Notice of Proposed Rulemaking on Use of the Internet in Federal Elections

On September 27, 2001, the Commission approved a Notice of Proposed Rulemaking (NPRM) seeking comments on proposed regulations concerning the use of the Internet for campaign-related activities. The proposed rules would address:

- Campaign-related Internet activity conducted by individuals; and
- Hyperlinks and endorsement press releases placed on web sites established by corporations and labor organizations.

The NPRM was published in the October 3, 2001, Federal Register (66 FR 50358) and is open to public comments until December 3, 2001.

Internet Activity by Individuals

The Federal Election Campaign Act (the Act) exempts from the definition of contribution certain individual volunteer activities. 2 U.S.C. §431(B)(ii). The Commission has not previously regulated the use of the Internet for campaign activities.

For more information on the proposed regulations, contact Beth Scudder, Assistant Director, Commission on Federal Election Campaign Activities, 302 Fourth Street, S.W., Washington, D.C. 20446. Telephone: 202/523-2331. E-mail: bs@fec.gov.
Regulations
(continued from page 1)

The proposed exceptions would not apply to the establishment and maintenance of a hyperlink from the web site of a corporation or labor organization to the web site of a candidate or party committee. The web site may be accessible to the general public, and the corporation or labor union may selectively provide hyperlinks to a candidate, political committee or political party without providing hyperlinks to any opposing candidate, committee or party.

However, three conditions must be met in order for the hyperlink to be exempted:

1. The corporation or labor union must not charge for providing a hyperlink to other organizations, or must charge only a nominal amount.

2. The hyperlink may not be a coordinated general public political communication under 11 CFR 100.23.

3. The hyperlink may not be anchored to an image or graphic material that expressly advocates the election or defeat of any candidate. Similarly, the text surrounding the hyperlink may not contain express advocacy. 11 CFR 100.22. The exemption still applies, however, if the hyperlink is anchored to the text of the URL of a candidate’s or party committee’s web site, and the text of the URL expressly advocates the election or defeat of a federal candidate.

Endorsement Press Releases on Corporate and Labor Organization Web Sites
Under the current regulations, corporations and labor unions may publicly announce their endorsement of candidates through press releases and press conferences so long as the disbursements for these
activities are *de minimis* (very small). The press release and notice of the press conference must be distributed only to the representatives of the news media that the corporation or labor organization ordinarily contacts for non-political purposes. 11 CFR 111.4(c)(6).

The Commission proposes adding new section 117.3 to address endorsement press releases on corporate and labor organization web sites. The new section would allow a corporation or labor organization to make a press release announcing a candidate endorsement available to the general public on its web site provided that four conditions were met:

1. The corporation or labor organization ordinarily made press releases available to the general public on its web site;  
2. The press release was limited to an announcement of the endorsement and a statement of the reasons for the endorsement;  
3. The press release was made available in the same manner as other press releases made available on the web site; and  
4. The costs of making the press release available on the web site were *de minimis*.4

The proposed regulation would not allow a corporation or labor organization to post on its web site express advocacy materials, such as banner advertisements for a candidate.

The Commission invites comments on any of these proposals. The full text of the NPRM is available on the FEC web site at http://www.fec.gov/register.htm and from the FEC faxline, 202/501-3413 (request document 244).

All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form by December 3, 2001. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to 202/219-3923, with a printed copy follow-up to insure legibility. Electronic mail comments should be sent to internetnprm@fec.gov and must include the full name and postal service address of the commenter. Comments that do not contain this information will not be considered. No oral comments can be accepted.◆

—Amy Kort

**Definition of “Political Committee” Rulemaking held in Abeyance**

On September 27, 2001, the Commission voted to hold in abeyance the proposed rulemaking on the definition of “political committee.”

The Commission had approved an Advance Notice of Proposed Rulemaking (ANPRM) seeking comment on several proposals that would revise the rules governing the definition of “political committee” at 11 CFR 100.5. The Notice, which was published in the March 7, 2001, *Federal Register* (66 FR 13681), addressed:

* • Possible revisions to the definitions of “contribution” and “expenditure,” which may trigger political committee status;  
* • Whether a “major purpose” test should be incorporated into the definition, and, if so, how this test should be applied; and  
* • The treatment as political committees of so-called 527 organizations (organizations established under section 527 of the Internal Revenue Code).

