

Record

July 2003

Federal Election Commission

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Court Cases

Christine Beaumont, et al. v. FEC

On June 16, 2003, the U.S. Supreme Court, overruling the U.S. Court of Appeals for the 4th Circuit, held that the prohibition on contributions by corporations is constitutional as applied to nonprofit MCFL-type advocacy corporations, such as North Carolina Right to Life, Inc.

Background

Under the Federal Election Campaign Act (the Act) corporations and labor organizations are prohibited from making contributions or expenditures in connection with a federal election. 2 U.S.C. §441b. In *FEC v. Massachusetts Citizens for Life (MCFL)*, the Supreme Court concluded that 2 U.S.C. §441b could not constitutionally prohibit certain nonprofit corporations from making independent expenditures. 479 U.S. 238 (1986). MCFL was exempt from this ban because it had the following features:

- It was formed to promote political ideas and did not engage in business activities;
- It did not have shareholders or other persons who had a claim on its assets or earnings, or who had

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Reports

July Reporting Reminder

The following reports are due in July:

- All authorized committees must file a quarterly report by July 15. The report covers financial activity from April 1 (or the day after the closing date of the last report) through June 30.
- National party committees, political action committees following a monthly filing schedule and state, district and local party committees that engage in reportable federal election activity must file a monthly report by July 20. This report covers activity for the month of June.
- All other filers must submit a mid-year report by July 31, covering financial activity from January 1 (or the day after the closing date of the last report) through June 30.

New Reporting Forms and Software

The Commission has approved new and revised reporting forms and software that conform to the reporting requirements of the Bipartisan Campaign Reform Act of 2002. All committees, individuals and other persons must use the new and revised forms for all reports. Paper copies of these forms have been sent

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Reports

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to registered political committees who file on paper, and may also be downloaded from the Commission's web site at <http://www.fec.gov/reporting.html>. Instructions for filling out the new and revised forms are also available at this web address.

For electronic filers, the software formats for FECFile, the FEC's free reporting software, are now available and may be downloaded at <http://www.fec.gov/electfil/electron.html>. Electronic filers using commercial software should contact their vendors to obtain the updated format for their software. Please note that 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 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 Commission's validation program will be considered nonfilers and may be subject to enforcement actions, including administrative fines.

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 electronic copy of their reports with the FEC in order to speed disclosure. All reports, whether they are filed with the FEC or with the Secretary of the Senate, must be filed using the new and revised reporting forms and/or software.

Additional Information

For more information on 2003 reporting dates:

- See the reporting tables in the January 2003 *Record*;
- 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 site at www.fec.gov/pages/charts.htm to view the reporting tables online. ♦

—Amy Kort

Principal Campaign Committees Must File FEC Form 3Z-1

Principal campaign committees of candidates running in 2004 must file FEC Form 3Z-1 as part of their 2003 July Quarterly and Year-End reports. 11 CFR 104.19. The information provided on Form 3Z-1 allows opposing candidates to compute their "gross receipts advantage," which is used to determine whether a candidate is entitled to increased contribution and coordinated party expenditure limits under the "Millionaires' Amendment." 2 U.S.C. §§441a(i) and 441a-1. Form 3Z-1 is included

in the FEC Form 3 package, and need only be filed with the July 15 quarterly report and year end report for the year preceding the general election for the office the candidate seeks. ♦

—Amy Kort

Compliance

Change in Letter Notification Procedures

A business process reengineering study of the Reports Analysis Division (RAD) was conducted in 2002. One of the procedural changes suggested to streamline RAD's processes, help optimize workflow and increase efficiency was the elimination of the second Request for Additional Information (RFAI) sent to committees following a non-response or inadequate response to the initial RFAI.

Beginning with the review of the 2003-2004 election cycle reports, committees will only receive one RFAI, but will have thirty days in which to respond to the inquiry. Since second notices will not be sent to committees that fail to adequately respond, the letter will encourage committees to call their Reports Analyst to discuss the nature of their response and whether further clarification or action by the committee is necessary. Extensions of time in which to respond will not be granted. ♦

—Reports Analysis Division

Court Cases

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other disincentives to disassociate themselves from the organization; and

- It was not established by a business corporation or labor union and had a policy of not accepting donations from such entities.

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Commission regulations at 11 CFR 114.10 establish a test based on these features to determine whether a corporation qualifies for the exemption.

North Carolina Right to Life, Inc., a nonprofit advocacy corporation, three of its officers and Christine Beaumont, a North Carolina voter (NCRL), filed suit against the FEC asking the court to declare 441b and its implementing regulations overly broad and unconstitutional and issue a permanent injunction barring the FEC from enforcing the Act and these regulations against the plaintiffs.

