

# Record

September 2004

Federal Election Commission

Volume 30, Number 9

## Table of Contents

### Regulations

- 1 Political Committee Rules Approved
- 4 Rulemaking Petition

### Court Cases

- 1 Wisconsin Right to Life, Inc. v FEC
- 3 LaRouche's Committee for a New Bretton Woods v FEC
- 3 New Litigation

### 4 Nonfilers

### 4 Advisory Opinions

### Public Funding

- 7 Public Funding for Kerry-Edwards
- 8 Matching Fund Certifications

### 8 Publications

### Administrative Fines

- 9 Fines Assessed

### Outreach

- 10 Reporting Roundtables

### Information

- 10 IRS 527 Disclosure Initiative

### 10 Index

## Regulations

### Political Committee Rules Approved

On August 19, 2004, the Commission approved final rules that may require more so-called 527 organizations to register and report with the FEC, beginning in 2005. In general, the new regulations:

- Expand the definition of contribution to include funds received as a result of a communication that indicates any portion of those funds will be used to support or oppose the election of a clearly identified federal candidate; and
- Define the types of costs that federal PACs may allocate between their federal and nonfederal accounts, and modify the allocation methods they must use.

The Commission is finalizing the Explanation and Justification that will accompany the final rules, and will publish both in the *Federal Register* and on the FEC website, [www.fec.gov](http://www.fec.gov). A complete summary of the new rules will appear in the October *Record*.

—Elizabeth Kurland

(continued on page 4)

## Court Cases

### Wisconsin Right to Life, Inc. v FEC

On August 17, 2004, the U.S. District Court for the District of Columbia denied Wisconsin Right to Life, Inc.'s (WRTL) motion for a preliminary injunction that would have exempted certain WRTL broadcast ads from the ban on corporate funding of electioneering communications.

### Background

WRTL had filed suit in the U.S. District Court for the District of Columbia on July 26, 2004, asking the court to find the prohibition on the use of corporate funds to pay for electioneering communications unconstitutional as applied to certain grass-roots lobbying activities, including three specific advertisements that were attached to WRTL's complaint. The plaintiffs also asked the court to preliminarily and permanently enjoin the Commission from enforcing this prohibition against WRTL for any of these communications.

On July 29, the court granted the plaintiff's unopposed motion to have the case heard by a three-judge

(continued on page 2)

## Court Cases

(continued from page 1)

panel, and also granted its motion to expedite proceedings on the request for a preliminary injunction.<sup>1</sup>

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

<sup>1</sup> *The Bipartisan Campaign Reform Act of 2002 (BCRA) provides for such expedited review of constitutional challenges to its provisions. See BCRA 403, 116 Stat. at 113-114.*

**Federal Election Commission**  
**999 E Street, NW**  
**Washington, DC 20463**

800/424-9530  
 202/694-1100  
 202/501-3413 (FEC Faxline)  
 202/219-3336 (TDD for the hearing impaired)

**Bradley A. Smith**, Chairman  
**Ellen L. Weintraub**, Vice Chair  
**David M. Mason**, Commissioner  
**Danny L. McDonald**,  
 Commissioner  
**Scott E. Thomas**, Commissioner  
**Michael E. Toner**, Commissioner

**James A. Pehrkon**, Staff Director  
**Lawrence H. Norton**, General Counsel

Published by the Information Division

**Greg J. Scott**, Assistant Staff Director  
**Amy Kort**, Editor  
**Meredith Trimble**, Associate Editor

<http://www.fec.gov>

and 11 CFR 100.29. Corporations may not make electioneering communications using their general treasury funds.<sup>2</sup> 2 U.S.C. §§441b(a)-(b) and 11 CFR 114.2 and 114.14.

The Plaintiff's grass-roots lobbying efforts involve broadcast ads paid for by WRTL asking Wisconsin listeners to contact U.S. Senators Kohl and Feingold and to ask them to vote against anticipated filibusters of federal judicial nominees. Senator Feingold is up for re-election this year, and some of the intended ads will run during the electioneering communications periods for Wisconsin's primary and general elections.

According to WRTL, because their ads express an opinion on pending Senate legislative activity, urge listeners to contact their Senators and do not refer to any political party or support or attack any candidate, they constitute *bona fide* grass-roots lobbying. They argue that these ads are not the "functional equivalent of express advocacy," and, thus, there is no constitutional justification for the prohibition on corporate payments for these ads or for requiring the ads to be paid for through a political action committee. See *McConnell v FEC*, 124 S. Ct. at 696. WRTL asserts that in this instance the prohibition on corporate-sponsored electioneering communications unconstitutionally burdens the rights of free speech, free association and petitioning the government—all in violation of the First Amendment.

### District Court Decision

The three-judge court rejected WRTL's motion for a preliminary injunction, finding that it did not demonstrate that: (1) WRTL had a

substantial likelihood of success on the merits; (2) WRTL would suffer irreparable harm in the absence of an injunction; (3) an injunction would not cause substantial injury to other parties; and (4) the public interest would be furthered by the injunction.