The rulemaking will be indefinitely suspended pending, among other things, possible legislative or court action and the completion of other rulemaking projects.◆

—Phillip Deen

**Court Cases**

(continued from page 1)

injunction, which prohibited the FEC from enforcing the regulation against any party throughout the country, was too broad. Instead, the appeals court limited the injunction to bar the FEC from enforcing the regulation against the Virginia Society for Human Life, Inc. (VSHL). The appeals court also rejected the VSHL’s cross-appeal, which asked the court to require the FEC to repeal the regulation. The appeals court found that ruling 11 CFR 100.22(b) unconstitutional and barring the FEC from enforcing the regulation against Plaintiffs gave the VSHL complete relief.

(continued on page 4)
Court Cases  
(continued from page 3)

Background
The VSHL is a nonprofit, tax-exempt membership corporation, which accepts corporate contributions. The group had planned to distribute voter guides to the general public in connection with the 2000 federal election cycle. The guides outlined the VSHL’s stance on abortion-related issues and tabulated candidates’ positions on these issues. The VSHL also planned to produce radio advertisements that would compare the positions of the candidates for President and U.S. Senator for Virginia on abortion-related issues. The VSHL planned to run these ads in Northern Virginia or the District of Columbia one week before the election.

On January 6, 1999, the VSHL submitted a petition for rulemaking to the FEC, requesting that it repeal 11 CFR 100.22(b). The VSHL argued that the definition of “express advocacy” was overly broad, and, thus, some of its planned activities might constitute prohibited corporate expenditures. See 2 U.S.C. §441b. The Commission did not vote to open a rulemaking. On August 9, 1999, the VSHL asked the U.S. District Court for the Eastern District of Virginia, Richmond Division, to require the FEC to act on its petition and to prohibit the Commission from enforcing 11 CFR 100.22(b).

District Court Decision
On January 4, 2000, the district court issued an injunction prohibiting the FEC from enforcing 11 CFR 100.22(b) “against the VSHL or against any other party in the United States of America.” Relying on Buckley v. Valeo, the district court concluded that the regulation at 100.22(b) was unconstitutional. The district court said that the Buckley court defined express advocacy as “communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.” The court found that by allowing the FEC to regulate advocacy based upon the understanding of the audience rather than the actual message of the advocate, the regulation at 100.22(b) failed the Buckley test. Moreover, the district court concluded, the regulation empowered the FEC to regulate issue advocacy, which was “clearly forbidden by Buckley.” See the March 2000 Record, page 8.

Appeals Court Decision

Plaintiff’s Standing and Timing of Judicial Intervention. On appeal, the FEC argued that the VSHL lacked standing to sue. The FEC maintained that, because it had adopted a policy of not enforcing 11 CFR 100.22(b) in the Fourth Circuit, the VSHL faced no credible threat of prosecution. The FEC also argued that the case was not appropriately timed for judicial intervention because the VSHL’s allegations about its planned activities were not sufficiently concrete.

The appeals court, however, held that the VSHL had standing and that its allegations created a controversy that was concrete enough for the court to address. First, the court found that the VSHL faced a threat of prosecution, despite the FEC’s policy in the Fourth Circuit. The FEC’s policy statement was only recorded in FEC meeting minutes, which “do not carry the binding force of law.” If sitting Commissioners were to change their minds, or new Commissioners were to disagree with the policy, the court reasoned, then the FEC could again enforce the regulation in the Fourth Circuit. Moreover, some of the VSHL’s planned activity could occur outside of the Fourth Circuit where it would not be protected even if the policy remained in place. Similarly, the court found that the case was ripe for judicial decision because the VSHL could not have engaged in its planned activities—nor could it engage in similar activities in the future—without the threat of penalty.

Constitutional Issues. The appeals court, relying on Buckley, agreed with the district court that the regulation violates the First Amendment and is unconstitutional because it “shifts the focus of the express advocacy determination away from the words themselves to the overall impressions of the hypothetical, reasonable listener or viewer.”

The FEC argued that a too narrow reading of the express advocacy requirement would allow corporations and unions to circumvent, with “little more than careful diction,” the Federal Election Campaign Act’s prohibitions against corporate expenditures. 2 U.S.C. §441b. The appeals court, however, stated that it was bound by previous Supreme Court decisions and that a broader reading of “express advocacy” must come “from an imaginative Congress or from further review from the Supreme Court.”

