

# Record

July 2004

Federal Election Commission

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## 800 Line

### FEC Rules for National Convention Delegates

In recent weeks the Commission has received a number of questions concerning the application of the campaign finance law to national convention delegates and individuals seeking selection as a delegate. The material that follows offers answers to frequently asked questions about FEC rules governing delegates to national nominating conventions.

#### To whom do these rules apply?

These rules apply to any individual who is seeking selection as a delegate, or who has already been selected as a delegate, at any level of the delegate selection process (local, state or national). 11 CFR 110.14(b)(1).

#### Do delegates have to file reports with the FEC?

No. Individual delegates are not required to register or file regular reports of the funds they raise and spend for their personal delegate activity. 11 CFR 110.14(d)(3) and (e)(2). However, delegates acting as a group may have to file reports as

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## Reports

### July Reporting Reminder

Committees filing on a quarterly basis must file their second quarterly report by July 15. The report covers financial activity from April 1 (or the day after the closing date of the last report) through June 30.

In addition to filing quarterly reports, committees of House and Senate candidates active in the 2004 primary and runoff elections must file pre-election reports and may have to file 48-hour notices of last-minute contributions of \$1,000 or more. Political action committees (PACs) and party committees filing on a quarterly basis may also have to file pre-election reports and 48- or 24-hour reports of independent expenditures, depending on the timing of their activities.

National party committees, PACs following a monthly filing schedule and state, district and local party committees that engage in reportable federal election activity must file a monthly report by July 20. (See the April 2003 *Record*, page 5, for more information on monthly filing for state, district and local party committees.)

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## Reports

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Under the Commission's mandatory electronic filing regulations, individuals and organizations<sup>1</sup> who receive contributions or make expenditures in excess of \$50,000 in a calendar year—or expect to do so—must file all reports and statements with the FEC electronically. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program will be considered nonfilers and may be subject to enforcement actions, including administrative fines.

<sup>1</sup> The regulation covers individuals and organizations required to file reports with the Commission, including any person making an independent expenditure. Disbursements for electioneering communications do not count toward the \$50,000 threshold for mandatory electronic filing. See 11 CFR 104.18(a).

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Senate committees and other committees that file with the Secretary of the Senate are not subject to the mandatory electronic filing rules, but may file an unofficial electronic copy of their reports with the FEC in order to speed disclosure.

The Commission's electronic filing software, FECFile 5, can be downloaded from the FEC's web site [www.fec.gov](http://www.fec.gov) (click on the Electronic Filing icon). Filers may also use commercial or privately-developed software as long as the software meets the Commission's format specifications, which are available on the Commission's web site.

For those filers who are not required to file their reports electronically, paper forms are available on the FEC's web site (<http://www.fec.gov/reporting.html>) and from FEC Faxline, the agency's automated fax system (202/501-3413).

### Additional Information

For more information on 2004 reporting dates:

- See the reporting table in the January 2004 *Record*;
- Call and request the reporting tables from the FEC at 800/424-9530 or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or
- Visit the FEC's web site at [www.fec.gov/pages/charts.htm](http://www.fec.gov/pages/charts.htm) to view the reporting tables online.

—Amy Kort

### 800 Line

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a delegate committee. See “Do delegate committees have to file FEC reports?” below.

### How are funds raised and spent for delegate activity treated under the federal campaign finance law?

Funds raised and spent for delegate selection are considered “contributions” and “expenditures” made for the purpose of influencing

a federal election<sup>1</sup> and are therefore subject to the federal law's prohibitions.<sup>2</sup> 11 CFR 110.14(c)(1) and (2). Although the law does not limit contributions per delegate, certain other contribution limits apply. 11 CFR 110.1(m)(1); 110.14(d). Please note that these prohibitions and limits apply to contributions of goods and services (in-kind contributions) as well as to monetary contributions. 11 CFR 100.52(d).

### Who is prohibited from contributing to a delegate?

Individual delegates may not accept any contributions from sources prohibited from making contributions in connection with federal elections. 11 CFR 110.14(c)(2). These sources include:

- Corporations (including banks and nonprofit corporations);
- Labor organizations;
- Foreign nationals or businesses (except “green card” holders—those admitted to the United States for permanent residence); and
- Federal government contractors (such as partnerships and sole proprietors with federal contracts). 11 CFR 110.20, 114.2, 115.2, 115.4 and 115.5.

### What are the limits on contributions to delegates?

Although contributions to an individual delegate are not subject to any per-delegate limit, they do

<sup>1</sup> A national nominating convention is considered a federal election. 11 CFR 100.2(e).

