

# Record

September 2000

Federal Election Commission

Volume 26, Number 9

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## Reports

### October Reporting Reminder

Committees should take note of the following due dates for October reports:

- Third quarter reports for quarterly filers are due on October 15 (reporting period July 1-September 30).
- Monthly reports for monthly filers are due on October 20 (reporting period September 1-30).
- Pre-general reports are due on October 26 (reporting period October 1-18). Candidate committees must file this report if their candidate is running in the general election. PACs and party committees that file quarterly must file this report if they make contributions or expenditures in connection with an election during this reporting period. PACs and party committees that file on a monthly schedule must file a pre-general report in lieu of the scheduled November monthly report.

### Last Minute Reports

In addition to these reports, candidate committees may also have to file 48-hour notices on last-minute contributions, and PACs and

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### Excessive Contributions

When a committee receives an excessive contribution, the committee may remedy the violation by refunding the excessive amount or by seeking a *redesignation* and/or *retribution* of it. Until the committee receives instructions from the contributor, it cannot use the excessive portion of the contribution.

In the case of a *redesignation*, the contributor instructs the committee to use the excessive portion of a contribution for an election other than the one for which the funds were originally given. In the case of a *retribution*, the contributor instructs the committee to attribute the excessive portion of the contribution to another individual—for example, a portion of a contribution from a joint checking account may be reattributed to the other account holder.

While the committee is waiting for a contributor to redesignate or reattribute the excess portion of the contribution, it may not use the excessive funds, but must put them aside. The committee must be prepared to make a full refund of the excessive portion within 60 days if the contributor fails to reattribute or redesignate the funds.

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### How to Request Redesignations and Reattributions

Committees seeking a redesignation or reattribution must comply with the following rules.

**Prohibition Against Use of Funds.** Until the excessive portion of a contribution is either redesignated or reattributed, it is an illegal contribution. Thus, the committee cannot spend the excessive portion of the contribution. To ensure that the committee will be able to make the refund—should that be necessary—the committee may either maintain sufficient funds in its regular account to make the refund or establish a separate account solely for the deposit of possibly illegal contributions. 11 CFR 103.3(b)(4).

**Control of Funds.** The contributor, and not the committee, ultimately controls the funds and how they are used. When contacting the contributor, the committee must

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

800/424-9530  
202/694-1100  
202/501-3413 (FEC Faxline)  
202/219-3336 (TDD for the  
hearing impaired)  
800/877-8339 (FIRS)

**Darryl R. Wold**, Chairman  
**Danny L. McDonald**,  
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offer to refund the contribution if the contributor does not wish to reattribute or redesignate the funds. 11 CFR 110.1(b)(5)(ii)(A) and 110.1(k)(3)(ii)(A).

**Time Limits.** A committee must either deposit or return the excessive portion of the contribution within ten days of the treasurer's receipt of the check. If the committee finds that it has deposited an excessive contribution, the committee has 60 days from the date the treasurer received the contribution to obtain either a redesignation or a reattribution for the excessive portion. If the committee does not receive instruction, it must refund the excessive portion within 60 days. 11 CFR 110.1(b)(5)(ii)(B), 110.1(k)(2), 110.1(3)(ii)(B), 103.3(b)(3) and 103.3(a).

**Documentation.** A contributor redesignating or reattributing a contribution must make his or her wishes known in writing. Additionally, reattribution requires the signature of *both* the initial contributor and the individual to whom the excessive portion is reattributed. 11 CFR 110.1(b)(5)(ii)(A) and 110.1(k)(1).

**Records.** The committee must keep documentation for each reattribution and redesignation to verify that it was received within the 60-day time limit. Documentation must include *one* of the following:

- A copy of the postmarked envelope bearing the contributor's name, return address or other identifying information;
- A copy of the signed statement authorizing the reattribution or redesignation with a date stamp showing the date of the committee's receipt; or
- A copy of the written redesignation or reattribution dated by the contributor. 11 CFR 110.1(1)(6).

These records must be maintained by the committee for three years. 11 CFR 102.9(c). ♦

### Voter Registration: Part I Party Generic Voter Drives

Special rules govern the reporting and funding of generic voter drives conducted by political parties. The following activities are considered generic voter drive activities:

- Voter identification;
- Voter registration;
- Get-out-the-vote drives; and
- Any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate. 106.5(a)(2)(iv).

