

# Record

May 2002

Federal Election Commission

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## Commissioners

### Toner Joins Commission

Michael E. Toner was nominated to the Federal Election Commission by President Bush on March 2, 2002, and appointed on March 29.

Prior to his appointment, Mr. Toner was Chief Counsel to the Republican National Committee and served as General Counsel to the Bush/Cheney Transition and Bush/Cheney 2000 Presidential Campaign. From 1997 to 1999, Mr. Toner served as Deputy Counsel to the Republican National Committee, and he was Counsel to the 1996 Dole/Kemp campaign. He was an Associate with Wiley, Rein and Fielding in Washington, D.C., from 1992 to 1996. Mr. Toner received an undergraduate degree from the University of Virginia, a Master's degree from Johns Hopkins University and a J.D. from Cornell Law School. ♦

—Amy Kort

## Legislation

### Bipartisan Campaign Reform Act of 2002

On March 27, 2002, President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA, which amends the Federal Election Campaign Act (FECA), becomes effective November 6, 2002, and will not affect the 2002 elections. The legislation requires the Commission to promulgate new soft money regulations by June 25, 2002, and regulations to implement other BCRA provisions by December 22, 2002.

The BCRA makes a number of significant changes to the FECA, from increasing individual contribution limits to banning national party committees from raising or spending soft money (funds not subject to the limitations, prohibitions and disclosure requirements of the federal campaign finance law). For example, the BCRA:

- Eliminates the FECA's provisions concerning national party office building funds;
- Increases the maximum civil penalties that may be assessed for violations of the federal campaign finance law; and
- Prohibits individuals 17 years old or younger from contributing to

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## Information

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federal candidates and party committees.

Senator Mitch McConnell, the National Rifle Association and others have filed lawsuits challenging the constitutionality of certain provisions of the BCRA. See related article on page 3. ♦

—Amy Kort

## Regulations

### Final Rules on Independent Expenditure Reporting

Based on a statutory change, the Commission has revised its regulations regarding the reporting of independent expenditures. The final rules and Explanation and Justification appeared March 20, 2002, in the [Federal Register](#) (67 FR 12834). The new regulations will take effect following the 30 legislative day Congressional review period, and

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**Scott E. Thomas**, Commissioner  
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the Commission will announce the effective date in the *Federal Register*.

### Independent Expenditure Reporting

The Federal Election Campaign Act (the Act) requires political committees and other persons making independent expenditures to file reports or statements if their independent expenditures exceed \$250. If an independent expenditure exceeds \$1,000 and is made less than 20 days but more than 24 hours before an election, an additional statement (a 24-hour notice) must be filed.

*Filing Deadlines.* In the past, 24-hour notices were required to be filed within 24 hours after the independent expenditure was made. However, amendments to the Act, implemented in Public Law 106-346, require that 24-hour notices must now be *received* by the Commission or the Secretary of the Senate within 24-hours of the time the independent expenditure is made. As a result, sending 24-hour notices by the filing date via registered or certified mail is no longer a viable filing option.

*Filing Methods.* The new regulations allow committees and other persons to transmit 24-hour notices by fax or e-mail in order to comply with the new filing deadline. Additionally, persons other than political committees may file their regular reports of independent expenditures by fax or e-mail in accordance with the standard filing schedule. Note, however, that those persons required to file electronically must file all reports of independent expenditures using the Commission's electronic filing system.

### When an Expenditure is Made

The new rules also clarify when an independent expenditure is considered to be "made." Under the new rules, an independent expenditure is "made" on the first date that the communication—for instance a

television ad or printed flyer—is published, broadcast or otherwise publicly distributed. Committees and other persons may report the expenditure as early as when the first payment is made, but they must report the expenditure no later than 24 hours after the time that the expenditure is first publicly disseminated. Independent expenditures that are mailed to their intended audience are considered publicly disseminated once they are given to the Post Office.

### Notarization Requirement

Although the statute requires that expenditures be certified as independent, reports of independent expenditures no longer need to be notarized. Instead, filers may self-verify the report using the handwritten signature of the treasurer on paper reports or the typed name of the treasurer on electronically-filed reports. As a result, Schedule E and Form 5 no longer require an accompanying paper copy to ensure notarization, and electronic filers no longer need to send a paper follow-up to 24-hour notices submitted electronically. Persons other than political committees must report independent expenditures using either a Form 5 or a letter and must continue to include a prescribed statement of certification as to the independence of the expenditure. 11 CFR 109.2. ♦

—Phillip Deen

### Federal Register

Federal Register notices are available from the FEC's Public Records Office, on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC faxline, 202/501-3413.

