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Compliance

MURs 5577 and 5620: Prohibited Contributions and Failure to Register as a Political Committee

On June 19, 2007, the Commission announced a settlement with the National Association of Realtors 527 Fund (NAR 527) in connection with violations of the Federal Election Campaign Act (the Act) during the 2004 election cycle. NAR 527, which is associated with the Chicago-based National Association of Realtors (NAR), will pay \$78,000 to settle charges that it failed to register and file disclosure reports as a federal political committee and accepted contributions in violation of federal limits and source prohibitions.

Background

During the 2004 election cycle, NAR 527 received \$2.9 million from NAR and received no other funds. NAR 527 spent approximately \$2.8 million to create and distribute various public communications that clearly identified nine federal candidates, including direct mail pamphlets and newspaper ads. The Commission concluded that certain of these public communications expressly advocated the election of

Court Cases

FEC v. Wisconsin Right to Life, Inc.

On June 25, 2007, the Supreme Court upheld a district court ruling that the electioneering communication (EC) financing restrictions of the Bipartisan Campaign Reform Act were unconstitutional “as applied” to ads that Wisconsin Right to Life, Inc., a 501(c)(4) nonprofit corporation, intended to run before the 2004 elections. The Supreme Court concluded that the EC financing restrictions are unconstitutional as applied to these ads because:

- The ads are not express advocacy or its functional equivalent; and
- The Court found no sufficiently compelling governmental interest to justify burdening WRTL’s speech.

Background

Under the Federal Election Campaign Act (the Act) and Commission regulations, an EC is defined, with some exceptions, as any broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is publicly distributed within 60 days before the general

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Court Cases

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election or 30 days before a primary election or a nominating convention for the office sought by the candidate. 2 U.S.C. §434(f)(3) and 11 CFR 100.29. Corporations may not make ECs using their general treasury funds.¹ 2 U.S.C. 441b(a)-(b) and 11 CFR 114.2 and 114.14.

WRTL originally filed suit in the U.S. District Court for the District of Columbia on July 28, 2004, asking the court to find the prohibition on the use of corporate funds to pay for ECs unconstitutional as applied

¹ Commission regulations provide an exception allowing “qualified nonprofit corporations” to pay for electioneering communications. 11 CFR 114.2(b)(2). However, WRTL alleges that it does not meet the definition of a qualified nonprofit corporation. 11 CFR 114.10.

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to what it calls “grassroots lobbying” communications planned for the period before the 2004 elections. After the district court both denied WRTL’s motion for a preliminary injunction and dismissed WRTL’s complaint, WRTL appealed to the Supreme Court. On January 23, 2006, the Supreme Court vacated the judgment and remanded to the district court to reconsider the merits of WRTL’s “as applied” challenge.

District Court Decision

The three communications in question were two radio advertisements and one television advertisement WRTL had planned to run before the 2004 primary and general elections concerning anticipated filibusters of President Bush’s federal judicial nominees. The ads encouraged Wisconsin listeners and viewers to contact their Senators (Senators Feingold and Kohl) to urge them to oppose the filibusters. Senator Feingold was up for reelection in 2004, but Senator Kohl was not.

A three-judge panel of the District Court considered the “as applied” challenge to the EC provisions based on two main arguments: whether the ads contained express advocacy for or against a federal candidate or the “functional equivalent” of express advocacy; and, if they did not, whether the government had demonstrated a compelling interest in regulating these ads.

Express advocacy. To determine whether WRTL’s 2004 anti-filibuster ads contained express advocacy, or its functional equivalent, the court considered only the text and images of the ads and declined to consider contextual factors bearing on the ads’ purpose or likely effect. The court’s evaluation was based upon whether the ads:

1. Described an issue that was or “likely” soon would be a “subject of legislative scrutiny”;
2. Referred to the prior voting record or current position of

the named candidate on the described issue;

3. Exhorted the audience to do anything other than contact the candidate about the described issue;
4. Promoted, attacked, supported or opposed the named candidate; and
5. Referred to an upcoming election, candidacy or party of the candidate.

