

# Record

March 2003

Federal Election Commission

Volume 29, Number 3

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## Reports

### New Forms Available

The Commission has revised FEC Forms 1, 2, 3, 3X and 5 and their supporting Schedules and instructions to facilitate disclosure under the Bipartisan Campaign Reform Act of 2002 (BCRA). The revisions to Forms 1, 2, 3 and 3X primarily affect House and Senate campaigns and state, district and local political party committees, while the revisions to Form 5 affect individuals and qualified nonprofit corporations filing reports of independent expenditures.

The Commission has also created four new forms in order to implement various provisions of the BCRA:

- FEC Form 9, for use by individuals and qualified nonprofit corporations in reporting electioneering communications; and
- FEC Forms 10, 11 and 12, which incorporate various notices required of House and Senate campaigns under the Millionaires' Amendment. (Other notices required under that amendment have been incorporated into Forms 3 and 3X Schedules.)

The new and revised forms and instructions were transmitted to

## Outreach

### FEC Conferences

#### Conference for Candidates and Party Committees

The FEC's March 12-13 conference for House and Senate campaigns and political party committees is sold out. Individuals who are unable to attend this conference should instead consider attending one of the FEC's regional conferences. Both the conference in Chicago and the conference in San Diego will address the concerns of candidates and political party committees, including the new requirements of the Bipartisan Campaign Reform Act of 2002 (BCRA).

#### Conference for Corporations and their PACs

The FEC will hold a conference for corporations and their PACs April 29-30 in Washington, DC. Commissioners and experienced FEC staff will conduct workshops to explain how the requirements of the federal election law apply to corporations and their PACs, including provisions governing fundraising, contributions, reporting and communications, and some workshops will

(continued on page 2)

(continued on page 2)

## Reports

(continued from page 1)

Congress on February 10. All committees, individuals and other persons must use the new and revised forms for reports due on or after March 20, 2003. For example, the revised forms must be used to file the March monthly report, for monthly filers, and the April 15 quarterly report, for quarterly filers. Paper copies of these forms will be sent 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, will be available to filers in early March, and may be downloaded at <http://www.fec.gov/electfil/electron.html>. Electronic filers using commercial software should contact their vendors to

determine when the updated format for their software will be available. (PACs that file electronically should note that some line numbers on Form 3X have changed; thus they will need to file using the new formats even though their reporting scheme has not been altered.)♦

—Amy Kort

## New Information Required on Statements of Candidacy and Statements of Organization for Authorized Committees

Under the Commission's regulations implementing the Bipartisan Campaign Reform Act's "Millionaires' Amendment," House and Senate candidates must now disclose additional information on their FEC Form 2, Statement of Candidacy, and FEC Form 1, Statement of Organization. See the [February 2003 Record](#), page 2.

Under the new rules, which took effect February 26, House and Senate candidates must disclose on Form 2 the amount by which their personal spending for the primary and general elections will exceed the applicable threshold amount set out in the regulations:

- For House candidates the threshold amount is \$350,000;
- For Senate candidates the threshold amount is \$150,000 plus an amount equal to \$0.04 multiplied by the voting age population in their state. 11 CFR 101.1(a) and 400.9.

Additionally, the principal campaign committees of House and Senate candidates must disclose on FEC Form 1 the committee's fax number, if available, and e-mail address. 11 CFR 102.2(a)(1)(viii).

## Filing Amended Statements

Candidates and committees who have already filed FEC Forms 1 and 2 for an upcoming election cycle and have not included this informa-

tion should file amendments to these documents. The Commission has recently issued revised reporting forms and software that allow for the disclosure of this information, and committees should file all reports and amendments using the new forms or software. Please note that electronic filers must file all statements and reports electronically.♦

—Amy Kort

## Outreach

(continued from page 1)

address new requirements under the BCRA. In addition, a representative from the Internal Revenue Service will be available to answer election-related tax questions.

The registration fee for this conference is \$385, which covers the cost of the conference, materials and meals. Registrations must be received by March 28. A ten dollar late fee will be assessed after that date for late registrations.

The conference will be held at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC. The hotel is located near the L'Enfant Plaza Metro and Virginia Railway Express stations. A room rate of \$189 per night is available to conference attendees. This room rate is only available for reservations made on or before the registration deadline.