### Notice 2002-3

Final Rules and Explanation and Justification on Independent Expenditure Reporting (67 FR 12834, March 20, 2002).

## Court Cases

### FEC v. Arlen Specter '96

On March 12, 2002, the U.S. District Court for the Eastern District of Pennsylvania granted the Commission's request for declaratory and injunctive relief against Koro Aviation, Inc. (Koro). Pursuant to a stipulation between the Commission and Koro, the court held that Koro violated 2 U.S.C. §441b(a) by making in-kind corporate contributions to Arlen Specter '96 in the form of air travel services charged at less than the usual and normal rate. The court permanently enjoined Koro from violating 2 U.S.C. §441b(a) by providing goods or services to any federal candidate at less than the usual and normal charge. The court also ordered Koro to pay a \$25,000 civil penalty.

#### Background

On June 22, 2000, the Commission asked the court to find that Arlen Specter '96, Senator Specter's Presidential campaign committee, and Paul S. Diamond, as treasurer, accepted unlawful in-kind contributions from Koro. The Commission argued that since Koro was an FAA-licensed commercial charter service carrier, Specter '96 should have paid the "usual and normal" rate for the air travel provided by Koro, rather than the first-class fare actually paid by Specter '96. Under Commission regulations, a campaign committee must pay the charter fare for travel on an FAA-licensed commercial charter carrier. 11 CFR. 114.9(e).<sup>1</sup> The difference between the usual and normal cost of a service and the amount paid by a candidate or

<sup>1</sup> In the case of air travel contracted from a corporation that is not licensed to provide commercial charter air service (e.g., a private corporate jet), a committee may pay the first-class fare if traveling between cities linked by regular commercial service.

committee represents an in-kind contribution. 11 CFR. 100.7(a)(1)(iii)(A). The Commission argued that Specter '96's payment of the first-class fare rather than the charter rate resulted in an unlawful in-kind corporate contribution from Koro in the amount of \$233,768. See the [August 2000 Record](#), page 14.

#### Decision

The order entered by the court stated that the first-class fares that Specter '96 paid for air travel were less than the charter fares charged to other Koro customers based on Koro's published hourly rate, and, as a result, Koro made an in-kind contribution to Specter '96 in violation of 2 U.S.C. §441b(a). Both the Commission and Koro stipulated to the entry of the court's judgment, and Koro waived all rights of appeal. Koro was ordered to pay the civil penalty within 10 days of the entry of the court's order and judgment.

U.S. District Court for the Eastern District of Pennsylvania, 00-CV-3167. ♦

—Amy Kort

### New Litigation

#### Alliance for Democracy v. FEC

On March 19, 2002, Alliance for Democracy, a non-profit, non-partisan advocacy group, Hedy Epstein and Ben Kjelshus (collectively the Plaintiffs) filed a complaint in the U.S. District Court for the District of Columbia alleging that the Commission acted contrary to law by failing to act on an administrative complaint filed by the Plaintiffs. The administrative complaint, filed March 8, 2001, alleged that the Spirit of America PAC contributed a fundraising list of 100,000 donors to Ashcroft 2000, the principal campaign committee for John Ashcroft's 2000 Missouri Senate campaign. The administrative complaint alleged that the list

was a contribution by the Spirit of America PAC to Ashcroft 2000 and that neither committee reported the contribution to the Commission. See 2 U.S.C. §431(8) and 11 CFR 100.7.

The Plaintiffs claim that, because the alleged contribution was unreported, they were denied, and continued to be denied, access to information that would assist them in evaluating candidates for the 2000 Missouri Senate election, as well as candidates for future elections. They contend that because the administrative complaint "was brought against the Attorney General of the United States, the nation's highest law enforcement officer, it is a matter whose resolution is particularly in the public interest and the FEC should rule on the complaint without continued delay." The Plaintiffs ask that the court:

- Find the Commission's failure to act on the administrative complaint contrary to law; and
- Compel the Commission to rule on the merits of the administrative complaint within 30 days. 2 U.S.C. §437g(a)(8)(C) and (3).

