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Table of Contents

Regulations
1 NPRM on Candidate Travel; Leadership PAC Definition
10 NPRM on Reporting Bundled Contributions Bundled
12 Hearing on Electioneering Communications

1 Advisory Opinions

12 Federal Register

Reports
13 Electronic Filing Format and Software Updated
14 Virginia Special Election Reporting

Compliance
15 Procedural Rules for Probable Cause Hearings
15 MUR 5666: Corporate Contributions in the Name of Another
16 MUR 5440: Excessive and Prohibited Contributions; Failure to Register

16 FEC Seeks Director, Congressional Affairs

Public Funding
17 Edwards Certified for Public Funds

Statistics
17 PAC Activity Increases in 2007

Outreach
18 FEC Conferences

18 Index

Regulations

Notice of Proposed Rulemaking on Candidate Travel and Definition of Leadership PAC

On October 18, 2007, the Commission approved a Notice of Proposed Rulemaking (NPRM) proposing rules to implement the new statutory provisions of the Honest Leadership and Open Government Act of 2007 (HLOGA). The NPRM outlines proposed regulations governing the rates and timing of payment for campaign travel on non-commercial aircraft and the definition of leadership PAC.

Background

HLOGA amends section 2 U.S.C. §439a(c) of the FECA to prohibit Senate and Presidential candidates, and their authorized committees, from spending campaign funds for travel on non-commercial aircraft, unless they pay their pro-rata share of the charter rate. House candidates, and their authorized committees and leadership PACs, are prohibited from spending any campaign funds for travel on private, non-commercial aircraft. There are exceptions for travel on government aircraft and aircraft owned by candidates or members of their immedi-

(continued on page 8)

Advisory Opinions

AO 2007-15

Payment for Administration of SSF by LLC Treated as Partnership; Name and Abbreviation of SSF

A subsidiary corporation of a partnership may establish a separate segregated fund (SSF) and use the name of the corporation in the title of the SSF. An acceptable abbreviation may also be used in the name of the SSF.

Background

GMAC is a financial services corporation that has elected partnership status with the Internal Revenue Service (IRS). It is owned 49 percent by General Motors, Inc. and 51 percent by FIM Holdings LLC. FIM Holdings LLC is an investment consortium led by Cerberus FIM Investors, LLC, which is its sole managing member, and several corporate principals. GMAC owns a number of subsidiaries, one of which is GMAC Insurance Holdings, Inc., which intends to establish an SSF.

Analysis

The Commission considered, but did not reach a conclusion by the required four votes, whether GMAC

(continued on page 2)

Advisory Opinions

(continued from page 1)

could pay the expenses associated with administering the SSF of its corporate subsidiary.[1]

[1] *Partnerships and LLCs that are treated as partnerships are generally prohibited from serving as the connected organization of an SSF, with the exception of partnerships that are owned entirely by corporations. The tax status of Cerberus was not made available by the requestor and, accordingly, some Commissioners concluded that they did not have sufficient information to determine whether GMAC is "owned entirely by corporations." Some Commissioners, however, concluded that the exception described above for partnerships owned entirely by corporations did not necessarily provide the appropriate analysis under the facts presented in this advisory opinion.*

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The SSF may include the name "GMAC LLC" in its official name and may use "GMAC PAC" as its abbreviation. Commission regulations require that the name of an SSF must include the full name of its connected organization. 11 CFR 102.14(c). Although the name of the connected organization is GMAC Insurance Holdings, Inc., Commission regulations do not require that an SSF established by a subsidiary include the name of its parent or another subsidiary.

Commission regulations also permit an SSF to use a clearly recognizable abbreviation or acronym by which the connected organization is known. In previous advisory opinions, the Commission has examined whether the abbreviations or acronyms give adequate notice to the public as to the identity and sponsorship of the SSF. The Commission concluded that the name "GMAC PAC" is permissible because it reflects the name of the SSF's connected organization and the parent of the connected organization.

Date Issued: October 19, 2007; Length: 4 pages

—Myles Martin

AO 2007-16
Affiliation of Membership Organizations

The American Kennel Club (AKC) and its voting clubs and accredited clubs are membership organizations under the Federal Election Campaign Act (the Act) and Commission regulations, and both the voting clubs and the accredited clubs are affiliated with the AKC. Therefore, any SSF the AKC establishes may solicit contributions from the individual members of its affiliated voting clubs and accredited clubs.

Background

The AKC is composed of about 600 voting clubs and 4,000 accredited clubs. Voting clubs have the right to designate a delegate to vote on the club's behalf at AKC meetings and are required to pay modest annual dues. Accredited clubs do not have voting representation and are not obligated to pay dues.

The AKC is governed by a board of 13 directors elected by the delegates at large. Only delegates are eligible to serve as directors on the board, and the board appoints two of its members to serve as its principal officers—the Chairperson and the Vice Chairperson. The board oversees the AKC's property and assets, reviews proposed amendments to its Charter and has final authority on issues related to dog shows. The board can adjudicate charges that any club or person has violated AKC rules and can impose penalties.

Clubs applying for membership must enclose a copy of their constitutions, bylaws and membership lists for AKC review. If the board approves the applicant club for membership, then the question is submitted to the delegates at large for voting. The AKC acknowledges its acceptance of membership by sending the new voting club a letter and publishing its name in the AKC's publication. Voting clubs have a continuing duty to submit proposed changes to their governing documents to the AKC's board for approval and to apprise the AKC's Executive Secretary of any changes in their officers. The AKC Charter also prescribes criteria for determining eligibility for the position of delegate, and its board has the authority to approve or disapprove a voting club's designation of a delegate. If the board disapproves the designation, the delegates at large vote on the issue.

The delegates of the voting clubs make and modify the rules for AKC-approved dog shows, which provide for comprehensive supervision of every aspect of a show. Both voting and accredited clubs must apply to the AKC for permission to hold a dog show and must adhere to the dog show rules.

Both voting and accredited clubs have their own constitutions and bylaws. The bylaws of the various clubs display similar structure and content because the clubs substantially follow sample bylaws provided by the AKC in designing their own. Each voting club's bylaws provide that its delegate to the AKC is also a member of its own board of directors and an officer of the club. Both kinds of bylaws have provisions for the types of memberships and the governance of the club, announce that a purpose is to conduct AKC-sanctioned dog shows, define dues for most levels of membership and provide that any member whose AKC privileges are suspended are equally suspended from the privileges of the voting or accredited club. The AKC board must approve any amendments to a voting club's constitution or bylaws. Although not technically required, virtually all accredited clubs submit their constitutional amendments for prior AKC approval.

Membership Organizations

A corporation without capital stock qualifies as a membership organization if it meets six requirements detailed in FEC regulations and is composed of persons who qualify as members under the regulations. 11 CFR 114.1(e)(1) and (2). See also 11 CFR 100.134(e) and (f).

The AKC and the vast majority of its voting and accredited clubs are non-profit corporations without capital stock, and the AKC meets the six enumerated requirements:

- It is composed partly of voting clubs vested with the power and authority to operate or administer the organization pursuant to the AKC Charter;
- The AKC Charter expressly states the requirements and qualifications for membership;
- The AKC Charter and bylaws are available to its members on its web site and upon request;
- The AKC expressly solicits membership by advertising the benefits of AKC registration on its web site and providing guidance on how to form a new club;
- The AKC acknowledges acceptance of membership by sending a letter to the voting club and publishing the names of new voting clubs;
- The AKC Charter shows that it is not organized primarily for the purpose of influencing federal elections, but instead for the purpose of ensuring the purity of specific breeds of dogs and of promoting the fitness of the dogs. 11 CFR 114.1(e)(1)(i)-(vi).

In addition, the AKC is composed of persons that are "members" under Commission regulations. 11 CFR 114.1(e)(2). The voting clubs are members because they satisfy the membership requirements set forth in the AKC Charter, affirmatively accept invitations to become members and pay annual dues of a predetermined amount.[1] 11 CFR 114.1(e)(2)(ii).

Both the voting clubs and the accredited clubs also meet all six requirements for being a membership organization and are composed of persons who are "members" under Commission regulations, as described above.

Solicitation and Affiliation

A membership organization or its SSF may solicit its individual members for contributions to the SSF. 2 U.S.C. §441b(b)(4)(C); 11 CFR 114.7(a). When a membership organization has several levels, such as national, regional, state and/or local affiliates, then a member of any entity or affiliate within the multi-level structure automatically qualifies as a member of all affiliates. 11 CFR 114.1(e)(5). In addition, a membership organization or its SSF may solicit the individual members of the membership organization's affiliates. AO 2005-03.

Per se affiliation. Under Commission regulations, organizations that are established, financed, maintained or controlled by a single corporation and/or its subsidiaries, or by the same person or group of persons, are *per se* affiliated. 11 CFR 100.5(g)(3)(i) and (v). In this case, neither the AKC, nor the voting clubs and accredited clubs, owns any portion of the others, and thus no organization is a subsidiary of either of the others. Moreover, the AKC and the voting and accredited clubs are not established, financed, maintained or controlled by the same person or group of persons.

