

# Record

October 2002

Federal Election Commission

Volume 28, Number 10

## Table of Contents

### Regulations

- 1 Notice of Proposed Rulemaking on Disclaimers, Fraudulent Solicitation, Civil Penalties and Personal Use of Campaign Funds
- 4 Notice of Proposed Rulemaking on Coordinated and Independent Expenditures

### Reports

- 1 October Reporting Reminder

### 2 Federal Register

### Court Cases

- 7 New Litigation

### 8 Advisory Opinions

### Alternative Dispute Resolution

- 9 ADR Program Update

### Compliance

- 9 Nonfilers

### Statistics

- 10 Congressional Campaign Fundraising Declines in 2002

### 11 Public Appearances

### 11 Index

## Regulations

### Notice of Proposed Rulemaking on Disclaimers, Fraudulent Solicitation, Civil Penalties and Personal Use of Campaign Funds

On August 29, 2002, the Commission published in the *Federal Register* a Notice of Proposed Rulemaking (NPRM) seeking comments on proposed regulations to implement provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA). These provisions:

- Specify new requirements for disclaimers accompanying radio, television and print campaign communications;
- Expand the scope of the statutory prohibition on fraudulent misrepresentation;
- Increase the civil penalties for violating the ban on contributions in the name of another; and
- Codify several aspects of the current regulatory test for the permissible use of campaign funds by candidates and federal office-holders.

The proposed rules are available on the FEC web site at <http://www.fec.gov/register.htm> and were

(continued on page 3)

## 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 (close of books, September 30);
- October monthly reports for monthly filers are due on October 20 (close of books, September 30); and
- Pre-general reports are due on October 24 (close of books, October 16). 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 between the 1<sup>st</sup> and 16<sup>th</sup> of October in connection with a federal election. PACs and party committees that file on a monthly schedule must file a pre-general report in lieu of the scheduled November monthly report.

In addition to these reports, candidate committees may also have to file 48-hour notices of last-minute contributions, and PACs and party committees may need to file 24-

(continued on page 2)

## Reports

(continued from page 1)

hour notices to disclose any last-minute independent expenditures.

### Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations that receive contributions or make expenditures in excess of \$50,000 in a calendar year—or that expect to do so—must file *all* reports and statements with the FEC electronically. Electronic filers who instead file on paper or submit an electronic report that does not pass the validation test will be considered nonfilers and may be subject to enforcement actions (including administrative fines). If the report passes the validation test and is accepted, the filer will receive a faxed or e-mailed receipt; if a filer does not receive this receipt, he or she should assume that the report is not successfully filed.

**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)

**David M. Mason**, Chairman  
**Karl J. Sandstrom**, Vice Chairman  
**Danny L. McDonald**,

Commissioner

**Bradley A. Smith**, Commissioner  
**Scott E. Thomas**, Commissioner  
**Michael E. Toner**, Commissioner

**James A. Pehrkon**, Staff Director  
**Lawrence H. Norton**, General Counsel

Published by the Information Division

**Greg J. Scott**, Assistant Staff Director

**Amy Kort**, Editor

<http://www.fec.gov>

Senate committees and other committees that file with the Secretary of the Senate are not subject to the mandatory electronic filing rules, but may file an unofficial copy of their reports with the Commission in order to speed disclosure. 11 CFR 104.18.

### Filing by Mail

All reports sent via first-class or overnight mail must be received by the Commission by the filing date, or by the Friday before if the due date falls on a weekend or federal holiday. Thus, in the case of the October monthly report, reports filed by first-class or overnight mail must be received by the Commission on or before Friday, October 18.

October monthly and quarterly reports sent by registered or certified mail must be postmarked by the filing date to be considered timely filed. The pre-general report, however, must have a registered or certified postmark on or before October 21 in order to be considered timely filed. A committee sending its reports via registered or certified mail should keep its mailing receipt with the U.S. Postal Service postmark as proof of filing. The U.S. Postal Service does not keep complete records of items sent by certified mail.

Please note that the Postal Service continues to irradiate mail directed to many federal agencies, including the FEC. This process has not only delayed mail delivery, but it has also damaged and in some cases destroyed pieces of mail. As a result, committees that file reports with the Commission may want to consider submitting their reports by some means other than regular U.S. mail. Alternative methods include:

- Electronic filing;
- Overnight mail delivery; and
- Hand delivery.

If you use one of these alternate methods, your report must be

received by the Commission on or before the filing date to be timely filed (or by October 18 for the October monthly report). Committees that choose to file electronically can download free FECFile software from the FEC web site at <http://www.fec.gov/electfil/electron.html>, and may contact the Commission's Electronic Filing office for assistance at 800/424-9530 or 202/694-1307.

