

# Record

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## Regulations

### Use of the Internet for Campaign Activity: Notice of Inquiry

The FEC is seeking comments from the public on the issues raised by the use of the Internet to conduct campaign activity. The Commission is conducting this review in order to assess the applicability of the Federal Election Campaign Act (the Act) and Commission regulations to Internet campaign activity. The Commission will use the comments it receives to determine whether to issue a Notice of Proposed Rulemaking (NPRM), which may include proposed changes to its regulations. An NPRM would seek further comment on any proposed revisions to the regulations. The Commission has made no final decisions regarding the issues discussed in this Notice of Inquiry (NOI), and may ultimately decide to take no action on this matter. In this NOI, the Commission invites comments on the issues listed below.

#### Basic

The fundamental question in this NOI is whether campaign activity conducted on the Internet should be subject to the Act and Commission

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## Court Cases

### USA v. Kanchanalak, et al.

#### Background

On October 8, 1999, the U.S. Court of Appeals for the District of Columbia Circuit reversed a district court decision to dismiss charges against Pornpimol Kanchanalak and Duangnet Kronenberg for illegally using conduits to disguise donations from foreign nationals and corporations. The Department of Justice originally filed suit against Ms. Kanchanalak and Ms. Kronenberg for willfully causing the Democratic National Committee (DNC) and other committees to file false reports of hard money contributions and soft money donations with the Federal Election Commission (FEC), in violation of 18 U.S.C. §§2(b), 1001.<sup>1</sup> The defendants were

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<sup>1</sup> The court of appeals stated that "hard money" refers to funds that have been deposited by the Committee into a "federal account" and are used to finance federal election campaigns, whereas "soft money" refers to funds that are deposited into a "nonfederal" account and are supposed to be used for, among other things, state and local campaigns.

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## Regulations

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regulations at all. Are Internet campaign activities analogous to campaign activities conducted in other contexts, or do they differ to such a degree as to require different rules? When the Internet is used for activity relating to federal elections and candidates, should the activity be treated as an expenditure or a contribution? If so, under what circumstances?

### Candidate Web Sites

Candidates are using Web sites to support their campaigns at an increasing rate. How should the candidate's committee treat costs associated with establishing a candidate Web site? Should the costs be considered expenditures?

### Hyperlinks

If a candidate's Web site contains a hyperlink to the site of another candidate or political party, should that link be treated as a contribu-

tion? If so, how should the value be determined? What if the hyperlink is to the Web site of a vendor who sells items that express support for the candidate?

### Web Sites of Publicly Funded Candidates

What issues arise when publicly funded Presidential candidates use the Internet to promote their candidacies? If the committee uses the site to solicit funds, should a portion of the cost of establishing and maintaining the site be exempt from the definition of expenditure? If so, how should that amount be determined?

### Web Sites Created by Individuals

Many Web sites created by individuals contain references to candidates and political parties. Some are entirely devoted to encouraging support or opposition to one or more candidates, while others only devote a portion to candidate advocacy. How should the definitions of in-kind contribution and independent expenditure be applied to these Web sites? Are the costs covered by the Act? If so, what is the value? What costs should be taken into account? What types of contacts between an individual and a candidate should be treated as coordination? How should the regulations address the republication of candidate materials? How should hyperlinks be treated? How should Web sites developed by campaign volunteers be treated? Should Web sites include disclaimers? If so, which ones? Should Web sites created by individuals be considered general public political advertising?

### Nonconnected Committees and Other Unincorporated Organizations

How should Internet activity by nonconnected political committees and unincorporated organizations be

treated? Under what circumstances would Web site activity be considered nonpartisan voter registration activity under 2 U.S.C. §431 (9)(B)(ii)?

### Corporations and Labor Unions

Many corporations and labor unions have Web sites to communicate with the general public. Under what circumstances should a candidate or election-related communication by a corporation or labor organization be treated as a prohibited contribution or independent expenditure? When should communications via the Internet be treated as communications to the general public and when should they be treated as communications to a more limited audience or restricted class? How should limits on the use of corporate or labor facilities apply? How should press releases be treated?

### News Organizations

Under what circumstances should an Internet site be considered an exempted newspaper, magazine, or other periodical publication? How should the Act and Commission regulations be applied when candidates make public appearances via a web site operated by a news organization? How should online discussions be treated?

### Party Committees

Party committee Web sites usually contain references to numerous candidates. How should expenses be allocated between candidates? How does the committee's coordinated expenditure limit come into play?

### Reporting and Recordkeeping

Should any additional reporting requirements be imposed on committees that receive contributions via the Internet? How should prohibited and excessive contributions be screened? How should

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disbursements for expenses incurred in Internet activity be reported? How long should records of campaign related Internet activity be retained?

### Electronic Mail

How broadly should the Commission treat e-mail as a substitute for regular mail? Would e-mail satisfy the "best efforts" requirements? Are there circumstances in which disclaimers should be included on e-mail?

### Other Issues

How are online "membership organizations" to be treated? Are rules needed on the use of the Internet by draft committees?

The Commission asks that all comments be submitted on or before January 4, 2000. Comments should be directed to Rosemary Smith, Assistant General Counsel, in written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E St., NW, Washington, DC 20463. Faxed comments should be sent to (202) 219-3923, with printed copy follow up. Electronic mail comments should be sent to [internetnoi@fec.gov](mailto:internetnoi@fec.gov), and must include the full name, electronic mail address and postal service address of the commenter. ♦

### Definition of Member of Membership Organization: Effective Date of New Rules

The FEC's revised rules governing who qualifies as a "member" of a membership organization became effective on November 2, 1999. See *Federal Register* Announcement of Effective Date (64 FR 59113, November 2, 1999).

The new rules largely address the internal characteristics of an organization that, when combined with certain financial or organizational attachments, qualify the organization for membership status.

You may obtain a free copy of the final rules as they appeared in the *Federal Register* (64 FR 41266, July 30, 1999) through the FEC Faxline. Dial 202/501-3413 and request document 229. For a summary of the new rules, see page 1 of the [September 1999 Record](#). ♦

### Documentation Required for Matching Credit Card and Debit Card Contributions in Presidential Campaigns: New Rules in Effect

The revised rules addressing the documentation needed for credit and debit card contributions to publicly funded Presidential candidates are effective retroactive to January 1, 1999. See *Federal Register* Announcement of Effective Date (64 FR 59607, November 3, 1999).

The new rules describe the documentation required before contributions made by credit or debit card, including contributions made over the Internet, may be matched under the Presidential Primary Matching Payment Account Act (Matching Payment Act). Matchable contributions are those which, when received by candidates who qualify for payments under the Matching Payment Act, are matched by the federal government. The new rules require candidates to provide sufficient documentation to ensure that each contribution submitted for matching was made by a lawful contributor who intended to make the contribution to the campaign committee that submits it for matching fund payments. The rules further note that additional information on the documentation required to accompany such contributions will be found in the Commission's Guide-line for Presentation in Good Order.

The new rules appeared in the *Federal Register* on August 5, 1999 (64 FR 42584). For a summary of the rules, see page 3 of the [Septem-](#)

[ber 1999 Record](#). Also, see page 4 of the [July 1999 Record](#) for a discussion of the Commission's rules on matchable contributions made by credit or debit card, including those made over the Internet. These rules appeared in the *Federal Register* on June 17, 1999 (64 FR 32394). You may obtain a free copy of both these rules as they appeared in the *Federal Register* through the FEC Faxline. Dial 202/501-3413 and request document 240. ♦

### New Rules On Party Committee Coordinated Expenditures and Costs of Media Travel with Presidential Campaigns: Effective Date

The FEC's new rules on party committee coordinated expenditures and costs of media travel with publicly financed Presidential campaigns became effective on November 3, 1999. See *Federal Register* Announcement of Effective Date (64 FR 59606, November 3, 1999).

These rules address party committee coordinated expenditures that are made before the date when the parties' candidates receive the nomination. The new rules also cover the costs of transportation and ground services that federally funded Presidential primary and general election campaigns may pass on to the news media covering their campaigns.