The costs associated with these activities are not considered contributions or coordinated party expenditures; however, party committees must report these costs, and committees must allocate the costs between their federal and nonfederal accounts. 11 CFR 106.5(a).

#### Allocation: General Rule

Party committees and party organizations must use federally permissible funds for at least a portion of the costs of generic voter drives.<sup>1</sup> 11 CFR 106.5(a)(2)(iv). The party committee may choose to pay all of the costs of the voter drive with federally permissible funds or may allocate the costs between federal and nonfederal monies in accordance with the party committee's allocation ratio.<sup>2</sup>

<sup>1</sup> Party organizations are organizations that are not political committees under 11 CFR 100.5.

<sup>2</sup> In recent enforcement actions against the California Democratic Party and the National Republican Senatorial Committee, the Commission found that a party committee must use a portion of federally permissible funds for the costs of generic voter drives even if it provides funds to a third party that conducts the drive. See the [March 2000 issue of the Record](#), page 2.

### State and Local Allocation Ratios

State and local party committees use the ballot composition method when allocating generic voter drive expenses. Costs are allocated according to the ratio of federal offices to total federal and nonfederal offices expected to be on the ballot in the next federal general election held in the state or geographic area of the committee. With certain exceptions, the allocation ratio must be calculated at the beginning of the two-year election cycle (for example, in January 1999 for the 1990-2000 cycle).<sup>3</sup> The committee calculates the ratio by assigning points to the federal and nonfederal offices to be listed on the general election ballot. The federal allocation percentage is obtained by dividing the number of federal points by the total number of points. 11 CFR 106.5(d)(1).

### House and Senate Allocation Ratios

House and Senate campaign committees of a national party allocate costs for generic voter drives according to the ratio of funds spent on behalf of federal candidates to total money spent on behalf of federal and nonfederal candidates during a two-year federal election cycle. The calculation includes only funds contributed to—or spent on behalf of—specific candidates. The calculation does not include overhead or other generic costs not attributable to any particular candidate. A minimum of 65 percent of such costs must be allocated as federal expenses.

<sup>3</sup> There are five states—Kentucky, Louisiana, Mississippi, New Jersey and Virginia—for which the calculation method is different because those states do not hold federal and nonfederal elections during the same year. See 11 CFR §106.5(d)(2).

The committee calculates the ratio at the beginning of the election cycle, based on federal- and nonfederal-candidate spending in a prior comparable two-year election cycle (or a reasonable estimate of candidate spending for the coming two years). On each report thereafter, the committee adjusts the ratio to reconcile it with actual disbursements for federal and nonfederal candidates made to date. If the nonfederal account has paid more than its share, the committee must transfer funds from the federal to the nonfederal account to reflect the adjusted ratio. 11 CFR 106.5(c).

### National Party Allocation Ratios

National party committees use a fixed ratio when allocating generic voter drive expenses. At least 65 percent of such expenses must be allocated as federal expenses during a Presidential election year; in other years, at least 60 percent must be allocated as federal. 11 CFR 106.5(b).

### Payment of Allocated Expenses

A party committee must pay the entire amount of an allocable expense from the federal account and may transfer funds from the nonfederal to the federal account only to cover the nonfederal share of the expense. Alternatively, a party committee may establish a separate federal account—an allocation account—to use to pay allocable expenses. In this case, the committee transfers money to the allocation account from the federal and nonfederal accounts in proportion to each account's share of the expenses.

### Reporting

A state or local party committee uses Schedule H1 to calculate its ballot composition ratio at the beginning of the two-year federal election cycle. Each reporting

period, the committee discloses transfers from the nonfederal account to the federal (or allocation) account to pay the allocated nonfederal portion of generic voter drive costs using Schedule H3. The total amount of transfers itemized on Schedule H3 is entered on Line 18 of the Detailed Summary Page. Such transfers must be made within a 70-day window (no more than 10 days before or 60 days after an allocated payment is made).

Committees report payments, showing the federal and nonfederal shares, on Schedule H4. The federal and nonfederal payment totals that appear on Schedule H4 are entered on Lines 21a(i) of the Form 3X Detailed Summary Page.<sup>4</sup> ♦

## Voter Registration: Part II Corporate and Labor Activity

While corporations and labor organizations are generally prohibited from making any contribution or expenditure in connection with a federal election, they may, under certain conditions, conduct voter registration and get-out-the-vote (GOTV) drives directed to the general public.<sup>1</sup> 2 U.S.C. §441b, 11 CFR 114.4(c)(2).