<sup>2</sup> Ballot access fees paid by an individual delegate to a political party are not considered contributions or expenditures—nor are administrative payments made by a party committee (including an unregistered organization) for sponsoring a convention or caucus to select delegates. Nevertheless, the funds used to pay these expenses are subject to the law's prohibitions and limits. 11 CFR 110.14(c)(1)(i) and (ii) and 11 CFR 110.14(c)(2).

count against an individual contributor's biennial contribution limit of \$95,000. 11 CFR 110.1(m); 110.5(e); 110.14(d)(1).<sup>3</sup>

**Do these rules apply if I'm only raising money to pay for travel to the convention?**

Yes. Travel and subsistence expenses related to the delegate selection process and the national nominating convention are considered "expenditures." 11 CFR 110.14(e). Thus, a delegate may not use prohibited funds to pay for travel to attend the national convention and related food and lodging expenses. AO 2000-38 and 1980-64.

**I'm a federal officeholder who will serve as a delegate. May I use my campaign funds to pay for my travel to the convention?**

Special rules apply to federal candidates or officeholders who attend the convention as delegates. While campaign funds may not be used to pay for anyone's personal expenses (i.e., expenses that would exist irrespective of the candidate's campaign or his/her duties as a federal officeholder), candidates who attend the convention as delegates may use campaign funds to pay for their own convention-related travel, food and lodging expenses. 11 CFR 110.14(e). The Commission has issued advisory opinions clarifying that such candidates may also use campaign funds to pay the travel and subsistence expenses of other individuals (e.g., spouse, child, Congressional staff person) in connection with the convention if the individual will be engaging in significant campaign-related or officeholder-related

activity on the candidate's behalf during the convention. 11 CFR 113.1(g); AOs 2000-12, 1996-20, 1996-19 and 1995-47.

Although the use of campaign funds to pay someone's personal expenses is a violation of the personal use prohibition, when travel involves both personal activities and campaign (or officeholder) activities, campaign funds may be used to pay the personal portion of travel and subsistence costs if the individual reimburses the campaign within 30 days. 11 CFR 113.1(g)(1)(ii)(C).

**Do expenditures I make for my own selection and travel count as contributions to a candidate?**

No. Expenditures made by delegates or delegate committees solely to further their selection are not considered contributions to any candidate and are not chargeable to a publicly funded candidate's spending limits. Examples of such expenditures include:

- A communication that advocates the selection of delegates only; and
- Travel and subsistence expenses related to the delegate selection process and the national nominating convention. 11 CFR 110.14(e)(1) and (h)(1).

**May delegates join together to raise and spend funds?**

Yes. Under FEC regulations, they would be acting as a delegate committee. A delegate committee is a group that raises or spends funds to influence the selection of one or more delegates. A delegate committee may be a group of delegates or a group that supports delegates. 11 CFR 110.14(b)(2).

**Do delegate committees have to file FEC reports?**

Possibly. A delegate committee becomes a "political committee" under federal law once it receives contributions or makes expenditures exceeding \$1,000 in a calendar year. 11 CFR 100.5(a) and (e)(5);

110.14(b)(2). At that point, the committee must register with the FEC within 10 days and begin filing periodic FEC reports to disclose its receipts and disbursements. 11 CFR 102.1(d) and 104.1(a). All pre-registration activity must be disclosed in the first report. 11 CFR 104.3(a) and (b). Note that a delegate committee that has triggered status as a federal political committee must include the word "delegate" or "delegates" in its name. It may also include the name of the Presidential candidate it supports. 11 CFR 102.14(b)(1).

**Do contribution prohibitions and limits apply to delegate committees?**

Yes. The same sources prohibited from making contributions to a delegate (listed above) are also prohibited from making contributions to a delegate committee. The following limits apply to contributions made to delegate committees:

- Contributions from permissible sources to a delegate committee are subject to an aggregate limit of \$5,000 per calendar year. 11 CFR 110.1(d) and (m)(2); 110.14(g)(1). Note, however, that if the delegate committee is affiliated with a Presidential campaign, it will share the limit applicable to the Presidential campaign. 11 CFR 110.3(a).
- Contributions by individuals to delegate committees count against an individual contributor's biennial contribution limit of \$95,000. 11 CFR 110.5(e).

**May a delegate or delegate committee make contributions to candidates?**

A delegate or delegate committee may contribute a maximum of \$2,000 to a federal candidate, per

<sup>3</sup> Note that contributions to a delegate from the committee of a Presidential candidate receiving public funds count against the candidate's expenditure limits. 11 CFR 110.14(d)(2). Presidential primary candidates receiving public funding must comply with an overall spending limit and a spending limit in each state. 11 CFR 9035.1.

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election.<sup>4</sup> 11 CFR 110.1(b)(1). The primary and general are considered separate elections, but, in the case of Presidential candidates, the entire primary season is considered only one election. 11 CFR 110.1(j)(1).

Note that a contribution to a candidate must be reported by the candidate's committee. For this reason, when making an in-kind contribution, a delegate or delegate committee should notify the candidate's committee of the monetary value of the in-kind contribution. Note also that in-kind contributions generally count against a publicly funded Presidential candidate's expenditure limits.