Considering those five factors, the court found that the anti-filibuster ads did not contain express advocacy or its functional equivalent and thus were not “intended to influence the voters’ decisions.” The court noted that the ads did not mention an election, a candidacy or the individual’s “fitness for office.” While the ads discussed the filibuster issue, the court stated that they did not reference the Senators’ voting records, current or past, on this issue, and that they did not promote, attack, support or oppose either Senator. Additionally, the court noted the ads asked the audience to contact both Senators, not just the Senator up for reelection.

Government interest in regulating issue ads. In *McConnell v. FEC*, 540 U.S. 93 (2003), the Supreme Court found that the compelling government interest in regulating the communications covered by the definition of electioneering communication was sufficient to uphold the statute on its face. However, the district court stated that by permitting “as applied” challenges to the provisions of the BCRA, the Supreme Court left open the question as to whether there is a compelling government interest in regulating “genuine issue ads” covered by the statute. In light of its finding that WRTL’s anti-filibuster ads did not contain express advocacy, or its functional equivalent, the three-judge panel evaluated the government interest in regulating these ads. The court found no compelling government interest and rejected the

argument that the need for a “bright line” test is a basis for regulating “genuine issue ads,” noting that the “virtues of the bright line test cannot alone justify regulating constitutionally protected speech.”

On December 29, 2006, the Commission filed a Notice of Appeal to the Supreme Court.

Supreme Court Decision

On June 25, 2007, the Supreme Court issued a decision upholding the District Court ruling that the EC financing restrictions of the Bipartisan Campaign Reform Act were unconstitutional as applied to WRTL’s ads. The Supreme Court also rejected the FEC’s argument that the case was moot.

Mootness. The FEC argued that the cases involving WRTL’s ads were moot because the 2004 election has passed and WRTL has no continuing interest in running its ads. The Court rejected this argument, noting that the case fits within the established exception to mootness for actions “capable of repetition, yet evading review.” The Court noted that WRTL could not have obtained complete judicial review of its claims in time to air its ads in the period prior to the 2004 election and that WRTL had credibly claimed that it intended to run materially similar ads during future EC periods.

Electioneering communication financing restrictions unconstitutional “as applied” to WRTL ads. The Court rejected the FEC’s argument that WRTL has the burden of demonstrating that the EC provisions are unconstitutional as applied to its ads. The Court reasoned that the EC provisions burden political speech and, as such, are subject to strict scrutiny. Therefore, the government must prove that applying the EC provisions to WRTL’s ads “furthers a compelling governmental interest and is narrowly tailored to achieve that interest.” The Court stated that while in *McConnell v. FEC* the EC provisions had satisfied the standard of strict scrutiny for the regulation of

express advocacy and its functional equivalent, the Court in *McConnell* did not formulate a test for future as-applied challenges. The Court rejected the use of an intent-and-effect test for determining when an ad is the functional equivalent of express advocacy and instead explained that the inquiry should focus on the substance of the communication.

The Court found that WRTL’s ads may reasonably be interpreted as something other than an appeal to vote for or against a specific federal candidate and, as such, did not constitute the functional equivalent of express advocacy. The Court noted that the content of the ads was consistent with that of a “genuine issue ad” focused on a specific legislative issue and urging the public to take action regarding that issue. Also, the Court noted, the ads’ content lacked “indicia of express advocacy” because they made no mention of “an election, candidacy, political party, or challenger . . . and [took no] position on a candidate’s character, qualifications, or fitness for office.”

In the decision, the Court cited its long recognition of the governmental interest in preventing corruption and the appearance of corruption in elections. The Court acknowledged that *McConnell* had upheld the EC financing restrictions on their face, but the Court determined that that anti-corruption interest did not justify application of the restrictions to the advertisements proposed by WRTL.

The Court concluded that because WRTL’s ads are not express advocacy or its functional equivalent, and because the Court found no compelling governmental interest to justify the burden on WRTL’s speech, the EC financing restrictions are unconstitutional as applied to these ads. The Court also noted that this case does not present the occasion to revisit *McConnell*’s facial upholding of the EC financing restrictions.

—Gary Mullen

Bialek v. Gonzales

On June 28, 2007, the U.S. District Court for the District of Colorado granted the Commission’s motion to dismiss the suit by Barry Bialek against the U.S. Attorney General and the FEC, holding that the Attorney General has discretion over whether to investigate and prosecute criminal violations of the Federal Election Campaign Act (the Act) and is not required to wait for a referral of a case from the Commission.