You may obtain a free copy of the final rules as they appeared in the *Federal Register* (64 FR 42579, August 5, 1999) through the FEC Faxline. Dial 202/501-3413 and request document 242. For a summary of the rules, see page 12 of the [September 1999 Record](#). ♦

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## Court Cases

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allegedly involved in a scheme in which permanent U.S. residents signed checks for both hard and soft money when the actual source of the funds was a foreign corporation, Ban Chang International (USA), Inc. The U.S. District Court for the District of Columbia dismissed the charges against Ms. Kanchanalak and Ms. Kronenberg. In regard to the hard money counts, the district court concluded that the government had failed to prove that the defendants had directly caused the making of false reports to the FEC. With regard to the soft money counts, the court determined that neither the Federal Election Campaign Act (the Act) nor Commission regulations require political committees to report the sources of soft money donations. The Court of Appeals reversed on each of these matters.

### Hard Money

The appeals court reinstated the hard money counts against the defendants based on its previous decision in *United States v. Hsia*,<sup>2</sup> which established that the Act requires political committees to report the true source of the federal funds they receive. 2 U.S.C. §441f. The appellate court ruled that the defendants' scheme of illegally utilizing conduits caused the DNC and other committees to report the conduits rather than the true sources of the contributions on FEC forms. Because the defendants' actions "caused false statements to be made to a government agency," the appeals court summarily reversed the district court's decision on these counts.

<sup>2</sup> *United States v. Hsia*, 176 F.3d 517 (D.C. Cir. 1999).

### Reporting Soft Money

The court of appeals also reversed the district court's ruling regarding the soft money reporting regulation. The appellate court did not question the lower court's determination that nothing in the Act requires soft money reporting, but pointed to the Commission's regulation at 11 CFR 104.8(e), which requires disclosure about any entity that "donates an aggregate amount in excess of \$200 in a calendar year to the committee's nonfederal account(s)." In upholding the FEC's interpretation of its regulation to require the disclosure of the true sources of soft money, the opinion noted the appeals court's long history of deferring to agencies' interpretations of their own regulations, and quoted a Supreme Court opinion which stated "that the [Federal Election] Commission is precisely the type of agency to which deference should presumptively be afforded."<sup>3</sup>

### Soft Money Donations by Foreign Nationals

In reversing the district court's judgment with regard to the soft money counts, the appeals court found that the FEC had reasonably interpreted the Act to forbid soft money donations by foreign nationals. While the defendants had argued that the prohibition applied only to federal elections, the appellate court ruled that it extends to state and local elections as well. The opinion cited 2 U.S.C.41e, which states that "it shall be unlawful for a foreign national directly or through any other person to make any contribution...in connection with an election to any political office." While the defendants had focused on the fact that "contribution" is defined to include "any

<sup>3</sup> *FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 37 (1981).

gift...made by any person for the purpose of influencing any election for Federal office" (2 U.S.C. §431(8)(A)(i)), the appeals court emphasized the use of the term "any political office." The appeals court compared §441e to §441b, which differentiates between contributions in connection with elections to federal office and those in connection with election to "any political office." The opinion noted that, "[b]y distinguishing federal offices from 'any political office,' Congress plainly intended to reach certain contributions made to state and local offices." In this regard, the appellate court again relied on the FEC's interpretation of the law, which has consistently been that nonfederal offices are included in the foreign national prohibition. ♦

### FEC v. California Democratic Party, et al.

On October 14, 1999, the U.S. District Court for the Eastern District of California ruled that the California Democratic Party, the Democratic State Central Committee of California - federal, and the Democratic State Central Committee of California - nonfederal (collectively, the CDP) violated the Federal Election Campaign Act (the Act) when it paid for a voter registration drive that was "targeted" at potential Democratic registrants entirely with nonfederal funds. On November 2, 1999, the court issued a consent order and judgment in which the CDP agreed to pay a civil penalty to the FEC in the amount of \$70,000 and to transfer \$354,500 from its federal account to its nonfederal account.

### Background

The CDP is the state party committee responsible for the operations of the Democratic Party in California. In 1992 and early 1993, the CDP contributed \$709,000 to Taxpayers Against Deception—

No on 165 (No on 165), a California political committee that opposed a state ballot initiative, Proposition 165. The money, paid from the party's nonfederal account, was given with the knowledge that it would be used for voter registration drives for the 1992 general election.

The Commission had argued that the CDP had violated the Act when it failed to allocate the costs of its voter registration drive between its federal and nonfederal accounts. Under Commission regulations, political committees must allocate expenses for generic voter drives between their federal and nonfederal accounts, must pay for the expenses directly from their federal account or a special allocation account, and must disclose the allocation in their reports to the FEC. 11 CFR 102.5(a)(1)(i), 104.10(b)(4) and 106.5(d) and (g). In this case, the CDP failed to allocate any of the voter drive costs to its federal account, paid for all of the costs directly from a nonfederal account and failed to report any of the costs to the FEC.

### Court's Findings

*Applicability of the Act.* The CDP asserted that the "FECA cannot be stretched beyond its literal terms to include any activity which could conceivably have an influence on a federal election." The court stated that the CDP's argument was unavailing because it disregarded the nature of the violations claimed by the FEC—that the CDP financed a partisan voter registration drive with nonfederal funds—and overlooked the allocation rules, which allow apportionment of the costs of fundraising activities not associated with a federal election, including generic voter drives, to a party's nonfederal account.

*Nonpartisan Voter Registration Drive Exemption.* The CDP argued that No on 165's voter registration drive was, to its knowledge, nonpar-

tisan and that its funding of the drive was therefore exempt from the Act under the Act's definition of "expenditure," which excludes "nonpartisan activity designed to encourage individuals to vote or to register to vote." 2 U.S.C. §431(9)(B)(ii). The court rejected the CDP's argument, and ruled that the definition of "expenditure" was not at issue in the case. The court also pointed out that there is no similar exception in the allocation rules. Further, the court determined that, in any event, the activities undertaken by No on 165 clearly were not nonpartisan and, therefore, could not fall under the exemption.

*Whether the Voter Registration Drive was Partisan.* The CDP further claimed that there was a genuine issue of fact as to the partisan nature of the voter drives, pointing out that there was no evidence that Democratic literature was distributed at the drive sites, that any worker expressly advocated registering as a Democrat, or that a worker refused to accept a non-Democratic registration card for filing. The court disagreed, asserting that the undisputed evidence demonstrated that No on 165's voter registration drive was "a targeted effort to register Democrats to vote in a general election."

*Whether CDP Knew the Drive was Partisan.* The court further concluded that the executive director undisputedly knew that No on 165 would target areas in which the majority of potential registrants would probably register as Democrats, and that whether she had "knowledge of all aspects" of the partisan conduct of the drive was not material.

*Attributing the Drive.* Finally, the CDP had contended that, in light of the fact that No on 165 devised its voter drive strategy independently of the CDP, that it raised approximately \$4 million in 1994, and that No on 165 and the CDP were "separate entities with separate

interests," the voter registration drive could not be attributed to the CDP. The court, however, concluded that it was unnecessary to "attribute" the drive to the CDP in order to find that the CDP had contributed only nonfederal funds to No on 165's voter registration drive and that its failure to allocate an appropriate portion of the costs to its federal account violated the Act and the allocation rules.

### Conclusion and Remedy

Because the FEC showed that the CDP violated the Act and allocation regulations by funding a generic voter drive that targeted Democrats,<sup>1</sup> the court granted the FEC's motion for summary judgment, ruling that the CDP violated the Commission's allocation and reporting rules at 2 U.S.C. §441b and 11 CFR 102.5(a)(1)(i), 104.10(b)(4) and 106.5.