### Additional Information

For more information on 2002 reporting dates:

- See the reporting tables in the [January 2002 Record](#), page 4;
- Call and request the reporting tables from the FEC at 800/424-9530 (press 1, then 3) or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or
- Visit the FEC's web page at <http://www.fec.gov/pages/report.htm> to view the reporting tables online. ♦

—Amy Kort

## 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 2002-15

Notice of Proposed Rulemaking on Disclaimers, Fraudulent Solicitation, Civil Penalties and Personal Use of Campaign Funds (67 FR 55348, August 29, 2002).

### Notice 2002-16

Notice of Proposed Rulemaking on Coordinated and Independent Expenditures (67 FR 60042, September 24, 2002).

## Regulations

(continued from page 1)

open for comments until September 27, 2002.

### Disclaimers

Under the Federal Election Campaign Act (the Act) and current regulations, communications that expressly advocate the election or defeat of a clearly-identified candidate or that solicit funds must include disclaimers identifying who paid for and, in some cases, who authorized the communication. 11 CFR 110.11. The BCRA expands this disclaimer requirement to reach “any communication” made by a political committee—including communications that do not expressly advocate the election or defeat of a clearly-identified federal candidate or solicit a contribution—and also requires that “electioneering communications” include disclaimers.<sup>1</sup> The BCRA also requires that additional, more specific information be included in some disclaimers. For example, under the BCRA a disclaimer for a communication that is not authorized by a candidate must include the permanent street address, telephone number or web site address of the person who paid for the communication.

The NPRM proposed replacing current section 11 CFR 110.11 with a new section with the same number that incorporates these statutory changes. The proposed regulations would clarify that the disclaimer requirements in this section apply only to “communications through any broadcast, cable or satellite transmission, newspaper, magazine, outdoor advertising facility, mailing or other type of general public political advertising.” The Commis-

sion requested comments on how to define such terms as “communication” for the purposes of the section.

The NPRM also sought comments on proposed regulations that require all disclaimers to be “clear and conspicuous” and that specify additional requirements for communications disseminated by various media. In the case of printed communications, for example, the BCRA requires that the disclaimer be of a “sufficient type size.” The Commission asked whether the regulations should define “sufficient type size” and, if so, whether it should be defined in relation to the type size of other text used in the communication, and/or whether the Commission should include a safe harbor for disclaimers of at least a specified size. The NPRM posed similar questions about defining a “reasonable degree of color contrast” between the background and the printed disclaimer.

In the case of radio and television communications that are authorized by a candidate, the BCRA requires the candidate to deliver the communication orally, identifying himself or herself and stating that he or she has approved the communication. For televised communications, the BCRA also requires that a full-screen view or picture of the candidate appear while he or she voices the disclaimer. The disclaimer must also appear in writing for at least four seconds at the end of the ad with a “reasonable degree of color contrast” between the printed statement and the background. The Commission asked whether and how to define safe harbors for both the spoken and printed disclaimers.

Disclaimers for radio and television communications that are not authorized by a candidate must include the name of the political committee or other person who is responsible for the ad and, if applicable, the name of the sponsoring committee’s connected organization. In the case of a televised ad,

the disclaimer must be spoken by a representative of the committee that paid for it. The Commission sought comments on whether the regulation should specify who may represent the ad’s sponsor for this purpose.

### Prohibitions on Fraudulent Solicitations

The BCRA prohibits any person from fraudulently misrepresenting that he or she is acting on behalf of a candidate or political party for the purpose of soliciting contributions or donations. It also prohibits persons from participating in, or conspiring to participate in, plans to make such fraudulent misrepresentations. The proposed rules would create a new section to implement this provision. The new section

(continued on page 4)

## FEC Accepts Credit Cards

The Federal Election Commission now accepts American Express, Diners Club and Discover Cards in addition to Visa and MasterCard. While most FEC materials are available free of charge, some campaign finance reports and statements, statistical compilations, indexes and directories require payment. Walk-in visitors and those placing requests by telephone may use any of the above-listed credit cards, cash or checks. Individuals and organizations may also place funds on deposit with the office to purchase these items. Since 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.

<sup>1</sup> “Electioneering communications” are addressed in a separate rulemaking. See the [September 2002 Record](#), page 10.

## Regulations

(continued from page 3)

would also include the Commission's existing prohibition on fraudulent misrepresentations by candidates and their agents, which is currently found at 11 CFR 110.9(b).

### Increase in Civil Penalties

The BCRA raises civil penalties for knowing and willful violations of the Act's prohibition on contributions made in the name of another. The proposed rules would reorganize 11 CFR 111.24(a) to separately address such violations and set the civil penalties at:

- No less than 300 percent of the amount of the contribution involved; and
- No more than \$50,000 or an amount equal to 1,000 percent of the amount of the contribution involved, whichever is greater.

### Personal Use of Campaign Funds

The BCRA codifies many of the Commission's current regulations concerning candidates' personal use of campaign funds, including the so-

called "irrespective" test, which states that "personal use" means the use of excess campaign funds for any expense "that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g) and 113.2. The Commission's regulations include a list of uses that constitute *per se* personal use of campaign funds. 11 CFR 113.1(g)(1)(i). The Commission proposed keeping most of its personal use regulations unchanged, but making three additions to its list of *per se* personal uses:

1. Non-campaign-related vehicle expenses;
2. Vacations and non-campaign related travel; and
3. Salary payments or other compensation to the candidate to defray the cost of income lost as a result of campaigning.