U.S. District Court for the District of Columbia, 1:02CV00527. ♦

—Amy Kort

### Bipartisan Campaign Reform Act Litigation

In recent weeks several individuals and parties have filed lawsuits challenging the constitutionality of various provisions of the Bipartisan Campaign Reform Act of 2002 (the BCRA). The BCRA, which President Bush signed into law on March 27, 2002, amends the Federal Election Campaign Act (FECA) and several other provisions of federal law. Certain provisions of the BCRA:

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## Court Cases

(continued from page 3)

- Ban national party committees from soliciting or using “soft-money;”
- Raise individual contribution limits; and
- Increase the contribution limits to candidates whose opponents spend large amounts of their personal funds on the campaign.

The BCRA also bans the use of corporate and labor union funds to pay for “electioneering communications,” which include broadcast advertisements that refer to a clearly identified federal candidate and are made within 30 days of a primary election or 60 days of a general election.

Although the BCRA does not become effective until November 6, 2002, it provides for immediate judicial review by a three-judge panel, as well as expedited appellate review by the Supreme Court, in order to settle questions of the law’s constitutionality.

### **McConnell v. FEC and FCC<sup>1</sup> and NRA v. FEC**

On March 27, 2002, Senator Mitch McConnell and the National Rifle Association (NRA) each filed a complaint with the U.S. District Court for the District of Columbia, challenging the constitutionality of several provisions of the BCRA.<sup>2</sup> Both plaintiffs requested that the cases be heard together by a three-judge panel. On April 3, 2002, Senators John McCain, Russell

<sup>1</sup> The Federal Communications Commission (FCC) is a defendant because the McConnell complaint also challenges parts of the BCRA that amend sections of the Federal Communications Act.

<sup>2</sup> On April 12, an amended complaint was filed in McConnell v. FEC and FCC, which added numerous persons, organizations and political parties as plaintiffs.

Feingold, Olympia Snowe and James Jeffords and Representatives Christopher Shays and Martin Meehan (collectively the Reform Act Sponsors) filed motions to intervene as defendants.

#### *Constitutional Challenges.*

Senator McConnell alleges in his complaint that aspects of the BCRA violate the First, Fifth and Tenth Amendments and the principles of federalism. For example, the complaint alleges that the BCRA:

- Unconstitutionally favors some speakers over others;
- Unconstitutionally constrains the rights of officeholders and candidates to raise money for tax-exempt organizations, political parties and other candidates;
- Burdens First Amendment associational rights by requiring organizations to disclose the identity of their supporters to a greater extent than does the FECA; and
- Places unprecedented limits on political parties’ ability to make expenditures for political speech.

The NRA’s complaint alleges similar constitutional violations, focusing specifically on the BCRA’s limits and prohibitions on electioneering communications.

*Reform Act Sponsors.* The Reform Act Sponsors counter that the BCRA “affirmatively promotes and enhances core First Amendment values,” and “ensures that candidates, parties, and citizens have robust opportunities to exercise their fundamental rights of expression and association.” They have asked the court to allow them to intervene in support of the BCRA in both lawsuits.

### **Echols v. FEC**

On April 4, 2002, Emily Echols, Isaac McDow, Jessica Mitchell, Daniel Solid and Zachary White, who are minors, and Reverend Patrick Mahoney filed a complaint with the U.S. District Court for the District of Columbia. The complaint challenges, among other things, the

constitutionality of BCRA provisions that prohibit contributions by individuals 17 years old and younger and that prohibit certain groups from engaging in electioneering communications.

*McConnell v. FEC et al.*, U.S. District Court for the District of Columbia, 1:02cv00582; *NRA et al. v. FEC*, U.S. District Court for the District of Columbia, 1:02cv00581; *Echols v. FEC*, U.S. District Court for the District of Columbia, 1:02cv00633. ♦

—Amy Kort

## Advisory Opinions

### Advisory Opinion Request

#### [AOR 2002-5](#)

Payment for travel including campaign and officeholder activities of federal candidate who is state officeholder (Mayor Ann Hutchinson, March 20, 2002) ♦

## Staff

### Greg Scott Named Assistant Staff Director for Information

The Commission has appointed Greg J. Scott to be the Assistant Staff Director for the Information Division. Mr. Scott had served as the Acting Assistant Staff Director for the Information Division since July 2001.

Mr. Scott joined the agency in 1990 as a Public Affairs Specialist. He has since served as the Information Division’s Senior Public Affairs Specialist, Senior Communications Specialist and Deputy Assistant Staff Director. Mr. Scott graduated from Indiana University in 1988 with a B.A. in Political Science and Journalism. ♦

—Amy Kort



## Administrative Fines

### Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 34 new Administrative Fine cases, bringing the total number of cases released to the public to 345.