Through a consent order and judgment, issued November 2, 1999, the CDP agreed to pay a civil penalty of \$70,000 and to transfer \$354,500 from its federal account to its nonfederal account. ♦

<sup>1</sup> The court, however, did not rule on one of the voter drives funded by the CDP. No on 165 had contributed \$59,000 of the CDP's money to another California political committee called *The Committee to Protect the Political Rights of Minorities* (which in turn engaged the *Black American Political Association of California (BAPAC)*) for use in a separate voter registration drive. The court concluded that there was insufficient evidence that BAPAC's drive was conducted in a partisan manner and this matter, therefore, was to go to trial. In the consent order and judgment, however, the parties resolved all the issues. Consequently, a trial was not held.

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## Court Cases

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### FEC v. Freedom's Heritage Forum, et al.

On September 29, 1999, the U.S. District Court for the Western District of Kentucky at Louisville granted in part and denied in part a Motion to Dismiss made by the Freedom's Heritage Forum (the Forum) and its treasurer, Frank G. Simon. The Motion applied to only a portion of the Commission's complaint. Litigation will continue with respect to the remaining parts of the complaint.

#### Background

The Forum is a political committee that promotes pro-life and other social issues. In 1994, the Forum made expenditures in connection with the planning and holding of a political meeting and the mailing of four political flyers during the 1994 Republican primary in Kentucky.

The Commission alleged that the Forum had violated sections §§441(a)(1)(A), 434(b) and 441d(a) of the Federal Election Campaign Act (the Act) by making excessive contributions, failing to report contributions and failing to include disclaimers on its communications. The Forum had engaged in political activities supporting congressional candidate Tim Hardy during the Kentucky Republican primary. The Commission maintained that the Forum had made coordinated expenditures on behalf

of Mr. Hardy that exceeded the Act's contribution limits, and that the Forum had distributed communications containing express advocacy that required disclaimers under the Act.

The court ruled that the Forum's expenditures were permissible independent expenditures—not coordinated expenditures. The court also maintained that, of the Forum's four communications, only one contained express advocacy and, thereby, required a disclaimer.

#### Coordination

The FEC had alleged that the expenditures supporting Mr. Hardy, totaling \$23,515.81, were not independent expenditures but coordinated expenditures, which resulted in excessive contributions to his campaign committee. 2 U.S.C. §441a(a)(1)(A).

The Act defines independent expenditure as an expenditure that expressly advocates the election or defeat of a clearly identified candidate and that is not made in concert with, or at the request or suggestion of, the candidate or the campaign. 2 U.S.C. §431(17).

FEC regulations elaborate on this definition. They add the following presumption:

"An expenditure will be presumed to be so made [in cooperation with the campaign] when it is based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made." 11 CFR 109.1(b)(4)(i)(A).

The Commission alleged two instances of coordination. The first was a meeting between Dr. Simon and the representatives of Mr. Hardy's campaign prior to Mr. Hardy's entering the primary. The second took place at a political event during which Mr. Hardy was present while Forum members planned strategies "on how to get Tim Hardy elected." Following the

event, the Forum made four separate direct mailings of campaign literature that supported the election of Mr. Hardy.

The court rejected the Forum's assertion that actual coordination of a specific disbursement must be shown in order to consider it a "coordinated expenditure." The court said, "This assertion finds no support in the statute, the regulations, or the case law." Further, the court stated, "...we do not find any requirement that coordinated expenditures must contain 'express advocacy' in order for them to fall within the purview of the statute." Nevertheless, the court found that "the FEC has not sufficiently plead enough facts that allege that the expenditures made by the Forum were coordinated with the Hardy campaign."

Regarding the first meeting, the court said that the FEC had not alleged that "Hardy actually informed Dr. Simon of his plans, projects, or needs *with a view toward having an expenditure made.*" As to the direct mailings of campaign literature, the court held that there were no allegations made that the mailings were at the request or suggestion of Mr. Hardy. The court stated that, "Hardy's mere presence at the meeting, even if his presence was accompanied by the giving of a campaign speech, [was] insufficient to make these expenditures coordinated." Following its conclusion that there was no coordination, the court dismissed the charges that the Forum had failed to report its expenditures as contributions.

#### Disclaimer and Express Advocacy

The Forum argued that its four mailings did not contain "express advocacy" and therefore did not constitute contributions to the Hardy campaign. The court disagreed. It said, "There is no requirement that a contribution as defined in 2 U.S.C. §441a must result in or from 'ex-

### Public Appearances

December 10, 1999

Georgia Corporate Counsel  
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General Counsel

press advocacy.” The Forum further argued that it was not required to include disclaimers on the four mailings because none of the mailings included “express advocacy.” (Under 2 U.S.C. §441d(a), communications containing express advocacy must include certain disclaimers.) The court stated that, “although a communication does not have to contain ‘magic words’ [‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘reject’] to constitute express advocacy, it will ordinarily contain some sort of functional equivalent of an exhortation, directive, or imperative for it to expressly advocate the election or defeat of a candidate.”

The court agreed that all four of the Forum’s mailings clearly portrayed Mr. Hardy’s opponent in an unfavorable light and Mr. Hardy in a favorable light. Nevertheless, the court found that only one of the Forum’s four mailings contained express advocacy. That mailing included a sample ballot identifying candidates the Forum supported, including Mr. Hardy, which stated, “Please take this sample ballot to the polls and vote on Tuesday.” It explicitly urged the reader to vote for the “pro-family” candidates identified, and it showed a vote for Mr. Hardy. The court held, therefore, that the flyer contained “the functional equivalent of an exhortation to vote for Hardy.”

With regard to another mailing that contained a request for volunteers and contributions, the court concluded that it sought “to persuade the reader to get involved in soliciting votes for Hardy and to contribute time and money to the Forum,” but it did not contain “...an express exhortation to the reader to elect Hardy, or to defeat [his opponent].” ♦

## Regulations

(continued from page 3)

### Rules Governing Public Financing of Presidential Primary and General Election Candidates: Effective Date

The FEC’s revised rules governing public financing of presidential primary and general election candidates became effective on November 12, 1999, except those revisions at 11 CFR 9003.3 and 9034.4(e)(6)(i) regarding solicitations to a General Election Legal and Compliance Fund (GELAC), which will take effect on June 1, 2000. See *Federal Register* Announcement of Effective Date (64 FR 61475, November 12, 1999).

The revised regulations implement the provisions of the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. The new rules address:

- Pre-nomination formation of a GELAC;
- Transfers from a primary campaign committee to a GELAC;
- Joint primary and GELAC solicitations;
- Winding down costs;
- Lost, misplaced or stolen items;
- Disposition of capital assets; and
- Receipts and disbursements of convention and host committees.

See page 1 of the [October 1999 Record](#) for a more detailed discussion of these new rules. You may obtain a free copy of the final rules as they appeared in the *Federal Register* (64 FR 49355, September 13, 1999) through the FEC Faxline. Dial 202/501-3413 and request document 235. ♦

### Audit Procedures, Primary/General “Bright Line” and Vice Presidential Committees: Final Rules Approved

On November 4, 1999, the Commission approved several revisions to its rules governing the public financing of Presidential primary and general election campaigns, as follows:

- Modification of the Presidential audit process to include Commission approval of the Preliminary Audit Report (11 CFR 9007.1(b)(2)(iii), (c) and (d)(1), and 9038.1(b)(2)(iii), (c) and (d)(1));
- The “bright line” between primary and general election expenses (11 CFR 9034.4(e)(1) and (e)(3)); and
- Contributions to and expenditures by Vice Presidential committees prior to nomination (11 CFR 9035.3).

The revised rules, together with the Explanation and Justification, were transmitted to Congress on November 9, 1999, for a 30-legislative day review period and published in the November 15, 1999, *Federal Register* (64 FR 61777). The date the regulations take effect will be published in the *Federal Register* following the review period.

### Audits: Preliminary Audit Report

Changes to paragraphs (b)(2)(iii), (c) and (d)(1) of sections 9007.1 and 9038.1 replace the Exit Conference Memorandum with a Preliminary Audit Report that will be approved by the Commission before it is provided to the audited committee after the exit conference.

