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Election Administration

Voluntary Standards for Computerized Voting Systems Issued for Public Comment

On December 13, 2001, the Commission issued for public comment two volumes of draft Voluntary Standards for Computerized Voting Systems (the Standards). The Standards, which revise those published in 1990, are designed to guide the development of computerized voting systems. Volume I provides functional and technical requirements for a number of different voting system types and configurations. Volume II provides testing specifications and processes for the requirements outlined in Volume I. Copies of both volumes are available on the Commission's web site at http://www.fec.gov/elections.html and by calling the Commission's Office of Election Administration, 800/424-9530 (extension 1095) or 202/694-1095.

Although the Standards are voluntary, 38 states have chosen to adopt them either in whole or in part and currently use them to design

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Advisory Opinions

AO 2001-16

Extension of 60-Day Window for Transferring Funds to Cover Allocable Expenses

The Democratic National Committee (DNC) may not transfer funds from its nonfederal to its federal accounts outside of the 60-day period Commission regulations allow for transfers to pay the nonfederal portion of allocable expenses.

Background

Under Commission regulations, expenses that are allocable between a committee's federal and nonfederal accounts must be paid entirely from a federal account. The committee may transfer funds to cover the nonfederal portion of the expense from the nonfederal account to the federal account up to ten days before the expenditure is made or within 60 days afterward. 11 CFR 106.5(g).

The DNC had requested that the 60-day post-payment transfer period be extended temporarily to 120 days, because the terrorist attacks of September 11, 2001, "made it

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Election Administration

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systems and procure equipment to meet the needs of a variety of voting populations and election formats.

Periodic revisions of the Standards are necessary in order to address emerging technology in voting systems, such as electronic and telecommunications components not considered in the original standards. The revised volumes also define:

- Specifications to help voting system vendors design systems that meet the specific needs of voters with disabilities;
- System specific software standards for ballot counting, vote processing, the creation of an unalterable audit trail and the generation of output reports and files;
- Performance requirements to provide direct feedback to the voter indicating an overvote or an undervote; and
- Performance requirements for the content and labeling of data provided to the media and other organizations prior to the canvass and certification of election results.

The Commission first released Volume I for public comment in July 2001, and made substantive revisions in response to the comments received. Volume II is being released for comment for the first time. A Notice requesting comments on these volumes was published in the December 20, 2001, *Federal Register* (66 FR 65708).✥

—*Amy Kort*

Advisory Opinions

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appropriate for the DNC to suspend its fundraising events and mail solicitations." The DNC asserted that it had not received nonfederal funds "in time to make allocation transfers because of circumstances outside the control of the committee or its agents."

As a result of the issues raised in this advisory opinion request, the Commission considered issuing a Statement of Policy to grant some temporary and circumscribed relief from compliance with the transfer deadline at 11 CFR 106.5(g)(2)(ii)(B).[1] The Commission, however, did not approve a Statement of Policy. Likewise, the Commission decided not to grant such relief through an advisory opinion and denied the DNC's request for an extension of the transfer deadline.

Commissioner Sandstrom issued a concurring opinion on December 14, 2001.

Date Issued: December 17, 2001; Length: 3 pages.✥

—*Amy Kort*

[1] *A proposed policy statement, "Request for Comment on Draft Statement of Policy Regarding Party Committee Transfers of Nonfederal Funds for Payment of Allocable Expenses," was published in the November 7, 2001,* Federal Register *(66 FR 56247).*

Advisory Opinion Requests

AOR 2001-15

Trade association PAC's solicitation of master limited partnership and its employees; acceptance of unsolicited contributions. (National Propane Gas Association, September 25, 2001)

AOR 2001-17

Disclosing receipt of contributions made via a single check that are split between federal and nonfederal accounts (DNC Services Corporation/Democratic National Committee, October 29, 2001)

AOR 2002-1

Presidential public funding for coalition of minor parties supporting candidate(s) who together gain five percent of vote (Lenora B. Fulani and James Mangia, *et al.*, January 3, 2002)✥

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 2001-19
Voluntary Standards for Computerized Voting Systems (66 FR 65708, December 20, 2001).