Background

According to the complaint filed February 14, 2007, Plaintiff Barry Bialek made contributions towards John Edwards’ 2004 Presidential campaign. In November 2005, the U.S. Attorney General began an investigation into possible violations of the Act by the plaintiff. See April 2007 *Record*, page 5.

The plaintiff filed a complaint with the District Court in Colorado, alleging that the Commission must refer, by a vote of the majority of the Commission, a matter to the Attorney General prior to the Attorney General investigating or prosecuting a violation of the Act.

Court Decision

The District Court held that the Act does not limit the Attorney General’s authority to investigate and prosecute criminal violations of the Act and that the Commission’s actions are not a prerequisite to the Attorney General’s investigation.

Upon creating the Federal Election Commission, Congress gave the Commission exclusive jurisdiction to enforce the civil provisions of the Act. 2 U.S.C. 437c(b)(1). The Commission may refer a violation to the Attorney General if, by four votes of the Commissioners, the Commission determines that there is probable cause to believe that a “knowing and willful” violation occurred. 2 U.S.C. 437g(a)(5)(C).

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Court Cases

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The plaintiff claimed that because the Act grants the Commission exclusive jurisdiction over civil violations and contains a referral provision, criminal violations must first be handled by the Commission, and the Attorney General may only become involved in the matter once the Commission has voted to refer the violation. The court rejected the plaintiff's argument, holding that there is a presumption against any limitation on the Attorney General's prosecutorial authority and Congress must show "clear and unambiguous" intent to restrict the Attorney General's authority to investigate and prosecute criminal offenses. The Act does not explicitly restrict the Attorney General in any way. The court held that nothing in the plain language of the Act required a referral prior to prosecution by the Attorney General.

Additionally, the court held that the legislative history of the Act does not show Congressional intent to limit the prosecutorial authority of the Attorney General.

The district court granted the Commission's motion to dismiss and dismissed the case with prejudice against the plaintiff.

Bialek v. Gonzales, U.S. District Court for the District of Colorado, 07:CV-00321-WYD-PAC.

—Meredith Metzler

Compliance

(continued from page 1)

federal candidates and that NAR 527's spending indicated that its sole purpose was to advocate the election of federal candidates.

The Act and Commission regulations require a group whose major purpose is to influence federal elections to register with the Commission as a political committee within ten days of receiving contributions or making expenditures that exceed

\$1,000 per calendar year. All political committees must file regular reports disclosing the committee's receipts and disbursements, and such committees may not accept any contributions from corporations and may accept no more than \$5,000 per calendar year from an individual or another PAC.

NAR 527 registered with the Internal Revenue Service as a "Section 527" organization—a tax exempt group whose function is to influence the selection, nomination, election or appointment of any individual to federal, state or local public office or office in a political organization, or the election Presidential electors. However, NAR 527 failed to register as a political committee with the FEC, even though it met the statutory threshold for political committee status and had federal campaign activity as its major purpose.

NAR 527 agreed to pay the civil penalty, register as a political committee and disclose its activities to the public in reports filed with the Commission.

—Amy Pike

Public Funding

Democratic and Republican Parties Certified for Convention Funding

The Democratic and Republican convention committees each received \$16,356,000 from the U.S. Treasury for planning and conducting their respective 2008 Presidential nominating conventions. The Commission has certified that the parties' convention committees have met all eligibility requirements for public funding. 26 U.S.C. §9008(g) and 11 CFR 9008.3(a)(3) and (4).

The Presidential Election Campaign Fund Act permits all eligible national committees of major and

minor parties to receive public funds to pay the official costs of their Presidential nominating conventions. Each major party convention committee is entitled to receive \$4 million,¹ plus an adjustment for inflation (since 1974). 26 U.S.C. §9008(b)(1) and 11 CFR 9008.4(a). Initial payments are made by the U.S. Treasury on or after July 1 of the year preceding the Presidential election. Payments for an additional cost-of-living adjustment will be made in 2008. In exchange for public funding of the conventions, committees agree to certain requirements, including spending limits, the filing of periodic disclosure reports and detailed audits by the Commission.