The Commission sought comments on whether candidates who are also federal officeholders could use campaign funds to pay for travel that is not related to the campaign but rather to officeholder duties and whether such travel should be considered on a case-by-case basis.

The Commission also proposed adding a recordkeeping requirement for vehicles that are used in part for the campaign and in part for personal use. This proposed regulation is based on AO 2001-3, where the Commission advised a member of Congress who proposed to pay for a vehicle with campaign funds and use it for a combination of campaign, official and personal uses, to keep a log or other record to document the dates and expenses related to personal use.

### Availability of Comments

The Commission will make every effort to post public comments on its web site within 10 business days of the close of the comment period. ♦

—Amy Kort

## Notice of Proposed Rulemaking on Coordinated and Independent Expenditures

On September 12, 2002, the Commission approved a Notice of Proposed Rulemaking (NPRM) seeking comments on proposed changes to its regulations on coordinated and independent expenditures. The proposed rules would implement provisions of the Bipartisan Campaign Reform Act (BCRA) that:

- Require additional reporting of independent expenditures;
- Define coordination between a candidate or a political party and a person making a communication; and
- Address independent and coordinated expenditures by political party committees.

The NPRM was published in the September 24, 2002, *Federal Register* (67 FR 60042), and is open to public comments until October 11, 2002.

### Definition of Agent

Proposed 11 CFR 109.3 would define the term "agent" for use throughout part 109, which addresses independent and coordinated expenditures. The proposed definition focuses on whether a purported agent has "actual authority, either express or implied," to act on behalf of the principal by engaging in one of a list of specified actions. The Commission seeks comments on whether a person must be "acting within the scope of his or her authority as an agent" while engaged in the action in question before he or she is considered an agent. The Commission also seeks comments on whether a person who is authorized by a candidate or political party committee to solicit or receive contributions or other transfers of funds, and who holds a formal or honorary position with the campaign or party committee,

## Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* starting with January 1996 are available through the Internet as PDF files. Visit the FEC's World Wide Web site at <http://www.fec.gov> and click on "What's New" for this issue. Click "Campaign Finance Law Resources" to see back issues. Future *Record* issues will be posted on the web as well. You will need Adobe® Acrobat® Reader software to view the publication. The FEC's web site has a link that will take you to Adobe's web site, where you can download the latest version of the software for free.

should be considered *per se* to be an agent of that candidate or party committee.

### Independent Expenditure Reporting

**New Requirement.** The BCRA adds a new reporting requirement for political committees and persons who make independent expenditures that aggregate \$10,000 or more. In addition to existing reporting requirements for independent expenditures, new “48-hour reports” must be received by the Commission within two days after the \$10,000 threshold is reached at any time during the campaign, up to and including the 20<sup>th</sup> day before an election.

The Commission seeks comment on a number of issues involving both 48- and 24-hour notices of independent expenditures, including whether a person or political committee should calculate the aggregate amount of independent expenditures to date by:

- Only including disbursements for communications that have been publicly distributed; or
- Also including any disbursements made for communications and contracts obligating funds for communications.

### Coordination

BCRA repealed Commission regulations defining a “coordinated general public political communication” and instructed the Commission to promulgate new rules on “coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees.” Pub. L. 107-155, sec. 214(c) (March 27, 2002).

The proposed rules would introduce the three required elements of a “coordinated communication.” For a communication to be deemed “coordinated,” all three parts of the test would have to be

satisfied. The three parts of the test include:

- The requirement that a communication be paid for by someone other than the candidate, the candidate’s committee or a party committee;
- A “content standard” regarding the subject matter of the communication; and
- A “conduct standard” regarding interactions between the person paying for the communication and the candidate or political party committee or their agents.

**Content Standard.** The purpose of the proposed content standards is to determine whether a communication is reasonably related to an election. A communication that met any of the standards would be judged to have met the content standard. The proposed content standards are:

1. The communication meets the proposed definition of “electioneering communication”;<sup>1</sup>
2. Republication, dissemination or distribution of candidate campaign materials in a communication would amount to a contribution;<sup>2</sup> or
3. The communication expressly advocates the election or defeat of a clearly identified candidate for federal office.

The NPRM also provides a fourth content standard in the form of three alternatives that are framed in terms of a “public communication” that refers to a clearly identified candi-

(continued on page 6)

<sup>1</sup> For the proposed rules regarding electioneering communications, see the Federal Register notice at [67 FR 51131](#) and the [September 2002 Record](#), page 10.

<sup>2</sup> In order for a communication to be deemed coordinated under this content standard, the sixth conduct standard (below) must be satisfied.