### May a delegate or delegate committee put out a communication that promotes both the delegate(s) and the Presidential candidate supported?

Yes. An individual delegate or a delegate committee may pay for communications that both:

- Advocate the selection of an individual delegate or the delegates promoted by the delegate committee; and
- Refer to, provide information on or expressly advocate the election or defeat of a Presidential candidate (or candidate for any public office). 11 CFR 110.14(f) and (i).

Under federal campaign finance law, such a "dual-purpose" expenditure would be considered a "public communication" (unless it was distributed over the Internet), and it would thus trigger certain election

law provisions.<sup>5</sup> 11 CFR 100.26. Moreover, depending on the circumstances, a portion of a dual-purpose expenditure may have to be allocated as an in-kind contribution or an independent expenditure on behalf of any federal candidate mentioned in the ad. 11 CFR 110.14(f) and (i). Finally, the communication must include a disclaimer notice. 11 CFR 110.11.

### May delegates undertake some small grassroots dual-purpose communications that do not trigger contribution limits?

Dual-purpose expenditures for campaign materials such as pins, bumper stickers, handbills, brochures, posters and yard signs are not considered in-kind contributions on behalf of the federal candidate mentioned in the materials as long as the materials are used in connection with volunteer activities (i.e., are distributed by volunteers) and are not conveyed through public political advertising.<sup>6</sup> 11 CFR 110.14(f)(1) and (i)(1).

<sup>5</sup> A public communication is a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing (more than 500 pieces of mail or faxes of an identical or substantially similar nature within any 30-day period) or telephone bank (of more than 500 telephone calls of an identical or substantially similar nature within any 30-day period). 11 CFR 100.26, 100.27 and 100.28.

<sup>6</sup> For purposes of the delegate selection regulations, public political advertising means political advertising conveyed through broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication. 11 CFR 110.14(f)(2) and (i)(2). Direct mail means mailings by commercial vendors or mailings made from lists not developed by the individual delegate or delegate committee. 11 CFR 110.14(f)(4) and (i)(4).

### When would a dual-purpose expenditure count against contribution limits to a candidate?

A portion of a dual-purpose expenditure is considered an in-kind contribution to the referenced candidate if the communication:

- Is conveyed through public political advertising (or is not distributed by volunteers); and
- Is a coordinated communication under 11 CFR 109.21. 11 CFR 110.14(f)(2)(i) and (i)(2)(i).

### When would a dual-purpose expenditure be considered an independent expenditure?

A portion of a dual-purpose expenditure for a communication that is conveyed through public political advertising is considered an independent expenditure (rather than an in-kind contribution) on behalf of the candidate if the communication:

- Expressly advocates the election (or defeat) of a clearly identified candidate; and
- Is not a coordinated communication under 11 CFR 109.21. 11 CFR 110.14(f)(2)(ii) and (i)(2)(ii).

Note that an independent expenditure, whether it is paid for by a delegate or a delegate committee, must carry a disclaimer notice and is subject to reporting requirements. For more information on independent expenditures, consult 11 CFR Part 109. For more information on disclaimers, consult 11 CFR 110.11.

### How do you determine what amount of a dual-purpose expenditure to allocate to the Presidential candidate?

The amount of a dual-purpose expenditure allocated as an in-kind contribution or independent expenditure on behalf of a candidate must be in proportion to the benefit the candidate receives, based on factors such as the amount of space or time devoted to the candidate compared with total space or time. 11 CFR 106.1(a)(1).

<sup>4</sup> A federal candidate is a candidate seeking election to the Presidency, the Vice Presidency, the U.S. Senate or the U.S. House of Representatives. 11 CFR 100.4.

### What if a delegate or delegate committee simply distributes materials prepared by the Presidential campaign?

Expenditures by a delegate or delegate committee to reproduce (in whole or in part) or to disseminate materials prepared by a Presidential candidate's committee (or other federal candidate's committee) are considered in-kind contributions to the candidate. Although subject to contribution limits, this type of contribution is not chargeable to a publicly funded Presidential candidate's spending limits as long as the expenditure is not a coordinated communication under 11 CFR 109.21. 11 CFR 110.14(f)(3) and (i)(3). The materials must include a disclaimer notice. 11 CFR 110.11.

### Is a delegate committee considered an affiliate of the Presidential campaign? If yes, what rules apply?

Possibly. Delegate committees—including unregistered committees—need to determine whether they are affiliated with another delegate committee or with a candidate's committee. Affiliated committees are considered one political committee for purposes of the contribution limits and, thus, share the same limits on contributions received and made. 11 CFR 110.3(a)(1). (Affiliated committees may, however, make unlimited transfers to one another 102.6(a)(1)(i).) If a delegate committee is affiliated with the committee of a Presidential candidate receiving public funds, then all of the delegate committee's expenditures count against the Presidential candidate's expenditure limits.