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-election, 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). ♦

—Amy Kort

### Committees Fined and Penalties Assessed

1. Alaska Democratic Party Federal Account	— <sup>1</sup>
2. American Neurological Surgery PAC, Inc. (12-Day Pre-General 2000)	\$5,000
3. American Neurological Surgery PAC, Inc. (30-Day Post-General 2000)	\$1,800
4. American Resort Development Association Resort Owners Coalition PAC	\$2,350 <sup>2</sup>
5. AMERIPAC: The Fund for a Greater America	\$400
6. Brian Baird for Congress	— <sup>1</sup>
7. Citizens for the Republic	\$695
8. Commerce Bancorp Inc.—PAC Fed,	\$1,000
9. Committee for Responsible Government of Temple—Inland Inc.	\$800
10. Conservative Victory Committee	\$1,000
11. Dave Treen for Congress	\$250
12. District No. 1—PCD MEBA Political Action Fund (MEBA-PAF)	\$1,000
13. Eckerd Corporation PAC (ECKPAC)	\$1,000
14. Ed Janosik for Congress	\$900 <sup>3</sup>
15. Elect, The Political Education and Action Committee of Alabama Farmers Federation	\$3,000
16. Friends of David Bishop	\$900
17. Harry Browne for President, Inc.	\$1,850
18. Lincoln Club of Riverside County	\$1,000
19. New Hampshire Republican State Committee	\$12,000
20. New York State Conservative Party	— <sup>1</sup>
21. Ocean County Democratic Committee	\$9,000
22. Ohio Bankers Association PAC (Federal)	— <sup>1</sup>
23. Ohio D.R.I.V.E. (Democratic Republican Independent Voter Education) (TEAMSTERS)	\$2,000
24. ORBPAC (The PAC of Orbital Sciences)	\$1,000
25. Peter Abair for Congress Committee	\$650 <sup>2</sup>
26. Randy Heine for Congress	— <sup>1</sup>
27. Reform Party of Minnesota (Independence Party of Minnesota)	\$900 <sup>3</sup>
28. Riverside County Republican Central Committee	\$1,800
29. Sallie Mae Inc. PAC (Sallie Mae PAC)	\$600
30. San Bernardino County Republican Central Committee	— <sup>4</sup>
31. Sills Cummis Radin Tischman Epstein & Gross Federal PAC, Inc.	— <sup>1</sup>
32. Transport Workers Union - Local 100 Political Contributions Committee	\$3,100
33. Women's Campaign Fund	\$4,500
34. Yuba County Republican Central Committee	\$2,700

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

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

<sup>3</sup> Penalty reduced due to a decrease in the level of activity on the report.

<sup>4</sup> The Commission waived the \$3,375 civil money penalty because the respondents demonstrated the existence of extraordinary circumstances that were beyond their control and a duration of at least 48 hours.

## Reports

### North Carolina Primary Election Postponed

The North Carolina State Board of Elections has delayed North Carolina's May 7, 2002, primary elections pending the North Carolina Supreme Court's decision in a legislative redistricting case, *Stephenson v. Bartlett*. The Commission will provide a revised reporting schedule for North Carolina pre-primary filings once the new primary date is announced. ♦

—Amy Kort

### Pennsylvania Primary Election May Be Postponed

Pennsylvania's primary election, planned for May 21, may be postponed because of disputes over the state's redistricting plan. If the primary is postponed, the Commission will publish new reporting dates for committees involved in Pennsylvania primaries. Any new reporting dates will be made available on the Commission's web site at [www.fec.gov/reporting.html](http://www.fec.gov/reporting.html). ♦

—Amy Kort

## Outreach

### FEC Conferences

#### Conference for Trade Associations

The FEC will hold a conference for trade associations and their PACs **May 22-24, 2002**, in Washington, D.C. The conference will consist of a series of interactive workshops presented by Commissioners and experienced FEC staff, who will explain how the requirements of the federal election law apply to trade associations. In addition, an IRS representative will be available to answer election-related tax questions.