### PACronyms, Other PAC Publications Available

The Commission annually publishes *PACronyms*, an alphabetical listing of acronyms, abbreviations and common names of political action committees (PACs).

For each PAC listed, the index provides the full name of the PAC, its city, state, FEC identification number and, if not identifiable from the full name, its connected, sponsoring or affiliated organization.

The index is helpful in identifying PACs that are not readily identified in their reports and statements on file with the FEC.

To order a free copy of *PACronyms*, call the FEC’s Disclosure Division at 800/424-9530 (press 3) or 202/694-1120. *PACronyms* also is available on diskette for \$1 and can be accessed free at [www.fec.gov/pages/pacronym.htm](http://www.fec.gov/pages/pacronym.htm).

Other PAC indexes, described below, may be ordered from the Disclosure Division. Prepayment is required.

- An alphabetical list of all registered PACs showing each PAC’s identification number, address, treasurer and connected organization (\$13.25).
- A list of registered PACs arranged by state providing the same information as above (\$13.25).
- An alphabetical list of organizations sponsoring PACs showing the PAC’s name and identification number (\$7.50).

The Disclosure Division can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St., NW.

## Regulations

(continued from page 5)

date. The Commission seeks comment on these and other possible content standards.

*Conduct Standard.* Under the proposed rules, if one of the conduct standards is met, and the first two parts of the test (the content standards and the source of payment) are also met, then the communication would be coordinated. The conduct standards are:

1. A communication is made at the "request or suggestion" of, or is agreed to by, a candidate, candidate's committee or political party committee;
2. A candidate or political party committee is "materially involved in decisions" about the communication;
3. A communication is created, produced or distributed after one or more substantial discussions between the person paying for the communication and the candidate clearly identified in the communication, his or her opponent or a political party committee;
4. A person paying for a communication uses a "common vendor" whose previous or current relationship with the candidate or political party committee allows the vendor to acquire material information about the plans, projects, activities or needs of the candidate or political party committee, and the vendor actually makes use of or conveys this material information to the payor;
5. A communication is paid for by a person formerly employed by a candidate or political party committee during the election cycle in which the communication is first publicly distributed, and this person makes use of or conveys material information about the plans, projects, activities or needs of the candidate or political party committee; or

6. The candidate or his or her committee engages in any of the conduct named in the first three conduct standards with regards to the subsequent dissemination, distribution or republication of campaign materials prepared by that candidate.

The Commission seeks comment on whether any exceptions to the proposed content or conduct standards should be included in the final rule.

### **Coordinated and Independent Expenditures by Party Committees<sup>3</sup>**

The BCRA sets new restrictions on political party committees' coordinated party expenditures, independent expenditures, transfers and assignments of coordinated party expenditure authorizations. 2 U.S.C. §441a(d)(4). The proposed rules would implement these restrictions by combining all political committees established and maintained by a national political party into one group and all political committees established and maintained by a given state political party into another group for the purposes of determining each group's permissible activities on behalf of a general election nominee. The Commission requests comments on the proposed combination of committees into these national and state groups.

*Coordinated or Independent Expenditures.* Under the proposed rules, as soon as a political committee within a political party group makes an independent expenditure

or a coordinated party expenditure with respect to a candidate after nomination, all political committees within that political party group are bound during the remainder of the election cycle to whichever type of expenditure the first political committee makes.

*Prohibited Transfers.* Under the BCRA, transfers of funds and some assignments of authority to make coordinated party expenditures between political committees in different political party groups would be prohibited after:

1. A political committee within a political party group makes a coordinated party expenditure in connection with the general election campaign of a candidate; and
2. A political committee within another political party group makes or intends to make an independent expenditure with respect to the same candidate.

After these two events, no political committee within one political party group electing to make coordinated party expenditures would be able to make any transfers to or receive any transfers from any political committee within the political party group electing to make independent expenditures during the remainder of the election cycle. Also, after these two events take place, no political committee within a political party group electing to make coordinated party expenditures would be able to assign authority to make coordinated party expenditures to any political committee within the political party group electing to make independent expenditures during the remainder of the election cycle.

The Commission seeks comments on such issues as whether to require party committees to keep track of the expenditure activities of other party committees within the same or another political party group, and/or

<sup>3</sup> Prior to the enactment of BCRA, the Commission had prohibited political party committees from making independent expenditures. In *FEC v. Colorado Republican Federal Campaign Committee ("Colorado I")*, the Supreme Court held that political party committees may make independent expenditures. 518 U.S. at 611-612 (1996).

how to track committees' "intent to make" independent expenditures.

*Presidential Candidates.* Finally, Congress, at 2 U.S.C. §441a(d)(4), may have effectively repealed the prohibition on national party committee independent expenditures in support of general election Presidential candidates. 11 CFR 110.7(a)(5). As already mentioned, a national party committee can make independent expenditures with respect to a candidate. Since this provision appears to equally apply to party committee expenditures in support of presidential or Congressional candidates, a national party committee would appear able to make independent expenditures with respect to a presidential candidate, regardless of whether a presidential candidate accepts public funding.

