particular election and attributing contributions to particular donors. 11 CFR 110.1, 110.2 and 102.9. Given the amount of resources that the Commission and the regulated community have devoted to complying with the Commission's current reattribution and redesignation procedures, the Commission is proposing the following possible changes as a matter of administrative convenience and to better reflect donor intent.

One possible change would allow a candidate committee to presume that when a contributor makes an undesignated excessive contribution before the primary election, he or she intends to contribute the excessive amount to the general election, provided that the total amount contributed does not exceed the limitations on contributions for both elections. Alternatively, or in conjunction with this approach, the committee could be required to inform the contributor about how the contribution had been designated and allow the contributor to request a refund. The Commission also seeks comments on whether to allow either of these approaches to apply for other types of redesignations, or for reattributions.

Another alternative would be to maintain the Commission's current regulations concerning reattributions and redesignations, but to eliminate the signature requirement. In this case, contributors could redesignate or reattribute their contributions via email, or by an oral communication with the committee when there is a signed record of the conversation.

Additional compliance issues. The NPRM also addresses the Commission's concerns about some

committees' illegal use of contributions received for the general election during the primary election. Currently, candidate committees may segregate primary and general funds either by maintaining separate accounts or by maintaining separate books for primary and general funds held within a single account. 11 CFR 102.9(e). The Commission seeks comments on whether committees should be required to segregate such funds by maintaining separate accounts. Moreover, the Commission seeks comments on whether to explicitly require committees to retain certain records of contributions over \$50, including copies of contribution checks and records of contributions made by credit or debit card. The NPRM also requests comments on proposed rules to require committees to maintain copies of all written solicitations.

Comments

The Commission invites comments on any of these proposals. The full text of the NPRM is available on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline, 202/501-3413.

All comments should be addressed to Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either written or electronic form by September 13, 2002. If the Commission receives sufficient requests to testify, a public hearing will be held on October 3. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to 202/219-3923, with a printed copy follow-up to insure legibility. Electronic mail comments should be sent to BCRAPart110@fec.gov and must include the full name and postal service address of the commenter. Comments that do not contain this information will not be

considered. No oral comments can be accepted. ♦

—Elizabeth Kurland
and Amy Kort

Advisory Opinions

AO 2002-8 Return of Federal Funds from Nonfederal Account to Federal Account

The David Vitter for Congress committee (the Committee) may re-deposit into its federal campaign account \$700,500 it had transferred to the candidate's state campaign account. The re-deposit does not violate Commission regulations that ban the transfer of funds from a candidate's state or local campaign to his or her federal campaign because the funds effectively remained federal funds at all times. 11 CFR 110.3(d).

Background

In March and April 2002, the Committee deposited \$700,500 from its account into an account for the Congressman's state exploratory committee. The funds were placed in a separate account and not commingled with any contributions raised under state law or made directly to the state exploratory committee. Moreover, the state campaign did not apply for a loan or line of credit, so the funds were not used as security or collateral. In May, the Congressman decided not to seek state office, and the \$700,500 remained in the separate account.

Under Commission regulations, a candidate may not transfer funds or assets from his or her nonfederal campaign accounts to his or her federal campaign accounts. 11 CFR 110.3(d). However, the nonfederal

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Advisory Opinions

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committee may choose to refund contributions and may coordinate arrangements with the candidate's federal campaign committee to have that committee solicit the contributors.

Re-deposit of Funds

According to the Explanation and Justification for the regulations prohibiting such transfers, the regulations are intended to prohibit a candidate from transferring funds raised under state law to a federal campaign account and from indirectly using funds that are not permissible under federal law to influence a federal election.¹ In this case, the funds in question were:

- Raised by a federal committee under the limits and prohibitions of the Federal Election Campaign Act;
- Never commingled with nonfederal funds; and

¹ See the Explanation and Justification for "Transfer of Funds From State to Federal Campaigns," published in the January 8, 1993, Federal Register (58 FR 3474).

Web Access to Senate Candidates' Campaign Finance Reports

Senate campaign finance reports are available to the public on the FEC web site. All Senate reports received after May 15, 2000, are currently accessible on the site, and the FEC will make future reports available within 48 hours of receiving them.

To view these reports, go to www.fec.gov, click on "Campaign Finance Reports and Data," and then select "View Financial Reports."

- Placed in an account that was never used for the state campaign.