### What are the factors indicating affiliation?

In determining whether a delegate committee and a Presidential committee are affiliated, the Commission may consider, among other factors, whether:

- The Presidential campaign<sup>7</sup> played a significant role in forming the delegate committee;
- Any delegate associated with a delegate committee has been or is on the staff of the Presidential committee;
- The committees have overlapping officers or employees;
- The Presidential committee provides funds or goods to the delegate committee in a significant amount or on an ongoing basis (not including a transfer of joint fundraising proceeds);
- The Presidential campaign suggests or arranges for contributions to be made to the delegate committee;
- The committees show similar patterns of contributions received;
- One committee provides a mailing list to the other committee;
- The Presidential campaign provides on-going administrative support to the delegate committee;
- The Presidential campaign directs or organizes the campaign activities of the delegate committee; and/or
- The Presidential campaign files statements or reports on behalf of the delegate committee. 11 CFR 110.14(j); 100.5(g)(4). See also AO 1988-1.

### Do affiliation rules apply to delegate committees that have a relationship with each other?

Possibly. Delegate committees established, financed, maintained or controlled by the same person or group are affiliated. Factors that indicate affiliation between delegate committees are found at 11 CFR 100.5(g)(4) . 11 CFR 110.14(k).

### Additional Information

For additional information on delegates and delegate committees,

contact the FEC's Information Division at 800/424-9530 or 202/694-1100.

—Dorothy Yeager

## Nonfilers

### Committees Fail to File Pre-Election Reports

The Swanson for Senate Committee and Friends of Albert Turner<sup>1</sup> failed to file 12-Day Pre-Primary reports for the June 1 primary election in Alabama, and Sharpton 2004 failed to file its May 2004 monthly report.

Prior to the reporting deadline, the Commission notified committees of their filing obligations. Committees that failed to file the required reports were subsequently notified that their reports had not been received and that their names would be published if they did not respond within four business days.

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

—Amy Kort

<sup>1</sup> Friends of Albert Turner is required to file electronically. The committee filed an incomplete pre-primary report on paper, with coverage dates of April 15 through May 15, 2004. The correct coverage dates for the report were April 1 through May 12, 2004.

<sup>7</sup> Campaign refers to the candidate, his or her authorized committee and other persons associated with the committee.

## Statistics

### Congressional Financial Activity Continues to Grow

Between January 1, 2003, and March 31, 2004, Congressional campaigns raised a total of \$583.3 million—a 35 percent increase over the same period in the 2001-2002 campaign. By the end of the first quarter of 2004, 1,655 Senate and House candidates had spent \$331.3 million (up 46 percent from 2002) and had cash on hand of \$421.6 million (up 27 percent).

Much of the increased financial activity occurred in Senate races, where candidates in this cycle's 34 Senate campaigns reported receipts of \$253.5 million, disbursements of \$140.6 million and cash balances of \$165.3 million. These figures represent a 74 percent increase in fundraising, a 123 percent increase in spending and a 67 percent increase in cash-on hand over 2002 levels.

Comparisons across election cycles are particularly difficult for Senate races because the states involved

vary and because a few campaigns can significantly affect totals. For example, in 2004 there are Senate campaigns in several large states that typically are more expensive. California, New York and Pennsylvania have incumbents seeking reelection, and there are open seat races in Florida and Illinois.

During this period House campaigns raised \$329.8 million (up 15.5 percent from 2002 levels) and spent \$190.7 million (17 percent above previous cycle totals). They reported a cash balance of \$256.3 million as of March 31. Receipts by Republican candidates increased 30 percent, with large increases for challengers and open seat candidates. Democratic candidates' receipts were 8 percent higher than in the last cycle, with much of that increase confined to incumbent candidates.

