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Compliance

MUR 4931 Corporate Contributions and Contributions in the Name of Another

The Commission recently entered into conciliation agreements with Audiovox Corporation (Audiovox), its Executive Vice President Philip Christopher, six of its executives and several other individuals and Audiovox distributors, resulting in civil penalties of \$849,000—the highest cumulative civil penalty in the history of the Commission. This matter was referred to the Commission by the U.S. Department of Justice on March 2, 1999. The conciliation agreements settle violations of the Federal Election Campaign Act (the Act) resulting from the reimbursement of individuals' contributions to federal candidates, both by Audiovox and its subsidiaries and personally by Mr. Christopher. The agreements provide, among other penalties, that Audiovox and six of its executives will pay \$620,000 and Mr. Christopher will pay \$130,000 from his personal funds.

The Act prohibits corporations from making contributions or expenditures from their general

(continued on page 2)

Reports

October Reporting Reminder

All principal campaign committees of House and Senate candidates must file quarterly in non-election years as well as in election years, and, as a result, must file a report by October 15. 11 CFR 105.4(a). Committees that file on a monthly basis, including all national party committees and certain political action committees and state, district and local party committees, have a report due on October 20. (See the [April 2003 Record](#), page 5, for more information on monthly filing for state, district and local party committees.)

New Reporting Forms and Software

Earlier this year, the Commission approved new and revised reporting forms and software that conform to the reporting requirements of the Bipartisan Campaign Reform Act of 2002 (BCRA). All committees, individuals and other persons must use the new and revised forms or software for all reports. Paper copies of these forms will be sent to registered political committees who file on paper, and may also be

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Reports

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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.¹

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 (either by direct transmission or on diskette) that does not pass the Commission's validation program will be considered nonfilers and

¹ Paper filers should use the Commission's old reporting forms to file amendments to reports that were originally filed using these forms.

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may be subject to enforcement actions, including administrative fines.²

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 table 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

Compliance

(continued from page 1)

treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. §441b. In addition, the Act prohibits making contributions in the name of another, knowingly permitting one's name to be used to effect such a contribution and knowingly accepting such a contribution. Further, no person may knowingly help or assist any person making a contribution in the name of another. This prohibition also applies to any person who

provides the money to others to effect contributions in their names. 2 U.S.C. §441f.

During 1995 through 1999, Mr. Christopher solicited federal campaign contributions from officers and employees of Audiovox and its subsidiaries, as well as from others, including distributors of Audiovox products. Mr. Christopher authorized payments of corporate funds to reimburse a number of individuals for their contributions. For example, he authorized payments to distributors of Audiovox products, which in turn used those funds to reimburse executives who had made contributions. Moreover, executives from an Audiovox subsidiary that Mr. Christopher is the president of, Audiovox Communications Corporation (ACC), submitted expense reports to ACC in order to receive reimbursements for contributions. Mr. Christopher signed expense reports submitted by three ACC executives.

In addition, James Maxim, a vice president of another Audiovox subsidiary, Quintex Mobile Communications Corporation (Quintex), used Quintex's petty cash account to reimburse himself and others for contributions made at Mr. Christopher's request. Moreover, Quintex's President, Aris Constantinides, directed his Assistant Vice President, Gloria Pisano, to write eight contribution checks to federal candidates from Quintex's petty cash account and used these checks to attend a political fundraiser with Quintex vendors. Ms. Pisano's name appeared on the checks, along with the company's address.

In addition to authorizing the use of corporate funds to reimburse contributors, Mr. Christopher used his personal funds to reimburse contributions made by Sophia Cotizia, the Executive Director of the International Coordinating Committee Justice for Cyprus, a

² Electronic filers should use Version 5 of FECEFile or other software that supports the new format to file all reports and amendments.

Greek-Cypriot organization of which Mr. Christopher is president.

In the conciliation agreement entered into by Audiovox and six of its executives, the respondents admitted to or acknowledged violations of the Act. In addition to agreeing to pay the civil penalty, the respondents also agreed to cease and desist from further violations of the Act. Audiovox has written letters to those campaigns that received impermissible contributions directing these committees to disgorge the contributions to the U.S. Treasury. Audiovox waived any claims to refunds of the contributions.

Audiovox also adopted a policy to educate its subsidiaries and current and future employees about the prohibitions on making corporate contributions to political candidates and reimbursing individuals for their campaign contributions. The respondents agreed to continue to take such measures to prevent similar violations in the future.

Mr. Christopher, in his conciliation agreement, admitted to violating the Act by assisting Audiovox in making corporate contributions in the names of others, by consenting to those contributions and also by reimbursing Ms. Cotizia for contributions she made at his request. In addition to paying the civil penalty, Mr. Christopher agreed to cease and desist from violating the Act and to waive any claim to refunds of the contributions he personally reimbursed. Mr. Christopher sent letters to the recipient committees directing them to disgorge the funds to the U.S. Treasury.

Seven additional respondents, including three of Audiovox's distributors, acknowledged violations of the Act's prohibitions on corporate contributions and contributions in the name of another and agreed to pay a total of \$99,000 in civil penalties.