Thus, in this situation, the concerns articulated in the Explanation and Justification are wholly absent.

Viewing these factors together, the Commission concluded that the funds may be re-deposited into the Committee's account. The Committee should re-deposit the funds within 10 days of its receipt of the opinion, and disclose the transaction on its next report, along with a memo entry explaining the circumstances of the re-deposit.

Length: 3 pages; Date Issued: August 1, 2002. ♦

—Amy Kort

AO 2002-10 Status of State Party as State Committee of Political Party

The Green Party of Michigan (the Party) satisfies the requirements for state committee status.¹

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 quali-

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

fied as a candidate under Commission regulations.

The Green Party of Michigan 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 satisfy this requirement for state committee status.²

The Party satisfies the second requirement—ballot access for at least one federal candidate. Ralph Nader, Matthew Abel, Alan Gamble and Thomas Ness each gained ballot access as one of the Party's federal candidates on the Michigan ballot in 2000, and each met the requirements for becoming a federal candidate under 2 U.S.C. §441a(d).³

Date Issued: August 1, 2002; Length: 4 pages. ♦

—Amy Kort

² 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.

³ 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 aggregating in excess of \$5,000. 2 U.S.C. §432(e)(1) and 11 CFR 101.1.

Court Cases

Friends for Houghton v. FEC

On July 23, 2002, the U. S. District Court for the Western District of New York denied Plaintiff's motion for summary judgment, granted the Commission's motion for summary judgment and dismissed the case.

Background

On September 13, 2001, Friends for Houghton (the Committee) filed a complaint in the U.S. District Court for the Western District of New York, appealing a civil money penalty for failure to timely file the Committee's 2000 Pre-Primary Report.

Section 437g(b) of the Federal Election Campaign Act (the Act) requires the Commission to notify any principal campaign committee of a House or Senate candidate that may have failed to file a required pre-election report or a quarterly report before an election of its failure to file such report, prior to taking action against that committee. If the committee does not file the report within four business days of the notification, the Commission must publish, before the election, the name of that committee as having failed to file the report. If the committee demonstrates that the report had been timely filed or files the report within the four business days, the Commission will not publish its name before the relevant election.

Additionally, under the Commission's Administrative Fine program, election-sensitive reports¹ are subject to the schedule of penalties for "late" reports if they

¹ Election sensitive reports are those filed immediately before an election and include pre-primary, pre-special, pre-general, October Quarterly and October monthly reports.

are filed after their due date, but more than four days before an election. Committees filing later than that, or failing to file at all, are subject to the schedule of penalties for reports that are "not filed."

According to the allegations in the complaint, Congressman Amo Houghton was a candidate in the New York primary held September 12, 2000. As a result, his campaign committee was required to file a pre-primary report on August 31. On September 1, the Commission sent a notice to the Committee indicating that it may have failed to file its pre-primary report, and that it would have four business days from the date of the notice to file the report. Because of the Labor Day holiday, the fourth business day after the Commission's September 1, 2000, notice was September 8. The Committee filed the report on that day.

On October 17, 2000, the Commission found reason to believe that the Committee and its treasurer had violated 2 U.S.C. §434(a), which requires the timely filing of reports by political committees. Having filed its pre-primary report less than five days before the election, the committee was subject to the schedule of penalties for reports that are "not filed." The Commission assessed a civil money penalty in the amount of \$9,000 in accordance with 11 CFR 111.43. In its complaint, the Committee asked the court to order the Commission to modify both its determination that the Committee was a nonfiler and its assessment of the civil money penalty.

Decision

The court observed that while the Commission's notice informed the Committee that the Commission was considering taking action against it and provided the Committee with a four business-day window to file its report and avoid the publication of its name, "Section 437g(b) does not . . . attach any

additional significance to the four business-day rule. More specifically, 437g(b) does not indicate that, by filing within four business days, the late filing is excused [and] that the person avoids a monetary penalty."

Thus, while a committee has four additional business days to file a report in order to avoid the publication of its name before the election, neither the Act nor Commission regulations provide a grace period for calculating a penalty under the Administrative Fine program.

The court dismissed the case. See the December 2001 *Record*, page 2.

U.S. District Court for the Western District of New York, 01-6444. ♦

—Jim Wilson

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If you would like to place an order for paper copies of the *Campaign Guides*, please call 800-424-9530, press 1, then 3.