The public funding portion of Presidential elections is financed by the Presidential Election Campaign Fund, which receives funds through dollars voluntarily "checked off" by taxpayers on federal income tax forms. The major parties received \$14,924,000 for the 2004 conventions and \$13,512,000 for 2000.

The 2008 Democratic National Convention Committee, Inc., will hold its convention in Denver, Colorado, August 25-28, 2008. The Committee on Arrangements for the 2008 Republican National Convention will have its convention in Minneapolis-Saint Paul, Minnesota, September 1-4, 2008.

—Amy Kort

¹ Originally, the limit was \$2 million, plus COLA. That figure was increased to \$3 million, plus COLA, for the 1980 conventions and to \$4 million, plus COLA, for the 1984 conventions.

Audit

Gephardt for President Audit

On May 31, 2007, the Commission approved the final audit report of Gephardt for President, Inc. (the Committee). Gephardt for President, Inc. was the principal campaign committee of Representative Richard A. Gephardt, a candidate for the Democratic Party's nomination for President in 2004.

The Presidential Primary Matching Payment Account Act (the Matching Payment Act) requires the Commission to audit political committees that receive public funding in order to ensure that those funds were spent in accordance with Commission rules and that accurate reports were filed by those committees. If a committee received funds in excess of its entitlement, incurred non-qualified campaign expenses, had surplus funds or committed an apparent violation of the law, the committee must repay public funds to the U.S. Treasury, as determined by the Commission.

The Committee received \$4,104,320 in federal matching funds.

The Committee's audit included four findings and recommendations, three of which resulted in payments owed to the U.S. Treasury totaling \$323,102. The audit found that the committee:

- Received federal matching funds in excess of its entitlement;
- Received contributions that exceeded the 2004 contribution limits; and
- Has outstanding stale-dated checks.

Funds in Excess of Entitlement

Under the Matching Payment Act, a candidate who receives matching funds for the primary elections must submit a statement of "net outstanding campaign obligations" within 15 days of his or her date of ineligibility to receive further matching fund

payments. However, the candidate may continue to receive matching fund payments if he or she still has net outstanding campaign obligations.

Representative Gephardt's date of ineligibility was January 20, 2004. The Committee's estimated winding down costs were substantially higher than the actual amount the committee spent. Thus, the Commission determined that \$250,304 in funds in excess of the Committee's entitlement must be repaid to the U.S. Treasury.

Excessive Contributions

The Commission also determined that the Committee failed to resolve \$60,556 in excessive contributions and must therefore pay that amount to the U.S. Treasury.

Expenditures in Excess of Iowa Spending Limit

Candidates who receive matching funds must comply with state-by-state spending limits. The Audit staff determined that the Committee exceeded the spending limit in Iowa despite measures the committee had taken to ensure that it spent within the limits. The Commission determined that the Committee was not required make repayments based on these expenditures.

Stale-Dated Checks

The Commission identified stale-dated (uncashed) checks issued by the Committee totaling approximately \$12,242. The Commission determined that this amount is payable to the U.S. Treasury.

Copies of the audit reports are available on the FEC's web site at http://www.fec.gov/audits/audit_reports_pres.shtml.

—Myles Martin

Enforcement Query System Available on FEC Web Site

The FEC continues to update and expand its Enforcement Query System (EQS), a web-based search tool that allows users to find and examine public documents regarding closed Commission enforcement matters. Using current scanning, optical character recognition and text search technologies, the system permits intuitive and flexible searches of case documents and other materials.

Users of the system can search for specific words or phrases from the text of all public case documents. They can also identify single matters under review (MURs) or groups of cases by searching additional identifying information about cases prepared as part of the Case Management System. Included among these criteria are case names and numbers, complainants and respondents, timeframes, dispositions, legal issues and penalty amounts. The Enforcement Query System may be accessed on the Commission's web site at www.fec.gov.

Currently, the EQS contains complete public case files for all MURs closed since January 1, 1999. In addition to adding all cases closed subsequently, staff is working to add cases closed prior to 1999. Within the past year, Alternative Dispute Resolution (ADR) cases were added to the system. All cases closed since the ADR program's October 2000 inception can be accessed through the system.

Administrative Fines

Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 69 new Administrative Fines cases, bringing the total number of cases released to the public to 1,411 with \$1,951,529 in fines collected by the FEC.