Scope of Injunction. The appeals court found that the district court abused its discretion by issuing a nationwide injunction against the FEC’s enforcement of the regulation. The appeals court found that a nationwide injunction:

• Exceeded what was necessary to give full relief to the VSHL because an injunction covering the VSHL alone adequately protected it from prosecution;
• Deprived the FEC of the opportunity to argue its case in other courts of appeals;
• Conflicted with the principle that a federal court of appeals’ decision is only binding within its circuit; and
• Deprived the Supreme Court of the benefit of decisions from several courts of appeals.

2 The Commission adopted this policy because it found that the Fourth Circuit’s decision in FEC v. Christian Action Network “in effect invalidated the regulation.”
The appeals court concluded that the injunction to bar the Commission from enforcing the regulation must be limited to protect only the VSHL anywhere in the country.

Repeal of Regulation. The appeals court rejected the VSHL’s request that it order the FEC to open a rulemaking to consider the repeal of 11 CFR 100.22(b). The court found it had given the VSHL complete relief by ruling the regulation unconstitutional and authorizing an injunction that prohibited the FEC from enforcing the regulation against the VSHL.

The appeals court remanded the case to the district court in order to have the injunction amended so that its protection is limited to the VSHL.

U.S. Court of Appeals for the Fourth Circuit, 00-1252 and 00-1332.

Advisory Opinion Request

AOR 2001-16

Extension of 70-day window for transferring funds for allocable expenses after suspension of party fundraising due to national emergency (Democratic National Committee, September 28, 2001)

Outreach

Regional Conference in San Francisco for Candidates, Parties and PACs

In February, the Federal Election Commission will hold a comprehensive, two and one-half day conference in San Francisco. This conference is designed to help federal political committees and U.S. House and Senate candidates understand and comply with the federal campaign finance law. The conference will provide an overview of the basic provisions of the federal election law and discuss specific requirements that apply to candidates, political parties and corporate, labor and trade association PACs (as well as their sponsoring organizations).

The conference will consist of a series of workshops presented by Commissioners and experienced FEC staff. A representative from the Internal Revenue Service will be available to answer election-related tax questions.

The conference will be held February 5-7, 2002, at the Grand Hyatt Hotel in San Francisco, California. The registration fee for the conference is $375, which covers the cost of the conference, reception, materials and meals. The registration fee must be received by January 14. A late registration fee of $10 will be added as of January 15, 2002. A full refund will be made available for all cancellations made before that date.

A room rate of $218 is available for hotel reservations made by January 14. Call the Grand Hyatt Hotel at 415/398-1234. After January 14, room rates are subject to availability. The hotel is located downtown on Union Square, near cable cars, Chinatown and the shopping district.

Registration

Conference registrations will be accepted on a first-come, first-served basis. Attendance is limited, and other FEC conferences have sold out in the past, so please register early.

For registration information:
- Call Sylvester Management Corporation at 800/732-9004;
- Visit the FEC web site at www.fec.gov/pages/infosvc.html#Conferences; or
- Send an email to toni@sylvestermanagement.com.

Public Appearances

November 3, 2001
First Saturday Society
Royal Oak, Michigan
Commissioner Smith

November 7, 2001
American University
Washington, D.C.
Vice Chairman Mason

November 12, 2001
Center for National Security Law,
University of Virginia
Charlottesville, Virginia
Commissioner Smith
Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 42 new Administrative Fine cases, bringing the total number of cases released to the public to 282.

Civil money penalties for late reports are determined by the number of days the report was late, the amount of financial activity involved and any prior penalties for violations under the administrative fine regulations. Penalties for nonfiled reports—and for reports filed so late as to be considered nonfiled—are also determined by the financial activity for the reporting period and any prior violations. Election sensitive reports, which include reports and notices filed prior to an election (i.e., 12 Day pre-primary, October quarterly and October monthly reports), receive higher penalties. The committees and the treasurers are assessed civil money penalties when the Commission makes its final determination. Unpaid civil money penalties are referred to the Department of the Treasury for collection.

The committees listed in the chart at right, along with their treasurers, were assessed civil money penalties under the administrative fine regulations.

Closed Administrative Fine case files are available through the FEC Press Office, at 800/424-9530 (press 2) and the Public Records Office, at 800/424-9530 (press 3).