Court Cases

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New Litigation

Schaefer v. FEC

On July 8, 2002, Michael Schaefer, a 2002 Congressional primary candidate in Arizona, asked the U.S. District Court for the District of Arizona to find unconstitutional the Federal Election Campaign Act's (the Act):

- Definition of "contribution;"
- Limits on individual contributions; and
- Prohibition on corporate contributions.

Mr. Schaefer alleges that these provisions of the Act favor incumbent candidates and violate Article I of the Constitution and the First and Tenth amendments.

Background. Under the Act, a contribution includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. §431(8)(A)(i). A bank loan made in the ordinary course of business is not a contribution. However, the endorsement or guarantee of a loan is considered a contribution in the amount that each endorser or guarantor is liable. 2 U.S.C. §§431(8)(B)(vii) and 431(8)(B)(vii)(I). The Act limits contributions from individuals to candidates to \$1,000 per election and prohibits corporations from making any contribution or expenditure to influence a federal election. 2 U.S.C. §§441a(a)(1) and 441b.

Court Complaint. Mr. Schaefer claims that he is unable to obtain a sufficient loan for his campaign because the endorsement or guarantee of the loan would be considered a contribution from each individual endorser or guarantor and thus subject to the Act's contribution limits. Moreover, his family's corporation cannot endorse or

guarantee the loan because of the ban on corporate contributions. In his complaint, Mr. Schaefer alleges that these provisions of the Act "appear to be protection of the incumbents, by the incumbents and for the incumbents," because, he asserts, incumbent candidates have greater access to funds from other sources, such as political action committees and party committees.

Mr. Schaefer asks the court for a declaratory judgment that:

- He has the right to finance his campaign with personal or borrowed funds from any source; and
- A guarantor of a loan is not a contributor in a case where there is no evidence that the loan is intended to be forgiven rather than repaid.

U.S. Court for the District of Arizona, 02-1255-PHX-SMM. ♦

—Amy Kort

Alternative Dispute Resolution

ADR Program Update

The Commission recently resolved three 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.

1. The Commission reached agreement with Charles J. Swindells concerning contributions that exceeded the \$25,000 annual contribution limit. The respondent obtained a refund of \$13,000 from the primary recipient of the contributions and also agreed to pay a \$6,000 civil penalty. (ADR 058)
2. The Commission reached agreement with the Massachusetts Republican State Congress-

sional Committee concerning excessive nonfederal transfers made to a federal account. The respondent acknowledged that a violation of the Act occurred as a result of a variety of reporting errors. The respondent agreed to appoint an FEC compliance officer, who will attend a Commission-sponsored conference, and to develop an FEC compliance manual. The respondent also agreed to pay a \$10,000 civil penalty. (ADR 065)

3. The Commission reached agreement with the Friends of John Sharpless concerning excessive contributions. The respondent agreed to pay a \$1,000 civil penalty and to terminate the committee. (ADR 066) ♦

—Amy Kort

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.

Compliance

Nonfilers

The campaign committees of the candidates listed at right failed to file required campaign finance reports. 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

Publications

New Campaign Guide Available

A revised *Campaign Guide for Congressional Candidates and Committees* is now available on the Commission's web site at <http://www.fec.gov/pdf/candgui.pdf>. The new guide provides candidates and their authorized committees with clear explanations of the Federal Election Campaign Act and Commission regulations as of July 2002. This version of the guide does not address changes to the federal campaign finance law that will become effective after November 6, 2002, as part of the Bipartisan Campaign Reform Act of 2002 (BCRA). The Commission plans to publish a new version of the *Campaign Guide for Congressional Candidates and Committees* once BCRA-related amendments to the campaign finance law and Commission regulations are in place.

Given the limited shelf life for the current edition, the Commission does not intend to print copies for mass distribution. Instead, the Guide

Candidate	Office Sought	Report Not Filed
Allen, Benjamin	House GA/12	Pre-Primary
Cornett, Carlton W.	House TN/05	Pre-Primary
Davis, Jim	House FL/11	July Quarterly
Dayan, Sigfried	House GA/03	July Quarterly
Fisher, Ada M.	Senate NC	July Quarterly
Lawrence, Robert I.	House WA/06	July Quarterly
Rackowski, Andrew	Senate MI	Pre-Primary
Reichow, David P.	House MN/06	July Quarterly
Sharpless, John	House WI/02	July Quarterly

will be available for download on the FEC web site. A limited number of printed loose-leaf copies will also be available for those without Internet access. To request a printed copy, call the Information Division at 800/424-9530 (press 1, then 3) or 202/694-1100. ♦

—Amy Kort

www.fec.gov

BCRA on the FEC's Web Site

In September, the Commission will add a new section to its web site (www.fec.gov) devoted to the Bipartisan Campaign Reform Act of 2002 (BCRA).