District Court Decision. On January 24, 2001, the U.S. District Court for the Eastern District of North Carolina, Northern Division, permanently enjoined the Commission from relying on, enforcing or prosecuting against the plaintiffs violations of 441b. The court also permanently enjoined the Commission from enforcing against the plaintiffs Commission regulations that:

- Prohibit all corporations from making contributions (11 CFR 114.2(b)); and
- Create an exemption from the ban on corporate expenditures for certain MCFL-type nonprofit corporations, for which the NCRL did not qualify because it accepted a small amount of corporate donations. 11 CFR 114.10.

Appeals Court Decision. The Commission appealed the district court decision, and on January 25, 2002, the U.S. Court of Appeals for the 4th Circuit found that a complete ban on corporate contributions and expenditures in connection with federal elections, with an exception to the corporate expenditure ban “so narrow that NCRL does not fit into it,” burdened the plaintiffs’ First Amendment speech and association interests. The appeals court also found that the reporting requirements and administrative burdens associated with maintaining a

political committee “stretch far beyond the more straightforward disclosure requirements of unincorporated associations.” The court concluded that, as a nonprofit advocacy group, the “NCRL is more akin to an individual or an unincorporated advocacy group than a for-profit corporation.”

The court also ruled that the prohibition on corporate contributions was unconstitutional as applied to NCRL. The court reasoned that the same rationale the Supreme Court used to find the ban on independent expenditures unconstitutional as applied to MCFL also applied to contributions. The court found that contributions by an MCFL-type corporation carried no greater risk of political corruption than did independent expenditures by such an organization.

Supreme Court Decision

The case was appealed to the Supreme Court solely on the issue of the constitutionality of the ban against contributions from nonprofit advocacy corporations.¹ The Court agreed to hear the case because on this issue the U.S. Court of Appeals for the 4th Circuit was in conflict with the U.S. Court of Appeals for the 6th Circuit.

The Court began its decision by noting that federal law has banned corporations from contributing directly to federal candidates for nearly 100 years. Over the years the Court had reasoned this prohibition against corporations is intended to:

¹ The Court noted that as a result it had no occasion to address whether NCRL was entitled to an MCFL-type exception to the ban on corporate independent expenditures. The Court also quoted from its decision in MCFL noting that MCFL’s formal policy against accepting donations from corporations was “essential to our holding.”

- Prevent corruption and the appearance of corruption² by ensuring that corporate earnings are not turned into political war chests;
- Protect individuals who have paid money into a corporation from having their funds used to support candidates to whom they may be opposed; and
- Hedge against the use of corporations as illegal conduits for circumventing the contribution limits.

The Court then noted that its decision in *FEC v. National Right to Work Committee (National Right to Work)*³ “all but decided the issue against NCRL’s position.” See *FEC v. National Right to Work Committee*, 459 U.S. 197 (1982). The Court explained that in *National Right to Work* it specifically rejected NCRL’s arguments that deference to Congress on the proper limits of corporate contributions depended upon the details of a corporation’s form or its affluence. The Court also explained that its decision in *MCFL*, which NCRL and the U.S. Court of Appeals for the 4th Circuit had relied upon in their reasoning, undermined NCRL’s arguments, noting that in *MCFL* the Court concluded that restrictions “on contributions require less compelling justification

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² The Court quoted from its decision in *FEC v. Colorado Federal Republican Campaign Committee* that it understood corruption to mean “not only quid pro quo agreements, but also undue influence on an officeholder’s judgment, and the appearance of such influence.” See *FEC v. Colorado Federal Republican Campaign Committee* 533 U.S. 431.

³ *National Right to Work* addressed a nonstock corporation’s ability to solicit contributions from outside of its membership. The Court concluded that a solicitation to any individual who had at one time contributed to the PAC, regardless of whether or not he or she was a member, went beyond the permissible solicitation of members provided for by 441b.

Court Cases

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than restrictions on independent spending.”

According to the Court, ruling in favor of NCRL would mean recasting its understanding of the “risks of harm” of corporate political contributions, their “expressive significance” and the deference owed to Congress on how to treat them. NCRL argued that contributions by MCFL-type corporations posed no potential threat to the political system, and the governmental interest in combating corruption was not sufficiently strong to warrant the Act’s broad prohibition against contributions from MCFL-type corporations. The Supreme Court, in rejecting this argument, noted that nonprofit advocacy corporations, “like their for-profit counterparts, benefit from significant ‘state-created advantages’ and may well be able to amass substantial ‘political war chests.’” Additionally, the Court stated that nonprofit corporations are “no less susceptible than traditional business corporations to misuse as conduits for circumventing the contribution limits imposed on individuals.”

NCRL also argued that the Act’s ban on corporate contributions should be subject to a strict level of constitutional scrutiny because it bans corporations from making contributions rather than merely limiting them from doing so. The Court also rejected this argument noting that in reviewing political financial restrictions, “the level of scrutiny is based on the importance of the ‘political activity at issue’ to effective speech or political association.” The Court determined that contribution restrictions “have been treated as merely ‘marginal’ speech restrictions” and therefore are constitutional if they are “‘closely drawn’ to match a ‘sufficiently important interest.’” Additionally, the Court pointed out that recognizing that the “degree of scrutiny runs

on the nature of the activity regulated is the only practical way to square two leading cases,” *National Right to Work* and *MCFL*.