## Conference for Trade Associations, Membership Organizations and their PACs

The Commission will hold a conference in Boston for trade associations and membership organizations. The conference will be held May 21-22 and will consist of a series of interactive workshops presented by Commissioners and experienced FEC staff, who will explain how the requirements of the federal election law apply to these organizations and their PACs. Discussion topics will include fundraising, reporting and commu-

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

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**Bradley A. Smith**, Vice Chairman  
**David M. Mason**, Commissioner  
**Danny L. McDonald**,

Commissioner

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**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>

nizations, and workshops will address any provisions of the BCRA that apply to these groups. In addition, a representative from the Internal Revenue Service will be available to answer election-related tax questions.

The registration fee for this conference is \$385, which covers the cost of the conference, materials and meals. Registrations must be received by April 27. A ten dollar late fee will be assessed after that date for late registrations.

The conference will take place at the Royal Sonesta Hotel, located at 5 Cambridge Parkway, Boston, MA. A room rate of \$179 per night is available to conference attendees who make room reservations on or before April 27.

### Conference Schedule for 2003

#### **Conference for Corporations and their PACs**

April 29-30, 2003  
Washington, DC

#### **Conference for Trade Associations, Membership Organizations and their PACs**

May 21-22, 2003  
Boston, MA

#### **Conference for Labor Organizations and their PACs**

June 17-18, 2003  
Washington, DC

#### **Regional Conference for House and Senate Campaigns, Political Party Committees and Corporate/Labor/Trade PACs**

September 9-10, 2003  
Chicago, IL

#### **Regional Conference for House and Senate Campaigns, Political Party Committees and Corporate/Labor/Trade PACs**

October 28-29, 2003  
San Diego, CA

### **Registration Information**

Complete conference registration information is now available online. Conference registrations will be accepted on a first-come, first-served basis. Attendance is limited, and an FEC conference has already sold out this year, so please register early. For registration information:

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

—Amy Kort

### **Information**

### **Federal Income Tax Return Requirements**

Although Pub. L. 107-276, adopted in November 2002, scaled-back the filing requirements for section 527 political organizations, political committees that file under the Federal Election Campaign Act (FECA) may still have a tax-filing requirement.

A political committee that has taxable income in excess of the \$100 specific deduction in a taxable year must file IRS Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*. Form 1120-POL is due by the 15<sup>th</sup> day of the 3<sup>rd</sup> month after the end of the organization's taxable year. In most cases, the due date will be March 15.

Political organizations may request a six-month extension of the filing deadline by filing Form 7004, *Application for Automatic Extension of Time to File Corporate Income Tax Return*. This extension must be filed by the due date of Form 1120-POL. There is a penalty for failure to file Form 1120-POL.

For more information:

- Visit the IRS web site at [www.irs.gov/polorgs](http://www.irs.gov/polorgs) to obtain copies of required forms, and additional information about federal tax requirements; and
- Call the IRS toll free number: 1-877-829-5500. Staff at this number answer questions about tax law filing requirements for political committees, and are available from 8:00 a.m. to 6:30 p.m., Eastern time, Monday through Friday.◆

—Submitted by the  
Internal Revenue Service

### **Alternative Dispute Resolution**

### **ADR Program Update**

The Commission recently resolved three 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 reached agreement with the Darland Corporation, Iowa Pipeline Associates, Inc., Pinnacle Bank and Par Electrical Contractors, Inc., concerning corporate contributions. Iowa Pipeline Associates, Inc., agreed to pay a \$375 civil penalty, and the other respondents each agreed to pay a \$300 civil penalty. In addition, Darland Corporation, Iowa Pipeline Associates, Inc., and Pinnacle Bank each agreed to adopt and distribute a policy prohibiting corporate contributions to election campaigns and advising any officer and director that he or she is prohibited from consenting to any contribution or expenditure by the corporation in connection with an election cam-

(continued on page 4)

## Alternative Dispute Resolution

(continued from page 3)

paign. Par Electrical Contractors, Inc., also agreed to conduct an internal education and compliance program to advise corporate officers or directors that they are prohibited from making contributions from corporate funds to federal election campaigns. (ADR 042—See MUR 5133R)

2. The Commission reached agreement with John D. Ong concerning his contributions exceeding the \$25,000 annual contribution limit in 1997 and 1999. Mr. Ong agreed to pay a \$15,000 civil penalty. (ADR 067)