The new page will provide links to:

- The Federal Election Campaign Act, as amended by the BCRA;
- Summaries of major BCRA-related changes to the federal campaign finance law;
- Summaries of current litigation involving challenges to the new law;
- *Federal Register* notices announcing new and revised Commission

regulations that implement the BCRA; and

- Information on educational outreach offered by the Commission, including upcoming Roundtable sessions and the Commission's tentative 2003 conference schedule.

The new section will also allow individuals to view the Commission's calendar for rulemakings, including projected dates for the Notices of Proposed Rulemaking, public hearings, final rules and effective dates for regulations concerning

- Soft money;
- Electioneering Communications;
- Contribution Limitations and Prohibitions;
- Coordinated and Independent Expenditures;
- The Millionaires' Amendment;
- Consolidated Reporting rules; and
- Other provisions of the BCRA.

The BCRA section of the web site will be continuously updated. Visit www.fec.gov and click on the BCRA icon. ♦

—Amy Kort

Administrative Fines

Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on fourteen new Administrative Fine cases, bringing the total number of cases released to the public to 436.

Civil money penalties for late reports are determined by the number of days the report was late, the amount of financial activity involved and any prior penalties for violations under the administrative fine regulations. Penalties for late reports—and for reports filed so late as to be considered nonfiled—are also determined by the financial activity for the reporting period and any prior violations. Election sensitive reports, which include reports and notices filed prior to an election (i.e., 12 Day pre-election, October quarterly and October monthly reports), receive higher penalties. Penalties for 48-hour notices that are filed late or not at all are determined by the amount of the contribution(s) not timely reported and any prior violations.

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

The committees listed in the chart above, along with their treasurers, were assessed civil money penalties under the administrative fine regulations.

Closed Administrative Fine case files are available through the FEC Press Office, at 800/424-9530 (press 2), and the Public Records Office, at 800/424-9530 (press 3). ♦

—Amy Kort

Committees Fined and Penalties Assessed

1. American Success PAC	_____ ¹
2. AT&T PAC	\$1,200
3. Bexar County Democratic Party	\$900
4. Bill McCollum for US Senate	\$4,150
5. Chris Chocola for Congress, Inc.	\$13,000
6. Committee on Letter Carriers Political Education (Letter Carriers Political Action Fund)	\$4,500
7. D.C. Democratic State Committee	\$800 ²
8. Dickey for Congress Campaign Committee	\$2,700
9. Eleanor Jordan for Congress	\$900 ^{2,3}
10. Friends of Phill	\$8,100
11. Greens/Green Party USA	\$900 ²
12. Harry Browne for President, Inc.	\$1,125 ²
13. John Fee for Congress	\$1,125 ^{2,3}
14. VenturePAC	\$750

¹ The Commission took no further action in this case.

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

³ This civil money penalty has not been collected.

Outreach

FEC Roundtables

On October 2, 2002, the Commission will host a roundtable session on the FEC's new soft money regulations. This roundtable is limited to 35 participants, and will be conducted at the FEC's headquarters in Washington, DC. The roundtable will begin at 9:30 a.m. and last until 11:00. Please arrive no later than 9:15, in order to allow for security screening.

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. Prepayment is required. The registration form is available at the FEC's Web site at <http://www.fec.gov/infosvc.htm> and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call 800/424-9530 (press 1, then 3) or 202/694-1100. ♦

Roundtable Schedule

Date	Subject	Intended Audience
October 2 9:30 - 11 a.m.	New Soft Money Rules <ul style="list-style-type: none"> • Soft money ban • Party office building funds • Levin funds • Solicitations for tax-exempt organizations • Allocation by state party committees 	<ul style="list-style-type: none"> • Political parties • House and Senate candidates • Tax-exempt organizations • Lawyers, accountants and consultants to above

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