Moreover, the Court stated that NCRL’s contention that the corporate prohibition is unconstitutional because it is not sufficiently closely drawn rests on a false premise in that the prohibition is not a complete ban but rather contains significant exceptions, including allowing corporations and unions to pay for the administrative expenses of their PACs. Finally, the Court noted that in *National Right to Work*, which was decided by a unanimous Supreme Court in 1982, it thought that the regulatory burdens placed on PACs were insufficient to make them unconstitutional as an advocacy corporation’s sole avenue for making contributions. “There is no reason to think the burden on advocacy corporations is any greater today,” the Court concluded, “or to reach a different conclusion here.”

Having found that the prohibition on corporate contributions is constitutional as applied to NCRL, the Supreme Court ordered that the judgment of the U.S. Court of Appeals for the 4th Circuit in *Beaumont v. FEC* be reversed. ♦

—George Smaragdis

Advisory Opinions

AO 2003-6

Transfer of Payroll Deduction Authorization Between Affiliated SSFs

The separate segregated fund (SSF) of Public Service Enterprises Group, Inc. (PSEG PAC) may receive a transfer of payroll deduction authority from its subsidiary’s SSF as long as employees participating in payroll deduction are notified at least 30 days before the transfer that all contributions are

voluntary and that they may stop contributing at any time or change the amount of their contribution.

Background

Commission regulations allow the use of a payroll deduction plan to collect voluntary contributions to a corporation’s SSF. 11 CFR 114.5(k)(1). Corporations may also use a payroll deduction plan to facilitate contributions from the restricted class of its subsidiaries. 11 CFR 114.5(g)(1).

PSE&G is a wholly owned subsidiary of Public Services Enterprise Group, Inc. (PSEG). PSE&G has facilitated contributions from the restricted class of PSEG’s many subsidiaries to PSE&G’s separate segregated fund (PEGPAC) through a payroll deduction plan. PEGPAC intends to terminate and transfer its payroll deduction authority to PSEG PAC. Before doing so, they will send a letter to those employees who participate in payroll deduction that informs them that all contributions are voluntary and that the employee may stop contributing or change the amount that they give.

Analysis

Because PSE&G is a wholly owned subsidiary of PSEG, their SSFs are affiliated. 100.5(g)(2). When the SSFs of each are affiliated, either a parent company or a subsidiary may establish and finance a payroll deduction plan to facilitate contributions to an affiliated SSF. AOs 1987-34 and 1982-34.

The Commission permits transfers of payroll deduction authority when the transfer is between affiliated committees, provided the employees are given advance notice that their contributions are voluntary and that they may revoke the payroll authorization without reprisal. AOs 1997-25, 1994-23 and 1991-19.

The notice must include all of the necessary disclaimers, including notification of PSEG PAC’s political purpose and the employees’

right to revoke authorization at any time without reprisal. 114.5(a)(1)-(5). Also, in order to provide adequate time for the contributors to revoke payroll authorization, the transfer must occur at least thirty days after the notice is given to the employees. AO 1997-25.

Date issued: May 8, 2003;
Length: 6 pages.◆

—Phillip Deen

AO 2003-7 **State Leadership PAC** **Refunding Nonfederal Funds**

The Virginia Highlands Advancement Fund (VHAF), a so-called “527 organization” administered and supervised by a member of the U.S. House of Representatives, may dispose of nonfederal funds it unexpectedly received after the Bipartisan Campaign Reform Act’s (BCRA) November 6, 2002, effective date by refunding the money to its donors on a pro-rata basis.

Background

Under the BCRA, any entity directly or indirectly established, financed, maintained or controlled by a federal officeholder may raise and spend funds in connection with state and local elections, but only in amounts and from sources that are consistent with state law and that do not exceed the limits and prohibitions of federal law. 2 U.S.C. §441(e)(1)(B); 11 CFR 300.60(d) and 300.62. Similarly, federal officeholders may not receive, direct, spend or disburse funds in connection with a state or local election if the funds are in excess of the limits and prohibitions of federal law. 11 CFR 300.62.

VHAF is a state political organization registered in Virginia and is “administered” and “supervised” by a Member of Congress. VHAF only raised nonfederal funds, and it is not affiliated with or otherwise connected with a federal political committee. In order to comply with the BCRA, VHAF spent all of its

funds prior to November 6, 2002. In December 2002, however, VHAF received a refund of \$690.10 from the IRS for an abated late filing penalty.