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## Regulations

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### Bright Line Between Primary and General Election Expenses

Section 9034.4 deals with the use of contributions and matching payments. Paragraph (e)(1) has been modified to state that any expenditure for goods or services that are used for the primary election campaign, other than those listed in paragraphs (e)(2) through (e)(7) of section 9034.4, will be attributed to the limits at 11 CFR 9035.1. Similarly, any expenditure for goods or services that are used for the general election campaign, other than those listed in paragraphs (e)(2) through (e)(7) of section 9034.4, will be attributed to the limits at 11 CFR 110.8(a)(2), as adjusted under 11 CFR 110.9(c).

Paragraph (e)(3) has been amended to resolve questions that have come up regarding payroll and overhead costs for the use of campaign offices prior to the candidate's nomination. The Commission removed the "exclusive use" exception governing office overhead and salaries, and also from the general rule in paragraph (e)(1). Under the revised rule, salary and overhead costs incurred between June 1 of the Presidential election year and the date of the nomination are treated as primary expenses. However, Presidential campaign committees have the option of attributing to the general election an amount of salary and overhead expenses incurred during this period up to 15 percent of the primary election spending limit, which is set forth at 11 CFR 110.8(a)(1).

### Vice Presidential Committees

The Commission added new section 9035.3 to specify when contributions to, and expenditures by, Vice Presidential committees must be aggregated with contributions to, and expenditures by, the primary campaign of that party's

eventual Presidential nominee, for purposes of the contribution and expenditure limitations. Paragraph (a) provides that the aggregation begins on the date that either the future Presidential or Vice Presidential nominee publicly indicates that the two candidates intend to run on the same ticket. Alternatively, aggregation of contributions begins when the Vice Presidential candidate accepts an offer to be the running mate, or when the committees of these two candidates become affiliated under 11 CFR 100.5(g)(4).

Paragraph (b) of the new section lists the following three types of expenditures which, if incurred by the party's Vice Presidential nominee, will not be aggregated with contributions to and expenditures by the party's Presidential candidate:

- The costs of a Vice Presidential candidate and his or her family and staff attending the party's nominating convention, including their transportation, lodging and subsistence;
- The costs of legal and accounting services incurred during background checks during the Vice Presidential selection process; and
- The costs of raising funds for the two activities listed above.

The full text of the final rules appears in the November 15, 1999, *Federal Register* (64 FR 61777). This document is available through the FEC's Public Disclosure Office and through the FEC Faxline. Dial 202/501-3413 and request document 245. ♦

## Status of FEC Regulations for 2000 Presidential Election Cycle

The FEC has nearly completed its regulations for the 2000 Presidential election cycle. Final rules on repayments when primary campaigns exceed their spending limits, a Notice of Proposed Rulemaking involving coordinated expenditures, and a Notice of Proposed Rulemaking on General Election Legal and Compliance Funds (GELACs) for minor and new party candidates are still pending.

The status of completed FEC regulations for the 2000 Presidential election cycle is listed below.

- Two sets of rules addressing when credit card and debit card contributions to Presidential candidates (including those made over the Internet) can be matched with public funds, and what documentation is needed for matching. Effective date: January 1, 1999. See article on page 4 of the [July 1999 Record](#) and article on page 3 of the [September 1999 Record](#) for a discussion of both sets of final rules.
- Rules on pre-nomination party committee coordinated expenditures and costs of media travel with publicly financed Presidential campaigns. Effective date: November 3, 1999. See article on page 12 of the [September 1999 Record](#) for a discussion of the final rules.
- Rules governing public financing of Presidential primary and general election candidates (e.g. winding down costs; lost, misplaced or stolen items; disposition of capital assets; and receipts and disbursements of convention and host committees). Effective date: November 12, 1999. See article on page 1 of the [October 1999 Record](#) for a discussion of the final rules.

- Rules regarding solicitations to a General Election Legal and Compliance Fund (GELAC). Effective date: June 1, 2000. See article on page 1 of the [October 1999 Record](#) for a discussion of the final rules.
- Final rules governing the Presidential audit process, the “bright line” between primary and general election expenses, and contributions to and expenditures by Vice Presidential committees prior to nomination. Transmitted to Congress: November 9, 1999.<sup>1</sup> See article on page 7 of this issue for a discussion of the final rules. ♦

## Advisory Opinions

### AO 1999-17 Internet Use by Campaign

The Commission’s response to an advisory opinion request by the Governor George W. Bush for President Exploratory Committee, Inc. (the Committee) addressed several issues regarding Internet use, including:

- Web sites established by volunteers;
- Links between Web sites;
- Committee and vendor Internet activities;
- Disclaimers;
- Internet polling;
- E-mail;
- Solicitation of contributions through the Internet; and
- Volunteers’ republication of candidate materials.

<sup>1</sup> The Commission will publish an effective date in the Federal Register after the rules have been before Congress for 30 legislative days.

### Web Sites Established by Volunteers

Commission regulations provide that, as an exception to the definition of contribution, no contribution results where an individual, in the course of volunteering personal services<sup>1</sup> for campaign-related activities, uses his or her home and provides the use of his or her personal property. 11 CFR 100.7(b)(4). Therefore, if a volunteer for the campaign prepares a Web site supporting the campaign, using his or her personal property at home, i.e., a home computer, that activity would not be a contribution. The ongoing related costs of maintaining a home-run Web site and registering a domain name for a Web site would also fall under this exception. The exception applies to individuals known to the campaign who, with the campaign’s permission, engage in volunteer activity that consists of the Internet activity described above. Since no contribution results, there are no reporting requirements.

### Web Sites Established by Those Who Are Not Volunteers

Where the Committee has not coordinated a particular Internet activity with individuals who are not volunteers, and where nothing of value is provided to the Committee, the Committee has no reporting obligation. Nor does the Committee have an obligation to search the Web to discover the existence of pro-Bush activity, given the constantly changing nature of Internet activity.

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<sup>1</sup> Volunteering services means the individual provides services without compensation. 2 U.S.C. §431(8)(B)(i).

## Federal Register

Federal Register notices are available from the FEC’s Public Records Office.

### Notice 1999-21

Definition of “Member” of a Membership Organization; Announcement of Effective Date (64 FR 59113, November 2, 1999)

### Notice 1999-22

Matching Credit Card and Debit Card Contributions in Presidential Campaigns; Announcement of Effective Date (64 FR59607, November 3, 1999)

### Notice 1999-23

Party Committee Coordinated Expenditures; Costs of Media Travel with Publicly Financed Presidential Campaigns; Announcement of Effective Date (64 FR59606, November 3, 1999)

### Notice 1999-24

Use of the Internet for Campaign Activity; Notice of Inquiry (64 FR 60360, November 5, 1999)

### Notice 1999-25

Public Financing of Presidential Primary and General Election Candidates; Announcement of Effective Date (64 FR 61475, November 12, 1999)

### Notice 1999-26

Audit Procedures, Presidential Primary/General “Bright Line,” and Vice Presidential Committees; Final Rules and Transmittal of Regulations to Congress (64 FR 61777, November 15, 1999)

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### Links Between Web Sites

Providing a link to Web sites operated by the Committee would be considered a service and something of value to the campaign and could, under certain circumstances, meet the definition of "contribution" under the Federal Election Campaign Act (the Act) and Commission regulations. 2 U.S.C. §441b(b)(2); 11 CFR 114.1(a)(1).

Whether a link to the Committee Web site would constitute a contribution to the Bush campaign depends on whether the owner of the Web page providing the link normally charges for providing such a link. If the owner would normally charge for a link and chooses not to charge the Committee, or charges the Committee less than a similarly situated nonpolitical organization, the link would be a contribution to the campaign. 11 CFR 100.7(a)(1)(iii)(A) and 100.8(a)(1)(iv)(A).<sup>2</sup> The amount of the contribution would be the difference between the usual and normal charge and the amount the Committee paid.