(continued on page 4)

<sup>4</sup> For more information on allocation, see the [Campaign Guide for Political Party Committees](#), pages 19, 47 and 50-51.

<sup>1</sup> Different rules apply when corporations and labor organizations target such drives to their restricted classes. See the [Campaign Guide for Corporations and Labor Organizations](#), pp 47-53, and 11 CFR 114.3(c)(4).

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**Limitations on Generic Voter Drive Activity Directed to General Public**

Although corporations and labor organizations may make communications on any subject to their restricted class, when making communications to the general public—including other employees and their families—certain restrictions apply. 11 CFR 114.4(a).

*No Express Advocacy.* The corporation or labor organization may not expressly advocate the election or defeat of a particular candidate or the candidates of a particular party. 11 CFR 114.4(d)(1).

*No Coordination.* Registration and GOTV drives cannot be coordinated with any candidate or any political party. 11 CFR 114.4(d)(2).

*No Targeting.* The corporation or labor organization may not aim the drive primarily at those voters registered with, or intending to register with, the party favored by the corporation or labor organization. Similarly, the services and voter information must be made available regardless of the voter's political preference. 11 CFR 114.4(d)(3), 114.4(d)(4).

*Written Notification.* During the drive, the corporation or labor organization must provide written notice of the nonpreferential nature of the service to those who receive the information or assistance. 11 CFR 114.4(d)(6).

*Payments to Individuals Conducting the Activity.* The corporation or labor organization may not pay the individuals conducting the drive based on the number of persons assisted who support a particular candidate or political party. 11 CFR 114.4(d)(5). ♦

## Georgia Special Election Reporting

The Special Election to fill the U.S. Senate seat of the late Senator Paul Coverdell will be held on November 7, 2000. Should no candidate achieve a majority vote, a Special Runoff Election will be held on November 28, 2000, between the top two vote-getters. Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more between October 19 and November 4 for the Special General Election and between November 9 and November 25 for the Runoff Election. Committees involved in any of these elections must follow the reporting schedules below.\*

For Committees Involved Only in Special General When No Runoff is Held:

	<b>Close of Books</b>	<b>Reg./Cert Mail Date</b>	<b>Filing Date</b>
<b>Pre-General Report</b>	Oct. 18	Oct. 23	Oct. 26
<b>Post-General Report</b>	Nov. 27	Dec. 7	Dec. 7
<b>Year-End Report</b>	Dec. 31	Jan. 31, 2001	Jan. 31, 2001

For Committees Involved in Special General and Special Runoff:

	<b>Close of Books</b>	<b>Reg./Cert Mail Date</b>	<b>Filing Date</b>
<b>Pre-General Report</b>	Oct. 18	Oct. 23	Oct. 26
<b>Pre-Runoff Report</b>	Nov. 8	Nov. 13	Nov. 16
<b>Post-Runoff Report</b>	Dec. 18	Dec. 28	Dec. 28
<b>Year-End Report</b>	Dec. 31	Jan. 31, 2001	Jan. 31, 2001

For Committees Involved Only in Special General When Both Special General and Runoff Elections Are Held:

	<b>Close of Books</b>	<b>Reg./Cert Mail Date</b>	<b>Filing Date</b>
<b>Pre-General Report</b>	Oct. 18	Oct. 23	Oct. 26
<b>Year-End Report</b>	Dec. 31	Jan. 31, 2001	Jan. 31, 2001

For Committees Involved Only in Special Runoff:

	<b>Close of Books</b>	<b>Reg./Cert Mail Date</b>	<b>Filing Date</b>
<b>Pre-Runoff Report</b>	Nov. 8	Nov. 13	Nov. 16
<b>Post-Runoff Report</b>	Dec. 18	Dec. 28	Dec. 28
<b>Year-End Report</b>	Dec. 31	Jan. 31, 2001	Jan. 31, 2001

\*PACs and party committees must also adhere to their reporting requirements for the regularly scheduled November 7 general election. The addition of these reports may affect the coverage dates of some of the Special Election reports. See the October Reporting Reminder on page 1.

## Reports

(continued from page 1)

party committees may need to file 24-hour reports to disclose any last-minute independent expenditures.

### Administrative Fines

The Commission has recently implemented a new Administrative Fines program for assessing civil penalties for violations involving:

- Failure to file reports on time;
- Failure to file reports at all; and
- Failure to file 48-hour notices.