—Phillip Deen

<table>
<thead>
<tr>
<th>Committees Fined and Penalties Assessed</th>
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<tbody>
<tr>
<td>1. American Hotel Motel PAC $3,000</td>
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<td>2. American Society for Clinical Laboratory Science $1,000</td>
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<td>3. Bayne for Congress $4,500</td>
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<td>4. Big Mack for Congress $79</td>
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<td>5. Bob Shrauger for Congress $1,400</td>
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<td>6. Carroll 2000 $2,700</td>
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<td>7. Chicago Board of Options Exchange Inc. PAC $1,000</td>
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<td>8. Clark for Senate $1,350</td>
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<tr>
<td>9. Committee for Responsible Government of Temple-Inland Inc. (Committee for Good Government of Temple-Inland Inc.) $600</td>
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<td>10. Cosgrove for Congress Committee $900</td>
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<td>11. Countrywide Credit Industries Inc. PAC $1,000</td>
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<td>12. CSX Corporation Good Government Fund $600</td>
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<td>13. DeWayne Graham for Congress Committee $900</td>
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<tr>
<td>14. Duncan/Hilleary Congressional Celebration Committee $0</td>
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<tr>
<td>15. Exxon Mobil Corporation PAC (12 Day Pre-General) $9,000</td>
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<tr>
<td>16. Exxon Mobil Corporation PAC (30 Day Post-General) $800</td>
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<td>17. Friends of Barry Ford $375</td>
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<td>18. Friends of Houghton $9,000</td>
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<td>19. Friends of Mike Forbes $650</td>
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<td>20. Friends of Ron Packard $900</td>
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<td>21. Garza for Congress Committee $2,000</td>
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<td>22. Hochberg for Congress $9,500</td>
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<td>23. John Fee for Congress $1,300</td>
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<td>24. Jon Amores for Congress $450</td>
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<td>25. Lauren Beth Gash for Congress $9,900</td>
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<td>26. Lehigh Valley Democratic Committee $1,800</td>
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<tr>
<td>27. National Auctioneers Association PAC (AUCTIONPAC) $1,000</td>
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<tr>
<td>28. National Fisheries Institute Fisheries PAC (FISHPAC) $1,000</td>
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<td>29. New York State Committee of the Working Family Party $2,700</td>
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<tr>
<td>30. Paul Rappaport for U.S. Senate $600</td>
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<tr>
<td>31. PECO Energy Company PAC (Philadelphia Electric Company PAC) $1,125</td>
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<tr>
<td>32. Plasterers Local 8 PAC Fund/Operative Plasterers &amp; Cement Mason International Assn. of the U.S. &amp; Canada 8 $1,000</td>
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<tr>
<td>33. Fryce for Congress $6,000</td>
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<td>34. Rely on your Beliefs Fund $1,300</td>
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<tr>
<td>35. Rosenthal for Congress $0</td>
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<td>36. Tico Perez for Congress Campaign $0</td>
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<tr>
<td>37. Transport Workers Union—Local 100 Political Contributions Committee $4,000</td>
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<tr>
<td>38. Tricon Global Restaurants Inc. Good Government Fund $1,000</td>
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<td>39. Trinity Industries Employee PAC Inc. $2,000</td>
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<td>40. Service Employees International Union Local 99 Federal PAC $504</td>
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<tr>
<td>41. Service Employees International Union Local 434-B Federal COPE $2,700</td>
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<tr>
<td>42. YOB 2000 (Y2K) $1,850</td>
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</tbody>
</table>

1 Partial payment made.
2 Penalty reduced due to lack of activity on the report.
3 This civil money penalty has not been collected.
4 The Commission took no further action in this case.
ADR Program Update

On September 26, 2001, the Commission made public three additional cases resolved under the Alternative Dispute Resolution (ADR) program. In each case, the ADR office concluded that the allegations against the respondents were unsubstantiated. The Commission concurred and agreed to dismiss matters arising from complaints against:

- The Moran for Congress Committee, committee treasurer Robert Morrison, and the Honorable James P. Moran concerning the alleged personal use of campaign funds;
- Michael J. Becker and Claire W. Clemens concerning alleged perjury during an investigation of a previous matter under review; and
- The Susan Davis for Congress Committee, committee treasurer Carolyn Witt and Susan Davis concerning the alleged use of nonfederal funds for a federal election.

Closed ADR-negotiated settlement summaries are available from the Public Records Office at 999 E Street, NW., Washington, DC 20463. The Public Records Office may also be contacted at 800/424-9530 (press 3).