Under Commission regulations, organizations established by a membership organization, including related state and local entities of the organization, are also *per se* affiliated. 11 CFR 100.5(g)(3)(iv). The AKC and its voting clubs and accredited clubs, however, are not *per se* affiliated under this provision because the voting and accredited clubs are not state or local chapters or entities within the AKC.

Affiliation factors. In the absence of *per se* affiliation, Commission regulations provide for an examination of various factors in the context of the overall relationship to determine whether one sponsoring organization has established, financed, maintained or controlled the other sponsoring organization. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J). These ten circumstantial factors do not constitute an exhaustive list, and other factors may be considered. Three of these factors are relevant in this case.

The first factor considers whether a sponsoring organization has the authority or ability to direct or participate in the governance of another sponsoring organization through provisions of constitutions, bylaws, contracts or other rules, or through

(continued on page 4)

[1] *Accredited clubs, in contrast, are not "members" of the AKC under Commission regulations.*

Advisory Opinions

(continued from page 3)

formal or informal practices or procedures. 11 CFR 100.5(g)(4)(ii)(B). The AKC and the voting clubs exercise reciprocal rights of participation in each other's governance. The voting clubs participate in the AKC's governance through the delegates they appoint to represent them, and the AKC participates in the governance of the voting clubs by reviewing and approving the voting club's organizational documents. Moreover, the AKC can discipline voting clubs and their individual members, and the AKC Board can approve or disapprove a voting club's designation of a delegate. Finally, through the dog show rules, the AKC governs all aspects of voting clubs' dog shows.

Although the accredited clubs are not "members" of the AKC under the Commission's regulations, individuals who are members of the accredited club need not have rights and obligations with respect to the AKC in order for the accredited club to be affiliated with the AKC. AO 1999-40. Moreover, the AKC participates in the governance and operations of the accredited clubs because it can discipline them and governs all aspects of their dog shows.

Further, the AKC furnishes both voting and accredited clubs with prototype constitutions and bylaws that the clubs follow substantially. Finally, the voting club must submit its organizational documents and its membership list to the AKC before it is accepted for membership. The AKC reviews and approves the organizational documents and membership lists of both voting and accredited clubs to determine whether the clubs are eligible for membership or accreditation. Once a club's organizational documents are approved, the AKC has effective veto power over any proposed amendments. Together, these facts suggest affiliation between the AKC and the voting and accredited clubs.

The second relevant factor addresses whether a sponsoring organization has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decision-making employees or members of another sponsoring organization. 11 CFR 100.5(g)(4)(ii)(C). The AKC and the voting clubs each exercise some authority over each other's officers or other decision-making employees. The voting clubs' delegates appoint members of the AKC Board of Directors from their own ranks. The Board then appoints the AKC's officers. Furthermore, the AKC reviews the membership lists submitted by clubs applying for membership. The AKC has the authority to strip any person of the privileges of association with the AKC. Thus, this factor also suggests affiliation between the AKC and the voting and accredited clubs.

The third factor considers whether a sponsoring organization or its agent had an active or significant role in the formation of another sponsoring organization. 11 CFR 100.5(g)(4)(ii)(I). The AKC takes an active role in the formation of voting and accredited clubs by establishing the requirements a club must satisfy to attain club status. Both voting and accredited clubs substantially follow prototype constitutions and bylaws provided by the AKC. In addition, the AKC reviews the organizational documents and membership lists of both voting and accredited clubs to determine whether the clubs are eligible for membership or accreditation.

Intent of individual members of voting and accredited clubs to join the AKC. In determining affiliation, the Commission also considers the intent of the people who join an organization.[2] Groups become voting or accredited clubs of the AKC because this allows them to conduct AKC-approved dog shows. Without AKC sponsorship, they would lose substantial revenue from exhibitors. Thus, clubs are motivated to subordinate practically all aspects of their dog shows to the direction of the AKC. In this sense, the individual's primary purpose in joining voting or accredited clubs is to be associated with the AKC as a whole.

Conclusion

The AKC and the voting clubs are affiliated because they exercise reciprocal rights of participation in each other's governance. The AKC also assumes a significant role in the formation of the voting clubs, and an individual's primary purpose in join-

[2] *The Commission noted in its Explanation and Justification for its final rules regarding the Definition of "Member" of a Membership Organization that "a person who joins one tier of a multi-tiered organization clearly demonstrates an intention to associate with the entire organization." 64 FR 41266, 41271 (July 30, 1999).*

FEC Accepts Credit Cards

The Federal Election Commission now accepts American Express, Diners Club and Discover Cards in addition to Visa and MasterCard. While most FEC materials are available free of charge, some campaign finance reports and statements, statistical compilations, indexes and directories require payment.

Walk-in visitors and those placing requests by telephone may use any of the above-listed credit cards, cash or checks. Individuals and organizations may also place funds on deposit with the office to purchase these items. Since prepayment is required, using a credit card or funds placed on deposit can speed the process and delivery of orders. For further information, contact the Public Records Office at 800/424-9530 or 202/694-1120.

ing a voting club is to be associated with the AKC. With regard to the accredited clubs, the fact that the AKC participates in the governance of the accredited clubs and has a significant role in their formation, coupled with the fact that the individual's primary purpose in joining an accredited club is to be associated with AKC, outweighs the absence of influence or control over the AKC through voting rights. AO 1995-12. Thus, because the voting and accredited clubs are affiliates of the AKC, the AKC or any SSF it forms may solicit all of the individual members of its voting and accredited clubs for contributions to its SSF.

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—Amy Kort

AO 2007-17

Contributor Signature Not Required on Contributions Made Through Online Banking Services

The Democratic Senatorial Campaign Committee (DSCC) may collect contributions from individuals using online banking services, which often take the form of electronic payments or bank-issued checks that are signed by bank officials. The DSCC is not required to collect a signature from the individual contributor as long as the check was executed by a bank official in accordance with the individual contributor's instructions and clearly indicates the personal account from which the check is drawn.

Background

The DSCC collects a number of contributions from individuals who use online banking services. This involves a bank customer registering his or her account online and scheduling payments to any person or entity he or she wishes to pay by transmitting this information to the bank via the Internet. The bank will either issue payment to the payee electronically or by means of a written check. Checks produced in this manner typically contain the account holder's name, checking account number and other identifying information.

Contribution checks issued to the DSCC by individual contributors through this method are frequently signed by a bank official rather than the account holder. The DSCC typically sends a follow-up letter to the contributor to obtain a written signature. The DSCC proposes to cease this follow-up procedure in cases where it has all of the necessary contributor information.

Legal Analysis

The Federal Election Campaign Act (the Act) and Commission regulations require that all contributions be properly attributed to the actual contributor. Any contribution made by check, money order or other written instrument must be reported as a contribution by the last person signing it prior to delivery to the candidate or committee, "absent evidence to the contrary." 11 CFR 104.8(c).

In cases where the individual contributor directs a contribution to be made to a political committee, if the check is drawn from the contributor's account and signed by a bank official at the direction of the account holder, then the check itself would provide adequate evidence that the account holder is the actual contributor (and consequently the person to whom the contribution must be attributed).

Accordingly, the DSCC is not required to send a follow-up letter to obtain a written signature from the contributor, as long as the DSCC has received all necessary contributor information. In the event that the DSCC does not have all necessary contributor information, they must use "best efforts" to obtain, maintain and report such information. 11 CFR 102.9(d).

In the case of a check drawn on a joint checking account, the DSCC must contact the individuals to ascertain their intent if the account holders do not specify how the contribution is to be attributed. 11CFR 110.1(k)(3)(ii)(A). However, if there is only one way to attribute the contribution consistent with the Act's contribution limits and prohibitions, then the DSCC may attribute the contribution according to the rules for "presumptive reattribution," and would not need to obtain a written attribution from the contributors. 11 CFR 110.1(k)(3)(ii)(B).

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—Myles Martin

AO 2007-18

Use of Campaign, Leadership PAC Funds for Official Portrait

Representative Charles Rangel's principal campaign committee (the Committee) or his leadership PAC (National Leadership PAC) may use their respective funds to pay for the commissioning of an official portrait of Representative Charles Rangel that will be donated to the U.S. House of Representatives. Payment for the portrait by the National Leadership PAC will not be considered an in-kind contribution to the Committee.

Background

Representative Rangel is the Chairman of the U.S. House of Representatives Committee on Ways and Means. The U.S. House of Representatives traditionally honors committee chairs by placing their portraits in the committee hearing rooms. The House Committee on Ways and Means will commission the portrait for donation to the U.S. House of Representatives. Representative Rangel's principal campaign committee or the National Leadership PAC will pay $64,500 for the cost of the portrait and will not solicit or receive funds to pay for the portrait. The portrait, which will

(continued on page 6)

Advisory Opinions

(continued from page 5)

be donated to the House for public purposes, will become the official property of the House and will not be transferred or sold to any other person or organization.

Analysis

The Federal Election Campaign Act (the Act) provides that campaign funds may be donated to any organization described in 26 U.S.C. §170(c), but may not be "converted by any person to personal use." 2 U.S.C. §§439a(a)(3) and (b)(1); 11 CFR 113.1(g)(2) and 113.2(b). Commission regulations provide that donations from campaign funds to section 170(c) organizations are not personal use, unless the candidate receives compensation from the organization before that organization has expended, for purposes unrelated to the candidate's personal benefit, the entire amount donated. 11 CFR 113.1(g)(2).