*Substantial likelihood of success on the merits.* In *McConnell v FEC*, 124 S. Ct. 619 (2003), the Supreme Court upheld the electioneering communication provisions of the BCRA in their entirety. Furthermore, the reasoning of the court left no room for the kind of "as applied" challenge brought by WRTL. The Supreme Court expressly stated that it upheld all applications of the primary definition of electioneering communication, suggesting little likelihood of success for an "as applied" challenge to a particular application of that definition. This deliberate upholding of "all applications" stands in contrast to the court's explicit acknowledgment that other parts of the statute, which it also upheld, might be subject to "as applied" challenges in the future.

*Plaintiff would suffer irreparable harm if an injunction is not granted.* The court concluded that the actual limitation on WRTL's freedom of speech is not nearly as great as WRTL had argued. WRTL is not precluded from forwarding its message or from exposing the public to the advertisements at issue. The BCRA does not prohibit the speech in question, it only requires that corporations and labor organizations engaging in such speech channel their spending through PACs. In *McConnell*, the Supreme Court noted that corporations remain free to organize and administer separate segregated funds (PACs) for the purpose of financing electioneering communications.

*An injunction would not cause substantial injury to other parties.* It is the statutory duty of the FEC to enforce the BCRA. To the extent the injunction is entered, the FEC

<sup>2</sup> *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.*

could not properly perform this duty, which is a substantial injury to the FEC.

*Public interest would be furthered by the injunction.* The Supreme Court has determined that the provisions of the BCRA serve compelling government interests. *McConnell*, 124 S. Ct. at 695-96. As a result, interference with executing the BCRA by enjoining its enforcement does not further the public interest.

The district court further ordered all parties to file appropriate supplemental memoranda addressing the potential dismissal of the matter, and denied WRTL's subsequent request to enter an injunction while WRTL pursued an appeal.

### Appeal

WRTL has appealed the district court's decision to the U.S. Court of Appeals for the District of Columbia Circuit, and has requested an injunction from the D.C. Circuit pending this appeal.

U.S. District Court for the District of Columbia, CV04-1260 (DBS, RWR, RJL).

—*Meredith Trimble*

### LaRouche's Committee for a New Bretton Woods v FEC

On July 29, 2004, the U.S. Court of Appeals for the District of Columbia granted the Commission's motion to dismiss this case. LaRouche's Committee for a New Bretton Woods (LCNBW) had asked the court to review the FEC's final determination requiring the committee to repay to the U.S. Treasury a portion of the Presidential primary matching funds it received for the 2000 Presidential election. The court concluded that the appeal was premature because LCNBW had filed with the Commission a timely petition for reconsideration, and the committee may not seek judicial review until the rehearing has concluded. See the June 2004 *Record*, page 7, and the May 2004 *Record*, page 15.

—*Amy Kort*

## New Litigation

### FEC v Reform Party of the USA

On July 21, 2004, the Federal Election Commission (FEC) filed an action with the U.S. District Court for the Northern District of Florida to collect \$333,558 from the Reform Party of the United States of America (RPUSA or Party) and its treasurer, William D. Chapman, Sr., and the Reform Party 2000 Convention Committee and its treasurer, Gerald M. Moan. The suit arises from a final determination by the FEC regarding the financing of the RPUSA's 2000 Presidential nominating convention, during which the Party spent some of the public money grant it received to pay for convention expenditures not permitted by law.

*Background.* Under the Presidential Election Campaign Fund Act (the Fund Act), the national party committee of an eligible major or minor party is entitled to receive public funding to finance the party's presidential nominating convention. 26 U.S.C. §9008. To receive these funds, the national committee must establish a convention committee that "shall be responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention." 11 CFR 9008.3(a)(2). The convention committee may use the funds only to pay for permissible convention expenses, defined as "all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities." 11 CFR 9008.7(a)(4).

The Fund Act also requires that the FEC conduct an audit of any committee that receives public funding. The Final Audit Report, adopted by the FEC on September 26, 2002, included a determination that the defendants must repay \$333,558

to the U.S. Treasury for expenditures that were not permissible convention expenses or were not properly documented. 11 CFR 9008.7(a) and 9008.10. The RPUSA submitted a timely request for administrative review of the repayment determination, and after review, the FEC upheld the repayment determination. The RPUSA requested reconsideration of the FEC's repayment determination, which the FEC rejected as untimely. The RPUSA then filed a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit, which the D.C. Circuit dismissed as untimely.

*Court complaint.* In its court complaint, the FEC asserts that the repayment determination is now "final and conclusive" and the merits of the repayment determination are not subject to judicial review. The defendants have not paid any of the \$333,558 debt. The FEC asks the court to declare that the defendants are obliged to pay to the U.S. Treasury \$333,558, plus interest, order defendants to make that repayment, and to give preference to the repayment over all other outstanding obligations of the committee, other than federal taxes.