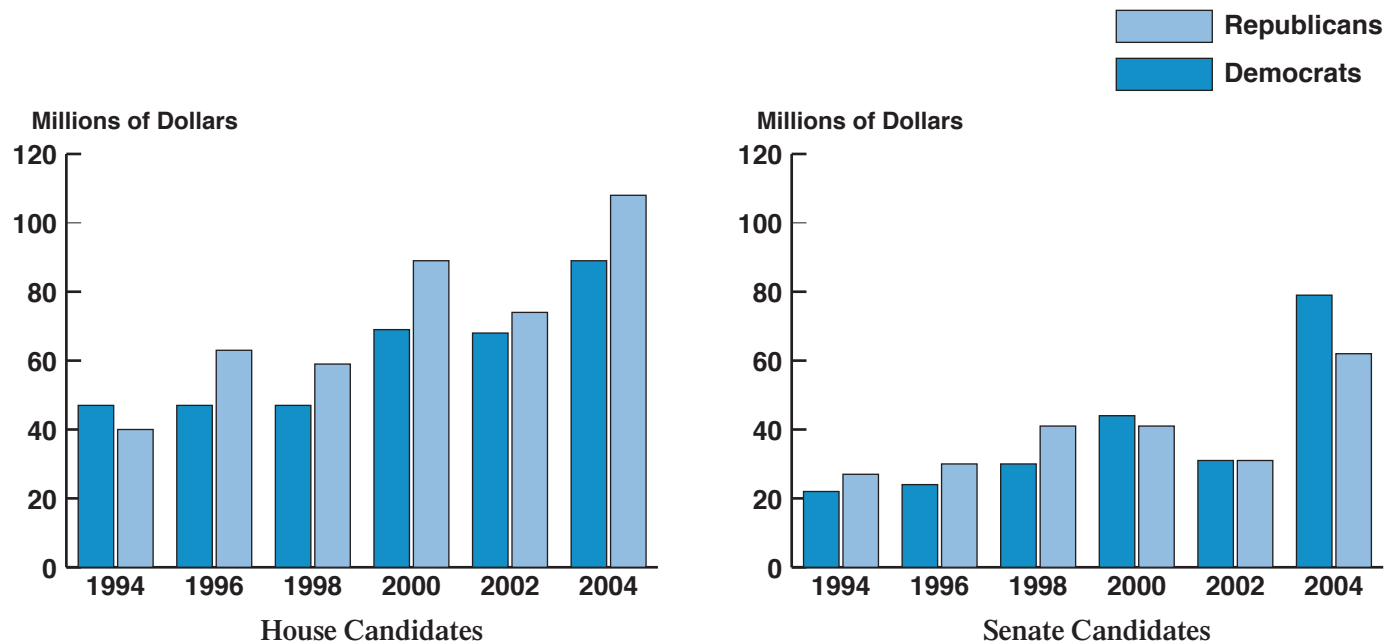
On January 1, 2003, the individual contribution limits to a federal candidate increased from \$1,000 per candidate, per election, to \$2,000 per candidate, per election. In the 2003-2004 cycle, contributions from individuals totaled \$349.9 mil-

lion and continue to be the largest source of receipts for Congressional candidates, representing 60 percent of all fundraising as of March 31. PAC contributions totaled \$137 million, or 23 percent, while candidates themselves contributed or loaned a total of \$74.8 million, representing 13 percent of all receipts.

The charts below show House and Senate candidates' spending during the 15 month period ending on March 31 of the election year, 1996 to 2004. Note that the number of financially active candidates varies by election cycle. For example, as few as 837 House candidates were active in 1998, while as many as 1,069 House candidates were running 1996. Currently, 951 House candidates are spending funds in the 2004 election cycle. For Senate races, the number of candidates varied from 95 candidates in 2002 to 149 candidates in 1996, with 140 candidates active in 2004.

Additional information on Congressional financial activity is available online (<http://www.fec.gov/news.html>) in a press release dated May 11, 2004. The release

### 15-Month Spending of House and Senate Candidates—1994-2004



offers summary data for Senate and House candidates by political party, as well as by candidate status (incumbent, challenger or open seat). Also included are rankings of Senate and House candidates for receipts, individual contributions, PAC and other committee contributions and disbursements, cash-on-hand and debts owed. Six-year financial summaries of Senate candidates for 2004, as well as current cycle financial summaries for each House campaign, are also available.

—Amy Kort

### Party Fundraising Increases in 2004

Party fundraising in early 2004 has maintained the strong pace begun in 2003. In April 2004, the Republican National Committee raised \$22.1 million and the Democratic National Committee raised \$19.2 million, representing the largest monthly totals for both committees since the start of 2003. Between January 1, 2003, and April 30, 2004, the RNC raised a total of \$179.5 million, while the DNC raised \$91.5 million.

The Senatorial and Congressional committees of the two major parties have also shown fundraising growth in this cycle. The National Republican Senatorial Committee (NRSC) raised \$3.5 million in April for a total of \$42.6 million in receipts since January of 2003. The Democratic Senatorial Campaign Committee (DSCC) raised \$3.1 million in April and has raised \$37 million so far in this two-year period. The National Republican Congressional Committee (NRCC) raised \$8 million in April and \$101.1 million for the cycle, while the Democratic Congressional Campaign Committee raised \$2 million in April, for a total of \$42 million since January 2003.

The 2004 election cycle is the first in which national parties have been prohibited from receiving nonfederal funds, or “soft money,” under the

Bipartisan Campaign Reform Act of 2002 (BCRA). Changes in the law also affected filing schedules, and, as a result, comparisons with past election cycles are only possible through March 31. However, these comparisons show significant growth in federal fundraising by each of these national party committees. Federal receipts of the DNC were up 93 percent when compared to the first 15 months of both the 2000 and 2002 election cycles. The RNC’s receipts increased by 66 percent from 2002 levels and were up 156 percent from their 2000 levels. Receipts were 75 percent higher than at this point in 2002 for the DSCC and up 16 percent for the NRSC. NRCC receipts were up 78 percent, while the DCCC increased its federal fundraising by 85 percent when compared the comparable period in 2002.