In this case, the Committee's use of campaign funds to pay for the cost of the portrait is permissible. The U.S. House of Representatives qualifies as an organization described in section 170(c) of Title 26, to the extent that the donation is made for exclusively public purposes. Moreover, the proposed payment for a portrait of Representative Rangel would not financially benefit Representative Rangel or a family member. While Representative Rangel is employed by the U.S. House of Representatives and receives compensation from the House for his services, no part of the payment for the portrait by the Committee or by the National Leadership PAC would benefit either Representative Rangel or his family financially.

The Commission also concluded that the National Leadership PAC may pay for the portrait commission. This payment would not be considered an in-kind contribution to the Committee because the payment would not be for the purpose of influencing an election for federal office. See U.S.C. §431(8)(A)(i); 11 CFR 100.52(a). Whichever committee pays for the painting must report all disbursements of funds, including any payment for a portrait and maintain appropriate documentation of disbursements. See 2 U.S.C. 434(b)(4) and (b)(5); 11 CFR 104.3(b).

Date Issued: October 12, 2007; Length: 4 pages.

—Diana Veiga

AO 2007-20

Free Airtime to Presidential Candidates on Satellite Radio

XM Satellite Radio Inc. (XM) may offer free airtime to qualified Presidential candidates because XM qualifies as a press entity and would not be making prohibited corporate contributions or expenditures. Communications made by candidates through XM's free airtime offer must include all required disclaimers.

Background

XM has launched a 24-hour, commercial-free national radio channel exclusively dedicated to the 2008 Presidential election. The channel, called "POTUS '08," features news updates, candidate interviews, complete speeches and other campaign-related news, in addition to archival audio of historic moments from past Presidential campaigns. As a separate and distinct part of POTUS '08, XM will also air "Candidate Supplied Content" which will consist of free airtime for Presidential candidates or their representatives to speak to voters. Each Presidential candidate who has qualified for ballot access in 10 or more states will be eligible for the free airtime.

XM will devote up to one hour per day to the candidate supplied content. Each eligible candidate will be allowed to supply content of up to 5 minutes per day and will retain complete editorial control over the content of the communications he or she supplies to POTUS '08. However, XM will not air any advertisements that have been carried on a for-pay basis on any medium (including campaign commercials for a candidate) or otherwise fail to comply with its prescribed access guidelines.

Analysis

The Federal Election Campaign Act (the Act) prohibits corporations from making contributions or expenditures in connection with federal elections. 2 U.S.C. §441b(a). The Act and Commission regulations define the terms "contribution" and "expenditure" to include any gift of money or "anything of value" for the purpose of influencing a federal election. 11 CFR 100.52(a). However, any cost "incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station" is excluded from the definitions of contribution and expenditure unless the facility is owned or controlled by any political party, political committee or a candidate. 11 CFR 100.73. The Act and Commission regulations also include a similar exemption with respect to "electioneering communications," which would otherwise be prohibited if made by a corporation. 2 U.S.C. §434(f)(3)(B)(i) and 11CFR 100.29(c)(2). This exclusion is commonly known as the "press exemption."

Applicability of the Press Exemption

The Commission has previously applied a two-step analysis to determine whether or not the press exemption applies in different circumstances. First, the Commission asks whether the entity engaging in the activity is a press entity; second, the Commission determines whether the entity is owned or controlled by a political party, political committee or candidate, and whether the entity is acting as a press entity in conducting the activity at issue.

The Commission concluded that XM qualifies as a press entity because XM is in the business of producing on a regular basis a radio program that distributes news stories, commentary and/or editorials. The Commission also concluded that XM is not owned or controlled by a political party, political committee or candidate and that by providing free airtime to qualified Presidential candidates, XM is covering or carrying a news story, commentary or editorial. Accordingly, the Commission determined that XM's broadcasts on the POTUS '08 channel, including the broadcast of Candidate Supplied Content, are exempt from the Act's prohibition on corporate contributions and expenditures under the press exemption. Such communications were also found to be exempt from the definition of "electioneering communications" because they meet the same criteria described above. 11 CFR 100.29(c)(2).

Disclaimers

All participating candidates must include disclaimers on any communications that are broadcast on the POTUS '08 channel, as required by the Act and Commission regulations. 2 U.S.C. §441d(a)(1) and 11 CFR 110.11(a)(1). The Commission provided a non-exhaustive list of three disclaimers that would satisfy the relevant requirements. Because participating candidates will make a disbursement by paying for the production costs of Candidate Supplied Content, the disclaimer must clearly state that the communication was paid for by the candidate's authorized committee. For instance, an acceptable statement would be, "Time for this message was provided free by XM radio to help inform the public about the current Presidential campaign, and other production costs were paid by X for President." Because the content will be a radio communication approved by a candidate, the disclaimer must also include an audio statement by the candidate that identifies the candidate and states that he or she has approved the communication. 11 CFR 110.11(c)(3)(i).

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—Myles Martin

AO 2007-21

Federal Candidate and Officeholder May Serve as Honorary Chairman for Publicly Funded Nonfederal Candidates

A current federal candidate and officeholder may serve as the honorary chairman of the general election campaigns of publicly funded state candidates, because his proposed activities would not violate the Federal Election Campaign Act's (the Act) restrictions on federal candidate and officeholder activities in connection with nonfederal elections.

Background

Representative Rush Holt is a candidate for re-election to the U.S. House and proposes to serve as the "honorary chairman" of the general election campaigns of three candidates for the New Jersey legislature. All of these candidates are participating in the New Jersey Fair and Clean Elections Pilot Project (NJ FECPP).

Under this pilot project, a candidate must qualify to receive public funds by meeting several criteria, which include receiving no fewer than 400, and no more than 800, "qualifying contributions"—$10 contributions from individuals registered to vote and residing in the district the candidate seeks to represent. Candidates participating in NJ FECPP must not receive any other private funding except qualifying contributions and "seed money," which is money candidates are permitted to raise from registered New Jersey voters to finance the collection of qualifying contributions. A seed money contribution may not exceed $500, and the total amount of seed money a candidate may raise is limited to $10,000.

Representative Holt would allow his name to appear on publicly funded state candidates' campaign letterhead and in other communications that express his support for their candidacies. The state candidates will not promote or support Representative Holt or attack or oppose any of his opponents in their communications.

Analysis

The Act and Commission regulations prohibit federal candidates and officeholders from soliciting, receiving, directing, transferring, spending or disbursing funds in connection with nonfederal elections unless those funds comply with federal limitations and source prohibitions. 2 U.S.C. §441i(e)(1)(B) and 11 CFR 300.62. Since all three state candidates that Representative Holt proposes to support have qualified for public funding under New Jersey law (and are thus prohibited from accepting any further private contributions), none of the communications in which Representative Holt will appear are solicitations. Thus, he will not solicit any funds in those communications. Furthermore, Representative Holt will not be involved in any decisions regarding the spending or disbursement of the candidates' funds.

The Act and Commission regulations also require that payment for any public communication that clearly identifies a federal candidate and promotes, attacks, supports or opposes any federal candidate be paid with federal funds (i.e. funds that are subject to the Act's limitations, prohibitions and reporting requirements). 2 U.S.C. §441i(f)(1) and 11 CFR 300.71. The state candidates will not promote or support Representative Holt, nor attack or oppose his opponents, in their general election communications merely by including Representative Holt's

(continued on page 8)

Advisory Opinions

(continued from page 7)

name, along with the title "Honorary Chairman," on the letterhead or in communications expressing his support for their candidacies.

Finally, since Representative Holt's involvement with the state candidates' campaign communications will be limited to his expression of support for their candidacies, the proposed communications would fall within the safe harbor for endorsements by federal candidates under the Commission regulations governing coordinated communications. Thus, the proposed communications would not be considered to be "coordinated communications." 11 CFR 109.21(g)(1).

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—Myles Martin

Advisory Opinion Requests

AOR 2007-25

Status of law firm as a corporation or as a partnership for purposes of administering and financially supporting a separate segregated fund (Holland and Knight LLP, October 11, 2007)

AOR 2007-26

Donations by federal candidate's state office campaign committee (Aaron Schock, September 18, 2007)

AOR 2007-27

Nonconnected committee soliciting, receiving, and forwarding contributions designated for specific separate segregated funds (ActBlue, October 18, 2007)

AOR 2007-28

Federal officeholders fundraising for qualification and passage of ballot initiative regarding redistricting (Representatives Kevin McCarthy and Devin Nunes, October 12, 2007)

AOR 2007-29

Contribution of federal campaign funds to candidate for local political party office (Representative Jesse L. Jackson Jr., October 15, 2007)

AOR 2007-30

Alternative security verification procedures for matchable contributions made by credit card over the Internet (Chris Dodd for President, Inc., October 12, 2007)

Regulations

(continued from page 1)

ate families, but the new provisions make it clear that candidates will no longer be permitted to pay the first-class or coach airfare for travel on a private plane. These provisions took effect when President Bush signed HLOGA into law on September 14, 2007.