Analysis

The BCRA does not directly address the receipt of an unexpected refund of nonfederal funds after November 6, 2002. However, this situation is analogous to that faced by a national party committee with nonfederal funds remaining after the BCRA took effect. Commission regulations provide for a transition period during which national party committees could disgorge nonfederal funds after November 6, and outline particular methods for disgorging the funds. 11 CFR 300.12(c). Since refunding monies to donors was one of the permitted means of disgorgement, the Commission—drawing an analogy between VHAF’s situation and these transition rules—concludes that VHAF may dispose of the IRS refund by returning pro-rata portions of it to VHAF donors.¹

Date issued: May 8, 2003;
Length: 4 pages.◆

—Gary Mullen

Advisory Opinion Requests

AOR 2003-17

Use of campaign funds to pay former candidate’s legal fees stemming from alleged criminal activity (James W. Treffinger, May 14, 2003)

AOR 2003-18

Defeated primary candidate’s use of general election contributions remaining after unsuccessful refund attempt to contribute to nonprofit foundation (Senator Bob Smith, May 16, 2003)◆

¹ The Commission did not address other possible uses for the IRS refund.

Election Administration

Revised National Mail Voter Registration Form Released for Comment

On June 4, 2003, the Commission released for public comment an updated draft of the national mail voter registration form. The form has been updated to reflect information required by the Help America Vote Act of 2002 (HAVA). Proposed changes to the form include adding:

- Questions that ask applicants if they are a U.S. citizen and whether they will be 18 years of age on or before election day. Applicants are instructed not to complete the form if they checked “No” in response to either question.
- A statement informing the applicant that if the form is submitted by mail and he or she is registering for the first time, appropriate information must be submitted with the mail-in registration form in order to avoid additional identification requirements when voting at the polls for the first time.
- Instructions to address new HAVA requirements for driver’s license and/or Social Security number information when applicants use these as ID numbers.

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FEC Issues 2002 Annual Report

The Commission’s *Annual Report 2002* is now available online. To view the *Annual Report 2002*, go to the Commission’s web site at <http://www.fec.gov/pages/anreport.htm>. Printed copies of the report will also be available in July. To order a free copy call 800/424-9530 (pres 1, then 3) or 202/694-1100.

Election Administration

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Because many states are still amending and updating their election laws and procedures to reflect the new provisions of HAVA, the Commission has also provided “default” draft instructions on ID numbers and first-time voter ID requirements that states may incorporate into their instructions.

The deadline for public comments on the draft form was June 26, 2003. The complete draft mail voter registration form is available on the FEC web site at http://www.fec.gov/votregis/pdf/nvra_form.pdf. ♦

—Amy Kort

Administrative Fines

Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 71 new Administrative Fine cases, bringing the total number of cases released to the public to 590, with \$821,520 in fines collected.

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 fines regulations. Penalties for late 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. Penalties for 48-hour notices that are filed late or not at all are determined by the amount of the

Committees Fined and Penalties Assessed

1. American Aids PAC	\$1,800
2. American Association of Airport Executives Good Government Committee	\$468
3. American Society of Cataract & Refractive Surgery PAC (AKA EYEPAC)	\$700
4. American Society of Interventional Pain Physicians PAC	\$250
5. American Textile Manufacturers Institute Inc. Committee for Good Government	\$900
6. American United Life Insurance Company PAC	\$350
7. America’s Foundation (FKA Fight-PAC)	\$6,000
8. Association of American Railroads PAC (RAIL PAC)	\$1,350
9. Baker Botts Bluebonnet Fund	\$250
10. Bi-County PAC (FKA Suffolk PAC)	\$2,000
11. Borski for Congress Committee	\$975
12. Campbell for Congress 2002	\$550
13. Cleve Mobley for Congress	\$2,400
14. Committee to Elect Helen Rahder July Quarterly 2002	\$900
15. Committee to Elect Helen Rahder 12 Day Pre-Primary 2002	_____ ¹
16. Committee to Elect Trent Franks to Congress	\$3,500
17. Conservative Leadership PAC	\$9,000 ^{2,3}
18. Council of Insurance Agents & Brokers PAC	\$825
19. Dan Hagood for Congress Inc.	\$8,000
20. Democratic Party of Orange County	\$900
21. Donna 2002 Congressional Campaign Committee	\$1,000
22. El Paso Municipal Police Officers Association Inc. PAC	\$1,450
23. Florida Sugar Cane League PAC April Quarterly 2002	\$5,625
24. Florida Sugar Cane League PAC July Quarterly 2002	\$5,625
25. Friends of Israel PAC FRIPAC	\$375
26. Friends of John Conyers	\$5,250
27. Friends of Martin Collen	\$700
28. Friends of Roger Wicker 2002	\$1,000
29. Golden Rule Financial Corporation—PAC	\$975
30. Harris County Democratic Party	\$850

¹The Commission took no further action in this case.

²This penalty was reduced due to the level of activity on the report.

³This civil money penalty was paid after referral for collection.

contribution(s) not timely reported and any prior violations.

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 these charts, along with their treasurers, were assessed civil money penalties under the administrative fines 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, cont.