U.S. District Court for the Northern District of Florida, CV 04-00079.

—*Meredith Trimble*

### Need FEC Material in a Hurry?

Use FEC Faxline to obtain FEC material fast. It operates 24 hours a day, 7 days a week. Hundreds of FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

Use a touch tone phone to dial **202/501-3413** and follow the instructions. To order a complete menu of Faxline documents, enter document number 411 at the prompt.

## Regulations

(continued from page 1)

### Rulemaking Petition Seeks New EC Exemption

On July 20, 2004, the Commission received a Petition for Rulemaking that asks the Commission to revise its electioneering communications regulations by providing a separate exception for advertisements of political documentary films that do not promote, support, attack or oppose a candidate for federal office and that are made in the ordinary course of business. See 11 CFR 100.29. The Commission will publish a Notice of Availability in the *Federal Register* seeking comments on whether to initiate a rulemaking in response to this petition. The deadline for comments is 30 days after the notice is published.

With certain exceptions, an electioneering communication is any communication that refers to a clearly identified federal candidate; is "publicly distributed" over television or radio within 60 days before a general election or 30 days before a primary election or a national nominating convention; and, in the case of Congressional candidates, is targeted to the relevant electorate. See 2 U.S.C. §434(f)(3)(a)(i) and 11 CFR 100.29. Corporations and labor unions are prohibited from directly or indirectly financing electioneering communications.

The rulemaking petition was submitted by Mr. Robert F. Bauer, acting on his own behalf and not on behalf of any client or third party.

The full text of the notice is available on the FEC web site at <http://www.fec.gov> and from the FEC faxline, 202/501-3413. The Commission requests comments on whether the Commission should initiate a rulemaking on "electioneering communications" and on whether there are other issues regarding the electioneering communication rules

that should also be addressed in a rulemaking at this time. Public comments must be submitted, in either written or electronic form, to Brad Deutsch, Assistant General Counsel. Comments may be sent by:

- E-mail to [ECADSNOA@fec.gov](mailto:ECADSNOA@fec.gov) (e-mailed comments must include the commenter's full name, e-mail address and postal address);
- Fax to 202/219-3923 (send a printed copy follow-up to ensure legibility); or
- Overnight mail to the Federal Election Commission, 999 E Street NW, Washington, DC 20436.

—Meredith Trimble

## Nonfilers

### Congressional Committees Fail to File Reports

Favazza for Congress, the Steve Dennis for Congress Committee and the Committee to Elect Charles E. Berry failed to file 12-Day Pre-Primary reports for the August 3, 2004, primary election in Missouri. Friends of John Conyers failed to file a 12-Day Pre-Primary report for the Michigan primary election also held on August 3. In addition, the Steve Dennis for Congress Committee (MO) and the Simon Pristoop for Congress Committee (FL) failed to file July Quarterly reports.

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

## Advisory Opinions

### AO 2004-18 Campaign Committee's Purchase of Candidate's Book at Discounted Price

The Friends of Joe Lieberman Committee (the Committee) may buy copies of Senator Joseph Lieberman's book at a discounted price that will be made available to other purchasers under a customary practice in the publishing industry. The books will be given to campaign supporters and contributors.

#### Background

Under Senator Lieberman's publishing contract, if the publisher determines that his book is no longer "readily saleable at regular prices within a reasonable time," it may designate its remaining stock of copies as "remainder copies" and sell them at a steep discount. The publisher recently made this determination and, pursuant to the publishing contract, offered the book to Senator Lieberman at a discounted price of \$3.40 per copy before offering this price to other buyers. The Committee intends to purchase a few hundred of the thousands of remaining copies in order to distribute them as gifts to campaign supporters. The Committee will not otherwise promote or sell the book. Senator Lieberman will waive any potential royalties or royalty credits that might result from this purchase.

## Analysis

*In-kind contributions.* Under the Federal Election Campaign Act (the Act), a contribution includes the provision of goods or services at less than the usual and normal charge—in other words, at less than the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 CFR 100.52(d)(1) and (2). In the past, the Commission has determined that the purchase of goods or services at a discount does not result in a contribution when the discounted items are made available in the ordinary course of business and on the same terms and conditions to the vendor's other customers that are not political committees. See AOs 2001-8, 1996-2, 1995-46 and 1994-10.

In this case, the practice of discounting books when they are no longer saleable at the regular price is standard in the publishing industry. In addition, the publisher set the price for the remainder copies of Senator Lieberman's book in the ordinary course of its business based on its estimation of the fair market value of the book as a remainder. Thus, the Committee will pay the usual and normal charge for this type of purchase, and no in-kind contribution will result.

*Personal use of campaign funds.* The Act provides for four categories of permissible uses of campaign funds, including otherwise authorized expenditures that are made in connection with the candidate's federal campaign. 2 U.S.C. §439a(b)(1) and 11 CFR 113.2(a), (b) and (c).

