

# Record

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## 2011 Edition of FEC Regulations Now Available

The 2011 edition of Title 11, Code of Federal Regulations is available from the FEC online at <http://www.fec.gov/law/cfr/cfr.shtml> or in print. You may order a printed copy by calling the FEC's Information Division at (202) 694-1100 or (800) 424-9530 (press 6, when prompted).

## Court Cases

### Van Hollen v. FEC

On April 21, 2011, U.S. Representative Chris Van Hollen filed suit against the Federal Election Commission in the U.S. District Court for the District of Columbia, challenging a Commission regulation that provides for the disclosure of donations given to fund electioneering communications. Representative Van Hollen claims that 11 CFR 104.20(c)(9), which requires the disclosure of donations of \$1,000 or more to corporations (including nonprofits) or labor organizations when the donation "was made for the purpose of furthering electioneering communications," is arbitrary, capricious and contrary to law.

### Complaint

The complaint states the regulation is inconsistent with the provision of the Bipartisan Campaign Reform Act it implements because "the regulation requires corporations, including non-profit corporations, to disclose only some contributors of \$1,000 or more, i.e., donors who have manifested a particular state of mind or 'purpose.'" The complaint asserts that the challenged regulation contravenes 2 U.S.C. §434(f)(2)(F) because the

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## Regulations

### Petition for Rulemaking on Disclosure of Independent Expenditures

On April 21, 2011, U.S. Representative Chris Van Hollen submitted a Petition for Rulemaking to the Commission to revise and amend regulations relating to disclosure of independent expenditures. The petition argues that the Commission's regulations at 11 CFR 109.10 are inconsistent with the disclosure requirements of the statute at 2 U.S.C. §434(c). The petition contends that the regulations only require disclosure of each person who makes a contribution of more than \$200 "for the purpose of furthering the reported independent expenditure," (11 CFR 109.10(e)(1)(vi)) while the statute requires disclosure of persons who make contributions of more than \$200 to the person making the independent expenditure (2 U.S.C. §434(b)(3)(A)) and disclosure of those persons who make more than \$200 in contributions for the purpose of furthering an independent expenditure (2 U.S.C. §434(c)(2)(C)). The petition requests that the Commission enact regulations that implement Congress's intent to "require disclosure of the sources of funds

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## Court Cases

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statute requires disclosure of “all contributors” of \$1,000 or more to the corporation or labor organization when electioneering communications are not paid for with a segregated bank account.

Representative Van Hollen’s complaint asks the court to declare 11 CFR 104.20(c)(9) arbitrary, capricious and invalid. The plaintiff requests that the District Court remand this matter to the FEC for

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further action consistent with such a declaration and that the court retain jurisdiction over the matter to monitor the FEC’s compliance.

The full text of the court complaint is available at [http://www.fec.gov/law/litigation/van\\_hollen\\_van\\_hollen\\_complaint.pdf](http://www.fec.gov/law/litigation/van_hollen_van_hollen_complaint.pdf).

U.S. District Court for the District of Columbia: Case 1:11-cv-00766-ABJ.

—*Isaac J. Baker*

## Regulations

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used by persons making independent expenditures.”

The petition asks that the Commission revise the regulations at 11 CFR 109.10(e)(1) by striking existing subparagraph (vi) and replacing it with the following text:

- (vi) The identification of each person who made a contribution during the calendar year to the person filing such report, whose contributions have an aggregate amount or value in excess of \$200 within the calendar year, or in any lesser amount if the person filing such report should so elect, together with the date and the amount of any such contribution; and
- (vii) The identification of each person who made a contribution during the reporting period in excess of \$200 to the person filing such report, which contribution was made for the purpose of furthering an independent expenditure.

The Petition for Rulemaking is available on the FEC’s website at <http://sers.nictusa.com/fosers> under REG 2011-01 Independent Expenditure Reporting (2011).

—*Stephanie Cacomo*

## Reports

### Nevada Special Election Reporting: 2<sup>nd</sup> District

On May 12, 2011, the Commission approved the filing dates for the Special General Election to fill the U.S. House seat in the 2<sup>nd</sup> Congressional District vacated by Senator Dean Heller to be held on September 13, 2011. At that time, the special general election ballot was to be open to all qualified candidates, regardless of party, and the candidate filing deadline for ballot access was May 25, 2011. On May 19, 2011, the First Judicial District Court of Nevada ruled that Nevada’s major political parties are to instead select their nominees for this election at meetings of their State Central Committees, and minor political parties are to select their nominees at executive committee meetings.

The two major political parties, Republican and Democratic, will select their nominees at meetings of their State Central Committees on June 18, 2011, and June 25, 2011, respectively. Note that at time of publication, the district court decision to allow the parties to select nominees for the Special General Election at Special Party Caucuses has been appealed to the Nevada Supreme Court. The Commission cautions that the need for filing deadlines for these caucuses may be affected by a decision of the Nevada Supreme Court. The Special General Election date will not be affected.