While most FEC materials are available free of charge, some campaign finance reports and statements, statistical compilations, indexes and directories require payment. Walk-in visitors and those placing requests by telephone may use any of the above-listed credit cards, cash or checks. Individuals and organizations may also place funds on deposit with the office to purchase these items. Since pre-payment is required, using credit cards or funds placed on deposit can speed the processing and delivery of orders. For further information, contact the Public Records Office at 800/424-9530 (press 3) or 202/694-1120.

—Amy Kort

Index

The first number in each citation refers to the “number” (month) of the 2001 Record issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, “1:4” means that the article is in the January issue on page 4.

Advisory Opinions

Alternative disposition of 2001-5, 5:6
2000-24: Preemption of state election law mandating fixed allocation ratio for administrative and voter drive expenses, 2:2
2000-27: Status of party as state committee, 3:6
2000-28: Disaffiliation of trade associations and their PACs, 2:3
2000-30: Nonconnected PAC’s receipt and use of securities, 5:1
2000-32: Reporting uncollectable loan, 1:9
2000-34: Name and acronym of SSF, 2:5
2000-35: Status of party as state committee, 1:10

2000-36: Disaffiliation of nonconnected PACs, 2:5
2000-37: Use of campaign funds to purchase and present Liberty Medals, 2:6
2000-38: Registration of party committee due to delegate expenses, 2:7
2000-39: Status of party as state committee, 2:8
2000-40: Donations to legal defense fund of Member of Congress, 3:7
2001-1: Use of political party’s office building fund to pay building renovation costs and fundraising expenses of building fund, 4:5
2001-2: Status of party as state committee, 4:6
2001-3: Use of campaign funds to purchase an automobile for campaign purposes, 5:5
2001-4: Use of electronic signatures for PAC contributions by payroll deduction, 6:6
2001-6: Status of party as state committee, 6:7
2001-7: Nonaffiliation of LLC PAC with SSFs of member companies of the LLC, 8:6
2001-8: Campaign committee’s purchase of candidate’s book for distribution to contributors, 8:9
2001-9: Former Senator’s use of excess campaign funds to pay expenses resulting from media inquiries made after his term expired, 9:1
2001-10: Employment of candidate’s spouse by campaign committee, 9:4
2001-11: Late transfer from nonfederal to federal account of state party committee after bank transfer problem, 10:1

Compliance

MUR 4594: Prohibited Foreign National Contributions, 6:8

(continued on page 8)
Index
(continued from page 7)
MUR 4762: Prohibited union contributions and other violations, 2:9
MUR 5029: Contributions in the name of another made by corporation and government contractor, 2:10

Court Cases
_____ v. FEC
– AFL-CIO and DNC Services Corp./DNC, 9:8
– Beaumont, 2:8, 3:2, 5:6, 6:9
– Buchanan, 1:10
– Cunningham, 8:4
– DNC, 2:8, 3:2
– Dole, 5:6
– Judicial Watch, 10:3
– Kieffer, 7:7
– Miles for Senate, 3:3
– Nader, 4:8, 6:9
– Natural Law Party of the United States of America, 1:10, 2:8, 3:2
– Virginia Society for Human Life, Inc., 11:1

FEC v. _____
– Colorado Republican Federal Campaign Committee, 8:1
– Friends for Fasi, 6:8
– NRA, 8:3, 10:3
– Toledano, 7:8
Other
– Hooker v. All Campaign Contributors, 1:10
– Hooker v. Sundquist, 4:8

Regulations
Advance Notice of Proposed Rulemaking on definition of "political committee," 4:1
Final rules for general public political communications coordinated with candidates and party committees; independent expenditures, 1:2, 6:3
Notice of Proposed Rulemaking on brokerage loans and lines of credit, 9:1
Notice of Proposed Rulemaking on reporting of independent expenditures and last-minute contributions, 6:1
Notice of Proposed Rulemaking on use of Internet in federal elections, 11:1
“Political committee” definition rulemaking held in abeyance, 11:3

Reports
Amendments to Statements of Organization, 2:1
Arkansas special election, 9:5
Arizona state filing waiver, 6:10
California special election, 3:5
Committees required to file tax returns, 3:4
Florida special election, 7:4
July reporting reminder, 7:1
Massachusetts special election, 7:6
Nevada state filing waiver, 2:2
Pennsylvania special election, 4:5
Reports due in 2001, 1:4
South Carolina special election, 10:4
Virginia special election, 5:6

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