In no case, however, may campaign funds be used for an expense that would exist irrespective of the candidate's campaign or duties as a federal officeholder, and thus be converted to "personal use." 2 U.S.C. §439a(b)(1) and 11 CFR 113.1(g).

In this case, the funds will be used for an otherwise authorized expenditure made in connection with Senator Lieberman's campaign, and

the expense would not exist irrespective of the campaign because:

- The books will only be used as gifts to campaign supporters and the Committee will not promote or sell the book; thus, the Committee will use them only for the purpose of influencing Senator Lieberman's re-election to federal office;
- The Committee will not buy more books than it needs for this purpose; and
- Senator Lieberman will not receive any royalties or royalty credits as a result of the Committee's purchase of the books, nor will the purchase increase his opportunity to receive future royalties.<sup>1</sup>

Thus, the Committee's purchase of the books is permissible under the Act and Commission regulations. The Committee should report funds it spends on the books as operating expenditures for the 2006 election cycle. 2 U.S.C. §§434(b)(4)(A) and (5)(A); 11 CFR 104.3(b)(2)(i) and (b)(4)(i).

Date Issued: July 15, 2005;  
Length: 7 pages.

—Amy Kort

<sup>1</sup> Although the personal use regulations permit a candidate to rent space, equipment or other items to his principal campaign committee at the usual and normal charge, Senator Lieberman's waiver of royalties and royalty credits that would otherwise result from the sale of copies of his book to the Committee precludes the use of the sale as a device to use the Committee to benefit him financially. See 11 CFR 113.1(g)(1)(i)(E) and AOs 2001-8 and 1995-46.

## AO 2004-20 Connecticut Party Convention Still Considered an "Election"

Despite a change in Connecticut state law, party conventions in Connecticut continue to be separate elections under the Federal Election Campaign Act (the "Act"). As a result, Democratic House candidate Diane Farrell, who did not participate in Connecticut's August 10, 2004, primary, may not accept undesignated primary contributions after May 10, 2004, the date of her Democratic district convention. Likewise, her principal campaign committee, Farrell for Congress (the "Committee"), was not required to file a pre-primary report in connection with the August 10, 2004 primary.

### Background

Diane Farrell is the Democratic candidate for the U.S. House of Representatives from Connecticut's 4<sup>th</sup> Congressional District. The Democratic Party in Connecticut held its convention for the U.S. House on May 10, 2004. The primary elections for all offices in Connecticut were held on August 10, 2004. Since the Democratic Party endorsed Ms. Farrell as its candidate for the 4<sup>th</sup> Congressional District, and no other member of the Democratic Party met the requirements to challenge her endorsement, Ms. Farrell is the Democratic Party's nominee and her name did not appear on the primary election ballot.

Until January 1, 2004, Connecticut law provided that if a candidate received his or her party's endorsement at the party's convention, and if no other candidate received at least 15 percent of the endorsement vote at the convention, then no primary would be held for that office and the party-endorsed candidate would be deemed lawfully chosen as the

(continued on page 6)

## Advisory Opinions

(continued from page 5)

party's nominee. In 2003, Connecticut enacted a new law, effective January 1, 2004, that provides for an additional route for a candidate's name to be placed on the primary ballot. The new law permits any registered member of the party, even if that member has not received 15 percent of the endorsement vote at the party convention, access to the primary ballot if they file a petition with signatures of at least two percent of the party members in the state or district (whichever applies) within 14 days after the end of the convention.

### Analysis

*Definition of "election."* The Act and Commission regulations define an "election" to include "a general, special, primary, or runoff election" and "a convention or caucus of a political party which has the authority to nominate a candidate." 2 U.S.C. §§431(1)(A) and (B); 11 CFR 100.2. The question of whether a particular event meets the definition of "election" is determined by an analysis of state law.

In Advisory Opinion 1976-58, analyzing Connecticut's old law, the Commission determined that party conventions were elections for purposes of the Act. This was because it was "possible under Connecticut law for the convention's 'party-endorsed candidate' to be 'deemed ... chosen as the nominee'" if no other candidate received the required percentage of the delegates' votes or filed a "candidacy" for nomination. The Commission noted that in such a case, the endorsement at the convention was "tantamount to a nomination of the candidate," and thus, the party convention had the "authority to nominate" candidates. Therefore, candidates could be involved in two elections during the primary process—the convention and the primary (if necessary)—and

could then be entitled to two separate contribution limits.

The new Connecticut law does not materially change this situation for purposes of the Act. The only difference between Connecticut's old and new laws is that there are now two ways (i.e., receiving at least 15 percent of the endorsement vote or filing a petition), rather than one, to challenge the party convention's endorsement. However, under the new law, as under the old law, if no party member challenges the party's endorsement, the party-endorsed candidate will be deemed chosen as the party's nominee solely by virtue of the party's endorsement and without being required to take any additional steps to secure the nomination. Therefore, Connecticut party conventions still have the authority to nominate candidates and thus continue to be elections under the Act. In this instance, no Democratic primary took place for the 4<sup>th</sup> Congressional District, and, therefore, the only election Ms. Farrell was involved in during this primary process was the May 10 Democratic district convention.