3. The Commission reached agreement with Jesse L. Jackson, Jr., concerning the commingling of campaign activity with personal business. Mr. Jackson acknowledged that such activity is inconsistent with House rules and the Act, and will direct staff from his campaign committee to attend an FEC-sponsored seminar in order to better-understand the Act's requirements. (ADR 071)♦

—Amy Kort

## Court Cases

### New Litigation

#### Lovely v. FEC

On December 31, 2002, the Committee to Elect Bill Sinnott (the Committee) and its treasurer, William A. Lovely, III, filed a complaint in the U.S. District Court for the District of Massachusetts challenging the Commission's final determination that the Committee filed its 2001 Year-End report late and assessment of an \$1,800 civil money penalty under the its administrative fines regulations. 11 CFR 111.30-111.45.

*Background.* According to the complaint, the plaintiffs were unable

to electronically file the report on the January 31, 2002, deadline because of computer problems. The plaintiffs allege that, at FEC staff's suggestion, they filed the report on January 31 on diskette via certified registered mail.<sup>1</sup> The plaintiffs heard from the Commission on February 13 that this disk was not in an acceptable electronic format and did not pass the Commission's validation program.<sup>2</sup> On February 26, the plaintiffs sent the report on diskette in an acceptable format via courier. The Commission received the diskette the following day.

On June 14, 2002, the Commission found reason to believe that the plaintiffs violated 2 U.S.C. §434(a) by failing to file the report on time and made an initial determination to assess a \$3,100 civil penalty. According to the complaint, an FEC Reviewing Officer from the Office of Administrative Review who had considered objections filed by the plaintiffs determined that, because the disk mailed January 31 was incorrectly formatted and did not pass the Commission's validation program, the report was not considered to have been filed. On November 25 the Commission made a final determination that the plaintiffs had failed to file timely. However, the Commission lowered the civil penalty assessed to \$1,800 "based on the filing, which was postmarked on the filing date, being fourteen days late, after accounting for the irradiation process which resulted in mail delays."

<sup>1</sup> Reports sent by registered or certified mail are considered timely filed if they are postmarked by the filing date. Reports sent by other means, such as first class mail, must be received by the filing date. 11 CFR 104.5(e).

<sup>2</sup> Under the Commission's electronic filing regulations, electronic filers who instead file on paper or submit a report that does not pass the validation program are considered not to have filed that report. 11 CFR 104.18.

*Court Complaint.* Plaintiffs argue that the Commission's finding that the January 31 report was not filed places the plaintiffs' "timely, accurate and complete, albeit electronically imperfect, report submission in the same category as that of a committee who chose to ignore the deadline completely" and is contrary to the purpose of the law. The plaintiffs further contend that the Commission acknowledged the "unreasonable and arbitrary" nature of its finding when it lowered the civil penalty based on the mail delay associated with the irradiation process. According to the complaint, this reasoning contradicts the Commission's premise that the initial submission was not filed, because mail delays would be irrelevant to the filing that passed the validation program, which was delivered by courier.

The plaintiffs ask the court to:

- Declare that the FEC's final determination was arbitrary, capricious and contrary to law;
- Declare that the plaintiffs have not violated 2 U.S.C. §434(a); and
- Order the FEC to set aside its final determination and penalty assessment.

U.S. District Court for the District of Massachusetts, 02-12496 PBS.♦

—Amy Kort

## Administrative Fines

### Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 18 new Administrative Fine cases, bringing the total number of cases released to the public to 501.

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

The committees and the treasurers are assessed civil money penal-

ties when the Commission makes its final determination. Unpaid civil money penalties are referred to the Department of the Treasury for collection.

The committees listed in the chart below, 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

## Advisory Opinions

### AO 2002-14

#### National Party Committee's Lease of Mailing List and Sale of Advertising Space and Trademark License

The national committee of the Libertarian Party of the United States, the Libertarian National Committee, Inc., (LNC), may, under the circumstances presented, rent its mailing list at the usual and normal charge in a *bona fide* arm's length transaction without the rental payments resulting in a contribution or donation to the LNC. Profits from the sale of advertising space in the *Libertarian Party News* and from licensing the party's trademarks are, however, contributions under the Federal Election Campaign Act (the Act) and subject to the Act's limits and prohibitions.