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 fines 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 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 committee and the treasurer are assessed civil money penalties when the Commission makes its final determination. Unpaid civil penalties are referred to the Department of the Treasury for collection.

The committees listed in the adjacent charts, along with their treasurers, were assessed civil money penalties under the administrative fines regulations.

Closed Administrative Fine case files are available through the FEC Press Office and Public Records Office at 800/424-9530.

—Amy Kort

Committees Fined and Penalties Assessed

1. Agri-Mark, Inc. Legislative and Educational Committee	\$250 ¹
2. Al Green for Congress 2006 October Quarterly	\$787 ¹
3. Al Green for Congress 2006 12 Day Pre-General	\$1,350 ¹
4. Allegheny Energy Inc. Federal PAC (Allegheny PowerPAC- Federal)	\$750 ¹
5. Allete PAC	\$600 ¹
6. Anderson for Congress	\$5,100 ¹
7. Armor Holdings, Inc. PAC (Armor Holdings PAC)	\$500 ¹
8. Canseco for Congress Committee	\$0 ²
9. Chevy Chase Bank FSB PAC	\$900 ¹
10. Citizens for Sherman Parker	\$190 ¹
11. Citizens to Elect Phillip Jackson 2006 July Quarterly	\$300 ¹
12. Citizens to Elect Phillip Jackson 2006 October Quarterly	\$187 ¹
13. Coburn for Senate Committee	\$33,170 ¹
14. Committee for a Better Future	3
15. Committee for a Democratic Future	\$900 ¹
16. Committee to Elect Matt Miller	\$900 ¹
17. Council for a Livable World Candidate Fund	\$1400 ¹
18. Croplife America PAC	\$160 ¹
19. David Pfeffer Campaign	\$100 ¹
20. District No. 1-PCD MEBA Political Fund (MEBA PAF)	\$1400 ¹
21. Dollar Thrifty Automotive Group Inc. PAC (DTAG PAC)	\$500 ¹
22. Electric Power Supply Association PAC	\$500 ¹
23. Florida Congressional Committee	\$800 ¹
24. Food Products Association PAC (FPA-PAC)	\$500 ¹
25. Friends for Dix	\$9,500 ¹
26. Friends of Joe Nation	\$340 ¹
27. Friends of Joe Ortega III for Congress	\$0 ²
28. Gilliland for Congress	\$0
29. Green for Change	\$135 ¹
30. Growth and Prosperity PAC	\$900 ¹
31. Growth and Prosperity PAC	\$900 ¹
32. IA Vets for Congress	\$2,025 ¹
33. John Konop for Congress	\$900 ¹
34. Kevin Zeese for U.S. Senate	\$210 ¹
35. Kiser 4 Congress	\$2,700 ¹
36. L A PAC	\$6,000 ¹
37. Liberty P.A. Pac	\$900 ¹
38. Local 401 Iron Workers Political Action Fund	\$900 ¹
39. Maloney for Congress	\$2,400 ¹
40. Michigan Doctors PAC—Michigan State Medical Society	\$1,125 ¹
41. Monroe County Democratic Committee	\$9,625 ¹
42. Mountjoy for U.S. Senate	\$2,550 ¹
43. MS Consultants Inc. PAC	\$400 ¹
44. Murray Energy Corporation PAC	\$975 ¹
45. National Association for Home Care PAC	\$290 ¹

¹ This civil money penalty has been paid.

² This civil money penalty has been reduced due to the report's level of activity.

³ The Commission took no further action in this case.

Committees Fined and Penalties Assessed, cont.