*Treatment of undesigned contributions received after the party convention.* Commission regulations provide that contributions not designated in writing by the contributor for a particular election are presumed to be made for the next election after the contribution is made. 11 CFR 110.1(b)(2)(ii). Furthermore, "[c]ontributions designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election." 11 CFR 110.1(b)(3)(i).

Because the Commission has determined that the May 10 Democratic district convention was the only election Ms. Farrell was involved in during the primary season, the Committee must treat undesigned contributions made after May 10, 2004, as contributions to the general

election. 11 CFR 110.1(b)(2)(ii). However, the Committee may use contributions raised after May 10 to the extent necessary to retire net debts outstanding. 11 CFR 110.1(B)(3)(i).

*Reporting.* Under Commission regulations, a Congressional candidate's principal campaign committee must file a pre-election report "no later than 12 days before any primary or general election in which the candidate seeks election." 11 CFR 104.5(a)(2)(i)(A). Because the May 10 convention was an election and no primary was held for the 4<sup>th</sup> Congressional District on August 10, the Committee fulfilled its pre-election reporting requirement by filing its pre-convention report. The Committee did not need to file a pre-primary report in connection with the August 10, 2004, primary election.

Date Issued: July 20, 2004;  
Length: 7 pages.

—Elizabeth Kurland

## AO 2004-22 Unlimited Transfers to State Party Committee

U.S. Representative Doug Bereuter, a retiring member of Congress, may make unlimited transfers of campaign funds to the Nebraska State Republican Party (the Party). The Party, in turn, may use these funds to renovate its office building. Under the Federal Election Campaign Act (the Act), transfers to a state party committee are a permitted use of contributions received by a principal campaign committee. 2 U.S.C. §439a.

### Background

Representative Bereuter resigned from the U.S. House of Representatives and will not run for re-election. His principal campaign committee, Bereuter for Congress, recently transferred \$5,000 from its campaign account to the Party to defray the costs of remodeling the Party's of-

office building. Bereuter for Congress intends to transfer another \$10,000 to \$15,000 to fund further remodeling.

### Analysis

The Act lists four permissible uses for campaign funds and provides that campaign funds must not be converted to the personal use of any individual. 2 U.S.C. §§439a and 439a(b). One permissible use of funds is for unlimited transfers to a state party committee. 2 U.S.C. §439a(a)(4); 11 CFR 113.2(c). These provisions of the Act do not limit the ways that the state party committee can use the funds, nor do they restrict the amount that may be transferred in any specific period of time.<sup>1</sup>

Thus, Bereuter for Congress may transfer \$10,000 to \$15,000 in campaign funds to the Party for the purpose of remodeling its party headquarters. Any or all of the funds may be transferred before August 31, 2004.

Date Issued: July 23, 2004;  
Length: 2 pages.

—Amy Kort

## Alternative Disposition of Advisory Opinion Request

### AOR 2004-21

On August 6, 2004, the requestors withdrew Advisory Opinion Request 2004-21, regarding a commercial web site designed to allow contributors to direct contributions to charity when an equal contribution was made to a competing candidate or cause.

—Amy Kort

<sup>1</sup> A transfer pursuant to 2 U.S.C. §439a(a)(4) and 11 CFR 113.2(c) is not subject to the contribution limitation in 2 U.S.C. §441a(a)(1)(D) or 11 CFR 110.1(c)(5). Such a transfer is also consistent with the regulations addressing office buildings of state or local party committees in 11 CFR 300.35.

## Advisory Opinion Requests

### AOR 2004-26

Volunteer work—including decision-making—by foreign national in federal candidate/officeholder's campaign and political committee activities (Congressman Jerry Weller and Zury Rios Sosa, July 13, 2004)

### AOR 2004-27

Campaign's payment of back pay to former employees for time they volunteered services while campaign was low on funds (Quayle 2000 Committee, July 14, 2004)

### AOR 2004-28

Authority of state to require state party committee to publicly disclose names of donors to building fund account (Iowa Ethics and Campaign Disclosure Board, July 22, 2004)

### AOR 2004-29

Federal candidate/officeholder's support of state ballot referendum committees that he did not establish (Representative Todd Akin and Todd Akin for Congress, July 20, 2004)

### AOR 2004-31

Ads containing references to a name shared by a candidate, his son, and their incorporated business as potential prohibited electioneering communications (Russ Darrow Group, Inc., July 30, 2004)

### AOR 2004-32

Affiliation resulting from a private investment firm holding voting stock of a corporation, enabling the corporation's PAC to solicit directors and senior employees of the firm (Spirit Airlines, Inc., July 22, 2004)

## Public Funding

### Public Funding for Kerry-Edwards

On July 30, 2004, the Commission approved public funding for the general election campaign of Democratic Presidential nominee John Kerry and his Vice-Presidential running mate Senator John Edwards. The U.S. Treasury Department made the payment of \$74.620 million shortly thereafter.