Notice 2001-20
Notice of Disposition Regarding Party Committee Transfers of NonFederal Funds for Payment of Allocable Expenses (66 FR 66813, December 27, 2001).

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Court Cases

AFL-CIO and DNC Services Corp./DNC v. FEC

On December 19, 2001, the U.S. District Court for the District of Columbia found that the FEC's decision to disclose documents obtained during an investigation of the plaintiffs was arbitrary, capricious and contrary to law. The court ruled that the confidentiality provision of the Federal Election Campaign Act (the Act) and an FEC regulation prohibit the Commission from making public the investigatory files of matters under review (MURs). The court also found that the Commission is required to redact names and other individual identifying information from the files prior to release under the Freedom of Information Act (FOIA).

Background

On June 17, 1997, the Commission found reason to believe that the plaintiffs had violated the Act during the 1995-96 election cycle (MURs 4291, *et al.*). At the conclusion of its investigation, the Commission voted to take no further action on MURs 4291, *et al.* and to close the files. In keeping with its long-standing practice of disclosing the investigatory record once a MUR is closed, the Commission planned to make public a portion of the investigatory file. 11 CFR 5.4(a)(3) and (4).

The plaintiffs claimed that public disclosure of the files would cause irreparable injury by revealing confidential information to their political opponents, the media and the public, and by chilling the plaintiffs' future efforts to engage in political activities. The plaintiffs asked the Commission not to make the documents public. The Commission denied their requests, and the AFL-CIO and DNC filed suit. On July 17, 2001, the U.S. District Court for the District of Columbia granted the plaintiffs' request for a preliminary injunction barring the Commission from publicly releasing certain documents relating to the investigation until the court made a final decision in this case. See the September 2001 Record, page 8.

Court Decision

The plaintiffs requested summary judgment from the court, arguing that disclosure of the documents would violate the confidentiality provision of the Act, which states that:

"Any notification or investigation made under [the enforcement] section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made." 2 U.S.C. §437g(a)(12)(A).

The plaintiffs further claimed that publicizing the MUR documents would violate:

- FOIA exemptions at 5 U.S.C. §552(b)(3) and (7)(C);
- The Privacy Act (5 U.S.C. §522a(b)); and
- The First Amendment.

Confidentiality Provision of the Act. The Commission argued that the Act only protects the confidentiality of ongoing investigations. Once a MUR is closed, the Act requires the Commission to make public the conciliation agreement or the Commission's determination that the Act has not been violated. 2 U.S.C. §437g(a)(4)(B)(ii). The Commission asserted that the Act's confidentiality provision was intended to protect a MUR respondent from disclosure of the fact that the respondent is under investigation. When the Commission makes public its MUR determination, it also reveals the fact that the respondent has been investigated, leaving nothing to be protected by the confidentiality provision.

The court, however, concluded that the plain language of the Act barred the Commission from publicizing investigative materials and, thus, that the Commission's interpretation of the statute ran counter to congressional intent. 2 U.S.C. §437g(a)(12)(A). The court explained that, "Had Congress intended §437g(a)(12)(A) to expire upon the conclusion of an FEC investigation, it certainly knew how to draft language to accomplish that goal." The court found that the Act's provision requiring that MUR determinations be made public was a limited exception to the Act's confidentiality provision, not a directive to end the protection of that provision. 2 U.S.C. §437g(a)(4)(b)(ii). Moreover, the court concluded that publication of the materials would violate one of the Commission's regulations that implements the Act's confidentiality provision. 11 CFR 111.21(a).