31. HCR Manor Care PAC	\$1,000
32. Health Plan PAC of the American Assoc of Health Plans (FKA Group Health Assoc of Amer PAC)	\$1,100
33. H & R Block PAC (BLOCK PAC)	\$350
34. Hispanic Democratic Organization (HDO) Federal PAC	\$500
35. Indiana Dental PAC	\$1,000
36. International Union of Operating Engineers Local 825 Political Action and Education	\$700
37. IT Group PAC	\$375
38. Kelly for Congress	\$1,800
39. KIDSPAC	\$675
40. Kilpatrick for United States Congress	\$300
41. Level 3 Communications Inc. PAC	\$700
42. McCoy for Congress April Quarterly 2002	\$536 ²
43. McCoy for Congress July Quarterly 2002	\$900 ³
44. Montgomery Watson Americas Inc. Employee PAC	\$2,700
45. New York State Conservative Party	\$300
46. New York State Public Employees Federation—COPE	\$1,450
47. Office and Professional Employees International Union— Voice of the Electorate	\$1,650
48. Parsons Corporation PAC	\$2,175
49. Patriot PAC April Quarterly 2002	\$350
50. Patriot PAC July Quarterly 2002	\$350
51. Petroleum Marketers Association of America\Small Business Committee	\$1,450
52. Phil Sudan for Congress	\$500
53. Prairie Leadership Committee	\$675
54. PSEA PACE for Federal Elections (FKA Pennsylvania PACE for Federal Elections)	\$1,125
55. R I Republican Party	\$3,500
56. Right to Work PAC	\$525
57. Society of Thoracic Surgeons PAC (STS PAC)	\$550
58. Sony Pictures Entertainment Inc. PAC	\$343
59. South Carolina Credit Union League Inc. Credit Union Defense Fund	\$1,500
60. South Carolina Republican Party	\$1,500
61. Teamsters Joint Council No 53 PAC Drive	\$650
62. Teamsters Local 745 DRIVE	\$2,900
63. TECO Energy Inc. Employees' PAC	\$1,000
64. Traditional Values Coalition PAC	\$350
65. ULLICO Inc. PAC (ULLIPAC)	\$2,400
66. United Assoc/Journeymen/Apprent/Plumb/PipeFitt Ind of the US/Can Loc 447 Federal Political Action Fund	\$350
67. Whetstone for Congress	\$250
68. Wine and Spirits Wholesalers of America Inc. PAC	\$1,000
69. Women's Alliance for Israel	\$2,600
70. ZACOPAC (Zachary Construction Corporation)	\$2,100
71. Zeneca Inc. PAC	\$550

²This penalty was reduced due to the level of activity on the report.

³ This civil money penalty has not been collected.

Hearings

FEC Holds Public Hearing on Enforcement Procedures

On June 11, 2003, the Commission hosted a public hearing concerning potential changes to its enforcement procedures. Many of those testifying felt that the Commission should make its procedures more transparent and take additional steps to ensure due process for respondents. Others emphasized the agency's obligation to enforce the law as efficiently and effectively as possible.

The FEC has exclusive jurisdiction with respect to civil enforcement of the Federal Election Campaign Act (FECA). Enforcement proceedings (Matters Under Review or MURs) may begin with complaints filed by the public or as a result of internal actions by Commission staff, including referrals from the Reports Analysis and Audit Divisions. In addition, referrals from other agencies and *sua sponte* submissions may result in MURs. (For additional information on the enforcement process, consult the Commission's "Filing a Complaint" brochure, available on the FEC web site at <http://www.fec.gov/pages/brochures/complain.htm>.)

On May 1, 2003, the Commission published in the *Federal Register* a notice inviting the public and members of the regulated community to comment on the agency's enforcement practices and to testify at a public hearing. See the [June 2003 Record](#), page 7.

Representatives of national party committees as well as counsel for members of the regulated community testified at the hearing, along with representatives from the Free Speech Coalition and Conservative Defense and Education Fund, the James Madison Center for Free

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Regulations

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Speech and the Center for Responsive Politics.¹ Commenters offered disparate opinions regarding the effectiveness of existing enforcement procedures, but agreed that the hearing gave the Commission an opportunity to examine many practices and procedures that have been in place since the FEC's founding in 1975.

Much of the testimony related to protecting the rights of the regulated community and providing more substantial guidance regarding enforcement proceedings and civil penalties that may be administered by the Commission. Many participants expressed the underlying need for more transparency, efficiency, and access to Commission resources for individuals involved in enforcement matters. Commenters not only relayed accounts of previous experiences with the Commission, but made tangible suggestions for improvement.