Under the Presidential Election Campaign Fund Act, the Democratic and Republican nominees are each entitled to a grant of \$20 million increased by a cost-of-living adjustment (COLA). In order to receive public funding, the Kerry-Edwards campaign agreed to abide by the overall spending limit and other legal requirements, including a post-campaign audit. Additionally, as major party nominees, they agreed to limit campaign spending to the amount of the public funding grant and not to accept private contributions for the campaign. They also agreed not to spend more than \$50,000 in the aggregate of their own personal funds. The campaign may, however, accept contributions designated for its general election legal and compliance (GELAC) fund. This fund is a special account maintained exclusively to pay for the expenses related to complying with the campaign finance law. Compliance expenses do not count against the expenditure limit. Contributions to the GELAC fund are, however, subject to the limits, prohibitions and reporting requirements of the federal campaign finance laws.

The Democratic National Committee may spend an additional

(continued on page 8)

## Public Funding

(continued from page 7)

\$16,249,699 for coordinated expenditures on behalf of the Kerry-Edwards campaign. These funds are subject to the limits, prohibitions and disclosure requirements of the Federal Election Campaign Act.

—Amy Kort

## Commission Certifies Matching Funds for Presidential Candidates

On July 22 and 30, 2004, the Commission certified \$427,744.66 in federal matching funds to four Presidential candidates. The U.S. Treasury Department made the payments on August 2, 2004. These certifications raise to \$27,495,425.98 the total amount of federal funds certified thus far to eight Presidential candidates.

### 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.

## Matching Funds for 2004 Presidential Candidates: July Certification

Candidate	Certification July 2004	Cumulative Certifications
Wesley K. Clark (D) <sup>1</sup>	\$0	\$7,615,360.39
John R. Edwards (D) <sup>2</sup>	\$83,430.52	\$6,604,769.40
Richard A. Gephardt (D) <sup>3</sup>	\$0	\$4,104,319.82
Dennis J. Kucinich (D) <sup>4</sup>	\$186,000.00	\$2,847,079.59
Lyndon H. LaRouche, Jr. (D) <sup>5</sup>	\$0	\$1,408,993.13
Joseph Lieberman (D) <sup>6</sup>	\$9,966.00	\$4,267,796.85
Ralph Nader (D)	\$148,348.14	\$547,106.80
Alfred C. Sharpton (D)	\$0	\$100,000.00 <sup>7</sup>

<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.

<sup>7</sup> On May 10, 2004, the Commission determined that Reverend Sharpton must repay this amount to the U.S. Treasury for matching funds he received in excess of his entitlement. See the July 2004 Record, page 8.

Treasury the following month. 26 CFR 702.9037-2. Only contributions from individuals in amounts of \$250 or less are matchable.

The chart above 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.

### Nominating Conventions

The Commission has previously certified \$14,924,000 to each of the two major political parties for their 2004 Presidential Nominating Conventions.

—Amy Kort

## Publications

### Updated Brochures Available

The Commission has recently updated its "Independent Expenditures" and "Local Party Activity" brochures to reflect changes in the law made by the Bipartisan Campaign Reform Act of 2002.

The brochures are currently available on the FEC web site at <http://www.fec.gov>. A limited number of printed copies will also be available for those without Internet access. To request a printed copy, call the Information Division at 800/424-9530 or 202/694-1100.



## Administrative Fines

### Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 30 new Administrative Fine cases, bringing the total number of cases released to the public to 973, with \$1,322,312 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 and notices filed prior to an election (i.e., 12-day pre-election, October quarterly and October monthly reports), receive higher penalties. Penalties for 48-hour notices that are filed late or not at all are determined by the amount of the contribution(s) not timely reported and any prior violations.

The 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 chart above, 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 for and Penalties Assessed