### Comments

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.

All comments should be addressed to Mr. John Vergelli, Acting Assistant General Counsel, and must be submitted in either written or electronic form by October 11, 2002. The Commission will hold a public hearing on October 23 and 24. Commenters wishing to testify must so indicate in their comments. 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 [BCRAcoord@fec.gov](mailto:BCRAcoord@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.

—Jim Wilson

## Court Cases

### New Litigation

#### Stevens v. FEC

On May 7, 2002, William J. Stevens and the Libertarian Party of Illinois (the Party) filed a complaint in the U.S. District Court for the Northern District of Illinois, Eastern Division, asking the court to set aside or modify the Commission's final determination that the Party, and its former treasurer Mr. Stevens, failed to file a required disclosure report. The plaintiffs also asked the court to enjoin the Commission from enforcing a civil money penalty it assessed under the administrative fine regulations.

*Court Complaint.* According to the complaint, in March 2002 the Commission made a final determination that Mr. Stevens and the Party had violated the Federal Election Campaign Act (the Act) by failing to file a 2001 Mid-Year Report. 2 U.S.C. §434(a). The Commission also assessed a \$7,875 civil money penalty under its Administrative Fine program based, according to the complaint, on "an assumed level of activity in the amount of \$108,755." Under the Commission's Administrative Fine regulations, penalties for nonfiled reports are determined by the estimated level of activity on the report and any prior violations under the administrative fine regulations. 11 CFR 111.43.

Mr. Stevens and the Party claim that, because they did not raise any federal campaign funds during the reporting period in question and allocated only \$14,552.64 as shared federal/nonfederal activity, they were not involved in any substantial activity that fell within the Commission's jurisdiction. The plaintiffs allege that in determining

### BCRA on the FEC's Web Site

The Commission has added a new section to its web site ([www.fec.gov](http://www.fec.gov)) devoted to the Bipartisan Campaign Reform Act of 2002 (BCRA).

The new page provides links to:

- The Federal Election Campaign Act, as amended by the BCRA;
- Summaries of major BCRA-related changes to the federal campaign finance law;
- Summaries of current litigation involving challenges to the new law;
- *Federal Register* notices announcing new and revised Commission regulations that implement the BCRA; and
- Information on educational outreach offered by the Commission, including upcoming Roundtable sessions and the Commission's tentative 2003 conference schedule.

The new section also allows individuals to view the Commission's calendar for rulemakings, including projected dates for the Notices of Proposed Rulemaking, public hearings, final rules and effective dates for regulations concerning:

- Soft money;
- Electioneering Communications;
- Contribution Limitations and Prohibitions;
- Coordinated and Independent Expenditures;
- The Millionaires' Amendment;
- Consolidated Reporting rules; and
- Other provisions of the BCRA.

The BCRA section of the web site will be continuously updated. Visit [www.fec.gov](http://www.fec.gov) and click on the BCRA icon.

(continued on page 8)

## Court Cases

(continued from page 7)

the penalty, the Commission overestimated the amount of activity on the nonfiled report by calculating the penalty based on the Party's federal and nonfederal activity. The complaint also claims that the Commission counted the same funds twice by determining the penalty according to both receipts and disbursements.

The plaintiffs ask the court to declare that "the application of the Federal Election Campaign Act is limited to federal election campaigns and cannot be applied to nor include non-federal funds nor non-federal activities." They ask the court to:

- Find that the plaintiffs are not in violation of 2 U.S.C. §434(a) and declare the civil money penalty null and void;
- Enjoin the Commission from enforcing the civil money penalty; and
- Enter an order and judgment setting aside the Commission's final determination or modifying it to limit its application to federal funds and activities only.

U.S. District Court for the Northern District of Illinois, Eastern Division, 02C-3291.♦

—Amy Kort

## Advisory Opinions

### AO 2002-9

#### Disclaimer Exception Applied to Political Ads Sent Via Short Messaging Service

Target Wireless may send political ads to wireless phone subscribers via Short Messaging Service (SMS) without including a disclaimer stating who paid for the ad and whether it was authorized by a candidate. SMS messages, like

bumper stickers, pins and other small objects, are limited in the size and length of the messages they can contain, and thus the small-item exception from the Commission's disclaimer requirement applies to SMS messages. 2 U.S.C. §441d and 11 CFR 110.11 and 110.11(a)(6)(i).