46. Ohio Association of Mortgage Brokers PAC (OAMB PAC)	\$250 ¹
47. Oregon Republican Party	\$3,750 ¹
48. Penske Truck Leasing Co., L.P. PAC	\$600 ¹
49. Plumbers Local 519 PAC	\$287 ¹
50. Regula for Congress Committee 2004	— ³
51. Republicans for Choice PAC	\$4,050
52. Rightmarch.com PAC Inc.	\$500 ¹
53. Road to Victory PAC	\$900 ¹
54. San Antonio Police Officers Association PAC 2006 July Quarterly	\$1,350 ¹
55. San Antonio Police Officers Association PAC 2006 October Quarterly	\$962 ¹
56. Sardo for Congress '06	\$160 ¹
57. Simon Pristoop for Congress Committee	— ³
58. TERRIPAC	\$1,350 ¹
59. Tesoro Petroleum Corporation PAC	\$900 ¹
60. The Air Transport Association of America PAC	\$165 ¹
61. The Byrne for Congress Committee	\$600 ¹
62. The Committee to Elect Jake Ford for Congress	\$2,400 ¹
63. The Fred D. Thompson PAC	\$450 ¹
64. Tom Barlow for Congress '06	\$450 ¹
65. United Assoc. of Journeymen & Apprentices/Plumbing & Pipe Fitting Industry Local Union 335	\$1,200 ¹
66. United Fresh Fruit and Vegetable Association Fresh PAC (FRESH PAC)	\$145 ¹
67. Utility Workers Union of America Political Contributions Committee	\$3,000 ¹
68. Warner for Congress	\$300 ¹
69. Zandstra for U.S. Senate Committee	\$140 ¹

¹ This civil money penalty has been paid.

² This civil money penalty has been reduced due to the report's level of activity.

³ The Commission took no further action in this case.

**Alternative
Dispute
Resolution**

ADR Program Update

The Commission has successfully resolved nine campaign finance enforcement matters through its Alternative Dispute Resolution (ADR) program. The respondents, the alleged violations of the Federal Election Campaign Act (the Act) and

the final disposition of the cases are listed below.

1. The Commission reached an agreement with the Friends of John Conyers and M. Mickey Williams, as treasurer, regarding the failure to disclose receipts properly, deposit receipts in a timely manner and properly disburse funds. The respondents acknowledged inadvertent errors and omissions, but contended that they worked with Audit staff to implement all recommendations and hired an accounting firm to assist with compliance. The respondents agreed to pay a \$3,000 civil penalty

and to work with Commission staff to terminate the committee. (ADR 339*)

2. The Commission reached an agreement with the Republican State Committee of Delaware and Thomas J. Shopa, as treasurer, regarding the failure to properly disclose all financial activity on their 2004 Post General Report. The respondents amended the Post General Report twice, disclosing an additional \$81,584.05 in disbursements. The respondents acknowledged an inadvertent violation and contended that the additional disbursements were the result of data input errors. The respondents agreed to pay a \$1,500 civil penalty and send a representative to an FEC-sponsored seminar. (ADR 351*)

3. The Commission reached an agreement with the International Association of Heat & Frost Insulators and Asbestos Workers Political Action Committee and James P. McCourt, as treasurer, regarding the failure to disclose all financial activity on their 2005 Mid-Year Report. An amended Mid-Year Report disclosed additional receipts totaling \$90,088.01. The respondents acknowledged an inadvertent violation and agreed to pay a \$1,200 civil penalty and designate a compliance specialist to train staff on the Act. (ADR 344*)

4. The Commission reached an agreement with the Indiana Democratic Congressional Victory Committee and Linda Buzinec, as treasurer, regarding the failure to disclose all financial activity on their 2005 September Monthly Report. An amended report filed in December of that year disclosed additional receipts of \$65,166.94 and additional disbursements of \$61,791.56. The respondents contended that additional receipts and disbursements disclosed in the amended report

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* Cases marked with an asterisk were internally generated within the FEC.

Alternative Dispute Resolution

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were the result of a data importing error and an allocation error on the state portion of items paid. The respondents agreed to pay a \$1,000 civil penalty and develop a compliance manual to avoid future similar errors. (ADR 342*)

5. The Commission reached an agreement with Independent Action, Inc. and Ralph Santora, as treasurer, regarding the failure to disclose all financial activity on their 2005 Year End Report. The respondents filed an amended Year End Report that disclosed an additional \$95,197.78 in disbursements. The respondents acknowledged an inadvertent violation of the Act due to problems with their data management vendor. The respondents agreed to attend an FEC seminar and develop a compliance

manual for staff. Due to mitigating circumstances pertaining to the respondents' financial hardship, the Commission did not assess a civil penalty. (ADR 345*)