FOIA Exemption. FOIA exemption 7(C) protects information compiled for law enforcement purposes that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. §552(b)(7)(C). The plaintiffs claimed that this exemption protected the identities and personal information of all individuals named in the investigative files. The Commission argued in response that:

- Individuals named in the files had a diminished expectation of privacy resulting from the Act's reporting requirements, its administrative enforcement procedures, the Commission's public disclosure regulations and the potential for enforcement cases to be litigated in federal district court (2 U.S.C. 437g(a)(6) and (8));
- The public interest in the disclosure of the results of any FEC enforcement investigation out-

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Court Cases

(continued from page 3)

weighed the privacy interest of the named individuals; and
- Much of the information contained in the files was already in the public domain and could thus be disclosed despite the FOIA exemption.

The court rejected the Commission's claims concerning the public interest and individuals' expectations of privacy because the District of Columbia Circuit has established a categorical rule that an agency must exempt from disclosure the names and identifying information of individuals appearing in an agency's law enforcement files.[1] Moreover, the court found that the Commission had failed to show that the majority of the names of individuals contained in the materials were already in the public domain.

Other Issues. The court, having found that disclosure would violate the Act and Commission regulations, as well as FOIA exemption 7(C), did not reach the merits of the plaintiffs' First Amendment or Privacy Act claims. The court granted the plaintiffs' motion for summary judgment in this case and denied the Commission's motion for summary judgment.

U.S. District Court for the District of Columbia, CA-01-1522.✥

—*Amy Kort*

[1] *Citing the D.C. Circuit, the court held that this rule applies unless that information is necessary to confirm or refute compelling evidence that the agency is engaged in illegal activity.*

New Litigation

Common Cause and Democracy 21 v. FEC

On November 21, 2001, Common Cause and Democracy 21 (the plaintiffs), both nonprofit public interest organizations, asked the U.S. District Court for the District of Columbia to find that the Commission acted contrary to law when it dismissed the plaintiffs' administrative complaint, filed April 4, 2000. The administrative complaint alleged that, during the 2000 election, joint fundraising efforts by authorized Senate campaign committees and national and state party committees resulted in violations of the Federal Election Campaign Act (the Act). On September 25, 2001, the Commission dismissed the administrative complaint.

Background. Under Commission regulations, political committees, such as authorized candidate committees and party committees, may engage in joint fundraising efforts and may form a committee to act as a joint fundraising representative. 11 CFR 102.17(a). If any participant in the joint fundraiser can lawfully accept nonfederal funds (soft money), then the joint fundraising representative can accept nonfederal funds.[1] 11 CFR 102.17(c)(3) and 2 U.S.C. §§441a, b, c, e, f and g. However, only federal funds—contributions that comply with the Act's limits and prohibitions—may be used to influence a federal election. Party committees may make coordinated expenditures on behalf of their federal candidates, so long as only federal funds are used and the expenditures do not exceed the coordinated party expenditure limits. 2 U.S.C. §441a(d).

Administrative Complaint. In their April 2000 administrative complaint, the plaintiffs alleged that during the 2000 federal elections a number of campaign committees and party committees were using nonfederal funds raised through joint fundraising activities to make expenditures that violated the Act. The plaintiffs alleged that during the 2000 New York Senatorial race, the Democratic Senatorial Campaign Committee (DSCC), the New York State Democratic Committee (NYSDC) and Senator Hillary Clinton's campaign committee (Clinton Committee) created a joint fundraising representative that raised funds for the committees. The plaintiffs claimed that the DSCC and the NYSDC used joint fundraising funds, including nonfederal funds, to purchase television advertisements that were intended to promote Senator Clinton's election and that may have constituted coordinated party expenditures because they appeared to have been coordinated with the Clinton committee. According to the complaint, donors who gave money to the joint fundraising representative understood that their donations would be used to support Senator Clinton's campaign. The plaintiffs asserted that the DSCC transferred funds that under the Act could not be allocated to the Clinton Committee to the NYSDC, which then purchased the ads. Thus, the administrative complaint alleged that the committees violated the Act's contribution limits and its prohibitions on corporate and labor union contributions. 2 U.S.C. §§441a and 441b.