HLOGA also defines the term "leadership PAC." Therefore, the Commission proposes adding the term to its regulations at 11 CFR 100.5, the section listing examples of "political committees." In addition, the Commission proposes revising its regulations to conform its existing exception to the definition of "contribution" for non-commercial travel aboard aircraft by, or on behalf of, federal candidates and authorized committees if the aircraft provider is reimbursed at a specific rate. 11 CFR 100.93.

Definition of Leadership PAC

In HLOGA, Congress defined a leadership PAC as "a political committee that is directly or indirectly established, financed, maintained or controlled by [a] candidate [for federal office] or [an] individual [holding federal office] but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party." New section 2 U.S.C. §434(i)(8)(B). The Commission proposes to incorporate a definition of leadership PAC into the general definition of "political committee," rather than within the travel rules themselves, since the new definition will affect several regulations. 11 CFR 100.5.

Non-Commercial Travel for Presidential, Vice-Presidential and Senate Candidates

New 2 U.S.C. §439a(c)(1)(B) requires candidates for President, Vice-President and Senate to pay the pro-rata share of the fair market value of flights on non-commercial aircraft. The pro-rata share is determined by dividing the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size by the number of candidates on the flight. The Commission proposes to define the pro-rata share based upon the number of candidates represented on the flight. A candidate would be represented on a flight if a person is traveling on behalf of that candidate or his or her authorized committee or leadership PAC. The entire charter rate would be split between the various candidates represented on the flight. The reimbursement rate would not apply when the candidate or his or her representative is traveling on behalf of another committee rather than on behalf of the candidate's own campaign.

The NPRM also outlines three other alternative methods for determining the pro-rata share. The alternatives include applying reimbursement:

- Based upon the number of represented committees, rather than the number of candidates or candidate committees (i.e., includes reimbursement by a representative traveling on behalf of a PAC);
- Reflecting the number of candidate representatives as a percentage of all aircraft passengers; or
- At a rate for an aircraft of sufficient size to seat the committee's own

campaign travelers (as outlined in the current rules).

Non-Commercial Travel for House Candidates

New 2 U.S.C. §439a(c)(2) provides that House candidates (including candidates for the office of Delegate or Resident Commissioner) and their authorized committees and leadership PACs may not make expenditures for non-commercial air travel. HLOGA provides an exception from this prohibition for payments for travel on government airplanes and aircraft owned by the candidate or members of the candidate's family. Note that the new provision would also apply to persons traveling on behalf of a House candidate, the candidate's authorized committee or the candidate's Leadership PAC.

Exception for Aircraft Owned by Candidates and Family Members

The amendments to the statute include an exception for travel aboard aircraft owned or leased by a candidate or candidate's immediate family member, including an aircraft owned or leased by an entity in which the candidate or a member of candidate's immediate family has an ownership interest. 2 U.S.C. §439a(c)(3)(A). While the new exception relieves the restrictions on expenditures, it does not relieve candidates of the obligation to reimburse the service provider to avoid receiving an in-kind contribution for the use of the aircraft. The Commission proposes that the reimbursement rates follow those set forth in the Commission's existing rules—where the payment rate depends upon whether the travel is between cities served by regularly scheduled commercial airline service and whether that service is available at the first-class or coach rate. See 11 CFR 100.93 (a)(3)(i) and 100.93(c). The Commission also sought comments on alternatives that would only require reimbursement for the incremental costs for the flight, or the actual value of the flight determined by any charge that the candidate or family member must pay for the use of the aircraft.

Exception for Government Aircraft

HLOGA also excepts travel on government aircraft from its general restrictions and prohibitions on payments for air travel, but it does not specify any particular rate of reimbursement for travel aboard government aircraft. The Commission proposes rules where campaign travelers must reimburse the appropriate government entity for the travel at one of two rates: the pro rata share reimbursement rate for an aircraft of sufficient size to accommodate all campaign travelers, or a reimbursement rate specified by the government entity providing the aircraft.

Non-Commercial Travel by Other Campaign Travelers

While a non-candidate reimbursement rate is not addressed in the new law, the Commission proposes changes intended to promote uniformity in the regulations. The NPRM presents a proposed air travel reimbursement rate for non-candidate travelers (i.e., individuals traveling on behalf of party committees, separate segregated funds or nonconnected PACs): the pro-rata share of the fair market value of such travel, calculating the pro-rata share in the same manner used for travel on behalf of Presidential, Vice-Presidential and Senate candidates. This rate would not apply when the travel is shared with a candidate or person traveling on behalf of a candidate because the candidate would be responsible for the entire cost of the flight. The Commission also proposed an alternative in which it would retain the existing reimbursement rates for non-candidate travel—at the first-class or coach rate based upon whether the travel is between cities served by regularly scheduled commercial airline service.

Additional Proposed Revisions

The NPRM outlines additional proposed revisions to assist in implementing HLOGA.

Members of the media. Currently, the candidate's committee is ultimately responsible for paying the service provider for costs of media travel, but may seek reimbursement for the media's portion of the travel expenses. The proposed rule would insure that the media would not be permitted to relieve the candidate of the responsibility for paying the service provider the full normal and usual charter rate or rental charge for travel on aircraft. 11 CFR 100.93(b)(1)(iii).

Security personnel. Under current rules, security personnel are not necessarily considered campaign travelers, but could qualify as such depending upon the nature of any additional services that they provide for the candidate. The proposed rule would make the candidate committee responsible for the full cost of travel for security personnel traveling with a candidate or candidate's committee. However, for travel on a government aircraft, security personnel would not be included in the calculation of the size of a comparable aircraft. 11 CFR 100.93(c)(1) and (e)(1).

"Comparable plane of comparable size." For the purposes of calculating the appropriate charter rate in the proposed rules, the Explanation and Justification clarifies the Commission's interpretation of "comparable size" as an aircraft with similar physical dimensions that is able to carry a similar number of passengers, and "comparable plane" as an aircraft of similar make and model as the airplane that actually makes the trip, with the same amenities as that airplane.

Travel on behalf of Senate candidate leadership PACs. While the

(continued on page 10)

Regulations

(continued from page 9)

new law does not address leadership PACs of Senate candidates, the Commission proposes to extend the new reimbursement rates that apply to Senate candidates and authorized committees to travel on behalf of a Senate candidate's leadership PACs.

Commercially reasonable time frame. The statutory provisions for non-commercial travel by Presidential and Senate candidates require reimbursement within a "commercially reasonable time frame." The Commission proposes to define the term as a "seven-day time frame beginning on the first day of the flight."

Use of Campaign Funds for Non-Commercial Travel

In addition to the revisions to the travel reimbursement regulations at 11 CFR 100.93, the Commission also proposes adding a new section to its regulations on the use of campaign funds at Part 113 to directly implement the limit on expenditures for non-commercial air travel. The proposed rules in this section outline the new prohibition on expenditures for non-commercial campaign travel for federal candidates and their authorized committees and Leadership PACs and provide that the unreimbursed value of transportation provided to any campaign traveler is an in-kind contribution from the service provider to the candidate or authorized committee on whose behalf the travel was taken.

Additional Information

The full text of the NPRM was published in the October 23, 2007, Federal Register and is available on the FEC web site at http://www.fec.gov/pdf/nprm/cand_travel_hloga/notice_2007-20.pdf.

—Elizabeth Kurland

NPRM on Reporting Bundled Contributions

On October 30, 2007, the Commission approved a Notice of Proposed Rulemaking (NPRM) requesting comments on proposed rules requiring the disclosure of information about lobbyists, registrants and political action committees (PACs) established or controlled by lobbyists and registrants that bundle contributions to certain types of political committees. The proposed rules would require authorized committees, leadership PACs and political party committees to report certain information when lobbyists and registrants, or their PACs, provide bundled contributions aggregating in excess of a certain amount during a specific period of time. These rules would implement provisions of the Honest Leadership and Open Government Act of 2007 (HLOGA).

HLOGA amends the Federal Election Campaign Act (the Act) to require certain political committees to disclose information about each lobbyist, registrant and political committee established or controlled by a lobbyist or registrant that forwards, or is credited with raising, two or more bundled contributions aggregating in excess of $15,000 during a "covered period." Reporting committees must disclose the name and address of the lobbyist/registrant or lobbyist/registrant PAC, the lobbyist/registrant's employer (for individual persons) and the aggregate amount of contributions bundled to the committee within the covered period. New 2 U.S.C. §434(i). These reporting requirements are in addition to existing reporting and recordkeeping requirements for contributions that are received and forwarded, and the Commission does not propose to change any of these existing rules. 2 U.S.C. §432(b) and §441a(a)(8); 11 CFR 102.8 and 110.6.

The NPRM proposes rules requiring the reporting of, and recordkeeping for, information about lobbyists/registrants and lobbyist/registrant PACs that bundle contributions. Specifically, the new law requires the disclosure of information about a person who forwards, or is credited with raising, bundled contributions if the person is "reasonably known" by the reporting committee to be a lobbyist/registrant or lobbyist/registrant PAC. The NPRM proposes rules to provide guidance about how a reporting committee can determine whether a person identified on a filing qualifies as a lobbyist, a registrant or a political committee established or controlled by a registrant or lobbyist. The Commission seeks comments on this proposal and also specifically requests comments on proposed rules to define the terms used in HLOGA, as discussed below.