6. The Commission reached an agreement with EMILY'S LIST and Ranny Cooper, as treasurer, regarding the failure to forward a small percentage of its earmarked contributions within 10 days of receipt during 2005. Review of the Committee's 2005 monthly reports revealed the respondents distributed \$35,698.44 in deposited earmarked contributions to various campaign committees more than 10 days after receipt. The respondents acknowledged the mistake and agreed take steps to prevent similar future mistakes and to send a representative to an FEC-sponsored seminar. (ADR 352*)

7. The Commission reached an agreement with the Citizens for Altmire and Joanne L. Clarke, as treasurer, regarding the failure to include adequate disclaimers on print communications. The respondents acknowledged the inadvertent omission of adequate disclaimers on billboard advertisements and contended that appropriate disclaimers were added one week after the signs were originally posted. The respondents agreed to designate a communications compliance specialist to review communications prepared by the respondents to ensure compliance with the Act and to send a representative to a FEC-sponsored seminar within 12 months. (ADR 360/MUR 5828)

8. The Commission dismissed allegations against the Braxton County Democratic Executive Committee and Callaghan for Congress. The complaint centered on radio ads placed by the Braxton Committee that advocated the election of Congressional candidate Mike Callaghan (WV/02) and allegedly violated disclaimer, coordination and contribution source provisions of the Act. (ADR 378/MUR5832)

9. The Commission sent a letter of admonishment and dismissed the matter concerning Wynn for Congress's failure to disclose all financial activity on its 2006 July Quarterly Report. (ADR 368*)

—Kathy Carothers

Reports

Massachusetts Special Election Reporting: 5th District

Massachusetts will hold Special Elections to fill the U.S. House seat in Massachusetts' 5th Congressional District vacated by Representative Martin T. Meehan. The Special Primary Election will be held on September 4, 2007, and the Special General Election on October 16, 2007.

Candidate committees involved in one or both of these elections must follow the reporting schedule on page 9. Please note that the reporting period for the Post-General election report spans two election cycles. For this report only, authorized committees must use the Post-Election Detailed Summary Page rather than the normal Detailed Summary Page.

PACs and party committees that file on a semiannual schedule and participate in one or both of these elections must follow the same schedule on page 9. PACs and party committees that file monthly should continue to file according to their regular filing schedule.

Filing Electronically

Reports filed electronically must be received and validated by 11:59 p.m. Eastern Time on the applicable filing deadline. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program by the filing deadline will be considered nonfilers and may

FEC Accepts 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 prepayment is required, using a credit card or funds placed on deposit can speed the process and delivery of orders. For further information, contact the Public Records Office at 800/424-9530 or 202/694-1120.

be subject to enforcement actions, including administrative fines.

Timely Filing for Paper Filers

Registered and Certified Mail.

Reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by certified or registered mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by certified mail.

Overnight Mail. Reports filed via overnight mail¹ will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Express or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports.

Other Means of Filing. Reports sent by other means—including first class mail and courier—must be received by the FEC before the Commission’s close of business on the filing deadline. 2 U.S.C. 434(a)(5) and 11 CFR 104.5(e). Paper forms are available at the FEC’s web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency’s automated fax system (202/501-3413).

48-Hour Contribution Notices

Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more between August 16 and September 1, for the Special Primary Election; and between September 27 and October 13, for the Special General Election.

¹ “Overnight mail” includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service’s on-line tracking system.

Massachusetts 5th District Special Election Reporting

Committees Involved in Only the Special Primary Must File:

	Close of Books	Reg./Cert./Overnight Mailing Date ¹	Filing Date
Pre-Primary	August 15	August 20	August 23
October Quarterly	September 30	October 15	October 15

Committees Involved in Both the Special Primary and Special General Must File:

	Close of Books	Reg./Cert./Overnight Mailing Date ¹	Filing Date
Pre-Primary	August 15	August 20	August 23
Pre-General	September 26	October 1	October 4
October Quarterly	September 30	October 15	October 15
Post-General	November 5	November 15	November 15
Year-End	December 31	January 31	January 31

¹ This date indicates the end of a reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered.

24- and 48-Hour Reports of Independent Expenditures

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate at or above \$1,000 between August 16 and September 2, for the Special Primary, and between September 27 and October 14, for the Special General. This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more at other times during a calendar year.