Court Complaint. In their November 2001 court complaint, the plaintiffs repeated the above allegations concerning the 2000 New York Senate race. The court complaint further alleged that these expenditures, when aggregated with the parties' other expenditures, exceeded the Act's coordinated party expenditure limits and were not properly reported to the Commission.

[1] *The fundraising representative must deposit nonfederal donations into a separate account created for that purpose or forward them directly to a participant that is permitted to accept them.*

As a result, the complaint alleged, the Clinton Committee, the DSCC and the NYSDC violated the Act by:

- Accepting contributions in excess of the individual contribution limits and in violation of the prohibitions on contributions from corporations and labor organizations (2 U.S.C. §§441a and 441b(a));
- Accepting or expending funds in excess of the coordinated party expenditure limits (2 U.S.C. §§441a(d) and 441a(f)); and
- Failing to report contributions and expenditures used to influence a federal election (2 U.S.C. §434(b)).

Additionally, the complaint alleged that the DSCC exceeded the Act's limit on national committee contributions to Senate candidates and that the DSCC and the NYSDC exceeded limits on political committee contributions to candidates and their authorized committees. 2 U.S.C. §§441a(h) and 441a(a).

In their complaint, the plaintiffs also asserted that other committees involved in joint fundraising for the 2000 elections had committed similar violations, including Democratic committees in Michigan supporting Senator Stabenow and Republican committees in Missouri supporting then-Senator Aschcroft.

Relief. The plaintiffs claim that the Commission failed to provide a reasoned basis for its decision to dismiss their administrative complaint and that the dismissal was erroneous. The plaintiffs ask the court to declare that the Commission's dismissal of the administrative complaint was arbitrary and capricious and contrary to law under the Act.

U.S. District Court for the District of Columbia, 1:01cv02423.✥

—*Amy Kort*

Audits

Runbeck for Congress and Reggie Seltzer for Congress

In two recently-approved audit reports, the Commission found that political committees had failed to use their "best efforts" to obtain the name, address, occupation and employer of each individual who had given more than $200 in a calendar year. The Commission approved the Final Audit Reports for Runbeck for Congress (Runbeck) and Reggie Seltzer for Congress (Seltzer) on November 9 and November 15, respectively. In each of the audits, insufficient identification required committees to amend previously-filed reports.

Background

Under the Federal Election Campaign Act (the Act), political committees are required to identify each person who gives more than $200 in a calendar year. 2 U.S.C. §434(b)(3)(A). Identification is defined as the name, address, occupation and employer of each individual. 2 U.S.C. §431(13)(A). Committee reports are judged to be in compliance with the identification requirements of the Act when a committee either discloses the required information or its treasurer can demonstrate that he used best efforts to obtain the information required under the Act. 2 U.S.C. §432(i). Treasurers are deemed to have exercised best efforts when they have made at least one attempt to obtain the required information after the receipt of a contribution. Such a request may be either a written request or an oral request documented in writing, and must be made no later than 30 days after the receipt of the contribution. 11 CFR 104.7(b).

Audit Findings

The Runbeck audit covered January 1, 1999, to December 31, 2000. The report found that Runbeck had disclosed 866 contributions that exceeded $200 per calendar year. For 234 of the 866 contributions, contributors' occupation and employer were not disclosed. After Runbeck was notified of the audit proceedings, its treasurer filed amended reports to disclose additional contributor information and materially correct the public record.

The Seltzer audit also covered January 1, 1999, to December 31, 2000. The report found that Seltzer had disclosed 313 contributions that exceeded $200 per calendar year. For 91 of the 313 contributions, contributors' occupation and employer were not disclosed. While Seltzer staff reported that they attempted to obtain the required information, they kept no records of such efforts.