Cleta Mitchell (representing Foley Lardner), as well as other participants, urged the Commission to recognize that due process is the most important principle to uphold during enforcement. Additionally, Jan Baran, Robert Bauer (representing Perkins Coie), and Charles Spies (representing the Republican National Committee) suggested that oral hearings presentations by respondents or their counsel before

¹ The following individuals made oral submissions during the hearing: Cleta Mitchell (Foley Lardner), Robert F. Bauer and Marc Elias (Perkins Coie), James Bopp (James Madison Center for Free Speech), Donald F. McGahn II (National Republican Congressional Committee), Joseph Sandler and Neil Reiff (Sandler, Reiff and Young, PC), Charles R. Spies (Deputy Counsel, Republican National Committee), and William J. Olson (The Free Speech Coalition and Conservative Defense and Education Fund) and Jan Witold Baran.

the Commission be incorporated as an essential component of the proceedings. Other testimony suggested that the FEC should make the following changes in the enforcement process:

- Provide more guidance regarding the complaint process and fine schedule;
- Clearly define liabilities of the candidates and committee treasurers;
- Allow respondents to obtain copies of their depositions during the investigative process;
- Establish different standards for naming respondents;
- Consider the timeliness of release of enforcement findings immediately before an election; and
- Allow respondents greater access to the Commission's investigative files.

Although most of the comments expressed during the hearing suggested changes that would uphold the rights of individuals directly involved in enforcement proceedings, Lawrence Noble (representing the Center for Responsive Politics) suggested that violations of campaign finance law are not victimless crimes and it is important to safeguard the public from such encroachments. He maintained that the FEC, first and foremost, is a law enforcement agency. Furthermore, he emphasized that the present procedures comply with due process. However, according to Mr. Noble's testimony, it is necessary not only to make the process more efficient but also to provide the Commission with greater ability to enforce the law.

The open forum enabled the Commission to hear testimony regarding issues that face members of the public, counsel who practice before the Commission and complainants and respondents who interact with FEC staff. Commissioners expressed their desire to make the enforcement process more efficient and effective. The Alterna-

tive Dispute Resolution program was cited as a recent effort to promote compliance and efficiency. In addition, Chair Ellen Weintraub announced at the hearing that the Commission will add a searchable MUR database to the agency's web site later this year to improve public access to enforcement documents.

An exhaustive list of hearing participants and written submissions is available on the FEC web site at <http://www.fec.gov/agenda/note2003-09/comments.html>. ♦

—Michelle L. Ryan

FEC Hearing on Presidential Public Funding and National Conventions

The Commission's proposed changes to its rules governing publicly financed Presidential candidates and national nominating conventions drew sharply divergent comments at a June 6, 2003, public hearing held at the Commission. On April 23, the Commission released for public comment proposed revisions to these rules to implement relevant provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) and to respond to issues that arose while administering the public funding program. See the [May 2003 Record](#), page 1.

Much of the testimony considered how national nominating conventions could be financed. Under the BCRA, a national committee of a political party may not solicit, receive or direct to another person a contribution, donation or transfer of funds or anything of value, or spend any funds that are not subject to the limits, restrictions and reporting requirements of the Federal Election Campaign Act. This prohibition also applies to agents acting on behalf of the national party committee and to entities directly or indirectly established, financed, maintained or controlled by a national party committee. 2 U.S.C. §§441i(a)(1) and (2).

In the NPRM, the Commission sought comments on whether host committees and municipal funds for national nominating conventions are “agents” of a national party committee or are directly or indirectly established, financed, maintained or controlled by that committee. The BCRA also prohibits an entity directly or indirectly established, financed, maintained or controlled by, or acting on behalf, a federal candidate or officeholder from raising or spending nonfederal funds in connection with a federal election. 2 U.S.C. §441i(e)(1). The NPRM requested comments on whether expenses of a host or municipal committee are in connection with a federal election.

In contrast, convention committees, as they have been organized in the past, have been directly or indirectly established, financed, maintained or controlled by a national party committee. Thus, one proposal would ban convention committees from raising and spending nonfederal funds. The NPRM also sought comments on whether this prohibition would bar convention committees from accepting many of the in-kind donations typically provided by host committees and municipal funds.

At the hearing, Steve Weissman, Associate Director of the Campaign Finance Institute, presented data from a study his organization had prepared showing a sizeable increase in spending on the national nominating conventions and private funding of host committees by corporations and large donors from 1980 to 2004. Others, however, disputed any implication that such spending was politically motivated. Robert Bauer from Perkins Coie argued that corporate sponsorship of the conventions is part of a larger general trend in increased corporate sponsorship. Joseph Sandler, representing the Democratic National Committee and Democratic National Convention Committee, testified that a similar increase in

donations would be seen if corporate sponsorship of the Olympics were considered, suggesting that the cost of putting on any such events has gone up, while the willingness of government entities to pay for such events has gone down.