Definitions

"Lobbyist/registrant PAC." The Commission proposes to define the term "lobbyist/registrant PAC" as "any political committee established or controlled" by a lobbyist/registrant. Political committees that meet this definition would have to identify themselves on their Statements of Organization. The Commission anticipates revising FEC Form 1, Statement of Organization, to allow committees to identify themselves as lobbyist/registrant PACs, and requests comments on how best to allow for this disclosure.[1] The Commission also asks for comments on when a nonconnected committee would be considered "controlled" by a lobbyist/registrant and whether an SSF should be considered to be controlled by a lobbyist/registrant, by definition, when the SSF's con-

[1] *This same identification requirement would apply to political committees that meet the definition of leadership PAC, and amendments to FEC Form 1 will include amendments to include "leadership PAC" as a type of committee. See 11 CFR 100.5(e)(6).*

nected organization employs in-house lobbyists.

"Covered period." HLOGA defines "covered period" as January 1 through June 30, July 1 through December 31 and "any reporting period applicable to the committee" under 2 U.S.C. §434 during which a lobbyist, registrant or one of their PACs provided more than two bundled contributions that aggregate over $15,000. 2 U.S.C. §434(i)(2). HLOGA gives the Commission authority to require monthly filers to disclose this information on a quarterly basis, rather than monthly. The NPRM includes a proposed and an alternative definition of "covered period," both of which would place monthly filers on the same schedule as quarterly filers.

Under the proposed definition, "covered period" would mean the semi-annual periods of January 1 through June 30 and July 1 through December 31. In addition, in any calendar year in which a reporting committee files monthly or quarterly reports, January 1 through March 31 and July 1 through September 30 would also be covered periods if during those periods a lobbyist/registrant or lobbyist/registrant PAC provided two or more bundled contributions that aggregated over $15,000. Thus, under the proposed rule, a committee that received such contributions during the first or third calendar quarter would have to disclose information about the bundler twice: once for the report covering the quarter during which the committee received the contributions and again at the end of the appropriate six-month period. Reporting for the six-month period would be cumulative, so that reports filed at mid-year and at year's end would show the aggregate amount bundled for each six-month period.

As an alternative, the Commission proposes to define "covered period" separately for years in which a committee files quarterly or monthly and for years in which a committee files semi-annually. Thus, for a committee filing quarterly or monthly the covered periods would be defined as January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31. For a committee filing semi-annually, the covered periods would be the semi-annual periods of January 1 through June 30 and July 1 through December 31. Thus, a committee might file two reports under this requirement in a year that it filed semi-annually, but could be required to file four reports in a year when it filed monthly or quarterly. The Commission requests comments on these proposals.

The Commission also intends to create a new form for disclosing information about lobbyists and lobbyists PACs that provide bundled contributions. The form would be filed along with the committee's next regularly scheduled filing of Form 3, Form 3P or Form 3X, as appropriate, following the covered period. As with other disclosure reports, House and Presidential committees, and PACs that support them, would file with the FEC. Senate committees and PACs that support only Senate candidates would file with the Secretary of the Senate.

"Bundled Contributions." Proposed 11 CFR 104.22(a)(4)(i) and (ii) would implement new 2 U.S.C. §434(i)(8)(A) by defining the term "bundled contribution" as any contribution that a lobbyist/registrant or lobbyist/registrant PAC forwards to the reporting committee from the contributor or that the reporting committee receives from the contributor but credits to the lobbyist/registrant or lobbyist/registrant PAC through records, designations or other means of recognizing that a certain amount of money has been raised by the lobbyist/registrant or lobbyist/registrant PAC. Thus, forwarded contributions would satisfy the proposed definition of "bundled contributions" regardless of whether the bundler receives credit from the reporting committee.

In addition, under this proposed rule, a contribution must be both received by the reporting committee and credited to a lobbyist/registrant or lobbyist/registrant PAC in order to be considered a "bundled contribution." A contribution credited to a lobbyist/registrant or lobbyist/registrant PAC would not fit this definition unless the contribution was actually received by the reporting committee. The Commission asks if the amount credited should instead control whether or not the contribution counts as a bundled contribution and also seeks comments on whether these rules should apply to in-kind contributions.

The Commission additionally asks if the new law covers bundled contributions provided by employees and agents of organizations that are registrants, even if the individuals are not lobbyists themselves. Can an organization that is a registrant but is also prohibited from making contributions (such as a corporation or labor organization) be credited with having raised contributions?

"Candidate involved." Proposed 11 CFR 104.22(a)(5) provides that the term "candidate involved" means, for authorized committees, the candidate for whom the committee is authorized and, for leadership PACs, the candidate or individual holding federal office who directly or indirectly establishes, maintains, finances or controls the leadership PAC. The Commission seeks comments on this proposed definition.

"Designations." Proposed 11 CFR 104.22(a)(6) would provide that "designations or other means of recognizing" a lobbyist/registrant or lobbyists/registrant PAC's fundraising would include "titles based on levels of fundraising, access to events reserved exclusively for those who generate a certain

(continued on page 11)

Regulations

(continued from page 11)

level of contributions, or similar benefits provided as a reward for successful fundraising." The Commission seeks comments on this approach and asks whether there are other examples of records, designations or other means of recognizing such fundraising.

Comments

The complete text of the NPRM was published in the November 6, 2007, Federal Register (72 FR 62600) and is available on the FEC web site at http://www.fec.gov/pdf/nprm/bundling_hloga/notice_2007-23.pdf. Comments must be received on or before November 30, 2007, and the Commission will announce the hearing date for this rulemaking at a later date. Anyone seeking to testify at the hearing must file written comments by the due date and must include a request to testify.

All comments must be submitted in writing to Ms. Amy L. Rothstein, Assistant General Counsel, by email, fax or paper copy form. Commenters are strongly encouraged to submit comments by email or fax to ensure timely receipt and consideration. Email comments must be submitted to bundling07@fec.gov, and faxed comments must be sent to 202/214-3923, with a paper copy follow-up. Send paper comments and paper copy follow-ups of faxed comments to the Federal Election Commission, 999 E St., NW., Washington, DC 20463. All comments must include the commenter's full name and address.

—Amy Kort

Hearings on Electioneering Communications

The Commission held public hearings on October 17 and 18, 2007, on proposed changes to its rules governing electioneering communications (ECs). The Commission published a Notice of Proposed Rulemaking (NPRM) on August 31, 2007, seeking public comment on proposed changes to these rules in response to the Supreme Court's decision in *FEC v. Wisconsin Right to Life, Inc*. (*WRTL II*). (See the August 2007 *Record*, page 1.) Fifteen commenters[1] testified on the NPRM and offered their views to the Commission on the scope and substance of the proposed rules changes

Background

The Bipartisan Campaign Reform Act of 2002 (BCRA) and Commission regulations define an EC as a broadcast, cable or satellite communication that 1) refers to a clearly identified federal candidate, 2) is publicly distributed within 30 days of a primary election or within 60 days of a general election and 3) is targeted to the relevant electorate. 2 U.S.C. §434(f)(3)(A)(i) and 11 CFR 100.29(a). Corporations and labor organizations are prohibited from using their general treasury funds to finance ECs. 2 U.S.C. §441b(b)(2) and 11 CFR 114.2(b)(2)(iii). Those making ECs are subject to several reporting and disclosure requirements. 2 U.S.C. §§434(f)(1) and (2) and §441d(a).

In *WRTL II* the Supreme Court reviewed an "as applied" challenge to EC funding prohibitions where Wisconsin Right to Life, Inc., a 501(c)(4) nonprofit corporation, sought to use its own general treasury funds, which included donations from other corporations, to pay for broadcast ads during the EC period that referred to both U.S. Senators from Wisconsin, one of whom was a clearly identified candidate. The Supreme Court held that because the

[1] *The testifying witnesses were James Bopp, James Madison Center for Free Speech; Marc Elias, Democratic Senatorial Campaign Committee, Allison Hayward, Professor of Law, George Mason University; Donald Simon, Democracy 21; Laurence Gold, American Federation of Labor and Congress of Industrial Organizations; Jan Baran, Chamber of Commerce of the United States of America; Paul Ryan, Campaign Legal Center; Jessica Robinson, American Federation of State, County and Municipal Employees; Brian Svoboda, Democratic Congressional Campaign Committee; Michael Trister, Alliance for Justice; Jeremiah Morgan, Free Speech Coalition; Stephen Hoersting, Center for Competitive Politics; John Sullivan, Service Employees International Union; Heidi Abegg, American Taxpayers Association; and Michael Boos, Citizens United.*

Federal Register

Federal Register notices are available from the FEC's Public Records Office, on the web site at www.fec.gov/law/law_rulemakings.shtml and from the FEC Faxline, 202/501-3413.