#### Background

Under the Federal Election Campaign Act and Commission regulations, communications that solicit a contribution or expressly advocate the election or defeat of a clearly-identified candidate and are distributed through general public political advertising must contain a disclaimer. 2 U.S.C. §441d and 11 CFR 110.11. The disclaimer must indicate who paid for the communication and, if made in support of a candidate, whether that candidate or a candidate's committee authorized the communication. If the candidate's committee both authorizes and pays for the communication, then the disclaimer must state that the communication was paid for by the campaign committee. 11 CFR 1109.3, 110.11(a)(1) and 110.11(a)(5).<sup>1</sup>

<sup>1</sup> *The Bipartisan Campaign Reform Act of 2002 (BCRA), which will take effect on November 6, 2002, mandates additional disclaimer requirements. First, the disclaimer requirements will apply to "any" communication financed by a political committee through any type of general public political advertising, not just those that expressly advocate the election or defeat of a clearly-identified candidate or that solicit a contribution. 2 U.S.C. §441d(a). Second, all persons who finance electioneering communications will be subject to 2 U.S.C. §441d(a). Third, for communications that are not authorized by a candidate or candidate's committee, disclaimers will have to include the "permanent street address, telephone number or World Wide Web address of the person who paid for the communication." 2 U.S.C. §441d(a)(3).*

Commission regulations also include exceptions to the disclaimer requirement. For example, small items upon which a disclaimer cannot be conveniently printed, such as bumper stickers, pins, buttons and pens, do not require disclaimer. 11 CFR 110.11(a)(6)(i).

Some wireless telephone providers offer subscribers the option of receiving "content," such as news or sports scores, on their wireless phone screens through SMS. Target Wireless proposes allowing political advertisers to append messages such as "Kids are Winners with Smith." SMS messages are limited to 160 characters in length, and the entire message—including the sports or news information, the political ad and any disclaimer included—must not use more than this number of letters, symbols, spaces, punctuation marks and single digits. Moreover, it is not possible to send a two-part message (with a total of 320 characters) because each SMS message is treated as a separate message and chances are remote that the two messages would arrive on the subscriber's screen in tandem.

#### Application to Proposal

Given these facts, the disclaimer exception for small items applies to SMS messages that contain political ads. The wireless telephone screens and SMS technology limit the size and the length of the information that can be conveyed, thus placing limits on the length of a political ad that are similar to those that exist with bumper stickers and other small items.

Commissioners Smith and Toner issued a concurring opinion on September 4.

Date Issued: August 23, 2002;  
Length: 4 pages.♦

—Amy Kort

## Advisory Opinion Request

### AOR 2002-12

Disaffiliation of SSFs of health insurance companies (American Medical Security, Inc., September 9, 2002)◆

## Alternative Dispute Resolution

### ADR Program Update

The Commission recently resolved two additional cases under the Alternative Dispute Resolution (ADR) program. The respondents, the alleged violations of the Federal Election Campaign Act (the Act) and the penalties assessed are listed below.

1. The Commission dismissed the matter concerning the Idaho Christian Coalition after the ADR office determined that the allegations of the complaint, regarding prohibited corporate and in-kind contributions, were unsubstantiated. (ADR 030; MUR 5070)
2. The Commission reached agreement with Engle for Congress, its treasurer, Debby Linhardt, and Michael Feinstein concerning excessive contributions. Engle for Congress and its treasurer acknowledged that an inadvertent software error resulted in their violation of the Act, but that they refunded the excessive contribution upon discovering it. The committee and its treasurer agreed to pay a \$1,000 civil penalty and to attend an FEC-sponsored seminar for candidate committees. Mr. Feinstein acknowledged that he had unintentionally made the excessive contribution and agreed to pay a \$500 civil penalty. (ADR 060; MUR 5214)◆

—Amy Kort

## Compliance

### Nonfilers

The campaign committees of the candidates listed below failed to file required campaign finance reports. The Federal Election Campaign Act requires the Commission to publish the names of principal campaign committees if they fail to file 12 day

pre-election reports or the quarterly report due before the candidate's election. 2 U.S.C. §§437g(b) and 438 (a)(7). The agency may also pursue enforcement actions against nonfilers and late filers under the Administrative Fine program on a case-by-case basis.◆

—Amy Kort

Candidate	Office Sought	Report Not Filed
Christian-Christensen, Donna M.	House, VI	Pre-Primary
Farrin, James	House NY/08	Pre-Primary <sup>1</sup>
Fisher, Ada M.	Senate NC	Pre-Primary <sup>1</sup>
Gonzaga, Luiz	House MA/10	Pre-Primary
Goss, Porter J.	House FL/14	Pre-Primary <sup>2</sup>
Lawrence, Robert I.	House WA/06	Pre-Primary
O'Grady, Marilyn F.	House NY/04	Pre-Primary <sup>2</sup>
Parke, Gregory T.	House VT/01	Pre-Primary
Pina, Albert R.	House AZ/07	Pre-Primary
Skorski, Alan	House NY/04	Pre-Primary
Thomas, Deborah	House AZ/06	Pre-Primary
Xuna, John (AKA Juan)	House FL/22	Pre-Primary

<sup>1</sup> This candidate's committee filed a Pre-Primary report with insufficient coverage dates.

<sup>2</sup> This candidate's committee is required to file electronically, but instead filed a paper copy of the report. Electronic filers who file on paper are considered nonfilers.