*Created by Corporation.* If the owner of the Web site is a corporation, then the contribution is prohibited by section 441b of the Act. Note, however, that, where a corporation establishes links to the Committee, and the links are not

established or maintained at the request or suggestion of, or in cooperation, consultation or concert with the Bush campaign, the Committee has no obligation to request the removal of the links and no obligation to report them.

*Created by Individuals.* In instances where individuals (who may or may not be volunteers to the campaign) create Web sites and establish links to the campaign without the Committee's prior consent, the link is not a reportable in-kind contribution to the Committee, assuming that there is no coordination and that something of value is not being given to the Committee.

### Committee and Vendor Internet Activity

The discussion above also applies to a vendor that sells campaign materials and provides a link to the Committee's Web site. If, however, the vendor normally charges for the link, then the committee will have to pay the usual and normal charge to avoid receiving a contribution from the vendor. The Committee must report the disbursement as an operating expenditure. See 2 U.S.C. §434(b)(4) and 11 CFR 104.3(b)(2).

A merchandise vendor who uses Mr. Bush's name to sell various goods may forward to the Committee the names of supporters and also provide a link to the Bush campaign from the vendor's site as long as the campaign pays the usual and normal charge for the list of supporters and for the link (if it is the standard business practice to be charged for the link).

### Disclaimers

Generally, unless an exemption or exception applies, disclaimers are required on Web sites that expressly advocate the election or defeat of a federal candidate, as well as on those that solicit contributions. See 2 U.S.C. §441d; 11 CFR 110.11(a)(1). See AO 1998-22.

### Internet Polling

The Committee may use its Web site or e-mail to support Mr. Bush via Internet polling. Any costs associated with this activity would be operating expenditures.

### E-Mail

*Volunteers.* The above discussion of the use of Web sites applies to the use of e-mail by Committee volunteers. Under 11 CFR 100.7(b)(4), the use of e-mail by a campaign volunteer using his or her home equipment will not result in a contribution to the Committee. The ongoing costs for home e-mail activity are covered by the same section.

*Corporations.* Under 11 CFR 114.9(a), stockholders and employees of a corporation may, subject to the rules and practices of the corporation, make occasional, isolated or incidental use of the facilities of a corporation for individual volunteer activity in connection with a federal election. Reimbursement of the corporation is required only if the overhead or operating costs of the corporation are increased as a result of the activity. Therefore, a volunteer may send e-mails on behalf of the Committee or prepare Internet-related materials, such as a Web site, using corporate-owned equipment or facilities. If such use goes beyond occasional, isolated or incidental use, the Committee must reimburse the corporation within a commercially reasonable time for the normal and usual rental charge, as defined in section 100.7(a)(1)(iii). Without such reimbursement, a prohibited corporate contribution will result.

### Best Efforts

Political committees are required to use "best efforts" to obtain and report, for each contribution aggregating in excess of \$200 per calendar year, any required contributor information that was not provided by the contributor. 11 CFR

<sup>2</sup> Recently, in Advisory Opinion 1999-7, the Commission determined that the exception in the Act at section 431(9)(B)(ii)—for nonpartisan activity to encourage voting—applied to links provided to candidates' Web sites by the Minnesota Secretary of State's office. Consequently, the links were not considered expenditures or contributions. See also Advisory Opinion 1999-25.

104.7(b)(2). Follow-up efforts require either a written request sent to the contributor or an oral request to the contributor documented in writing. Furthermore, the Explanation and Justification for the Commission's regulations on the matching of credit card contributions noted the special circumstances of contributions raised through the Internet. The Commission, citing Advisory Opinion 1995-9, noted that "in the unique case of a contribution received over the Internet, the [follow-up] request could consist of an electronic message sent to the contributor's e-mail address." Therefore, in

## Change of Address

### Political Committees

Treasurers of registered political committees automatically receive the *Record*. A change of address by a political committee (or any change to information disclosed on the Statement of Organization) must, by law, be made in writing on FEC Form 1 or by letter. The treasurer must sign the amendment and file it with the Secretary of the Senate or the FEC (as appropriate) and with the appropriate state office.

### Other Subscribers

*Record* subscribers who are not registered political committees should include the following information when requesting a change of address:

- Subscription number (located on the upper left corner of the mailing label);
- Subscriber's name;
- Old address; and
- New address.

Subscribers (other than political committees) may correct their addresses by phone as well as by mail.

situations where the contribution was received over the Internet, or where the Committee has otherwise obtained reliable information as to a donor's e-mail address, the Committee may substitute e-mail communications for written or oral communications as a means of exerting best efforts to obtain missing contributor information.

### Republication of Candidate Materials by Volunteers

Individuals, working as volunteers, may redistribute campaign materials advocating Mr. Bush's election in their Internet fundraising efforts for the Committee, and the redistribution of materials will not be considered a contribution to the Bush campaign. Activities undertaken by volunteers receive the benefit of the volunteer exception at 2 U.S.C. §431(8)(B)(i) and section 110.7(b)(4) of Commission regulations.

### Third Parties

The Commission did not address activities by third parties<sup>3</sup> in accordance with 2 U.S.C. §437f(a)(1), which requires that the Commission respond to a written advisory opinion request with respect to a specific transaction or activity by the person asking for the advisory opinion. Internet activities by individuals (not functioning as volunteers of the campaign), vendors and corporations that are not conducted at the suggestion of, or in cooperation, consultation or concert with the Bush campaign, were beyond the scope of this advisory opinion.

Issued: November 10, 1999;  
Length: 19 pages. ♦

<sup>3</sup> In this opinion, "third party" refers to an entity outside the Bush campaign (e.g., an individual, a corporation) whose activities are not made in cooperation with the Bush campaign.

## AO 1999-23 Replacement For Lost Check

American Bankers, Inc., PAC (ABPAC) may request and receive a check to replace a 1998 contribution made by, but never received from, another PAC. The replacement check will count against the contributing PAC's 1998 annual limit.

On December 29, 1999, Arvest PAC mailed a check for \$4,000 payable to ABPAC. This check was never received by ABPAC and has not cleared Arvest PAC's checking account.

A contribution is considered to be made when the contributor relinquishes control over the contribution. 11 CFR 110.2(b)(6). A contribution that is mailed to a political committee is considered to be made on the date of the postmark. 11 CFR 110.1(1)(4). Consequently, Arvest PAC's initial \$4,000 contribution is considered to have been made on December 29, 1998.

Arvest PAC reported its \$4,000 contribution to ABPAC in its 1998 year-end report. Neither ABPAC's 1998 year-end report nor its 1999 mid-year report indicates the receipt of this contribution. Because the circumstances for the failure to receive the first check were beyond the control of either committee, the initial making of the contribution is nullified. Therefore, ABPAC may request and receive a replacement check for \$4,000 from Arvest PAC without that replacement check affecting Arvest PAC's contribution limit for 1999.

To ensure that the replacement check relates back to the earlier 1998 contribution check, Arvest PAC must stop payment on the December 29, 1998, check. ABPAC must receive, with the replacement check, confirmation of the stop payment order and a written

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statement from Arvest PAC confirming the initial contribution and explaining that the Arvest PAC replacement check is for the lost contribution originally made in 1998.

### Reporting

ABPAC must report the replacement check as a 1998 calendar year contribution on Schedule A of its report covering the period when the replacement check is received. The report must include a notation explaining the circumstances of the lost 1998 contribution check, making reference to this Advisory Opinion and the documentation it has received from Arvest PAC.

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Length: 3 pages. ♦

### AO 1999-25

#### Corporate Sponsored Web Site Featuring Information on Federal Candidates

The League of Women Voters Education Fund (the League) and the Center for Governmental Studies (CGS) may sponsor Democracy Network (DNet), a Web site providing information with respect to federal candidates, without making a corporate expenditure, based on this opinion's analysis of the composition, purpose and activity of the Web site.

#### DNet's Proposed Activities

DNet will contact all registered candidates and provide them with an ID and password so they can prepare their online biographies and submit their contacts and endorsers' statements. Candidates may then submit policy positions and reply to questions and statements from other candidates and the public—all done online.