Under this program, the Commission will assess civil money penalties based on a schedule of penalties in cases where it determines a committee has committed one of the above violations. Reports due in October are considered “Election Sensitive,” which means that the penalty amount can be increased. The schedule of penalties included in the new regulations—and other information on the new program—is available on the FEC Web site at <http://www.fec.gov/af/af.shtml>. See also the [July 2000 Record](#), page 1.

### More Information

For more information on 2000 reporting dates:

- Visit the FEC’s website at <http://www.fec.gov/pages/charts.htm> to view the reporting tables;
- Obtain a faxed copy of the reporting tables by calling FEC Faxline (202/501-3413, request documents 586 and 587);
- See the reporting tables in the [January 2000 Record](#); or
- Call and request the reporting tables from the FEC at 800/424-9530 (press 1, then 3) or 202/694-1100. ♦

## Advisory Opinions

### AO 2000-12

#### Using Campaign Funds to Pay Convention Expenses of Former Candidates

Former Presidential candidates Bill Bradley and John McCain may use federal matching funds to pay for travel and other expenses associated with their parties’ national conventions, so long as their convention expenses are “qualified campaign expenses” directed toward fundraising efforts to pay down their campaigns’ outstanding obligations. Additionally, Mr. Bradley and Senator McCain may use campaign funds from other, non-presidential committees to pay for convention expenses involved in fundraising for these committees without violating the prohibition against the personal use of campaign funds.

Although neither Mr. Bradley nor Senator McCain is an active candidate for the Presidency, both of their Presidential campaign committees have debts outstanding, and both continue to receive matching funds to pay these debts. Additionally, neither former candidate has “released” his delegates, and each plans to travel to his respective convention in order to:

- Attend receptions hosted by his campaign to thank delegates and supporters and to encourage their continued support;
- Attend fundraising events to retire his campaign’s primary election debts; and
- Participate in the official proceedings of the convention.

Under the Act and Commission regulations, a candidate and candidate committee have wide discretion in making expenditures to influence the candidate’s election, but they may not convert campaign funds to personal use—that is, they may not use the funds for any expense that would exist irrespective of the candidate’s campaign or duties as a federal office holder. Additionally, under the Matching Fund Act, a committee may use matching funds to pay for “qualified campaign expenses,” which include any lawful purchases, payments or anything of value incurred by the candidate or committee in connection with his campaign for nomination. 26 U.S.C. §9032(9).

### Matching Funds

In the past, the Commission has determined that the expenses necessary to travel to, and attend, a Presidential nominating convention are nonqualified expenses for candidates who are no longer seeking the party’s nomination. In this case, however, Mr. Bradley and Senator McCain may use federal matching funds to pay for travel to the convention and for activities at the convention that are a part of their committees’ “winding down” expenses. Specifically, following Commission guidelines, they may use matching funds to pay for gifts and “thank-you” receptions for committee employees, consultants and volunteers.<sup>1</sup> Commission guidelines do not permit the use of matching funds to pay for travel expenses to attend or organize these events. However, the former candi-

<sup>1</sup> A committee that is in the process of “winding down” from a campaign may give gifts and monetary bonuses to committee employees, consultants and volunteers provided that such gifts do not exceed \$150 total per individual and the total of all gifts does not exceed \$20,000. 11 CFR 9034.4(a)(3)(i).

## Advisory Opinions

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dates may use matching funds to pay for their campaigns' fundraising activities at the conventions and the travel expenses of the former candidates and their staffs going to the conventions to participate in these fundraisers. These fundraising expenses are considered qualified campaign expenses.

The Commission, however, recognizes several limitations to the use of matching funds for convention-related fundraising activities:

- The campaign committees must have outstanding net debts at the time of the conventions;
- For fundraising expenses to be considered qualified, they must be for specific fundraising events and not, for example, for promotional material that may be used in later fundraising efforts;<sup>2</sup>
- Expenses related to participation in the official convention proceedings cannot be considered qualified expenses; and
- If either candidate or his staff participates in other (non-fundraising) aspects of the convention, the portion of the expenses related to that participation is not a "qualified expense."