Audit staff recommended that Seltzer:

- Provide "one effort after receipt" documentation to demonstrate that best efforts had been made to obtain the required information; or
- File amended Schedules A to disclose any contributor information not previously reported.

In response, Seltzer filed amended reports to disclose additional contributor information and materially correct the public record.✥

—*Jim Wilson*

Public Appearances

February 7, 2002
Orange Rotary Club
Orange, California
Commissioner Wold

February 13-14, 2002
Government Performance Institute
Washington, D.C.
Patricia Brown

Alternative Dispute Resolution

ADR Program Update

Between October 2000 and December 2001, the Alternative Dispute Resolution (ADR) Pilot program resolved 28 cases, resulting in 45 separate negotiated settlement agreements. None of the cases required mediation.

The vast majority of ADR cases—90 percent—arose from complaints filed with the Commission. These cases involved a variety of alleged violations of the Federal Election Campaign Act (the Act), most frequently the Act's provisions concerning:

- Contributions or expenditures by corporations, banks or labor organizations;
- Reporting by political committees; and
- Contribution and expenditure limits.

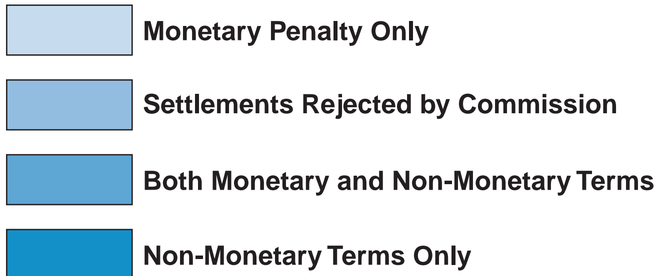
ADR aims to resolve disputes through the mutual consent of the parties involved and to promote compliance with and understanding of the Act. Moreover, ADR encourages parties to engage in negotiations that promptly lead to the resolution of their dispute. In its first 14 months, the ADR program concluded cases within an average of 117 days.

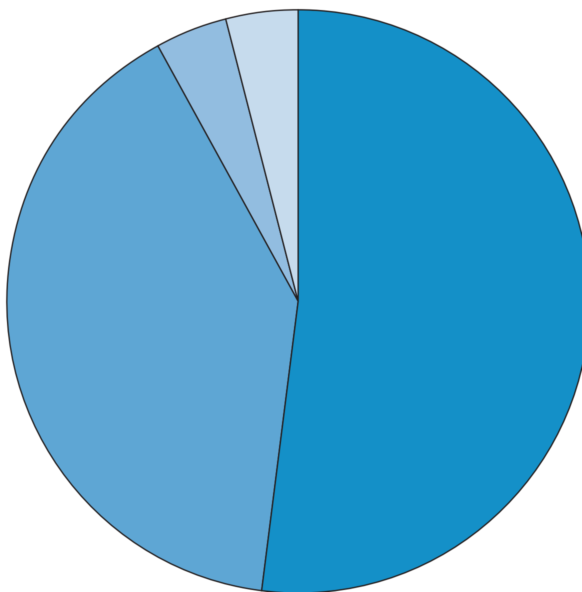
To date, the Commission has approved all but two of the ADR office's negotiated settlement agreements.[1] Fifty-two percent of ADR-negotiated agreements mandated only non-monetary terms of settlement designed to encourage corrective action, such as the respondents' participation in an FEC conference. Only four percent of the agreements required the payment of a civil penalty absent other, non-monetary terms. See graph at left.

For more information about the ADR program, see the FEC's "Alternative Dispute Resolution" brochure, which describes how cases qualify for the program. The brochure is available on the FEC's web site at http://fecweb1.fec.gov/pages/adr.htm, or by mail. Call 800/424-9530 (press 1, then 3) or 202/694-1100 to request a copy.✥

—*Amy Kort*

Separate Negotiated Settlement Agreements October 2000—December 2001





ADR Settlements

Staff

Robert Biersack Named Deputy Press Officer

The Commission has appointed Robert W. Biersack to be the agency's Deputy Press Officer, filling a vacancy left by the retirement of Sharon L. Snyder. Mr. Biersack will assume his new duties on February 11, 2002.