—Amy Kort

Commission Issues Policy Statement on Deposition Transcripts in Nonpublic Investigations

On August 14, 2003, the Commission issued a Statement of Policy announcing a change in its enforcement practices to allow deponents to obtain a copy of the transcript of their own deposition so long as there is no good cause to limit the deponent to an opportunity only to review and sign the transcript. The Statement of Policy was published in the August 22, 2003, *Federal Register* ([68 FR 50688](#)).

Background

When the Commission's attorneys take a deponent's sworn testimony at an enforcement deposition, only the deponent and his or her counsel may attend. Under the Commission's historic practice, the deponent has the right to review and sign the transcript. 11 CFR 111.12(c); see also 2 U.S.C. §437d(a)(4). In the past, a deponent who was also a respondent could not obtain a copy of, or take notes while reviewing, his or her own transcript until the General Counsel transmitted a brief recommending that the Commission find probable cause to believe that the respondent had violated, or was about to violate, the Federal Election Campaign Act (the Act). See 2 U.S.C. §437g(a)(3). Deponents who were not respondents had no opportunity to review their own transcripts until the matter was closed.

In its enforcement proceedings, the Commission is governed, in part, by the Administrative Procedure Act (APA). Under the APA, a "person compelled to submit data or evidence is entitled to retain or, on payment of lawfully proscribed costs, procure a copy of a transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony." 5 U.S.C. §555(c).

In the past, the Commission has considered all open investigations to fall within this "good cause" exception, based on the potential for deponents to share their testimony with third parties. The Commission has also been mindful that the Act requires that ongoing investigations be kept confidential.

On June 11, 2003, the Commission held a public hearing on its enforcement practices. At the hearing several commenters suggested that the Commission allow deponents who are also respondents to obtain copies of a transcript immediately after the deposition. Commenters also cited other government agencies that conduct nonpublic investigations and have adopted a more narrow interpretation of the APA's "good-cause" exception.

New Policy

Beginning on August 22, 2003, deponents in enforcement matters may obtain, upon request, a copy of the transcript of their own deposition. The Commission determined that it can maintain the integrity of its investigations even if the current practice is altered, so long as access to transcripts may still be denied if it determines that good cause exists for doing so, and so long as third-party witnesses (or deponents who are also respondents in matters with multiple respondents) are granted access to their transcripts subject to the confidentiality requirements of the Act.

Under the new policy, deponents may now make written requests for their transcripts at any time after the deposition concludes. The Office of General Counsel will review the request. Absent good cause to the contrary, it will notify the deponent and the court reporter in writing that the deponent may obtain a copy of the transcript, at his or her own cost,

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Compliance

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from the court reporter. If the Associate General Counsel or her deputy determines there is reason to invoke the good-cause exception and restrict access to the transcript, the Office of General Counsel will notify the deponent and the Commission. ♦

—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 2003-13

Notice of Proposed Rulemaking on Multicandidate Committees and Biennial Contribution Limits (68 FR 50488, August 21, 2003)

Notice 2003-14

Notice of Proposed Rulemaking on Candidate Travel (68 FR 50481, August 21, 2003)

Notice 2003-15

Statement of Policy Regarding Deposition Transcription in Nonpublic Investigations (68 FR 50688, August 22, 2003)

Notice 2003-16

Notice of Proposed Rulemaking on Party Committee Telephone Banks (68 FR 52529, September 4, 2003)

Notice 2003-17

Notice of Proposed Rulemaking on Mailing Lists of Political Committees (68 FR 52531, September 4, 2003)

Regulations

Notice of Proposed Rulemaking on Party Committee Phone Banks

On August 28, 2003, the Commission approved a Notice of Proposed Rulemaking (NPRM) addressing phone banks conducted by national, state and local party committees on behalf of Presidential nominees. In Presidential election years, party committees conduct phone banks to get out the vote or otherwise promote the party and its candidates. The scripted message might ask an individual to vote for the named Presidential candidate and then make a general promotional reference to the party's other candidates. For example, the caller might say: "Please tell your family and friends to come out and vote for President John Doe and our great Party team." The Commission sought comments on two alternative approaches to how the cost of such a phone bank should be attributed to a Presidential candidate.

Proposed Rules

The proposed rules would apply to phone bank communications that:

- Refer to no clearly identified candidate other than the Presidential or Vice-Presidential candidate;
- Refer generally to the other candidates of the Presidential nominee's party without clearly identifying them; and
- Do not solicit contributions.

The new rules would not apply, and no amount would be attributed to the Presidential candidate, if the phones were operated by volunteers and if the other conditions described in 11 CFR 100.89 and 100.149 were satisfied.