1. Americans for Common Sense Government	\$2,400
2. Americans United in Support of Democracy	\$1,593
3. America's PAC	\$2,700
4. Bankers United in Legislative Decisions AKA BUILD (FKA Iowa Bankers Association)	_____ <sup>1</sup>
5. Buckley02	\$275
6. Bricklayers and Allied Craftworkers Local No. 3 New York, Niagra Falls/Buffalo Chapter PAC	\$825 <sup>2,3</sup>
7. Campaign for U. N. Reform PAC (Now named "Citizens for Global Solutions PAC—Global Solutions PAC")	_____ <sup>1</sup>
8. Cohen for New Hampshire	\$850 <sup>4</sup>
9. Cox for U.S. Senate Committee, Inc.	\$22,150
10. David Langston for Congress	\$0 <sup>4</sup>
11. Ed Tinsley for Congress	\$0 <sup>4</sup>
12. Friends of Bob Gross Committee July Quarterly 2002	\$2,700 <sup>2</sup>
13. Friends of Bob Gross Committee October Quarterly 2002	\$2,700 <sup>2</sup>
14. Friends of Roger Kahn Inc.	\$0 <sup>4</sup>
15. Jim Baker for Congress	\$2,700
16. Keyspan Energy PAC (KEYPAC)	_____ <sup>1</sup>
17. Mark A. Augusti for Congress	\$750 <sup>2</sup>
18. Meeks for Congress	\$11,275
19. Mike Greene for Congress Committee	\$10,125 <sup>2</sup>
20. National Committee for an Effective Congress	\$9,000
21. New Mexicans for Bill Richardson	\$4,100
22. Office of the Commissioner of Major League Baseball PAC	\$400
23. Philip Lowe for Congress	\$23,750 <sup>2</sup>
24. Plumbers Union Local 690 of the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local Election Political Action Fund	_____ <sup>1</sup>
25. Pro-Life Campaign Committee 30 Day Post-General 2002	\$12,000
26. Pro-Life Campaign Committee Year End 2002	\$6,000
27. Ross For Congress July Quarterly 2003	\$9,625 <sup>2</sup>
28. Ross For Congress October Quarterly 2003	\$11,000 <sup>2</sup>
29. Saltchuk Resources Inc. PAC (AKA SALTCHUK PAC)	\$825
30. Strickland for Colorado, Inc.	\$6,400

<sup>1</sup>The Commission took no further action in this case.

<sup>2</sup>This civil money penalty has not been collected.

<sup>3</sup>This civil money penalty was reduced after being recalculated for a late report rather than for a nonfiled report.

<sup>4</sup>This civil money penalty was reduced due to the level of activity on the report.

## Outreach

### Reporting Roundtables

On October 6, 2004, the Commission will host two roundtable sessions on election year reporting, including new disclosure requirements under the Bipartisan Campaign Reform Act of 2002 (BCRA). See the chart below for details. Both sessions will be followed by a half-hour reception at which each attendee will have an opportunity to meet the campaign finance analyst who reviews his/her committee's reports. Representatives from the FEC's Electronic Filing Office will also be available to meet with attendees.

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> 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

### Roundtable Schedule

Date	Subject	Intended Audience
October 6 9:30-11 a.m. Reception 11-11:30 a.m.	Election Year Reporting for PACs and Party Committees, plus "Meet Your Analyst" reception	Individuals responsible for filing FEC reports for PACs and Party Committees (Up to 30 may Attend)
October 6 1:30-3 p.m. Reception 3-3:30 p.m.	Election Year Reporting for Candidates and Their Committees, plus "Meet Your Analyst" reception	Individuals responsible for filing FEC reports for Candidate Committees (Up to 30 may Attend)

## Information

### IRS 527 Disclosure Initiative

On August 19, 2004, the Internal Revenue Service (IRS) announced a new initiative to improve reporting and disclosure by tax-exempt "section 527" political groups.

In the initial stage of the program, the IRS will immediately begin contacting a cross-section of 527 groups to request that they explain and correct apparent discrepancies in their existing filings prior to upcoming filing deadlines. These deadlines include September 20 (for monthly filers) or October 15 (for quarterly filers), as well as October 21 for pre-election reports.

An organization that fails to timely report, fails to include all required information about contributions and disbursements, or that reports incorrect information is required to pay 35 percent of the amount related to the failure. There is an exception for reasonable cause.

The filings, as well as information on the filing requirements and upcoming dates, are available on the IRS.gov website at [www.irs.gov/pol-orgs](http://www.irs.gov/pol-orgs).

—Submitted by the IRS

## Index

The first number in each citation refers to the "number" (month) of the 2004 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "1:4" means that the article is in the January issue on page 4.

### Advisory Opinions

- 2003-28: Nonconnected PAC established by limited liability company composed entirely of corporations may become an SSF with the limited liability company as its connected organization, 1:20
- 2003-29: Transfer of funds from a nonfederal PAC to a federal PAC of an incorporated membership organization, 1:21
- 2003-30: Retiring campaign debt and repaying candidate loans, 2:1
- 2003-31: Candidate's loans to campaign apply to Millionaires' Amendment threshold, 2:2
- 2003-32: Federal candidate's use of surplus funds from nonfederal campaign account, 2:4
- 2003-33: Charitable matching plan with prizes for donors, 2:5
- 2003-34: Reality television show to simulate Presidential campaign, 2:6
- 2003-35: Presidential candidate may withdraw from matching payment program, 2:7
- 2003-36: Fundraising by federal candidate/officeholder for section 527 organization, 2:8
- 2003-37: Nonconnected PAC's use of nonfederal funds for campaign activities, 4:4
- 2003-38: Funds raised and spent by federal candidate on behalf of redistricting committee to defray legal expenses incurred in redistricting litigation, 3:14
- 2003-39: Charitable matching plan conducted by collecting agent of trade association, 3:10
- 2003-40: Reporting independent expenditures and aggregation for