Electioneering Communications

The 30-day electioneering communications period in connection with the Special Primary Election runs from August 4 through September 4, 2007. The 60-day electioneering communications period for

the Special General Election runs from August 17 through October 16, 2007.

—Elizabeth Kurland

Advisory Opinions

Advisory Opinion Requests

AOR 2007-09

GELAC fund’s reimbursement of compliance costs related to disclaimers in television advertisements paid by publicly funded Presidential campaign committee (Kerry-Edwards

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Advisory Opinions

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2004, Inc. and Kerry-Edwards 2004 General Election Legal and Compliance Fund, June 20, 2007)

AOR 2007-10

Recognizing the corporate employers of individual contributors at a golf tournament fundraiser (The Silvestre Reyes Campaign Committee, June 22, 2007)

AOR 2007-11

Advertising federal candidate/officeholder's appearance at state party fundraiser in pre-event material that references solicitations for nonfederal funds (California Republican Party and California Democratic Party, June 26, 2007)

AOR 2007-12

Disaffiliation of corporate SSFs after spinoff of subsidiaries (Tyco International Management Company, June 26, 2007)

Outreach

FEC Fall Regional Conferences

Each year the Federal Election Commission sponsors conferences where Commissioners and staff conduct a variety of technical workshops on the federal campaign finance law. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. The schedule in the box at right lists the dates and locations for conferences to be held in Fall 2007.

Regional Conference in Seattle for House and Senate Campaigns, Political Party Committees and Corporate/Labor/Trade PACs

The Commission will hold a regional conference in Seattle, WA,

on September 26-27, for House and Senate campaigns, political party committees and corporations, labor organizations, trade associations, membership organizations and their respective PACs. The Seattle conference will be held at the Red Lion Hotel on Fifth Avenue in downtown Seattle. For additional information, or to register for the conference, please visit the FEC web site at <http://www.fec.gov/info/conferences/2007/seattle07.shtml>.

Hotel Information. The Red Lion Hotel is located at 1415 Fifth Avenue, within walking distance of Seattle's famed Pike Place Market and near the monorail to tourist attractions such as the Space Needle and the Experience Music Project. A room rate of \$169 (single or double) is available to conference attendees who make reservations on or before August 31. To make your hotel reservations, please call 206-971-8000 or 1-800-504-3909 and indicate that you are attending the FEC conference. The FEC recommends that you wait to make your hotel and air reservations until you have received confirmation of your conference registration from Sylvester Management Corporation.

Registration Information

The registration fee for this conference is \$450, which covers the cost of the conference, a reception, materials and meals. A \$25 late fee will be added to registrations received after August 31. Complete registration information is available online at <http://www.fec.gov/info/conferences/2007/seattle07.shtml>. Please direct all questions about conference registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; e-mail: tonis@sylvestermanagement.com). For questions about the conference program, or to receive e-mail notification of upcoming conferences and workshops, call the FEC's Information Division at 1-800/424-9530 (press 6) (locally at

202/694-1100), or send an e-mail to Conferences@fec.gov.

—Dorothy Yeager

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- 2006-38: Officeholder's Use of State Campaign Funds, 3:7
- 2007-1: Federal Officeholder May Raise Nonfederal Funds to Retire

Fall Conference Schedule

Conference for Campaigns, Party Committees and Corporate/Labor/Trade PACs
September 26-27, 2007
Red Lion Hotel on Fifth Avenue
Seattle, WA

Conference for Campaigns, Party Committees and Corporate/Labor/Trade PACs
November 6-7, 2007
Hilton St. Louis at the Ballpark
St. Louis, MO

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FEC Updates AO Search System

This past March, the FEC launched a new Advisory Opinion Search System on its web site at www.fec.gov. This improved search function allows users to search for advisory opinions (AOs) by the AO number or name of requestor, or to enter search terms or perform an advanced search for documents.

The new system quickly provides relevant AOs, along with all related documents including advisory opinion requests, comments and any concurring or dissenting opinions issued by Commissioners. The search function also provides summary material and links to other AOs cited in the opinion.

When the search system was first launched, it included AOs issued from 1997 to the present. The system has now been updated to include AOs dating back to 1990. The AO search system is available at <http://saos.nictusa.com/saos/searchao>.

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