The BCRA also raised the amount of money that an individual can contribute to a national party committee from \$20,000 per year to \$25,000, and it raised the combined amount that an individual can contribute yearly to state and local party committees from \$5,000 to \$10,000.<sup>1</sup> Contributions from individuals continue to be the largest source of funds for all party committees, representing more than 80 percent of all national party funds.

The BCRA also included a provision permitting state and local parties to receive “Levin funds”—limited funds raised under federal and state law that can be used for activities that indirectly affect federal elections, such as get-out-the-vote activities. Thus far, 14 party committees have reported raising \$1.1 million in Levin funds. They have spent \$100,000 for voter registration and generic campaign activity.

Additional information on party committee fundraising is available on line (<http://www.fec.gov/news.html>) in a press release dated May

26, 2004. The press release contains, among other things, financial overviews for national and state/local committees of the two major parties for this 15 month period. Transfers from national to state parties are listed by state, as are national party proceeds from joint-fundraising committees and transfers from candidate committees to the national Senatorial and Congressional committees.

—Amy Kort

## Public Funding

### Commission Certifies Nader for Primary Matching Payments

The Commission has certified that Ralph Nader is eligible to receive Presidential primary matching payments for his Presidential primary committee, Nader for President 2004. 26 U.S.C. §9033(a) and (b); 11 CFR 9033.1 and 9033.3.

Under the Presidential Primary Matching Payment Account Act, the federal government will match up to \$250 of an individual’s total contributions to an eligible Presidential primary candidate. A candidate must establish eligibility to receive matching payments by raising in excess of \$5,000 in each of at least 20 states (i.e., over \$100,000). Although an individual may contribute up to \$2,000 to a primary candidate, only a maximum of \$250 per individual applies toward the \$5,000 threshold in each state. Candidates who receive matching payments must agree to limit their spending and submit to an audit by the Commission.

—Amy Kort

<sup>1</sup> These contribution limits also apply to non-multicandidate PACs.

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## Public Funding

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### Commission Certifies Matching Funds for Presidential Candidates

On May 27 and 28, 2004, the Commission certified \$169,648.28 in federal matching funds to two Presidential candidates for the 2004 election. The U.S. Treasury Department made the payments on June 1, 2004. Thus far, the eight eligible candidates have been certified \$27,183,143.79.

### Presidential Matching Payment Account

Under the Presidential Primary Matching Payment Account Act, the federal government will match up to \$250 of an individual's total contributions to an eligible Presidential primary candidate. A candidate must establish eligibility to receive matching payments by raising in excess of \$5,000 in each of at least 20 states (i.e., over \$100,000). Although an individual may contribute up to \$2,000 to a primary candidate, only a maximum of \$250 per individual applies toward the \$5,000 threshold in each state. Candidates who receive matching payments must agree to limit their committee's spending, limit their personal spending for the campaign to \$50,000 and submit to an audit by the Commission. 26 U.S.C. §§9033(a) and (b) and 9035; 11 CFR 9033.1, 9033.2, 9035.1(a)(2) and 9035.2(a)(1).

Candidates may submit requests for matching funds once each month. The Commission will certify an amount to be paid by the U.S. Treasury the following month. 26 CFR 702.9037-2. Only contributions from individuals in amounts of \$250 or less are matchable.

The chart at right lists the amount most recently certified to each eligible candidate who has elected to participate in the matching fund program, along with the cumulative amount that each candidate has been certified to date.

### Sharpton—Repayment of Public Funds

On May 10, 2004, the Commission determined that Reverend Alfred C. Sharpton must repay \$100,000 to the U.S. Treasury for matching funds he received in excess of his entitlement.

*Background.* On March 11, 2004, the Commission opened an investigation to resolve whether Reverend Sharpton had exceeded his \$50,000 personal expenditure limitation. The Commission subsequently made an initial determination to suspend matching payments to Reverend Sharpton based on his committee's March 2004 monthly report, which showed that he had made expenditures from his personal funds that were more than double the \$50,000 limit. 11 CFR 9033.9(a).

On April 21, 2004, Reverend Sharpton and his principal campaign

committee submitted materials in response to the Commission's subpoena and initial determination to suspend funds. 11 CFR 9033.9(b) and 9033.10(b). The information showed that Reverend Sharpton knowingly and substantially exceeded his \$50,000 personal expenditure limitation. Therefore, on April 29, 2004, the Commission made a final determination to suspend matching fund payments.