#### Bipartisan Campaign Reform Act of 2002 (BCRA)

Prior to the BCRA, national party committees could raise and spend nonfederal funds using separate nonfederal accounts. Under these rules, the LNC had in the past participated in a number of "business" activities to help advance its political interests, and deposited the proceeds from these transactions in its nonfederal account. These activities included:

- Renting its mailing list to others;
- Selling advertising space in the *Libertarian Party News*; and
- Licensing Libertarian Party trademarks to t-shirt vendors and other manufacturers of campaign items.

In addition, the LNC participated in list exchanges with outside organizations in order to expand its mailing list. The above transactions

#### Committees Fined and Penalties Assessed

1. Asworth Corporation PAC	<sup>1</sup>
2. California Voter Registration 2002	\$8,000
3. Collins for Congress	\$625 <sup>2</sup>
4. Committee to Elect Trent Franks to Congress	\$700 <sup>2</sup>
5. Conservative Leadership PAC	\$11,250 <sup>2</sup>
6. Eva Clayton Committee for Congress	\$2,012 <sup>2</sup>
7. IUOE Local 542 Operating Engineers Political Action Fund	\$2,700 <sup>2</sup>
8. Kalogianis for Congress, Inc.	\$1,200 <sup>2</sup>
9. Keyes 2000, Inc.	\$900 <sup>2</sup>
10. MBNA Corporation Federal Political Committee	<sup>1</sup>
11. National Italian American PAC	\$2,700 <sup>2</sup>
12. Norm Dicks for Congress Committee	<sup>1</sup>
13. Nortel Networks PAC	\$1,375
14. Operating Engineers Local 12 Voluntary Legislative Fund	\$850 <sup>3</sup>
15. RI Republican Party	\$3,500 <sup>2</sup>
16. Titan Corporation PAC	\$2,850
17. Voters for Choice/Friends of Family Planning Year End 2001	\$2,700
18. Voters for Choice/Friends of Family Planning February Monthly 2002	\$1,800

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

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

<sup>3</sup> This penalty was reduced from \$3,975 based on a recalculation of the number of days late.

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## Advisory Opinions

(continued from page 5)

involved corporations, political committees, tax-exempt organizations and so-called 527 organizations.

On November 6, 2002, however, provisions of the BCRA took effect that banned national party committees from soliciting, receiving, directing, transferring or spending nonfederal funds. 2 U.S.C. §441i(a) and 11 CFR 300.10(a).

### Mailing Lists

The LNC has developed its own mailing list over a period of time, rather than simply purchasing a list or lists from other sources. The LNC developed the list to use primarily for its own political or campaign purposes, and not for sale or lease to others. Indeed, the lease of the list by the LNC was only a small percentage of the LNC's overall use of it. Under these circumstances, the LNC may continue to lease this mailing list to any person, committee or organization without receiving contribution so long as:

- The list, or the leased portion of the list, has an ascertainable fair market value; and
- The list is leased at the usual and normal charge in a *bona fide*, arm's length transaction, and is used in a commercially-reasonable manner consistent with such an arm's length agreement.

The Commission determined that under these circumstances and given the nature of the list's development and use, the rental payments would not be a contribution, donation or transfer of funds or any other thing of value subject to the Act's limits and prohibitions. Thus, rental payments could come from sources otherwise prohibited from contributing to a national party committee and in amounts in excess of the contribution limits. Receipts from rental payments would be consid-

ered federal funds usable by the LNC for any purposes permitted under the Act and Commission regulations.

Likewise, the LNC may exchange its mailing lists, or portions of the lists, of equal value with any outside organization, provided that the lists or list portions that are exchanged are of equal value. When such exchanges of equal value occur, which are not reportable under the Act, no contribution, donation or transfer of funds or any other thing of value takes place under the Act or Commission regulations. See 2 U.S.C. §441i(a) and 11 CFR 300.10(a).

### Advertising and Trademarks

While a broad and open market exists for mailing lists through which a fair market value may usually be determined, it is difficult, if not impossible, to determine the fair market value for advertising space in the *Libertarian Party News* and for the licensing of the Libertarian Party trademarks. In addition, the sale of advertising space in a political committee's newsletter is inherently susceptible to use for political fundraising rather than for commercial purposes. As a result, payments for either advertising space or trademark licensing would be treated as a contribution in its full amount and subject to the Act's limits and prohibitions.