Notice 2007-20
Candidate Travel; Notice of Proposed Rulemaking (72 FR 59953, October 23, 2007)

Notice 2007-21
Procedural Rules for Probable Cause Hearings; Rule of Agency Procedure (72 FR 64919, November 19, 2007)

Notice 2007-23
Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants; Notice of Proposed Rulemaking (72 FR 62600, November 6, 2007)

ads in question were not the "functional equivalent of express advocacy," the EC funding prohibitions were unconstitutional as applied to the plaintiff's ads.

Testimony Regarding Proposed Rules on Electioneering Communications

The Commission's NPRM proposed two alternative methods of implementing the Supreme Court's *WRTL II* decision. Alternative 1 would create an exemption for certain types of ECs from the corporate or labor organization funding prohibitions, but would not alter the EC reporting requirements (which would require the entities financing ECs to report their activities to the FEC once they spend more than $10,000 in a calendar year on ECs). Alternative 2 would create an exemption for these communications from the definition of electioneering communication, so that such communications would not be considered ECs and would not be subject to either the corporate and labor organization funding prohibitions or the EC disclosure requirements.

Commenters who favored Alternative 1 argued that simply allowing corporations and labor organizations to fund ECs that are not the "functional equivalent of express advocacy" is a proper interpretation of the Supreme Court's holding in *WRTL II* and that corporations and labor organizations should still be required to disclose their sources of funding for such ads. Furthermore, these commenters pointed out that the Wisconsin Right to Life plaintiffs did not challenge any of the EC disclosure requirements. Paul Ryan, Donald Simon, Stephen Hoersting, Brian Svoboda, Allison Hayward and Marc Elias generally favored adoption of Alternative 1.

James Bopp, Laurence Gold, Heidi Abegg, Jan Baran, Michael Boos, Jessica Robinson, John Sullivan and Michael Trister generally urged the Commission to adopt Alternative 2. These commenters argued that Alternative 2 was the proper implementation of the Supreme Court's holding in *WRTL II* and that the disclosure requirements of Alternative 1 were burdensome and impractical because they could require that corporations and labor organizations disclose the names and information of individuals who provided funds at any time to those entities, including funds from dues-paying members of a union and unrestricted donations to an organization.

Jeremiah Morgan, representing the Free Speech Coalition, Inc., opposed both alternative rules and instead urged the Commission to promulgate narrow definitions of express advocacy and its "functional equivalent" and clarify that the FEC's reporting and disclaimer requirements extend no further.

Testimony Regarding the Definition of "Express Advocacy"

In addition to requesting comments on proposed changes to the EC rules, the Commission asked in the NPRM if the decision in *WRTL II* requires it to amend its definition of "express advocacy." Several commenters argued that, in the wake of *WRTL II*, the Commission should repeal a provision that defines as express advocacy communications that, when taken as a whole and with limited reference to external events, such as the proximity to an election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates.[2] 11 CFR 100.22(b). Other commenters, by contrast, were opposed to altering the definition of express advocacy in this rulemaking.

[2] *A separate provision defines as express advocacy communications that use such phrases as "Vote for" or "vote against." 11 CFR 100.22(a). The Commission does not propose altering this provision.*

Additional Information

The full text of the NPRM, written comments in response to the NPRM and a transcript of the hearings are available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml#ec07.

Audio files of public hearings are available at http://www.fec.gov/pdf/nprm/electioneering_comm/2007/publichearing-oct-17-18-2007.shtml.

—Myles Martin

Reports

FEC Updates Electronic Format and Filing Software

The Commission has updated its electronic filing format to Version 6.1. On January 2, 2008, FECFile Version 6.1.1.0, supported by the new format, will be available for download from the FEC web site at http://www.fec.gov/elecfil/updatelist.html. Committees using commercial software should contact their vendors for more information about the latest software release.

Please note that, for electronic filers, any report filed after January 2, 2008, must be filed in Format Version 6.1 (the new version). Reports filed in previous formats will not be accepted. Thus, for example, all electronic filers must file their 2007 Year-End reports in Format Version 6.1.

If you have any questions, please call the Electronic Filing Office at 202/694-1307 or 800/424-9530 ext. 1307.

—Amy Kort

(continued on page 14)

Reports

(continued from page 13)

Virginia Special Election Reporting: 1st District

Virginia will hold a Special Election to fill the U.S. House seat in Virginia's 1st Congressional District formerly held by the late Representative Jo Ann Davis. The Special General Election will be held on December 11, 2007.

Candidate committees involved this election must follow the reporting schedule at right. Please note that the reporting period for the consolidated Post-General and Year End report spans two election cycles. For this report only, authorized committees must use the Post-Election Detailed Summary Page rather than the normal Detailed Summary Page. PACs and party committees that file on a semiannual schedule and participate in one or both of these elections must also follow this schedule. PACs and party committees that file monthly should continue to file according to their regular filing schedule.

Filing Electronically

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

Timely Filing for Paper Filers

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

Overnight Mail. Reports filed via overnight mail[1] will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Express or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports.

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

48-Hour Contribution Notices

Note that 48-hour notices are required of the participating candidate's principal campaign committee if it receives contributions of $1,000 or more between November 22 and December 8.

24- and 48-Hour Reports of Independent Expenditures

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate at or above $1,000 with respect to a given election between November 22 and December 9. This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate $10,000 or more with respect to an election at other times during a calendar year.

Electioneering Communications

The 60-day electioneering communications period for the Special General Election runs from October 12 through December 11, 2007.

—Elizabeth Kurland

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

Virginia 1st District Special Election Reporting

Committees Involved in the Special General Must File:

	Close of Books[1]	Reg./Cert./Overnight Mailing Date	Filing Date
Pre-General	November 21	November 26	November 29
Post-General & Year-End[2]	December 31	January 10	January 10

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

[2] Committee must file a consolidated Post-General and Year-End Report by the filing date of the Post-General Report.

Compliance

Procedural Rules for Probable Cause Hearings

On October 25, 2007, the Commission made permanent the pilot program under which respondents in enforcement matters may request a hearing before the Commission considers whether there is probable cause to believe that they violated the Federal Election Campaign Act or the Commission's implementing regulations. The pilot program was initiated on February 16, 2007, for an eight-month trial period. The Commission found that the program was successful, and thus the Commission has now made the program a permanent part of the agency's procedural rules.

Under the permanent rule, any respondent who receives a General Counsel's Brief in the "probable cause to believe" stage of the enforcement process may submit a request for a hearing to the Commission with his or her reply brief. The request should state why the respondent is requesting the hearing and what issues the respondent expects to address. The request for a hearing is optional, and the respondent's decision as to whether to request a hearing will not influence the Commission's decision regarding a probable cause finding.

Within 30 days of receiving the brief, the Commission will notify the respondent whether the Commission has granted the hearing request. The Commission will grant a request for an oral hearing if any two Commissioners conclude that a hearing would help resolve significant legal issues or significant questions about the application of the law to the facts. At the hearing, the respondent, or the respondent's counsel, may directly present his or her arguments to the Commission, and be subject to questions from the Commissioners, General Counsel and Staff Director. Hearings are confidential and closed to the public.

The hearing's format and length are within the Commission's discretion. Third-party witnesses may not testify. Transcripts of the hearings will be recorded and will be available to the respondent as soon as practicable after the hearing. The transcripts will be made public in accordance with the agency's policies on disclosure.

More information about this program was published in the *Federal Register* on November 19, 2007 (72 FR, 64919), and is available on the Commission's web site at http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-21.pdf.

—Meredith Metzler

MUR 5666: Corporate Contributions in the Name of Another

On October 31, 2007, the Commission announced that Mitchell Wade and MZM, Inc. have agreed to pay a $1,000,000 civil penalty. The penalty is part of a conciliation agreement in which Mr. Wade admits to knowingly and willfully violating the Federal Election Campaign Act (the Act) by making corporate contributions and contributions in the name of another to two federal candidates. This civil penalty is the second-largest in Commission history.

Background

The Act prohibits any person from making a contribution in the name of another and from knowingly permitting his or her name to be used to make such a contribution. 2 U.S.C. §441f. In addition, no person may knowingly help or assist any person in making a contribution in the name of another. 2 U.S.C. §441f; 11 CFR 110.4(b)(l)(iii). This prohibition also applies to any person who provides money to others to effect contributions in their names. 11 CFR 110.4(b)(2).

The Act also prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office and prohibits any officer or director of any corporation from consenting to any contribution or expenditure by the corporation. 2 U.S.C. §441b(a).

In addition, the Act contains certain prohibitions on government contractors' contributions to any political party, committee or candidate for public office or to any other person for any political purpose. 2 U.S.C. §441c(a)(l).

MZM Inc. (now known as True Norte, Inc.) is a corporation and a federal government contractor. At the time the violations of the Act occurred, Mr. Wade was the principal owner and Chief Executive Officer of MZM. Mr. Wade used MZM corporate funds to reimburse employees and their spouses for contributions to the campaign committees of Representatives Virgil Goode and Katherine Harris. Richard Berglund assisted in the scheme by receiving cash from Mr. Wade from which Mr. Berglund made a contribution under his and his wife's name and then distributed the remaining cash to other employees of MZM, and in some cases their spouses, to make contributions. In total, Mr. Wade and MZM reimbursed, directly and indirectly, $78,000 in contributions to two federal candidates.