*Repayment.* Since the candidate had knowingly and substantially exceeded his personal expenditure limitation as of January 2, 2004—the date that he submitted his letter of agreements and certifications seeking to become eligible to receive matching funds—he was never eligible to receive matching payments. 11 CFR 9033.3(a). Thus, he was not entitled to receive any public funds, and the \$100,000.00

### Matching Funds for 2004 Presidential Candidates: May Certification

Candidate	Certification May 2004	Cumulative Certifications
Wesley K. Clark (D) <sup>1</sup>	\$0	\$7,615,360.39
John R. Edwards (D) <sup>2</sup>	\$0	\$6,521,338.88
Richard A. Gephardt (D) <sup>3</sup>	\$0	\$4,104,319.82
Dennis J. Kucinich (D) <sup>4</sup>	\$0	\$3,075,300.72
Lyndon H. LaRouche, Jr. (D) <sup>5</sup>	\$69,648.28	\$1,408,993.13
Joseph Lieberman (D) <sup>6</sup>	\$0	\$4,257,830.85
Ralph Nader (D)	\$100,000.00	\$100,000.00
Alfred C. Sharpton (D)	\$0	\$100,000.00

<sup>1</sup> General Clark publicly withdrew from the Presidential race on February 11, 2004.

<sup>2</sup> Senator Edwards publicly withdrew from the Presidential race on March 3, 2004.

<sup>3</sup> Congressman Gephardt publicly withdrew from the Presidential race on January 2, 2004.

<sup>4</sup> Congressman Kucinich became ineligible to receive matching funds on March 4, 2004.

<sup>5</sup> Mr. LaRouche became ineligible to receive matching funds on March 4, 2004.

<sup>6</sup> Senator Lieberman publicly withdrew from the Presidential race on February 3, 2004.



in public funds that he did receive were in excess of his entitlement. 26 U.S.C. §9038(b)(1) and 11 CFR 9038.2(b)(1).

—Amy Kort

## Alternative Dispute Resolution

### ADR Program Update

The Commission recently resolved six additional cases under the 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 agreement with the Women’s Campaign Fund, Inc. and its treasurer, Lynn Martin, regarding the committee’s failure to report accurately receipts, disbursements and cash-on-hand. The respondents acknowledged that errors and misstatements inadvertently occurred during the 2000 calendar year and agreed to pay a \$750 civil penalty. In order to avoid similar errors in the future, they also agreed to keep an FEC compliance officer on staff and to have that individual attend an FEC seminar within 15 months of the effective date of this agreement. (ADR 144)

2. The Commission reached agreement with Americans for Sound Energy Policy and the committee’s treasurer, Gregg Renkes, regarding corporate contributions and the committee’s failure to accurately report in-kind contributions. In an effort to clarify the record, and in response to the Commission’s request, the respondents refunded \$10,500, which represented a portion of the prohibited contributions. The respondents also agreed to pay a \$4,500 civil penalty and to work with members of the audit staff to

### North Carolina Special Election

The Special General Election to fill the U.S. House seat vacated by Representative Frank W. Ballance, Jr., will be held on July 20, 2004. Committees involved in this election must follow the reporting schedule below, unless they file on a monthly schedule.<sup>1</sup> PACs and party committees that file monthly should continue to file according to their regular filing schedule. Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more between July 1 and July 17, 2004. The 60-day electioneering communications period in connection with this election runs from May 21 through July 20, 2004.<sup>2</sup>

#### Committees Involved in the Special General Must File:

	Close of Books	Reg./Cert./Overnight Mailing Date	Filing Date
<b>July Quarterly</b>		—waived—	
<b>Pre-General</b>	June 30	July 5 <sup>3</sup>	July 8
<b>Post-General</b>	August 9	August 19	August 19

<sup>1</sup> Reports filed electronically must be submitted by midnight on the filing date. A committee required to file electronically that instead files on paper reporting forms will be considered a nonfiler. Reports filed on paper and sent by registered or certified mail must be postmarked by the mailing date. Reports filed using an overnight mail service with an on-line tracking system are considered timely filed if they are received by the delivery service by the mailing date. Reports sent by other means must be received by the Commission’s close of business on the filing date.

<sup>2</sup> Individuals and other groups not registered with the FEC who make electioneering communications costing more than \$10,000 in the aggregate in the calendar year must disclose this activity to the Commission within 24 hours of the distribution of the communication. See 11 CFR 100.29 and 104.20. For more information, see the December 2003 Record, page 5.