## Virginia Convention Reports\*

### Democratic Party

	Election Day	Close of Books	Mailing Date	Filing Date	48-Hour Notice Period
House Districts 1, 9	June 8	May 19	May 24	May 27 <sup>1</sup>	May 20—June 5
House Districts 2, 5, 7, 8	May 18	April 28	May 3	May 6	April 29—May 15
House District 11	May 11	April 21	April 26	April 29	April 22—May 8
House District 6	Convention Date Pending				

### Republican Party

	Election Day	Close of Books	Mailing Date	Filing Date	48-Hour Notice Period
House Districts 3, 8	May 11	April 21	April 26	April 29	April 22—May 8
House District 9	June 1	May 12	May 17	May 20	May 13—May 29

\* Virginia will hold a primary election on June 11 for U.S. Senate candidates and House candidates in other districts. See the [January Record](#) for reporting dates.

<sup>1</sup> Notice that this deadline falls on a federal holiday. Filing dates are not extended for weekends or holidays. Reports filed on paper or diskette must be received by the appropriate filing office(s) the Friday before the filing date.

The registration fee for this conference is \$375, which covers the cost of the conference, materials and meals. The deadline for registration (and for fully-refunded registration cancellations) is April 28. A late registration fee of \$10 will be added effective April 29.

The conference will be held at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, D.C. A room rate of \$220 single or \$250 double is available for reservations made by April 28. Call 800/635-5065 or 202/484-1000 ext. 5000 to make reservations. In order to receive this room rate, you must notify the hotel that you will be attending the FEC conference. After April 28, room rates are based on availability. The hotel is located near the L'Enfant Plaza Metro and Virginia Railway Express stations.

### Conference for Membership and Labor Organizations

On **June 26-28, 2002**, the Commission will hold a conference in Washington, D.C., for membership and labor organizations. Commissioners and experienced FEC staff will conduct a series of interactive workshops explaining how the requirements of the federal

election law apply to these organizations. A representative from the IRS will be available to answer election-related tax questions.

The registration fee for this conference is \$375, which covers the cost of the conference, materials and meals. The registration deadline (and the deadline for fully-refunded registration cancellations) is June 4. A late registration fee of \$10 will be added effective June 5.

The conference will be held at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, D.C. A room rate of \$199 single or \$229 double is available for reservations made by June 4. Call 800/635-5065 or 202/484-1000 ext. 5000 to make reservations. In order to receive this room rate, you must notify the hotel that you will be attending the FEC conference. After June 4, room rates are based on availability. The hotel can be easily reached via the L'Enfant Plaza Metro and Virginia Railway Express stations.

### Registration Information

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

- Call Sylvester Management Corporation at 800/246-7277;
- Visit the FEC web site at [www.fec.gov/pages/infosvc.htm#Conferences](http://www.fec.gov/pages/infosvc.htm#Conferences) (on-line registration requires complete credit card information); or
- Send an e-mail to [allison@sylvestermanagement.com](mailto:allison@sylvestermanagement.com). ♦

—Amy Kort

### Are You a Membership Organization?

The FEC's Labor and Membership Organization Conference is intended only for labor unions and membership organizations other than trade associations.

If you are not certain whether you represent a membership organization or a trade association, please read the following descriptions. Membership organizations and trade associations share many of the same characteristics—indeed, trade associations are a type of membership organization. Trade associations, however, have certain unique characteristics and rules that set them apart from other kinds of membership organizations.

### Membership Organization

Generally, a membership organization is defined by the following criteria:

- It provides for members in its articles and bylaws;
- It seeks members;
- It acknowledges the acceptance of members (e.g., by distributing membership cards); and
- It is not organized primarily for the purpose of influencing the election of an individual to federal office.

### Trade Association

In addition to having the characteristics above, a trade association possesses two unique features:

- Its membership is comprised of persons and/or companies engaged in a similar or related line of commerce or business; and
- It is organized to promote and improve the business conditions of its members.

If your organization qualifies as a trade association, with its own special characteristics and rules, the FEC asks that you register for the Trade Association Conference, May 22-24. ♦

—Amy Kort

## Conferences in 2002

For complete conference information, visit the FEC's web site at [www.fec.gov/pages/infosvc.htm#Conferences](http://www.fec.gov/pages/infosvc.htm#Conferences).

### Conference for Trade Associations

Date: May 22-24, 2002  
Location: Washington, D.C.  
(Loews L'Enfant Plaza)  
Registration Fee: \$375

### Conference for Membership and Labor Organizations

Date: June 26-28, 2002  
Location: Washington, D.C.  
(Loews L'Enfant Plaza)  
Registration Fee: \$375

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