However, because a federal candidate's principal campaign committee may make unlimited transfers to a national party committee, it may purchase advertising space or acquire a limited trademark license from the LNC without making a contribution. 2 U.S.C. §439a(a)(4) and 11 CFR 113.2(c). However, if the principal campaign committee pays less than the usual and normal charge for such an item, then the difference between the amount paid and the usual and normal charge would be a contribution from the LNC to the candidate. Similarly, because state party

committees can, subject to certain restrictions, transfer federal funds to a national party committee, their purchase of advertising space or a trademark license would be considered a transfer of funds not subject to the Act's limits. 2 U.S.C. §441a(a)(4) and 11 CFR 102.6(a)(1)(ii).

Nevertheless, the funds making up the transfer would be subject to the limits, prohibitions and (if applicable) reporting requirements of the Act. 2 U.S.C. §441i(a) and 11 CFR 300.10(a).

Date Issued: January 31, 2002;  
Length: 6 pages.♦

—Amy Kort

## Advisory Opinion Request

### AOR 2003-1

Use of PAC's nonfederal account to receive and make disbursements for an annual trip to Washington to meet Members of Congress and discuss a policy issue, and whether allocation is required (NORPAC, January 27, 2003)♦

### Public Appearances

March 12-14, 2003  
Organization of American States  
Panama City, Panama  
Chair Weintraub  
Staff Director Pehrkon

March 17-19, 2003  
Carter Center  
Atlanta, GA  
Commissioner McDonald

March 25, 2003  
Greater Washington Society of  
Association Executives  
Rockville, MD  
Elizabeth Kurland

March 25-28, 2003  
Global Election Organizations  
Network  
Mexico City, Mexico  
Chair Weintraub

## Statistics

### Semiannual PAC Count Shows Increase in 2002

According to the FEC's semiannual political action committee (PAC) count, 4,027 PACs were registered with the Commission on January 1, 2003. This figure represents a 162-committee increase from the July 1, 2002, count.

Corporate PACs remain the largest category, with 1,528 committees. Nonconnected PACs remain the second-largest group, with 1,055 committees. The chart below shows the complete mid-year and year-end PAC figures since 1995.

A complete listing of PAC statistics is available in the agency's January 14, 2003, press release. 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, request document 602).♦

—Amy Kort

## Index

The first number in each citation refers to the "number" (month) of the 2003 *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.

	Corporate	Labor	Trade/ Member/ Health	Coop- erative	Corp. w/o Capital Stock	Non- connected <sup>1</sup>	Total
Jul. 95	1,670	334	804	43	129	1,002	3,982
Dec. 95	1,674	334	815	44	129	1,020	4,016
Jul. 96	1,645	332	829	43	126	1,058	4,033
Dec. 96	1,642	332	838	41	123	1,103	4,079
Jul. 97	1,602	332	826	41	118	953	3,875
Dec. 97	1,597	332	825	42	117	931	3,844
Jul. 98	1,565	325	820	43	112	897	3,762
Dec. 98	1,567	321	821	39	115	935	3,798
Jul. 99	1,540	318	826	38	115	941	3,778
Jan. 00	1,548	318	844	38	115	972	3,835
Jul. 00	1,523	316	812	39	114	902	3,706
Jan. 01	1,545	317	860	41	118	1,026	3,907
Jul. 01	1,525	314	872	41	118	1,007	3,877
Jan. 02	1,508	316	891	41	116	1,019	3,891
Jul. 02	1,514	313	882	40	110	1,006	3,865
Jan. 03	1,528	320	975	39	110	1,055	4,027

\*Committees with no activity for the election cycle are not included in the mid-year and year-end PAC count.

<sup>1</sup>Nonconnected PACs must use their own funds to pay fundraising and administrative expenses, while the other categories of PACs have corporate or labor "connected organizations" that are permitted to pay those expenses for their PACs. On the other hand, nonconnected PACs may solicit contributions from the general public, while solicitations by corporate and labor PACs are restricted.

### Advisory Opinions

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### Accommodations for Candidate/Party Conference

The Loews L'Enfant Plaza is sold out for March 12-13, the nights of the FEC's Conference for Candidates and Political Party Committees. Rooms are available to conference attendees at a special rate of \$135 per night at the Sheraton National in Arlington, VA. For reservations call 800/325-3535 and identify yourself as a member of group FEC303. The Sheraton National offers a shuttle to the airport and subway, and it is a short cab ride away from the conference site.

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