Representatives from the Center for Responsive Politics testified in favor of extending the BCRA’s restrictions on the activities of national party committees and federal candidates and officeholders to cover convention activities. Paul Sanford, Director of FECWatch, suggested that the convention is inherently a party activity and that the Commission should revise its rules to prohibit host committees from using nonfederal funds for convention expenses, including the costs of providing the convention center and transportation services. Under Mr. Sanford’s recommended plan, host committees could still use nonfederal funds to pay for services that most directly benefit individual attendees rather than the national parties, such as promoting the city as a convention site and welcoming attendees to the city.

In contrast, representatives from the Democratic National Committee, the Republican National Committee, the Boston Host Committee and New York Host Committee, among others, questioned whether the BCRA should have any effect on nominating conventions and argued that these activities are not in connection with an election. For example, Cheryl Cronin, representing the Boston Host Committee, testified that Congress would have addressed host committees in the BCRA had it intended for convention activities to be altered. She argued that host committees are not political committees and are not an agent of or established, maintained or financed by any national party committee. Thomas Josefiak, representing the Republican National Committee, further argued that host committees are generally considered charities by the IRS and

that, as a result, their funding should not be restricted and federal officeholders should be able to solicit on their behalf.

In addition, Ms. Cronin and Kenneth Gross, who represented the New York Host Committee, both recommended that the Commission remove its prohibition on donations to host committees from individuals, corporations and unions that are not “local.” Donald McGahn, representing a federal officeholder, agreed with Ms. Cronin and Mr. Gross that the Commission should dispense with the “local rule,” and also testified in opposition to proposed rules that would regulate private events held in the convention city to which candidates and officeholders are invited, such as corporate and union events held around the time of the convention.

Witnesses on both sides of the debate questioned whether any changes to the rules should be made to affect the 2004 conventions.

In addition to these comments, speakers addressed a number of other issues raised in the NPRM, including:

- Winding-down costs of publicly funded presidential campaigns;
- Primary expenditure limitations and repayments;
- Permissible uses of General Election Legal and Accounting Compliance (GELAC) funds consistent with the BCRA;
- Quarterly and monthly reporting requirements for Presidential candidates;
- Several specific issues related to expenditures by campaigns, including salaries to candidates, gifts and bonuses and press reimbursement for travel costs;
- Mitigating the effect of a potential shortfall in the Presidential primary matching payment account;
- Expenditures by a multicandidate political committee for qualified campaign expenses of a presidential candidate; and

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Regulations

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- Audits of host committees and municipalities.

The complete list speakers' comments¹ from this hearing are available on the FEC web site at http://www.fec.gov/pdf/nprm/public_financing/comments.html. ♦

—Amy Kort

Alternative Dispute Resolution

ADR Program Update

The Commission recently resolved 11 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 closed the case involving Ron Kirk, the Ron Kirk for Senate Committee and its treasurer Paul Wagemen. The case involved allegations that the respondents solicited unlawful contributions for a primary runoff election and a fundraiser when the press reported that the committee did not carry debt from the primary election. The respondents noted previ-

¹ The following individuals testified at the hearing: Donald McGahn (National Republican Congressional Committee), Robert Bauer (Perkins Coie), Paul Sanford (FECWatch, Center for Responsive Politics), Steve Weissman (Campaign Finance Institute), Kenneth Gross and Ki Hong (New York City Host Committee), Cheryl Cronin and David Passafaro (Boston Host Committee), Joseph Sandler and Neil Reiff (Democratic National Committee, Democratic National Convention Committee), Thomas Josefiak and Charles Spies (Republican National Committee).

ous reports of debt and that the solicitation was for legal fundraising for the runoff election. The ADR Office recommended that the Commission close the case and send an appropriate letter. (ADR 073; MUR 5253)

2. The Commission reached agreement with Citizens Bank-Illinois N.A., the Berwyn Regular Democratic Organization and its treasurer Fred Turner, concerning contributions from a national bank. Citizens Bank agreed to pay a \$500 civil penalty and to distribute to its officers a memorandum reiterating the guidelines for national banks' participation in politically related activities. Berwyn Regular Democratic Organization and Mr. Turner agreed to pay a \$500 civil penalty and to distribute a memorandum to all organization staff and volunteers on the organization's current mailing list detailing appropriate solicitations on contributions and expenditures. (ADR 089; MUR 5292)

3. The Commission closed the case involving Kevin Kelly for Congress and its treasurer Richard Young, the Michigan Democratic State Central Committee and its treasurer Roger Winkelman, and the 11th District Democratic Committee and its treasurer Barbara Johnson. The case involved allegations of excessive contributions, which the respondents effectively argued were timely refunded. The ADR Office recommended that the Commission close the case and send an appropriate letter. (ADR 094; MUR 5314)

4. The Commission closed the case involving allegations that Kaiser Permanente-Colorado failed to provide its employees' union with payroll deduction for voluntary contributions to the union's separate segregated fund (SSF) similar to that provided to company executives and administrative staff for contributions to the corporation's SSF. The ADR Office recommended that the Commission take no further action in this case because the issue raised in this matter had been ad-

ressed to the satisfaction of the complainant. (ADR 098; MUR 5290)