Mr. Biersack, who joined the Commission's Data Systems Development Division in 1983, has been instrumental in defining, planning and executing statistical studies related to campaign finance information filed with the Commis-

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[1] Two agreements were rejected by the Commission on September 26, 2001, due to provisions in the agreements reflecting the respondents' misunderstanding of various sections of the Act.

sion. He was also a key participant in the design and implementation of the FEC's electronic filing program and Internet accessible database.

Mr. Biersack holds degrees in economics and political science from Marquette University and the University of Wisconsin-Milwaukee.✥

—Amy Kort

Administrative Fines

Committees Fined for Nonfiled and Late Filed Reports

The Federal Election Commission recently publicized its final action on three new Administrative Fine cases, bringing the total number of cases released to the public to 300:

- California Dental Association, $3,000 civil money penalty;
- Federal Managers' Association PAC, $1,000 civil money penalty; and
- Rustad Senate 2000, penalty reduced to $0 due to lack of activity on the report.

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 nonfiled 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. 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.

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

Outreach

Conference for Candidates and Party Committees

The FEC will hold a conference for candidates and party committees **March 25-26, 2002**, in Washington, D.C. The conference will consist of a series of interactive workshops presented by Commissioners and experienced FEC staff, who will explain how the requirements of the federal election law apply to House and Senate campaigns and political parties. In addition, an IRS representative will be available to answer election-related tax questions.

The registration fee for this conference is $325, which covers the cost of the conference, materials and meals. The deadline for registration (and for fully-refunded registration cancellations) is March 1. A late registration fee of $10 will be added effective March 2.

The conference will be held at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW. Washington, D.C. A room rate of $189 single or double is available for reservations made by March 1. Call 800/635-5065 or 202/484-1000 ext. 5000 to make reservations. In order to receive this room rate, you must notify the hotel that you will be attending the FEC conference. After March 1, room rates are based on availability. The hotel is located near the L'Enfant Plaza Metro and Virginia Railway Express stations.

Registration Information

Conference registrations will be accepted on a first-come, first-served basis. Attendance is limited, and FEC conferences have sold out in the past, so please register early. For registration information:

- Call Sylvester Management Corporation at 800/246-7277;
- Visit the FEC web site at www.fec.gov/pages/infosvc.htm#Conferences; or
- Send an email to toni@sylvestermanagement.com.✥

—Amy Kort

Conferences in 2002

For complete conference information, visit the FEC's web site at www.fec.gov/pages/infosvc.htm#Conferences.

Conference for Candidate Committees, Parties and PACs
Date: February 5-7, 2002
Location: San Francisco, CA (Grand Hyatt on Union Square)
Registration Fee: $375

Conference for Candidate and Party Committees
Date: March 25-26, 2002
Location: Washington, D.C. (Loews L'Enfant Plaza)
Registration Fee: $325

Conference for Corporations
Date: April 22-24, 2002
Location: Washington, D.C. (Loews L'Enfant Plaza)
Registration Fee: $375

Conference for Trade Associations
Date: May 22-24, 2002
Location: Washington, D.C. (Loews L'Enfant Plaza)
Registration Fee: TBA

Conference for Member and Labor Organizations
Date: June 26-28, 2002
Location: Washington, D.C. (Loews L'Enfant Plaza)
Registration Fee: TBA

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Correction

The January 2002 Record incorrectly stated that a committee with a fiscal year ending on September 30 must file IRS Form 990 (or 990-EZ) on or before January 15. Form 990 is due the 15th day of the 5th month after the close of a committee's tax year, and thus in this example Form 990 would be due on or before **February 15**. For more information, call the IRS at 877/829-5500.

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