Candidate committees involved in these elections must follow the reporting schedule available at [http://www.fec.gov/info/report\\_dates\\_2011.shtml](http://www.fec.gov/info/report_dates_2011.shtml). 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.

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## Reports

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PACs and party committees that file on a semi-annual schedule and participate in this election must also follow this special election reporting schedule. PACs and party committees that file monthly must continue to file according to their regular filing schedule.

### Filing Electronically

Reports filed electronically must be received and validated by the Commission 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 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 registered or certified 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. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

*Overnight Mail.* Reports filed via overnight mail<sup>1</sup> 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

<sup>1</sup>"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 online tracking system.

transmittal of its reports. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

*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. 11 CFR 100.19 and 104.5(e).

Forms are available for downloading and printing at the FEC's website (<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 the participating candidate's principal campaign committee if it receives any contribution of \$1,000 or more per source between May 30 and June 15, 2011, for the Special Republican Party Caucus, between June 6 and June 22, 2011, for the Special Democratic Party Caucus and between August 25 and September 10, 2011, for the Special General Election.

### 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 May 30 and June 16, 2011, for the Special Republican Party Caucus, between June 6 and June 23, 2011, for the Special Democratic Party Caucus and between August 25 and September 11, 2011, for the Special General Election. This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more during a calendar year.

### Electioneering Communications

The 30-day electioneering communications period in connection with the Special Republican Party Caucus runs from May 19 through June 18, 2011. The 30-day electioneering communications period in connection with the Special

Democratic Party Caucus runs from May 26 through June 25, 2011. The 60-day electioneering communications period in connection with the Special General Election runs from July 15 through September 13, 2011.

### Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special election must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of \$16,200 during the special election reporting period (see reporting schedule chart at [http://www.fec.gov/info/report\\_dates\\_2011.shtml](http://www.fec.gov/info/report_dates_2011.shtml)). 11 CFR 104.22(a)(5)(v). For more information on these requirements, see the March 2009 *Record*.

—Elizabeth Kurland

## 2011 Combined Federal/State Disclosure Directory Now Available

The 2011 edition of the *Combined Federal/State Disclosure and Election Directory* is now available on the Commission's website ([www.fec.gov](http://www.fec.gov)). This directory identifies the federal and state agencies responsible for the disclosure of campaign finances, lobbying, personal finances, public financing, candidates on the ballot, election results, spending on state initiatives and other financial filings.

The Directory is available at <http://www.fec.gov/pubrec/cfsdd/cfsdd.shtml>. Printed editions of the Directory are also available. To order a copy, please contact the FEC's Public Disclosure Division at 800/424-9530 or 202/694-1120.

## Advisory Opinions

### [Advisory Opinion Requests](#)

#### AOR 2011-07

Use of campaign funds to pay for legal expenses of a campaign consultant (Chuck Fleishmann for Congress, April 21, 2011)

#### AOR 2011-08

Qualification of “Life Members” and “Retired Members” as members of incorporated non-profit professional association for solicitation purposes (American Society of Anesthesiologists, April 27, 2011)

#### AOR 2011-09

Exemption from disclaimer requirements of small character-limited ads (Facebook, April 26, 2011)

#### AOR 2011-10

Fundraising program by nonconnected committee (POET PAC, May 6, 2011)

#### AOR 2011-11

Application of media exemption (Stephen Colbert, May 13, 2011)

#### AOR 2011-12

Candidate solicitations for independent expenditure-only committees (Majority PAC and House Majority PAC, May 19, 2011)

## Outreach

### FEC to Host Reporting and E-Filing Workshops in July

On July 13, 2011, the Commission will host roundtable workshops on reporting and electronic filing. The reporting sessions will address common filing problems and provide answers to questions committees may have as they prepare to file their July Quarterly, Monthly or Mid-Year reports. The electronic filing sessions will provide hands-on instruction for committees that use the Commission’s FECFile software and will address questions filers may have concerning electronic filing. All attendees will have an opportunity to meet the Campaign Finance Analyst who reviews their reports. Attendance is limited to 50 people per reporting workshop and 16 people per electronic filing workshop; the registration fee is \$25 per workshop. The registration form is available on the FEC’s website at <http://www.fec.gov/info/outreach.shtml#roundtables>. For more information, please call the Information Division at 800/424-9530, or locally at 202/694-1100.

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## Roundtable Schedule

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FEC Headquarters  
Washington, DC  
July 13, 2011

### Reporting for PACs and Party Committees

9:30 a.m.-11:00 a.m.

### FECFile and E-Filing for Candidate Committees

9:30 a.m.-11:00 a.m.

### Reporting for Candidate Committees

1:00 p.m.-2:30 p.m.

### FECFile and E-Filing for PACs and Party Committees

1:00 p.m.-2:30 p.m.

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