5. The Commission reached agreement with Dunn Lampton for Congress and its treasurer Wayne Hutchinson regarding the respondents' failure to provide contributor information, report contributions and accurately report disbursements on its FEC disclosure reports. The respondents agreed to pay a \$500 civil penalty and to work with the Reports Analysis Division to terminate the committee. (ADR 102)

6. The Commission closed the case involving Pat Ahumada for Congress, its treasurer Herbert G. Ames and Pat Ahumada, Jr. The case involved allegations that the respondents failed to file timely reports. The respondents contended that they attempted to comply with the Act at all times. The ADR Office recommended that the Commission close the case and expend no further resources on this matter. (ADR 109; MUR 5137)

7. The Commission closed the case involving Ian Hoffman and allegations concerning a fraudulently obtained court judgment for the payment of salary for campaign services. The ADR Office recommended that the Commission close the case and expend no further resources on this matter, given that violations of the Act were not substantiated. (ADR 111; MUR 5317)

8. The Commission closed the case involving Chapman for Congress and its treasurer Norma Minnis concerning allegations that the respondents violated the Act's disclaimer rules on approximately fifty copies of a flyer distributed at an association conference. The ADR Office recommended that the Commission close the case and expend no further resources on this matter. (ADR 115; MUR 5318)

9. The Commission closed the case involving Friends of Bennie Thompson, its treasurer Reuben V. Anderson and Isaac Byrd, Esq. The case involved alleged violations of contribution limits and failure to

report contributions. The respondents contend that they have no information on the alleged in-kind contributions. The ADR Office recommended that the Commission close the case and expend no further resources on this matter. (ADR 116; MUR 5319)

10. The Commission closed an additional case involving Chapman for Congress and its treasurer Norma Minnis concerning allegations that the respondents violated the Act's disclaimer rules on approximately fifty copies of a flyer distributed at an association conference. The ADR Office recommended that the Commission close the case and expend no further resources on this matter. (ADR 117; MUR 5320)

11. The Commission closed the case involving Votenet Solutions, Inc., concerning the respondent's alleged failure to forward contributions timely to the recipient committee. The respondent contends that the untimely distribution of the contribution occurred due to a technological difficulty and was corrected as soon as it became apparent. The ADR Office recommended that the Commission close the case and expend no further resources on this matter. (ADR 124; MUR 5339)◆

—Amy Kort

FEC to Hold State Outreach Training

FEC staff will visit Austin, TX, Denver, CO, and Nashville, TN, in August to hold free training sessions for federal candidates, party committees and PACs. Additional information on these sessions will be available on the FEC web site at <http://www.fec.gov/pages/infosvc.htm#Conferences>. To register, call 800/434-9530 (press 1, then 3) or send an e-mail to info@fec.gov.

Outreach

Campaign Finance Law Conferences in Chicago and San Diego

In September and October the Commission will hold conferences for House and Senate campaigns, political party committees and corporations, labor organizations, trade associations, membership organizations and their respective PACs. The conferences will consist of a series of workshops conducted by Commissioners and experienced FEC staff who will explain how the federal campaign finance law, as amended by the Bipartisan Campaign Reform Act of 2002 (BCRA), applies to each of these groups. Workshops will specifically address rules for fundraising and reporting, and will explain the new provisions of the BCRA. A representative from the IRS will also be available to answer election-related tax questions.

Conference in Chicago

The Commission will hold a conference in Chicago, IL, September 9-10, 2003, at the Millennium Knickerbocker Hotel. The registration fee for this conference is \$385, which covers the cost of the conference, materials and meals. A \$10 late fee will be assessed for registration forms received after August 18.

The Millennium Knickerbocker Hotel is located at 163 E. Walton Place. A room rate of \$169 per night is available to conference attendees who make room reservations on or before August 18 and identify themselves as attending the FEC conference. Call 800/621-8140 or 312/751-8100 to make reservations.

Conference in San Diego

The FEC will hold a conference in San Diego, CA, October 28-29, 2003, at the Hyatt Regency Islandia. The registration fee is \$385, which cover the cost of the conference, materials and meals. A \$10 late fee

will be assessed for registration forms received after October 6.

The Hyatt Regency Islandia is located at 1441 Quivira Road. A room rate of \$159 per night is available for conference attendees who make reservations on or before October 6. To make reservations call 800/233-1234 and state that you are attending the FEC conference.

Registration Information

Conference registration information will available online in July. Conference registrations will be accepted on a first-come, first-served basis. Attendance is limited to two attendees per organization. FEC conferences are selling out quickly this year, so please register early. For registration information:

- Call Sylvester Management Corporation at 800/246-7277;
- Visit the FEC web site at <http://www.fec.gov/pages/infosvc.htm#Conferences>; or
- Send an e-mail to toni@sylvestermanagement.com.◆

—Amy Kort

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