### Funds from Other Registered Committees

Other registered federal committees may also pay a portion of the convention expenses of these former candidates under certain circumstances. Mr. McCain is a candidate for the Senate as well as a former Presidential candidate. As a candidate for the Senate, he may find opportunities at the convention to

<sup>2</sup> At the time each campaign committee is audited, it will be expected to produce documentation that links each expense to a specific fundraising event at the convention. See 11 CFR 9033.11.

participate in fundraising efforts for his Senate campaign and to meet with constituents of his district to discuss issues of importance to his role as a Senator. Expenses for these campaign-related or office-holder activities would not be considered personal use by the candidate and could be paid for by Mr. McCain's Senate campaign committee. Similarly, Senate campaign funds may be used to cover expenses of staff and volunteers in connection with his Senate activity at the convention.

Mr. Bradley, while not currently a candidate or an office holder, has converted his Senatorial campaign committee into a nonconnected political committee. The personal use restrictions would apply to any Senate campaign funds remaining in the account of this nonconnected PAC. 11 CFR 113.2(e)(5) and AO 1993-22. The PAC could, nevertheless, pay expenses related to its fundraising activities at the convention since those expenses would not represent a personal use of campaign funds.

Issued: July 24, 2000;  
Length: 11 pages. ♦

### AO 2000-14

#### Status of State Party as State Committee of Political Party

The New York State Committee of the Working Families Party (the Committee) meets all of the Federal Election Commission's (the Commission) 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).

In past Advisory Opinions, the Commission has identified three requirements necessary for state committee status in those cases where, although the organization was affiliated with a national political party, the party itself had not yet achieved the status of a national committee. AOs 1998-27, 1998-23, 1997-29 and 1997-7. In these cases, the organization had to satisfy the following criteria:

- The organization must have a state-affiliated agreement that "delineates activities commensurate with the day-to-day operation" of a party at a state level;
- The state affiliate must gain ballot access for at least one Congressional candidate; and
- The state party's candidate must qualify as a candidate under FEC regulations.

The Committee meets all three requirements. It satisfies the first requirement because the Working Families Party's (the Party) bylaws set out a comprehensive organizational structure for the Party from the statewide level down through local levels, and they clearly identify the role of the Committee.

The Party satisfies the second requirement—ballot access for a congressional candidate—in that Hillary Rodham Clinton qualifies for ballot access in the 2000 Senate election, as the candidate of the Working Families Party. Although, in the past, the Commission granted state committee status to organizations whose candidates had attained ballot access in a prior election, Mrs. Clinton's assured access in the upcoming election, on the Working Families Party line, satisfies the second criterion. Finally, the committee meets the third criterion because Mrs. Clinton satisfies the requirements for becoming a federal candidate under 2 U.S.C. §441a(d).

Date Issued: July 24, 2000;  
Length: 5 pages. ♦

**AO 2000-15****Payroll Deduction by Trade Association's Affiliated Member**

The New York State Credit Union League, Inc. (New York League)—a member and affiliate of the Credit Union National Association, Inc. (CUNA)—may use payroll deduction to collect contributions from its restricted class for CUNA's separate segregated fund (CULAC). 11 CFR 114.8(e)(3) and 100.5 (g).

CUNA is a trade association with 51 members that are leagues representing the 50 states and the District of Columbia. In an earlier Advisory Opinion, the Commission found that CUNA qualified as a federation of trade associations and that the state leagues could be considered branches, divisions or local units of CUNA. AO 1998-19.

Under Commission regulations, a corporate member of a trade association may not use payroll deduction to collect contributions for the association's SSF. 11 CFR 114.8(e)(3). Moreover, a member corporation is not considered a connected organization of the trade association's SSF.

By contrast, an affiliated branch, division or local unit of a trade association is considered an affiliated entity of the association, under the Act. As such, it may function as a collecting agent for the association's SSF, and may pay the costs of soliciting and transmitting contributions. 11 CFR 102.6(b)(1) and 102.6 (c)(2)(i).

In this case, the New York League is not only a member of CUNA, but also an affiliate. As an affiliate, it may use payroll deduction to collect contributions from its restricted class for CULAC.

Date Issued: July 17, 2000;  
Length: 6 pages. ♦

**AO 2000-17****Establishment of Separate Segregated Fund by Subsidiary of Foreign Corporation**

Extencicare Health Services, Inc. (Extencicare), a United States subsidiary of a Canadian corporation, may establish and maintain a political action committee (PAC) because the PAC will be managed and authorized only by U.S. citizens and permanent aliens residing in the U.S.

**Structure and Composition**

Extencicare Inc., a Canadian corporation, is the parent company of Extencicare, which is based in Wisconsin. Extencicare's current board of directors is comprised of three individuals, only one of whom is a U.S. citizen.