The major feature of DNet is "a database of textual, audio and visual statements, which candidates can directly and remotely update, and which voters can access according to their interests." Using his or her ID and password, a candidate can enter the Web site and write on any issue he or she chooses, or respond to questions from other candidates or from members of the public.

A candidate's position on an issue is automatically entered into a "Candidate Grid," which indicates that he or she has stated a position with a red check mark and states "no comment" opposite the opponents' names. The position is then e-mailed to the opponents who are thereby encouraged to submit statements, which are entered into the Grid. A candidate may continually edit or update his or her position statements, as well as comment on the positions of the other candidates. To see a candidate's position on an issue and responses to viewers' questions, the viewer clicks on the check mark on the Grid. Candidate rebuttals to other candidates on each issue will appear in a separate "digital debate" section. Viewers will also be able to compare any two candidates side by side on the same screen on a particular issue.

#### Legal Analysis

As corporations, the League and CGS are prohibited by the Federal Election Campaign Act (the Act) from making any contribution or expenditure in connection with a federal election. 2 U.S.C. §441b(a); 11 CFR 114.2(b). Moreover, in past advisory opinions, the Commission has concluded that the costs associated with creating and maintaining a Web site could be considered an expenditure or in-kind contribution, depending upon the content of the site and whether certain exceptions are applicable. Advisory Opinions 1999-7, 1998-22 and 1997-16. At the same time, however, the term "expenditure" does not apply to

"nonpartisan activity designed to encourage individuals to vote or to register to vote." 2 U.S.C. §431(9)(B)(ii). In this case, even though the statements of the candidates and their endorsers or the contents of the candidate Web sites (to which DNet has hyperlinks) are in connection with a federal election, the DNet Web site is permissible under this exception because of the composition, purpose and activities of DNet.

#### Composition and Purpose of DNet

DNet is a project of two corporations that have qualified as tax exempt organizations under 26 U.S.C. §501(c)(3). As such, they may not participate or intervene in any political campaign on behalf of or in opposition to any candidate. Moreover, the League and CGS were created and operate for the purposes of providing information about elections, the electoral process and government on a nonpartisan basis. DNet was established for the purposes of increasing voter understanding of public policy issues and government, and increasing civic participation and voter interaction with candidates on a nonpartisan basis.

#### Activities

To determine whether DNet comes within the nonpartisan voter registration exception to the definition of expenditure, the Commission examined the following aspects of DNet's activity (in addition to DNet's composition and purpose): the standards for inviting candidates and the degree of participation by each candidate; the type of audience; the selection of materials that comes from sources other than the campaigns, such as media entities; the degree of coordination between DNet and the campaigns; and the communications of DNet itself.

*Standards for Inviting Candidates and Degree of Candidate Participation.* DNet will invite each ballot-qualified candidate in an election—other than a presidential general election—to post statements, responses, hyperlinks to their campaign Web sites, and other information.<sup>1</sup> DNet's limitation with respect to presidential candidates in the general election conforms to Commission regulations, set out in another context, that seek to ensure that corporate contributions or expenditures do not result. See the voter guide regulations at 11 CFR 114.4(c)(5)(ii). Similarly, the space allocations and the positioning of candidates on the Grid are based upon objective criteria.

*Audience.* DNet's Web site will be available for viewing and interaction by the general public. No effort will be made to determine the political party or candidate preference of the viewers. See 11 CFR 100.8(b)(3). The Web site will not encourage participation or voting by a selected group of persons of a particular party or other group.

*Links to Sources Other Than Candidate Web Sites.* In addition to providing links to neutral sources (e.g., official ballot and voting information, campaign finance information and news services), DNet's Web site will have links to editorial endorsements. DNet will make efforts on a nonpartisan basis to link to a representative sample of newspapers that have made endorsements in a relevant race. If DNet skews a selection to emphasize support of a candidate or a party, the editorials may be construed as express advocacy by DNet and not merely the republication of news media editorials. It is recognized, however, that links to editorials

showing a preponderance of support for a particular candidate does not necessarily mean that DNet is engaging in express advocacy since a representative sample may, in some cases, show a preponderance of support for one candidate.

*Coordination Between DNet and Campaigns.* DNet will communicate with the candidates (or their campaigns) in order to invite their participation, to inform them of the positions, questions and comments of other candidates, to remind them to respond, to edit for length or obscenity, and to provide technological advice as to the use of the Web site. DNet's communications with the candidates, however, will not pertain to the substance of the statements or information posted by the candidates. In engaging in the above communications, which are necessary for the effective operation of the Web site, DNet will not be discussing the candidate's plans, projects, or needs. In view of these circumstances, DNet's communication with a campaign would not constitute acting in cooperation with or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate, his or her committee, or his or her agent. See 2 U.S.C. §§431(17) and 441a(a)(7)(B)(i); 11 CFR 100.16, 109.1(a) and (b)(4)(i)(A). As a result, DNet's efforts to provide candidates with an opportunity to participate in the Web site would not constitute an in-kind contribution by DNet to those candidates.

*DNet's Communications.* DNet itself will not score or rate the candidates or make any statements expressly advocating the election or defeat of any clearly identified candidate, or of the candidates of any political party. DNet will function in such a way that none of the statements made by the candidates or persons supporting the candidates can be attributed to DNet.

Based on the above discussion of the nature of DNet, its sponsors and the proposed Web site, DNet's proposed activity is exempt from the definition of "expenditure" at 2 U.S.C. §431(9)(B)(ii) and is therefore permissible under the Act.

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Length: 8 pages. ♦

## **AO 1999-26 Status as State Committee of Political Party**

The State Central Committee of the Virginia Taxpayers Party (the Party Committee) meets both of the Commission's requirements for state committee status.

The Federal Election Campaign Act (the Act) defines a state committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. §431(15).

The definition of a state committee requires the existence of a political party. A political party is "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization." 2 U.S.C. §431(16).

In a number of advisory opinions, the Commission has identified two requirements necessary for state political committee status. First, the organization must have a state affiliate agreement that "delineates activities commensurate with the day-to-day operation" of a party at a state level. Second, the state affiliate must gain ballot access for its federal candidates. The state party's candidate must qualify as a candidate under FEC regulations in

<sup>1</sup> This is the same standard approved in Advisory Opinion 1999-7, which was issued to the State of Minnesota.

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order for the party to satisfy this second requirement. See AOs 1998-27, 1998-24, 1998-2, 1997-29, 1997-7 and 1997-3.

The Commission has made clear that a state political party can qualify as a state party committee without an affiliation with a national political party.

The Virginia Party meets both requirements. In addressing the first requirement, the party's bylaws set out a comprehensive organizational structure for the party from the statewide level down through the district level. These bylaws do indeed delineate activity commensurate with the day-to-day operations of a political party on the state level.

The Virginia Party also satisfies the second requirement of ballot access for a federal candidate. The party's 1996 Presidential candidate, Howard Phillips, attained ballot access in Virginia as the Taxpayers Party Presidential candidate in the general election and satisfied FEC requirements for establishing himself as a federal candidate under 2 U.S.C. §431(2). It makes no difference that Mr. Phillips was a bona fide candidate in a previous election cycle because the party continues to pursue its political objectives and goals in Virginia during the current election cycle.

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Length: 4 pages. ♦

## AO 1999-27 Conduct of Presidential Straw Poll

Funds spent by the Alaska Federation of Republican Women (the Federation), a party committee, in connection with a presidential straw poll will be subject to the limitations and prohibitions of the Federal Election Campaign Act (the Act), but the disbursements will not be allocable to any particular presidential candidate. While the disbursements for the straw poll will not count as contributions to the candidates or as expenditures attributable to any candidate, they should be reported as operating expenditures.