various elections, 3:11  
 2004-1: Endorsement ads result in contribution if coordinated communications; “stand-by-your-ad” disclaimer for ad authorized by two candidates, 3:12  
 2004-2: Contributions from testamentary trusts, 4:8  
 2004-3: Conversion of authorized committee to multicandidate committee, 5:5  
 2004-4: Abbreviated name of trade association SSF, 5:7  
 2004-6: Web-based meeting services to candidates and political committees, 5:7  
 2004-7: MTV’s mock Presidential election qualifies for press exemption—no contribution or electioneering communication results, 5:8  
 2004-8: Severance pay awarded to employee who resigns to run for Congress, 6:4  
 2004-9: State committee status, 5:10  
 2004-10: “Stand by your ad” disclaimer for radio ads, 6:5  
 2004-12: Regional party organization established by several state party committees, 8:4  
 2004-14: Federal candidate’s appearance in public service announcements not solicitation, coordinated communication or electioneering communication, 8:6  
 2004-15: Film ads showing federal candidates are electioneering communications, 8:8  
 2004-17: Federal candidate’s compensation for part-time employment, 8:8  
 2004-18: Campaign committee’s purchase of candidate’s book at discounted price, 9:4  
 2004-20: Connecticut party convention considered an election, 9:5  
 2004-22: Unlimited transfers to state party committee, 9:6

### Compliance

ADR program cases, 1:25; 4:15; 7:9; 8:11  
 Administrative Fine program cases, 1:24; 4:14; 6:9; 9:9  
 Enforcement Query System available on web site, disclosure policy for closed enforcement matters

and press release policy for closed MURs; “enforcement profile” examined, 1:6; EQS update, 7:10  
 MUR 4818/4933: Contributions in the name of another and excessive contributions, 8:1  
 MUR 4919: Fraudulent misrepresentation of opponent’s party through mailings and phone banks, 6:2  
 MUR 4953: Party misuse of nonfederal funds for allocable expense, 6:3  
 MUR 5197: Donations from Congressionally chartered corporations, 4:13  
 MUR 5199: Campaign committee’s failure to report recount activities, 6:4  
 MUR 5229: Collecting agent’s failure to transfer contributions, 1:7  
 MUR 5279: Partnership contributions made without prior agreement of partners to whom contributions were attributed, 8:3  
 MUR 5328: Excessive contributions to and from affiliated leadership PACs, 5:1  
 MUR 5357: Corporation’s reimbursement of contributions, 2:1  
 Naming of treasurers in enforcement matters, proposed statement of policy, 3:4  
 Nonfilers, 3:16; 4:13; 6:7; 7:5; 8:13; 9:4

### Court Cases

\_\_\_\_\_ v. FEC  
 – Akins, 4:10  
 – Alliance for Democracy, 3:8  
 – Cooksey, 8:11  
 – Cox for Senate, 3:4  
 – Hagelin, 4:11; 8:9  
 – Kean for Congress, 3:7  
 – Lovely, 5:12  
 – McConnell, 1:1  
 – LaRouche’s Committee for a New Bretton Woods, 6:7; 9:3  
 – O’Hara, 6:6; 8:11  
 – Wilkinson, 4:9  
 – Wisconsin Right to Life, Inc., 9:1  
 – Sykes, 4:12  
 FEC v. \_\_\_\_\_  
 – California Democratic Party, 4:9; 8:10  
 – Dear for Congress, 8:10  
 – Friends of Lane Evans, 3:9

– Malenick, 5:13  
 – Reform Party of the USA, 9:3

### Regulations

Administrative Fine program extension, final rule, 3:1  
 Contributions by minors, Notice of Proposed Rulemaking, 5:3  
 Electioneering communications, FCC database, 3:3  
 Electioneering Communication Exemption, Petition for Rulemaking, 9:4  
 Federal election activity periods, 3:1  
 Inaugural committees, Notice of Proposed Rulemaking, 5:1  
 Leadership PACs, final rules, 1: 18  
 Overnight delivery service, safe harbor for timely filing of reports, 3:1  
 Party committee coordinated and independent expenditures, Notice of Proposed Rulemaking, 8:1  
 “Political committee” definition, definition of “independent expenditure,” allocation ratio for nonconnected PACs, Notice of Proposed Rulemaking, 4:1; Public hearing, 5:3; extension of Commission’s consideration, 6:1; Rules approved, 9:1  
 Public access to materials from closed enforcement matters, Petition for Rulemaking, 3:4  
 Public financing of Presidential candidates and nominating conventions, correction and effective date, 1:19  
 Travel on behalf of candidates and political committees, final rules, 1:19

### Reports

Due in 2004, 1:9  
 April reminder, 4:1  
 Convention reporting for Connecticut and Virginia, 5:10  
 July reminder, 7:1  
 Kentucky special election reporting, 1:9  
 North Carolina special election reporting, 7:9

FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20463

Official Business  
Penalty for Private Use, \$300

PRESORTED STANDARD  
U.S. POSTAGE  
PAID  
FEDERAL ELECTION COMMISSION