<sup>3</sup> Notice that the registered, certified and overnight mailing date falls on a federal holiday. The report should be postmarked (or received by the overnight delivery service) before that date.

correct and amend disclosure reports for calendar years 1999 and 2000. The respondents will provide the Commission with copies of missing documents, including copies of checks refunding the prohibited contributions, and will file for termination. (ADR 145)

3. The Commission closed the case involving Friends of Farr, its treasurer, Sidney Slade, and Representative Sam Farr regarding failure to accurately report candidate loans,

failure to report employee payroll taxes and improper use of campaign funds. The ADR Office recommended that the case be closed, and the Commission agreed to close the file. (ADR 147/MUR 5371)

4. The Commission reached agreement with United Food & Commercial Workers, Active Ballot Club, and its treasurer, Anthony Perrone, concerning the committee’s

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## Alternative Dispute Resolution

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failure to file 24-hour reports of independent expenditures. The respondents acknowledged that a violation of the Act inadvertently occurred and agreed to pay a \$7,000 civil penalty. In order to avoid similar errors in the future, they also agreed to appoint a Compliance Administrator and to have the Administrator attend a FEC seminar within 15 months of the effective date of this agreement. (ADR 151)

5. The Commission reached agreement with the Libertarian Party of Illinois and David Lee, its treasurer, concerning excessive contributions. The respondents acknowledged that a violation of the Act resulted from the committee's use of a single bank account for both federal and nonfederal activities. The respondents agreed to pay a \$1,000 civil penalty and, in an effort to avoid similar errors in the future, to set up separate bank accounts for federal and nonfederal funds. The respondents will also file all amended reports necessary to accurately reflect the contributions and expenditures for both federal and nonfederal activities, appoint a staff member to serve as the FEC compliance officer and develop an FEC compliance manual. (ADR 152)

6. The Commission reached agreement with Stephanie Tubbs Jones for U.S. Congress and its treasurer, Sandra Berry, concerning the personal use of campaign funds. The respondents acknowledged that a violation of the Act occurred—in part due to staff inexperience and a misunderstanding of what expenses were legitimate—and agreed to pay a \$2,500 civil penalty. In an effort to avoid similar errors in the future, they also agreed to appoint a member of the campaign staff to monitor compliance with Act. (ADR 155)

—Amy Kort

## Advisory Opinions

### Alternative Disposition of Advisory Opinions

#### AOR 2004-11

This request was closed without issuance of an opinion because it did not qualify as an advisory opinion request. The request was submitted by Mr. Paul Streitz, a candidate for the Republican nomination for the U.S. Senate, and concerned a federal candidate's receipt of appearance fees from speeches about his book. Mr. Streitz subsequently informed the Commission that he was no longer running for the U.S. Senate. Based on the specific situation presented by Mr. Streitz, it was determined that the request posed a hypothetical situation. See 11 CFR 112.1(b).

#### AOR 2004-16

On June 9, 2004, the requestors withdrew their request for this advisory opinion. The request had concerned a corporation's purchase of advertising space to publish political party committees' positions on campaign issues.

—Amy Kort

### Advisory Opinion Request

#### AOR 2004-18

Federal candidate committee's discounted purchase of copies of candidate-authored books to be used as campaign gifts (Friends of Joe Lieberman, May 13, 2004)

## Compliance

### EQS Update

The FEC's Enforcement Query System (EQS) has been updated to include documents relating to matters under review (MURs) closed since January 1, 2001. When the Commission launched the web-based search tool in December 2003, only documents relating to matters under review (MURs) closed after January 1, 2002, were available through the EQS. However, the system has now been updated to provide documents from -MURs closed in 2001. In addition, the system now offers additional case information and navigation tools, including:

- A redesigned Case Summary section that includes the name of a respondent committee treasurer and any previous treasurer; and
- An On Line-Tutorial to help users to utilize the system's search capabilities more fully.

A complete list of updates can be found in the EQS by clicking on the *New Features and Additional Information* link.

—Amy Kort

## Outreach

### Roundtable on Pre-Election Communications

On August 4, 2004, the Commission will host a roundtable session on new rules for pre-election communications, including coordinated communications within 120 days of an election and electioneering communications within 60 day of the general election. See the chart on page 11 for details.

Attendance is limited to 30 people per session, and registration is accepted on a first-come, first-served basis. Please call the FEC before registering or sending money

to ensure that openings remain. The registration form is available on the FEC web site at <http://www.fec.gov/pages/infosvc.htm> and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call the Information Division at 800/424-9530, or locally at 202/694-1100.

—Amy Kort

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- 2003-30: Retiring campaign debt and repaying candidate loans, 2:1
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- 2003-35: Presidential candidate may withdraw from matching payment program, 2:7
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## Roundtable Schedule

Date	Subject	Intended Audience
August 4 9:30-11 a.m.	<b>New Rules on Pre-Election Communications:</b> <ul style="list-style-type: none"> <li>• Coordinated Communications within 120 days of an election; and</li> <li>• Electioneering Communications within 60 days of the general election.</li> </ul>	<ul style="list-style-type: none"> <li>• Candidates;</li> <li>• Government affairs representatives; and</li> <li>• Persons making coordinated communications or electioneering communications.</li> </ul>

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