### The Federation's Proposal

The Federation proposes to conduct a nonbinding presidential preference straw poll, in which Alaskans will express their preference as to the Republican presidential nominee. The straw poll will have several of the features of an election. All publicly announced candidates for the Republican presidential nomination in the year 2000 will be listed on the polling form or "ballot." All Alaska registered Republicans will be permitted to "vote," and the results will be totaled and immediately released to the public. The poll results are intended to be purely advisory.

The straw poll will be held in the same buildings and on the same evening as the Republican Party of Alaska's precinct caucuses, which will be conducted by the local or district party organizations. Participation in one event is not a prerequisite to participation in the other event. The caucus and the poll will be "physically distinct" from each other, and everyone present will be "aware of the separation of the two."

To pay for the expenses for the poll, the Federation will solicit donations of money and in-kind

goods and services, and will deposit the funds in a separate bank account opened specifically to pay for the poll. The Federation will not use the funds donated for the poll for any state or local election purposes, or to advocate a specific presidential candidate's election. Funds will be solicited through "personal communication over the telephone or in person."

Advertising for the poll will be informational and will not be used to obtain new Republican registrants or to advocate voting Republican. Post cards will be sent to all registered Republicans in the state, advising them of the straw poll, the nature of the poll, where they can go to participate and similar details. Advertisements in selected newspapers and on radio will encourage participation and stress that the poll will be the first held in the election year and will put Alaska and Alaska issues before the candidates and the media. The Federation will also issue press releases to the media announcing the poll. Both the ads and the press releases will contain a brief reference to the caucuses and a statement that participation in the caucus is not required to vote in the straw poll.

At the straw poll itself, the Federation will not advocate a vote for any particular presidential candidate. The Federation will not make any general communications concerning party activities or events, or party platforms and positions; nor will it solicit contributions to the party or candidates, or encourage registration. However, it is anticipated that individual presidential candidates, or representatives of their campaigns, may be at the buildings where the caucuses and straw polls take place and may advocate their respective candidacies.

## Allocation

Commission regulations provide that party committees that make disbursements in connection with federal and nonfederal elections must allocate certain kinds of expenses between their federal and nonfederal accounts or, if the parties wish, pay for them entirely from their federal accounts. 11 CFR 100.7(b)(9), (15) or (17) and 100.8(b)(10), (16) or (18) and 11 CFR 106.5(a)(2)(i)-(iv).

The straw poll itself is not a federal election. Nevertheless, the Federation's activities for the poll will be for the purpose of influencing a federal election since the ballot contains a specific group of named Republican presidential candidates; the straw poll "will encourage voters to select a Republican candidate for the presidential nomination;" and the "purpose of this straw poll is to obtain a valid expression of Alaska's choice as the Republican nominee."

The straw poll is an event that pertains exclusively to a federal election—the presidential election process: The fundraising and spending will be separated entirely from the other activities of the Federation and the state party;<sup>1</sup> fundraising appeals will make clear that the funds will be used only for the poll; and, unlike allocable generic party activities (for which allocation is permissible), this activity will focus on a specific group of candidates and the straw poll form itself will list specific candidates. Consequently, to cover its straw poll activities, the Federation may only raise and spend "hard dollars," i.e., funds subject to the

limitations and prohibitions of the Act; allocation between federal and nonfederal accounts is not permissible.

## Contributions, Expenditures

Since the Federation's proposed straw poll activities and related communications do not appear to entail acting in cooperation with or with the prior consent of, or in consultation with, or at the request or suggestion of, any candidate or his or her committee, these activities would not entail contributions to any candidate. The expenses for the activities would, however, be considered operating expenditures of the Federation, reportable on line 21b as "Other Federal Operating Expenditures," i.e., outside the allocation formula. Since the Federation is not participating in an activity specifically on behalf of the candidates or in a way that can be directly attributed to each candidate, the disbursement need not be specifically allocated to any of the presidential candidates, in accordance with 11 CFR 106.1(a) or (c)(2).

## Disclaimer

The Federation does not need to include a disclaimer in its solicitations of funds for the straw poll since it will not use any form of general public advertising. The public media advertisements mentioning the straw poll do not need a disclaimer since they will not contain any message expressly advocating the election or defeat of a candidate.

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## AO 1999-28 Solicitation of Restricted Class of Foreign Parent Corporation and Its U.S. Subsidiaries

Bacardi-Martini, USA, Inc. (BMUSA) may solicit PAC contributions from—and send election advocacy communications to—the restricted class of its foreign corporate parent, Bacardi Limited (BL), and any United States subsidiary of BL, so long as those individuals are not foreign nationals.

BL is a Bermuda corporation, and thus a foreign national. The Federal Election Campaign Act (the Act) and Commission regulations prohibit foreign nationals from making contributions (directly or indirectly) in connection with any United States election.<sup>1</sup> In addition, it is unlawful to solicit, accept or receive contributions from a foreign national. 2 U.S.C. §441e(a); 11 CFR 110.4(a)(1) and (2).

Under 22 U.S.C. §611(b), a corporation organized under the laws of any state within the United States, with its principal place of business within the United States, is not a foreign principal. Hence, under 2 U.S.C. §441e, such an entity is not considered a foreign national. Accordingly, BMUSA, which is organized under the laws of Delaware and has its principal place of business in Florida, is not considered a foreign national under 2 U.S.C. §441e. Consequently, BMUSA may serve as the connected organization of its separate segregated fund (SSF), Bacardi-Martini USA, Inc. Political Action Committee (BAC-PAC), subject to the

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<sup>1</sup> Surplus money remaining after the poll is conducted will be refunded to contributors on a pro rata basis or given to charity. None of the funds will be contributed to any Federal candidate.

<sup>1</sup> See *United States v. Kanchanalak*, Nos. 99-3019 & 99-3034, 1999 WL 798065, at \*9-10 (D.C. Cir. Oct. 8, 1999).

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conditions of FEC regulations. 11 CFR 110.4(a);<sup>2</sup> see also Advisory Opinions 1995-15 and 1990-8.

Criteria set out in the Act and Commission regulations that govern whether SSFs are affiliated are also used to determine whether corporations are affiliates of each other.<sup>3</sup> 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2) and 110.3(a)(1)(ii). See also Advisory Opinions 1996-50 and 1988-14. According to Commission regulations, the committees of a parent corporation and its subsidiaries are affiliated with each other per se. 11 CFR 100.5(g)(3)(i) and 110.3(a)(2)(i); see also Advisory Opinion 1999-10. Hence, BMUSA is affiliated with all of BL's subsidiaries, as well as with its parent, BL.

In addition to its own restricted class, a corporation may solicit the restricted class of its affiliated entities. A corporation may also

<sup>2</sup> The regulation at 110.4(a)(3) states, "A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee."

<sup>3</sup> Committees, such as SSFs, affiliated with each other are treated as a single committee for the purposes of the contribution limits in the Act. 2 U.S.C. 441a(a)(5); 11 CFR 110.3(a)(1) and 110.3(a)(1)(ii). In other words, such committees must aggregate contributions that are made by or to them for the purposes of those limits. *Id.* Transfers between affiliated committees are not subject to the limits of 2 U.S.C. 441a. 11 CFR 102.6(a)(1)

make communications on any subject, including communications containing express advocacy, to this same group of persons. 2 U.S.C. §441b(b)(2)(A); 11 CFR 114.3(a) and 114.1(j).

In past Advisory Opinions, the Commission has recognized that solicitation rights do not move merely in one direction, e.g., from parent to subsidiary. As a result, a U.S. subsidiary may solicit contributions to its SSF from the individuals of its foreign parent's restricted class who are not foreign nationals, as well as from the nonforeign nationals of the restricted class of any domestic subsidiary.

Consequently, BMUSA may solicit contributions to BAC-PAC from the restricted class of BL and any of its U.S. subsidiaries, so long as those individuals are not foreign nationals. BMUSA may also communicate messages containing election advocacy to the same group of individuals.

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Length: 6 pages. ♦

## Advisory Opinion Requests

Advisory opinion requests are available for review and comment in the Public Records Office.