On February 24, 2006, Mr. Wade pleaded guilty to multiple felony counts, including one count of election fraud by unlawfully making campaign contributions in the name of another. On July 23, 2006, Richard Berglund pleaded guilty to a misdemeanor violation by unlawfully making contributions in the name of another.

Respondents disclosed the violations of the Act to the U.S. Depart-

(continued on page 16)

FEC Seeks Director, Congressional, Legislative and Intergovernmental Affairs

The Federal Election Commission seeks a Director of Congressional, Legislative and Intergovernmental Affairs (CLIA), at an annual salary of $110,363 to $143,471. The selected candidate will be responsible for all CLIA Programs and serve as the Commission's central point of contact for all Congressional inquiries concerning the Commission's implementation of campaign finance laws. The selected candidate will be responsible for providing information regarding the Commission's interpretations and applications of campaign finance law and assessing proposals for amendments to campaign finance laws. The selected candidate will ensure the Commission maintains a workable, efficient, effective and congenial relationship with Congressional Members, Staffs and the Committees.

The full vacancy announcement and contact information for the position of Director, Congressional, Legislative and Intergovernmental Affairs, Office of Communications, Federal Election Commission (Public Affairs Officer, GS-1035-15) are available on the FEC web site at http://www.fec.gov/pages/jobs/jobs.shtml or through the FEC's Office of Human Resources at 202-694-1080.

Compliance

(continued from page 15)

ment of Justice and have cooperated with the Commission in resolving this matter. Mr. Wade and MZM have also taken responsibility for the liability of the former employees of MZM and their spouses who acted as conduits for the reimbursed contributions, and the Commission will take no further action with respect to those conduits. In addition to the $1,000,000 civil penalty to be paid by Mr. Wade and MZM Inc., Mr. Berglund has agreed to pay a civil penalty of $42,000.

The Commission found no evidence that either Goode for Congress or Friends of Katherine Harris knew that the contributions were illegal, and both committees have either refunded or disgorged all MZM-related contributions.

—Amy Pike

MUR 5440: Excessive and Prohibited Contributions; Failure to Register

The Commission has reached a settlement with The Media Fund, a 527 organization charged with violating federal campaign finance laws during the 2004 Presidential election. The Media Fund (TMF) agreed to pay $580,000, the seventh largest civil penalty in Commission history, to settle charges that it failed to register and file disclosure reports as a federal political committee and knowingly accepted contributions in violation of federal limits and source prohibitions. The Commission unanimously approved the conciliation agreement.[1]

This is the eleventh settlement the Commission has entered into in the past year with organizations exempt from taxation under either section 527 or 501(c)(4) of the Internal Revenue Code. The Commission determined all of these organization violated election laws during the 2004 campaign, most by failing to register as political committees. The Commission collected more than $3,000,000 in civil penalties from these cases.

If an organization receives contributions or makes expenditures in excess of $1,000, and its major purpose is involvement in campaign activity, it must register with the Commission as a federal political committee and abide by the contribution restrictions and reporting requirements of the Federal Election Campaign Act (FECA/the Act).

Facts of the Case

TMF is an unincorporated entity organized in November of 2003 under Section 527 of the Internal Revenue Code. TMF has not registered as a political committee with the Commission.

From its inception through 2004, TMF raised $59,414,183. Approximately 93 percent of its receipts during that time period—over $55 million—came from labor organizations or corporations prohibited from contributing to political committees, or from individuals who gave in amounts that exceeded the $5,000 limit established under the Act for contributions to political committees. The Commission concluded that the language used in fundraising solicitations sent by TMF or its joint fundraising committee, the Joint Victory Campaign, clearly indicated that the funds received would be targeted to the election or defeat of a specific federal candidate. Most of the solicitations targeted the defeat of George W. Bush, and some of the solicitations targeted the election of John Kerry. Funds received in response to these solicitations constituted contributions under the Act and caused TMF to surpass the $1,000 statutory threshold by December 2003. TMF's former president made direct solicitations to donors, which included messages such as "Bush can be beaten," "The Race for 270; The fight for the White House is a

[1] *FEC Chairman Robert Lenhard was recused in this matter.*

state-by-state battle," "270 Electoral Votes (Evs) Needed to Win" and "17 Key States Will Decide the 2004 Election."

TMF spent approximately $53,389,856—or more than 92 percent of its reported disbursements during that time period—on 37 television advertisements, 24 radio advertisements, nine newspaper advertisements and 20 mailers that referenced President George Bush or Senator John Kerry in the context of the 2004 Presidential election. TMF broadcast or disseminated some of these communications in "battleground states," including Florida, Missouri, Nevada, New Hampshire, Ohio, Pennsylvania, Wisconsin and West Virginia.

A TMF mailer on education contained express advocacy, referring to the "need" for a particular kind of President, followed by identification of John Kerry as that type of candidate.

Other TMF mailers contained express advocacy because the advertisements attacked the character, qualifications and fitness for office of George Bush, or supported the character, qualifications and fitness for office of John Kerry to a degree that reasonable minds could not differ as to whether the communications encouraged actions to elect or defeat the candidates.

The Commission concluded that TMF's statements and activities demonstrate that its major purpose was to elect John Kerry and defeat George Bush. From its inception, TMF presented itself to donors as a destination for "soft money" to support the Democratic Presidential nominee. The Commission concluded that TMF's communications to the public further establish its major purpose of federal campaign activity—specifically the defeat of George Bush. The vast majority of TMF's advertisements—34 out of 36 television advertisements, 20 out of 24 radio advertisements and 26 out of 29 print advertisements—mention either George Bush or John Kerry. TMF's self-proclaimed goal in producing and running these advertisements was to decrease public support for Bush and to increase public support for Kerry.

The conciliation agreement was reached after the Commission had determined that there was probable cause to believe that the Media Fund had violated the Act. The Media Fund was the first respondent in an FEC investigation to request and be granted a "probable cause hearing" under the Commission's pilot program for such hearings, which became effective February 16, 2007. TMF's hearing was held on March 21, 2007. For additional details, please consult publicly available documents for each case in the Enforcement Query System (EQS) on the FEC web site at http://eqs.nictusa.com/eqs/searcheqs.

—Amy Kort

Public Funding

Edwards Certified for Matching Funds

On October 31, 2007, the Commission certified that John Edwards is eligible to receive Presidential primary matching funds. Mr. Edwards is the third 2008 Presidential candidate that has been certified eligible to receive primary matching funds. 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. To become eligible for matching funds, a candidate must raise a threshold amount of $100,000 by collecting $5,000 in 20 different states in amounts no greater than $250 from an individual. Although an individual may contribute up to $2,300 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 also agree to limit their spending and submit to an audit by the Commission.

The Presidential public funding program is financed through the $3 check-off that appears on individual income tax returns. The program has three elements: grants to parties to help fund their nominating conventions, grants available to nominees to pay for the general election campaign and matching payments to participating candidates during the primary campaign.

Treasury Department regulations require that funds for the convention and general election grants be set aside before any matching fund payments are made, and the Commission has estimated that no funds will be available for matching payments in January 2008. As deposits are made from tax returns in the early months of 2008, matching fund payments will be made from those deposits until all certified amounts have been paid. The maximum amount a candidate could receive is currently estimated to be about $21 million.

—Diana Veiga

Statistics

PAC Activity Increases in 2006

From January 1, 2005, through December 31, 2006, political action committees (PACs) raised $1.086 billion, up 18 percent over 2004, and spent $1.055 billion, up 25 percent over 2003-2004. PAC contributions to federal candidates during 2005-2006 totaled $372.1 million, up 20 percent from 2003-2004. Most of that money—$348 million—was given to candidates seeking elec-

(continued on page 18)

Statistics

(continued from page 17)

tion in 2006. The remaining $24.1 million went to candidates running for office in future years, or to debt retirement for candidates in past cycles. Incumbents continued to receive most of the PAC contributions, as they have in previous elections.

House candidates received $279.2 million from PACs, up 24 percent from the previous cycle, while Senate candidates received $86.1 million, 13 percent above 2004 levels. Republican Congressional candidates received $207.7 million, an increase of 18 percent from the previous cycle, while Democrats received $161.4 million, up 20 percent.

In addition to the $372 million in contributions, PACs made $37.8 million in independent expenditures for and against candidates. Of this, $23 million was spent on behalf of various candidates, and $14.8 million was spent against them.

Some PACs (mostly nonconnected committees) also maintain nonfederal accounts and must therefore use a combination of federal and nonfederal funds to pay for activities that relate to both federal and state or local elections. In addition to the federal receipts and disbursements discussed above, PACs reported spending a total of $144.5 million in nonfederal funds for these shared expenses.

Additional information, including data on PAC financial activity for 2005-2006 and comparable summary statistics for several previous election cycles, is available in a press release dated October 5, 2007. The press release is available on the FEC web site at http://www.fec.gov/press/press2007/20071009pac/20071009pac.shtml.