Extencicare plans to establish a special committee comprised only of U.S. citizens and permanent resident aliens (Special Committee) to direct and manage a PAC. This PAC would solicit contributions from eligible personnel of Extencicare and its subsidiaries who may lawfully make such contributions. The Special Committee would have the authority to approve and amend the bylaws governing the PAC and to appoint members of the PAC Committee. The PAC Committee, in turn, would administer the PAC without review or approval by the Special Committee or Extencicare's board of directors. It would decide:

- Whom to solicit;
- The recipients and timing of PAC contributions; and
- The nature and timing of the PAC's expenditures.

The Federal Election Campaign Act (the Act) prohibits a foreign national from making a contribu-

tion, directly or through any other person, or an expenditure in connection with an election to any political office. Additionally, the Act prohibits any person from soliciting, accepting or receiving a contribution from a foreign national. 2 U.S.C. §441e(a) and 11 CFR 110.4(a)(1) and (2).

Under the Act, the term "foreign national" includes any corporation or other group organized under the laws of or having its principal place of business in a foreign country. 2 U.S.C. §441e(b)(1). A corporation organized under the laws of any state within the U.S. that has its principal place of business in the U.S. is not a foreign principal and, thus, is not bound by the prohibition against contributions from foreign nationals.

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**Correction**

*Electronic Filing.* The [August 2000 Record](#) incorrectly stated that, "all filers (whether electronic or paper) must include on their Statement of Organization the URL for their Web site, if they maintain one, and their e-mail address, if they have one."

The statement should have read: "All filers (whether electronic or paper) must include on their Statement of Organization the URL for their Web site, if they maintain one. *Those committees that file electronically must also include their e-mail address on their Statement of Organization.*" In other words, only committees that file electronically are required to include their e-mail address on their Statement of Organization.

## Advisory Opinions

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In this case, Extendicare, as a U.S. based corporation, may establish and maintain a PAC under the following conditions:

- Extendicare's board must delegate all decisions concerning the administration of the PAC to the Special Committee, a corporate personnel group comprised solely of U.S. citizens and green card holders.
- The appointees to the PAC Committee must be U.S. citizens and green card holders and, as with any other corporate PAC, qualify as executive or administrative personnel of Extendicare or of one of its affiliated corporations. 2 U.S.C. §441b(b)(7) and 11 CFR 114.1(c).
- Extendicare may exercise control over the PAC by making general corporate policy decisions such as the decision to establish or terminate the PAC. Other administrative decisions relating to the PAC's personnel and operating procedures, however, must be made only by U.S. citizens and green card holders.
- With regard to the board's control over the PAC's budget and personnel, the Commission recommended taking a "reasonable approach." For instance, the board might set a budget ceiling for the PAC's administrative expenses and monitor the Special Committee's and PAC Committee's compliance with the ceiling, without otherwise participating in the administration of the PAC. Similarly, performance evaluations of PAC personnel might be based exclusively on input by the Special Committee or PAC Committee.

Date Issued: July 28, 2000;  
Length: 11 pages. ♦

## Court Cases

### New Litigation

#### Patrick J. Buchanan, et al. v. FEC

On July 25, 2000, Presidential candidate Patrick Buchanan, Buchanan Reform (his principal campaign committee), and Angela Buchanan asked the court to require the Federal Election Commission (the Commission) to reconsider its dismissal of their March 2000 administrative complaint against the Commission on Presidential Debates (the CPD). An amended complaint was filed on July 31, 2000, to add the Reform Party of the United States of America and Pat Choate as plaintiffs. Plaintiffs allege that the CPD failed to register as a political committee and to report receipts and expenditures. Moreover, they argue that the CPD's staging of presidential debates does not fall within the Federal Election Campaign Act's (the Act) "safe harbor" for corporate sponsorship of nonpartisan candidate debates (2 U.S.C. §431(9)(B)(ii) and 11 CFR 110.13); thus, the CPD is making and accepting illegal corporate contributions and prohibited corporate expenditures.

The CPD is a not-for-profit corporation that staged all of the presidential debates in 1988, 1992 and 1996, and, according to plaintiffs, is expected to stage all of the presidential debates this year. The CPD has announced that it will sponsor a series of presidential debates in October 2000. In order to stage these debates, the CPD accepts contributions from various individuals and organizations, including for-profit corporations, in excess of \$1,000, and has made payments for goods and services in excess of \$1,000.