### AOR 1999-30

Application of allocation ratio to State party in state with only a single house legislature (Nebraska Democrats, October 18, 1999; 1 page)

### AOR 1999-31

Application of one-third rule to door prizes for payroll deduction contributions and to premiums paid to employees who recruit new contributors to PAC (Oshkosh Truck Corporation, October 25, 1999; 8 pages)

### AOR 1999-32

Federal contractor status of native American tribe that provides utility services to federal agencies (Tohono O'odham Nation, November 1, 1999; 25 pages)

### AOR 1999-33

Delayed deposit and reporting of payroll deduction contributions to PAC that were held in general corporate account for many months (MediaOne, November 4, 1999; 1 page)

### AOR 1999-34

Use of Congressional campaign funds to finance charitable fundraising event hosted by member of Congress (Mike Bilirakis for Congress, November 9, 1999; 8 pages)

### AOR 1999-35

Use of electronic deduction system for receipt of contributions to trade association PAC from solicitable personnel of corporate members of the association (Associated Builders and Contractors, Inc., November 9, 1999; 47 pages)

### AOR 1999-36

Use of electronic checks and fund transfers via the Internet to make contributions to Presidential and other Federal candidates (Campaign Advantage, November 16, 1999; 9 pages)

### AOR 1999-37

Valuation and reporting of independent expenditures made by political committee through Internet (The Political Action Committee for Generation X, November 15, 1999; 7 pages) ♦

## Election Administration

### Advisory Panel Passes Resolution to Update Voting Systems Standards

On August 7, 1999, the FEC's Advisory Panel on Election Administration passed a resolution supporting the continued update of the Voting Systems Standards. The Advisory Panel, composed of twenty state and local election officials selected by the Commission, advises the agency on the allocation of its resources for the benefit of election officials at all levels of government.

The resolution stated, in part, that:

- The FEC implemented the intent of Congress and the states by developing the Standards and publishing them in 1990.
- Since no one state has the resources to independently develop and implement voting system standards, state governments rely upon federal involvement in the development of the Standards as an ideal federal-state compact.
- Over 30 states have adopted the original—but now outdated—Standards in order to help election officials in those states procure new voting systems.
- Nearly a decade old, the current standards neither encompass recent technological developments nor address the accessibility of voting systems to the disabled.
- The FEC is the appropriate agency with the expertise and experience to update the Standards and develop new standards.

This is the fourth resolution passed by the Advisory Panel. The first, in July of 1977, declared the federal development of voluntary voting system standards to be essential in maintaining the integrity of the election process. The second,

in February 1981, expressed the panel's commitment to adopt and promote any voluntary standards the FEC might promulgate. The third, in March 1983, urged the FEC to devote funds to the development of the Standards.

The Advisory Panel on Election Administration hopes that the 1999 resolution will be an important step to Congressional recognition that the Standards program should remain with the FEC, should be included as a part of the Commission's permanent responsibilities and should be funded accordingly. ♦

## Reports

### Waiver of State Office Filings

On October 14, 1999, the Commission approved a state filing waiver program, relieving qualified state offices of the requirement to receive and maintain paper copies of campaign finance reports from Presidential and House candidates and most political committees. This also relieves committees of the obligation to file these paper copies. Under the new program, qualified states will disclose campaign finance information by providing public access, via computer, to the FEC's Web site, which displays the reports of most federal candidates and committees.

In order to qualify for the waiver, states must fulfill the following criteria to show they have a system that ensures public Internet access to the FEC's Web site, where visitors can view and copy reports and statements filed with the Commission:

- The state has at least one computer terminal that can electronically access the Commission's Web

page, with at least one printer (connected either directly or through a network); and

- The state will, to the greatest extent possible, allow anyone requesting federal campaign finance data to use the computer terminal at any time during regular business hours.

Note that the waiver would not apply to reports filed by the campaigns for U.S. Senate candidates and other political committees that support only U.S. Senate candidates.

As a result of this waiver, certified states will no longer have to make paper copies of most reports available in a state public records room. Also, Presidential and House candidates, parties and political action committees will no longer have to file duplicate reports at the state level in those states that qualify for the waiver. Senate candidates and other political committees that support only Senate candidates, however, will have to continue to file duplicate reports with the states since they file with the Secretary of the Senate, not the FEC.

As part of the program, the Commission is offering to provide participating offices with free computer equipment and free Internet access for the remainder of the 2000 election cycle, provided that the state would continue to provide the access effective March 1, 2001, at its own expense.

Further details, including the names of certified states, will be announced in future issues of the *Record* and on the FEC Web site. ♦

## Outreach

### FEC Conducts Monthly Roundtable Sessions

The FEC is conducting monthly roundtable sessions for the regulated community at its offices in Washington. The roundtable sessions, limited to 12 participants per session, focus on a range of topics. See the table at right for dates and topics.

Registration is \$25 and will be accepted on a first-come, first-served basis. Please call the FEC before registering or sending money to be sure that openings remain in the session of your choice. Prepayment is required. The registration form is available at the FEC's Web site—<http://www.fec.gov>—and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call 800/424-9530 or 202/694-1100.

Individuals who have signed up for a roundtable but who will be unable to attend are strongly encouraged to call the FEC and cancel their registration so that the next person on the waiting list may attend in their place. ♦

### Need FEC Material in a Hurry?

Use FEC Faxline to obtain FEC material fast. It operates 24 hours a day, 7 days a week. More than 300 FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

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

### FEC Conference Schedule

The FEC continues its series of conferences on campaign finance this fall. See below for details. To register for any conference, call Sylvester Management at 800/246-7277 or send an e-mail to [tsylvester@worldnet.att.net](mailto:tsylvester@worldnet.att.net). For program information, call the FEC's Information Division at 800/424-9530 or 202/694-1100. A regularly updated schedule for the conferences and a downloadable invitation/registration form appear at the FEC's Web site. Go to <http://www.fec.gov/pages/infosvc.htm> for the latest information.

#### Candidate Conference

Date: February 10-11, 2000  
 Location: Washington, DC (Hyatt Regency Capitol Hill)  
 Registration: \$265

#### Regional Conference (includes candidate, corporate/labor and party workshops)

Date: March 8-10, 2000  
 Location: Miami, FL (Sheraton Biscayne Bay)  
 Registration: \$240

#### Corporate and Labor Conference

Date: April 4-5, 2000  
 Location: Washington, DC  
 Registration: To be determined

#### Membership and Trade Association Conference

Date: May 16-17, 2000  
 Location: Washington, DC  
 Registration: To be determined

### Roundtable Schedule

Date	Subject	Intended Audience
December 1 9:30 - 11 a.m.	<b>Reporting Requirements for 2000</b> • Deadlines • Pitfalls to Avoid (Code #1299)	<ul style="list-style-type: none"> <li>• PACs</li> <li>• House and Senate Campaigns</li> <li>• Political Party Committees</li> <li>• Lawyers, Accountants and Consultants to Above</li> </ul>
January 5 9:30 - 11 a.m.	<b>Supporting Presidential Candidates</b> • PAC Contributions • Independent Expenditures • Internal Communications by Corporations, Labor Organizations and Trade Associations (Code #100)	<ul style="list-style-type: none"> <li>• PACs</li> <li>• Corporations, Labor Organizations and Trade Associations</li> <li>• Lawyers, Accountants and Consultants to Above</li> </ul>

## Publications

### Compilation of FEC Court Cases Available

The FEC has published the latest edition of *Selected Court Case Abstracts*, a collection of summaries of court decisions pertinent to the Federal Election Campaign Act. This latest edition, which covers court decisions from 1976 through September 1999, includes:

- The summaries of court opinions,
- An alphabetical list of opinions, with page references to the summaries, and
- A subject index.

The publication is available free from the FEC's Information Division. Call 800/424-9530 or 202/694-1100 to request a copy. *Selected Court Case Abstracts* is also available at the FEC's Web site—<http://www.fec.gov>—as a PDF and HTML file. You will need Adobe Acrobat Reader to view the publication once it has been downloaded. ♦

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