—Amy Kort

FEC Conference Schedule for 2008

Conference for Corporation/ Labor/Trade Association PACs, House/Senate Campaigns and Political Party Committees
February 12-13, 2008
Orlando, FL

Conference for Corporations and their PACs
March 11-12, 2008
Washington, DC

Conference for Candidates and Party Committees
April 2-3, 2008
Washington, DC

Conference for Trade/Member/ Labor PACs
June 23-24, 2008
Washington, DC

Outreach

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

The Commission will hold a regional conference in Orlando, Florida, on February 12-13, 2008, at the Wyndham Orlando Resort. Commissioners and staff will conduct a variety of technical workshops on federal campaign finance law. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. For additional information, to view the conference agenda or to register for the conference, please visit the conference web site at http://www.fec.gov/info/conferences/2008/orlando08.shtml.

Hotel Information. The Wyndham Orlando Resort is located on International Drive near Universal Studios and offers complimentary shuttle service to Universal Studios, Sea World and Wet n' Wild amusement parks. A room rate of $189 (single or double) plus a resort fee of 7.5% and a 12.5% tax is available to conference attendees who make reservations on or before January 11, 2008. To make hotel reservations, call 1-800/421-80001 or 1-407/351-2420. State that you will be attending the Federal Election Commission conference to reserve this group rate. The FEC recommends that you wait to make your hotel and air reservations until you have received confirmation of your conference registration from Sylvester Management Corporation.

Registration Information. The registration fee for this conference is $475, which covers the cost of the conference, a reception, materials and meals. A $25 late fee will be added to registrations received after January 11, 2008. Complete registration information is available online at http://www.fec.gov/info/conferences/2008/orlando08.shtml.

Questions

Please direct all questions about conference registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; email: tonis@sylvestermanagement.com). For questions about the conference program, or to receive email notification of upcoming conferences and workshops in 2008, call the FEC's Information Division at 1-800/424-9530 (press 6) (locally at 202/694-1100), or send an e-mail to Conferences@fec.gov.

—Dorothy Yeager

Index

The first number in each citation refers to the numeric month of the 2007 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 four.

Advisory Opinions
2006-33: Association May Compensate State Affiliate Collecting Agents, 2:6
2006-34: Political Committee Sponsored Affinity Program, 4:5
2006-35: Legal Fees Paid with Campaign Funds, 3:4
2006-36: Green Senatorial Committee Gains National Party Status, 3:5
2006-37: Campaign May Reimburse Candidate's Misreported Loans, 3:6
2006-38: Officeholder's Use of State Campaign Funds, 3:7
2007-1: Federal Officeholder May Raise Nonfederal Funds to Retire State Campaign Debt, 5:7
2007-2: State Party Status for Arizona Libertarians, 4:7
2007-3: Private Contributions Do Not Preclude Public Funding, 4:8
2007-4: Credit Card Processing Services Provided to Political Committees, 7:7
2007-5: Officeholder's Chief of Staff Raising Nonfederal Funds as Chairman of State Party Committee, 6:5
2007-6: State Party Status for Libertarian Party of Indiana, 6:6
2007-7: Candidate's Loans Initially Misreported as Contributions, 7:9
2007-8: Encouraging Voluntary Performances by Professional Entertainers at Campaign Events, 9:4
2007-9: Use of GELAC Funds to Cover Compliance Portion of Broadcast Ads, 10:7
2007-10: Campaign May Not Use Corporate Names, Trademarks or Service Marks at Golf Fundraiser, 10:8
2007-11: Pre-Event Communications for State or Local Party Fundraisers Featuring a Federal Candidate or Officeholder, 10:8
2007-12: Disaffiliation of SSFs After Corporate Spin-Off, 11:1
2007-13: Union and Association SSFs not Affiliated, 11:4
2007-14: Trade Associations' Joint Sponsorship of Telephone Conferences to Restricted Classes, 11:7
2007-15: Payment for Administration of SSF by LLC Treated as Partnership; Name and Abbreviation of SSF, 12:1
2007-16: Affiliation of Membership Organizations, 12:2
207-17: Contributor Signature Not Required on Contributions Made Through Online Banking Services, 12:5
2007-18: Use of Campaign, Leadership PAC Funds for Official Portrait, 12:5
2007-20: Free Airtime to Presidential Candidates on Satellite Radio, 12:6
2007-21: Federal Candidate and Officeholder May Serve as Honorary Chairman for Publicly Funded Nonfederal Candidates, 12:7

Audits
Bush/Cheney '04 and Clark for President, 5:8
Gephardt for President, 8:5
Kerry/Edwards, 7:10

Compliance
527 Organizations Pay Civil Penalties, 1:1
Administrative Fine Update, 4:9; 8:6
Alternative Dispute Resolution Update, 8:7
Comments Sought on Proposed Probable Cause Hearings, 1:5
Comments Sought on *Sua Sponte* Proposal, 1:5
MUR 5358: Jamie Jacob Morgan, 6:1
MURs 5403 and 5466: Use of Prohibited Funds; Failure to Allocate and Report Expenses, 10:10
MUR 5440: Excessive and Prohibited Contributions; Failure to Register, 12:16
MUR 5487: Progress for America Voter Fund, 4:1
MURs 5511 and 5525: Swift Boat Veterans and POWs for Truth, 1:3
MURs 5577/5620: Prohibited Contributions and Failure to Register as a Political Committee, 8:1
MUR 5634: Express Advocacy Leads to Prohibited Corporate Expenditure, 1:4
MUR 5645: Prohibited In-Kind Corporate Contributions, 5:4
MUR 5666: Corporate Contributions in the Name of Another, 12:15
MUR 5690: Reporting Joint Fundraising Proceeds, 5:4
MUR 5702: Colorado Democratic Party, 6:2
MUR 5753: League of Conservation Voters 527 I and II, 1:3
MUR 5754: MoveOn.org Voter Fund, 1:4
MURs 5928 and 5853: Political Blogs, 10:11
Policy Statement on Treasurer's Best Efforts, 7:1
Policy Statement on Embezzlement Misreporting Safe Harbor, 5:1
Policy Statement Establishing Probable Cause Hearings, 3:1; Program Made Permanent, 12:15
Policy Statement on Initial Stage of Enforcement Process, 4:3
Policy Statement on Reporting of "Purpose of Disbursement," 2:5
Policy Statement on Self-Reporting of Violations, 5:2
Policy Statement on Internal Controls for Political Committees, 5:3

Court Cases
_____ v. FEC
– Christian Civic League of Maine, 10:13
– CREW, 2:3
– Davis, 9:1
– Fieger, 10:14
– Shays II, 10:12
– Shays III, 11:8
– Unity '08, 2:4
– Wisconsin Right to Life, 2:1; 8:1
Bialek v. Gonzales, Marcus v. Gonzales, Beam v. Gonzales, 4:5; 8:3
FEC v. _____
– Adams, 10:15
– Citizens Club for Growth, Inc., 10:14
– Reform Party of the USA, 7:12
Fieger v. Gonzales, 3:3

(continued on page 20)

Index

(continued from page 19)

Legislation
Honest Leadership and Open Government Act of 2007, 10:9
Legislative Recommendations Approved, 5:11

Information
800 Line: Disclosing Multicandidate Committee Status, 9:5
2007-2008 Contribution Limits, 2:1
Coordinated Party Expenditure Limits for 2007, 3:9
Reporting Notices Enter the Electronic Age, 2:7; 3:10; 7:13
Staff Director Testifies on Senate E-Filing, 4:10
Telephone Excise Tax Refunds, 1:11

Public Funding
Democratic and Republican Parties Certified for Convention Funding, 8:4
Estimated Presidential Spending Limits, 5:6
Matching Fund Certifications, McCain; Tancredo, 10:10; Edwards, 12:17

Regulations
2007 Rulemaking Priorities, 4:4
Best Efforts Defense Replaces Extraordinary Circumstances Defense, 5:1
Candidate Travel; Leadership PACs, Notice of Proposed Rulemaking, 12:1
Electioneering Communications, Notice of Proposed Rulemaking, 10:1; Hearing, 12:12
Federal Election Activity and Nonfederal Elections, Notice of Proposed Rulemaking, 7:6
Notice of Proposed Rulemaking for Hybrid Communication, 6:1; public hearing, 9:3
Proposed Rules and Policy Statement on Best Efforts, 1:6
Reporting Bundled Contributions, Notice of Proposed Rulemaking, 12:10
Supplemental E&J on Political Committee Status, 3:1
Use of Campaign funds, NPRM, 9:1; Final Rules, 11:1

Reports
April Reporting Reminder, 4:1
California Special Election, 6:7
Electronic Filing Format, Software Updated, 12:13
Georgia Special Election, 5:10
July Reminder, 7:1
Massachusetts Special Election, 8:8
October Reporting Reminder, 10:1
Ohio Special Election, 10:3
Reports Due in 2007, 1:7
Update, 7:3
Virginia Special Election, 12:14

Statistics
Detailed Presidential Fundraising and Spending Information Available on FEC Web Site, 5:12
House and Senate Fundraising, 10:17
PAC Activity, 9:6; 12:17
Party Financial Activity, 4:10; 7:10; 10:16

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