# Statistics

## Congressional Campaign Fundraising Declines in 2002 Election Cycle

Congressional campaigns raised \$604.6 million between January 1, 2001, and June 30, 2002, a decline of seven percent from the record levels reached in the 2000 campaign. During the first 18 months of the campaign, 1,746 Senate and House candidates spent \$357.7 million, down 11 percent from the same period in 1999-2000. Candidates also reported cash on hand of \$373.2 million, a four percent increase from 1999-2000.

Contributions from individuals totaled \$353.1 million and continue to be the largest source of receipts for Congressional candidates, representing 58.4 percent of all fundraising as of June 30, 2002. Contributions from PACs and other committees represented 27.9 percent of funds raised, and candidates themselves contributed or loaned a total of \$54.6 million, representing

nine percent of Congressional campaign receipts.

### Senate Campaigns

The decline in financial activity is confined to the Senate, where candidates in this cycle's 34 Senate races reported receipts of \$202.2 million, 22 percent lower than in 1999-2000 (see chart below). Senate candidates made disbursements of \$109.8 million, 35 percent lower than in the 2000 cycle.

Comparisons across election cycles are particularly difficult for Senate races, however. More small-population states are holding Senate elections this year, and a few campaigns can significantly affect totals. For example, as of June 30, 2000, there were three Senate campaigns with receipts more than two-times greater than those of the largest 2002 campaign.

### House Campaigns

Fundraising in House campaigns increased slightly during the first 18 months of the 2002 cycle. House campaigns raised \$402.4 million, up two percent from 2000 levels, and

spent \$247.9 million, up six percent. These increases are confined to incumbent and open seat candidates from both parties—the financial activity of challengers is lower than in the 2000 cycle.

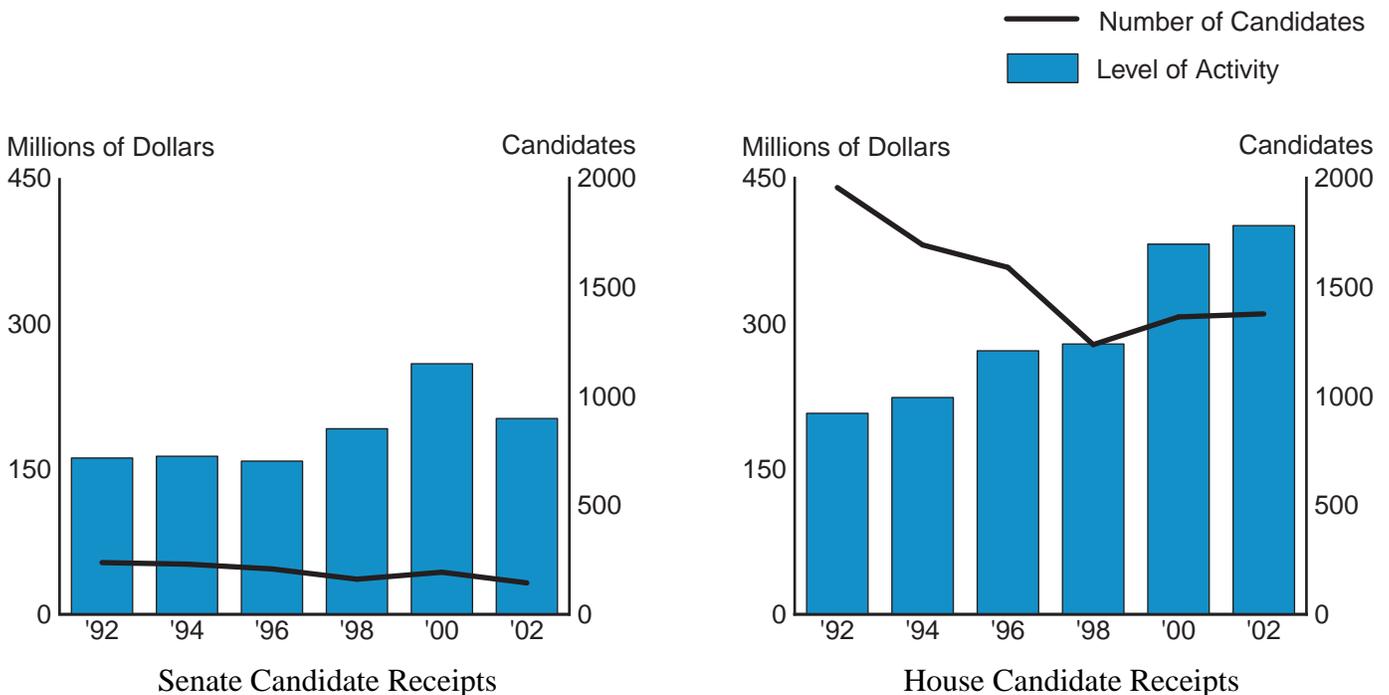
### Additional Information

The chart below shows the 18-month Senate and House receipts dating back to the 1992 election cycle. A press release dated September 9, 2002, provides detailed information about Congressional fundraising and spending, including rankings of Senate and House campaigns for receipts, disbursements, cash-on-hand, debts and major sources of receipts. The press release is available:

- On the FEC web site at [www.fec.gov/news.html](http://www.fec.gov/news.html);
- From the Public Records office (800/424-9530, press 3) and the Press Office (800/424-9530, press 5); and
- By fax (call the FEC Faxline at 202/501-3413 and request document 616). ♦

—Amy Kort

18-Month Receipts of Congressional Candidates—1992-2002



## Index

The first number in each citation refers to the “number” (month) of the 2002 *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 2001-15, 3:9; 2001-20, 3:9
- 2001-13: National committee status of party committee, 1:11
- 2001-16: Extension of 70-day window for transferring funds for allocable expenses after suspension of party fundraising due to national emergency, 2:1
- 2001-17: Reporting contributions made via single check split between federal and nonfederal accounts, 3:5
- 2001-18: Affiliation between LLC PAC and PACs of corporate owners in 60-40 joint venture, 3:7
- 2001-19: Non-preemption of state law prohibiting political committee’s bingo license, 3:8
- 2002-1: Coalition of minor parties supporting candidate(s) who together gain five percent of vote not eligible for Presidential public funding, 4:3

### Public Appearances

October 1, 2002  
COGEL  
Ottawa, Canada  
Chairman Mason  
Commissioner Thomas

October 30, 2002  
The Federalist Society,  
University of Richmond School  
of Law  
Richmond, VA  
Commissioner Smith

- 2002-2: Preemption of state law barring lobbyist from fundraising for Congressional candidate who is member of Maryland General Assembly, 4:4
- 2002-3: State committee status, 6:6
- 2002-4: Name and Abbreviation of SSF, 6:7
- 2002-6: State committee status, 7:4
- 2002-8: Return of federal funds from nonfederal account to federal account, 9:13
- 2002-9: Disclaimer exception applied to political ads sent via short messaging service, 10:8
- 2002-10: State committee status, 9:14

### Compliance

- Administrative Fine program extended, 1:13
- Cases resolved under Alternative Dispute Resolution program, 7:6; 9:16. 10:9
- Committees fined under Administrative Fine program, 1:13; 2:7; 3:11; 5:5, 6:10; 8:6; 9:18
- MUR 5041: Contribution in the name of another made by corporation, 8:5
- Nonfilers, 6:5; 7:7; 10:9

### Court Cases

- \_\_\_\_\_ v. FEC
- AFL-CIO, 2:3; 3:5
- Alliance for Democracy, 5:3
- Baker, 4:3
- Beaumont, 3:4
- Common Cause and Democracy 21, 2:4
- Echols, 5:3; 6:4
- Friends for Houghton, 9:15
- Graham, 7:5
- Judicial Watch, Inc., and Peter F. Paul, 3:3
- McConnell, 5:3; 6:4
- Miles for Senate, 3:1
- NRA, 5:3
- Schaefer, 9:16
- Stevens, 10:7
- Wertheimer, 1:12
- FEC v. \_\_\_\_\_
- Democratic Party of New Mexico, 7:5
- Freedom’s Heritage Forum, 8:2

- Specter ’96, 5:3
- Triad Management Services, 8:4

### Regulations

- Administrative fines, Notice of Proposed Rulemaking, 6:2
- Allocation of candidate travel expenses, interpretation, 3:2
- Brokerage loans and lines of credit, final rules, 7:2
- Candidate debates, petition for rulemaking, 6:4
- Civil penalties, no increase, 3:2
- Contribution and expenditure definitions, Notice of Proposed Rulemaking, 7:3; final rules, 9:9
- Contribution limitations and prohibitions, Notice of Proposed Rulemaking, 9:11
- Coordinated and independent expenditures, Notice of Proposed Rulemaking, 10:4
- Disclaimers, fraudulent solicitation, civil penalties and personal use of campaign funds, Notice of Proposed Rulemaking, 10:1
- “Electioneering Communications,” Notice of Proposed Rulemaking, 9:10
- Independent expenditure reporting, final rules, 5:2; effective date, 7:1
- Soft money rules, Notice of Proposed Rulemaking, 6:1; final rules, 9:1
- Use of Internet, public hearing, 3:1

### Reports

- Alaska and Iowa certified for state filing waiver, 7:1
- April reporting reminder, 4:1
- Independent expenditure reporting, new forms, 6:9; effective date 7:1
- Iowa convention reporting, 7:4
- IRS filing requirements, 1:11; 6:8
- Louisiana primary, 8:1
- North Carolina primary, 8:2
- October reporting reminder, 10:1
- Reports due in 2002, 1:2
- Virginia convention reporting, 5:6
- 48-hour notice periods for 2002 primaries, 3:10

FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20463

---

Official Business  
Penalty for Private Use, \$300



Printed on recycled paper

Prepaid Standard  
Postage and Fees Paid  
Federal Election Commission  
Permit Number G-31