#### "Safe Harbor" for Staging Candidate Debates

Under FEC regulations, certain nonprofit corporations may stage or sponsor candidate debates, exempt from the prohibition against corporate contributions, so long as specific rules are followed. For example, the debates must be between at least two candidates, and must be staged so as not to promote or advance one candidate over another. A debate sponsor must also use "pre-established objective criteria" for choosing which candidates will participate. 11 CFR 110.13.

Plaintiffs allege that the CPD fails to qualify for this exemption in two respects. First, they argue that the CPD is a bipartisan organization, organized by and supporting the Democratic and Republican parties, which therefore does not qualify as a nonpartisan organization. Second, plaintiffs allege that the CPD's criterion of including only those candidates who have demonstrated at least a 15 percent level of support in the national electorate, as measured by the average of five national polls, is subjective rather than objective because it is designed to exclude third party candidates.<sup>1</sup> Plaintiffs argue that, for presidential candidates, eligibility to receive federal funding is the objective criterion that should be used.

#### Filing as Political Committee

Under the Act, a political committee is required to register with the Commission and disclose its contributions and expenditures once

<sup>1</sup> Plaintiffs further argue that this measure is subjective because such polls have significant error rates and each poll will have a different sample size, sample make-up and error rate.

its expenditures or its contributions (received) exceed \$1,000 in a calendar year. 2 U.S.C. §431(4)(A). Plaintiffs contend that the CPD is an illegal political committee because it has received contributions and made expenditures in excess of \$1,000 in this calendar year, but has neither registered with the Commission nor reported its contributions and expenditures.

**Relief**

Plaintiffs maintain that, given these circumstances, the FEC must find that the CPD is acting as a political committee that is illegally accepting corporate funds and making corporate expenditures in support of the Democratic and Republican parties, while failing to register and report as a political committee.

Plaintiffs ask the court to:

- Declare the Commission’s dismissal of plaintiffs’ administrative complaint to be arbitrary and capricious and contrary to law, and issue an order directing the Commission to act in conformance with the court’s declaration;
- Declare all of the CPD’s expenditures and all of the contributions to the CPD to be illegal corporate expenditures and contributions under 2 U.S.C. §441b; and
- Declare that the CPD’s debate criteria do not conform to the FEC’s regulations at 11 CFR 110.13 and 114.4(f) and that the CPD must use criteria that include all candidates eligible for federal funding.

U.S. District Court for the District of Columbia, Civil Action No. 00-1775 (RWR), July 25, 2000. ♦

**Outreach**

**FEC Roundtables**

The Commission will host roundtable sessions in September and December.

FEC roundtables, limited to 12 participants per session, focus on a range of subjects. See the table for dates and topics. All roundtables are conducted at the FEC’s headquarters in Washington, DC.

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 (press 1, then 3) or 202/694-1100. ♦

**Roundtable Schedule**

Date	Subject	Intended Audience
<b>September 13</b> 9:30 - 11 a.m.	<b>Pre-Election Reporting Tune-Up</b> <ul style="list-style-type: none"> <li>• October Deadlines</li> <li>• Last-Minute Notices</li> <li>• Problems to Avoid</li> <li>• Your Questions Answered</li> </ul>	<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>
<b>December 6</b> 9:30 - 11 a.m.	<b>New FEC Alternative Dispute Resolution Program</b> <ul style="list-style-type: none"> <li>• Explanation and Q/A about the FEC’s new program for settling complaints and audit referrals</li> <li>• How Program Works</li> <li>• Benefits for Regulated Community</li> </ul>	<ul style="list-style-type: none"> <li>• Lawyers and Consultants to PACs, Campaigns and Political Parties</li> </ul>



**Public Appearances**

September 13, 2000  
 International Republican Institute  
 Washington, D.C.  
 Chairman Wold

September 13, 2000  
 American University  
 Washington, D.C.  
 Commissioner Mason  
 Kevin Salley

September 15, 2000  
 American University  
 Washington, D.C.  
 Commissioner Smith  
 Kevin Salley

September 27, 2000  
 American University  
 Washington, D.C.  
 Commissioner Mason

## Public Funding

### July Matching Fund Payments

On July 31, 2000, the Commission certified \$1,091,848.05 in matching funds to eight Presidential candidates. The U.S. Treasury Department made the payments the first day of August.

With these latest certifications, the FEC has now declared ten candidates eligible to receive a total of \$58,989,331.53 in federal matching funds for the 2000 election. The chart lists the most recent certifications and cumulative certifications (and payments) for each candidate. ♦

### Public Funding for Bush-Cheney

On August 4, 2000, the Federal Election Commission approved public funding for the general election campaign of Republican Presidential nominee George W. Bush and his running mate Richard Cheney. The U.S. Treasury Department made the payment of \$67.56 million in federal funds shortly thereafter.

Under the Presidential Election Campaign Fund Act, the Democratic and Republican nominees are each entitled to a grant of \$20 million increased by a cost-of-living adjustment (COLA). In order to receive public funding, the Bush-Cheney campaign agreed to abide by the overall spending limit and other legal requirements, including a post-campaign audit. Additionally, as major party nominees, they agreed to limit campaign spending to the amount of the public funding grant and not to accept private contributions for their campaign. They also agreed not to spend more than

### Matching Funds for 2000 Presidential Candidates: July Certification

Candidate	Certification July 2000	Cumulative Certifications
Gary L. Bauer (R) <sup>1</sup>	\$20,737.88	\$4,791,877.82
Bill Bradley (D) <sup>2</sup>	\$0.00	\$12,462,047.69
Patrick J. Buchanan (Reform) <sup>3</sup>	\$169,921.43	\$4,022,171.84
Al Gore (D) <sup>4</sup>	\$138,209.62	\$15,456,083.75
John Hagelin (Natural Law)	\$75,360.00	\$389,495.00
Alan L. Keyes (R) <sup>5</sup>	\$451,676.48	\$3,777,020.84
Lyndon H. LaRouche, Jr. (D) <sup>6</sup>	\$49,772.61	\$1,234,148.46
John S. McCain (R) <sup>7</sup>	\$7,542.00	\$14,475,333.10
Ralph Nader (G) <sup>8</sup>	\$178,628.03	\$278,628.03
Dan Quayle(R) <sup>9</sup>	\$0.00	\$2,102,525.00

<sup>1</sup> Gary L. Bauer publicly withdrew from the race on February 4, 2000.

<sup>2</sup> Bill Bradley publicly withdrew from the race on March 9, 2000.

<sup>3</sup> Patrick J. Buchanan became ineligible for matching funds on August 11, 2000.

<sup>4</sup> Al Gore became ineligible for matching funds on August 16, 2000.

<sup>5</sup> Alan L. Keyes became ineligible for matching funds on April 20, 2000.

<sup>6</sup> Lyndon H. LaRouche, Jr., became ineligible for matching funds on August 16, 2000.

<sup>7</sup> John S. McCain publicly withdrew from the race on March 9, 2000.

<sup>8</sup> Ralph Nader became ineligible for matching funds on August 12, 2000.

<sup>9</sup> Dan Quayle publicly withdrew from the race on September 27, 1999.

\$50,000 in the aggregate of their own personal funds. The campaign may, however, accept contributions designated for its general election legal and compliance (GELAC) fund. This fund is a special account maintained exclusively to pay for legal and accounting expenses related to complying with the campaign finance law. Compliance expenses do not count against the expenditure limit. Contributions to the GELAC fund are, however,

subject to the limits and prohibitions of the federal campaign finance laws.

The Republican National Committee may spend an additional \$13,680,292 for coordinated expenditures on behalf of the Bush-Cheney campaign. These funds are subject to the limits, prohibitions and disclosure requirements of the Federal Election Campaign Act. ♦

## Compliance

### Nonfilers

The campaign committees of the candidates listed at right failed to file required campaign finance disclosure reports. The list is based on recent FEC news releases. The FEC is required by law to publicize the names of nonfiling campaign committees. 2 U.S.C. §438(a)(7). The agency pursues enforcement actions against nonfilers on a case-by-case basis. ♦

Candidate	Office Sought	Report Not Filed
Bonagofski, Kevin	House WA/03	July Quarterly
Diaz-Balart, Lincoln	House FL/21	July Quarterly
Garrett, Grant G.	House MI/09	Pre-Primary
Lawson, John W.	House WA/04	July Quarterly
Taylor-Shelby, Mary	Senate WA	July Quarterly
Taylor-Shelby, Mary	Senate WA	Pre-Primary
Thomas, Jesse L.	House CO/01	Pre-Primary
Troutt, Eric D.	House OK/02	July Quarterly
Turner, Thomas A.	House MI/10	Pre-Primary
Volgy, Tom	House AZ/05	July Quarterly

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