Alternative A. Under one proposal, 50 percent of the disbursement for the phone bank must be attributed to the Presidential and

Vice-Presidential nominees. The remaining 50 percent of the cost would not be attributable to any federal or nonfederal candidate. If the party committees paid for the entire cost of the phone bank (rather than having the Presidential candidate's committee pay a portion of the cost), the 50 percent attributed to a candidate that is publicly funded may be, in some cases, either a coordinated expenditure or an independent expenditure. If the candidate is not publicly funded, it may be either an in-kind contribution to the candidate or a coordinated or independent expenditure. 2 U.S.C. §§441(d) and 431(17).

Alternative B. Under the other proposal, 100 percent of the disbursement must be attributed to the candidate as a coordinated or independent expenditure or an in-kind contribution.

Under either alternative, the entire expense must be paid solely with federal funds.¹ The Commission sought comment on which of these two alternatives is preferable, or on whether the percentage should be based on the actual space or time used to refer to the nominee or on some other factor.

The Commission also sought comment on a proposal to apply either of the attribution formulas to broadcast and print media. In addition, the NPRM asked whether the formula should apply to House and Senate candidates as well as to Presidential candidates.

Coordinated Party Expenditures

Under Commission regulations, a state party committee may make

¹ Barring the unlikely event that the phone bank will involve 500 or fewer calls, the message would be a public communication that promotes a clearly identified federal candidate and, thus, must be financed entirely from federal funds. 11 CFR 300.33(c)(1). All payments by national party committees must be from federal funds. 11 CFR 300.10(a)(1).

BCRA on the FEC's Web Site

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

The 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;
 - BCRA-related advisory opinions; and
 - Information on educational outreach offered by the Commission, including upcoming Roundtable sessions and the Commission's 2003 conference schedule.
- The section also allows individuals to view the Commission's calendar for rulemakings, including 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 and click on the BCRA icon.

coordinated party expenditures on behalf of a Presidential or Vice-Presidential candidate only if the national party committee has assigned to the state committee in writing an amount of its spending authority sufficient to cover the expenditure. See 11 CFR 109.32(a) and 109.33(a). The Commission asked whether the proposed rule should refer to this requirement, or whether it is understood that the proposed rule would not exempt state, district or local party committees from the requirement. The Commission also sought comment on whether the requirement that party expenditures not be made from contributions designated to a particular federal candidate should be included in the proposed rule. See 2 U.S.C. §§431(8)(B)(xi)(3) and (9)(B)(ix)(3); 11 CFR 100.89 and 100.149.

Additional Information

The NPRM was published in the September 4, 2003, *Federal Register* (68 FR 52529), and is available on the Commission's web site at <http://www.fec.gov/register.htm>. The Comment period for this NPRM closed on September 25, 2003. The Commission plans to hold a public hearing on these proposed rules on October 1 if sufficient requests to testify are filed with the Commission. ♦

—Amy Kort

Notice of Proposed Rulemaking on Political Committees' Mailing Lists

On August 28, 2003, the Commission approved a Notice of Proposed Rulemaking (NPRM) on proposed additions to its rules covering the sale, rental and exchange of political committee mailing lists. The proposed rules address:

- When the proceeds from a political committee's rental or sale of its

mailing list, or an exchange of mailing lists, results in a contribution to that committee;

- A candidate's personal use of his or her authorized committee's mailing list; and
- The sale or rental of a mailing list by the authorized committee of a publicly funded Presidential candidate.

Rental, Exchange and Sale of Mailing Lists

Under Commission regulations, when goods or services are provided to a political committee at less than the usual and normal charge, the difference between the usual and normal charge and the amount the committee pays is an in-kind contribution to the committee and subject to the limits, prohibitions and reporting requirements of the Federal Election Campaign Act (the Act). See 11 CFR 100.52(d)(1). The regulations also provide that the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution. 11 CFR 100.53. The proposed rules would allow political committees to rent or sell their mailing lists to other persons, including other political committees. The resulting payments would not be considered contributions as long as certain conditions are met.

Rental. The proposed regulations would require a political committee to ascertain the usual and normal charge for the rental of its mailing list before renting it. The NPRM requested comments on proposed rules to require that, for the purchaser to avoid making a contribution, a mailing list (or list portion) must be rented or sold at the previously ascertained usual and normal charge in a *bona fide* arm's length transaction within commercially reasonable contractual terms, including terms that address the use of the list by the renter or purchaser.

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Regulations

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The Commission also asked whether the regulations should define the factors a committee should use to determine the usual and normal charge for renting or selling its mailing list.

In addition, the NPRM sought comments on proposed factors describing commercially reasonable terms for renting a list, such as whether:

- The person leasing the list is permitted to use it only within a reasonable time period;
- Any delayed use permitted in the leasing agreement is based on reasonable business considerations; and
- The agreed upon use comports with the usual and normal practices of the list industry and the lessee's established practices and procedures.

The Commission requested comments on whether the presence of a *bona fide* arm's length transaction should be required under the proposed rules, particularly if the mailing lists are rented out at the usual and normal charge and under commercially reasonable terms. Moreover, the Commission asked whether it should conclude that this requirement could not be satisfied if committees of the same candidate, or party committees of the same political party, rented mailing lists from each other, or if a candidate's authorized committee rented a mailing list from an unauthorized committee such as that candidate's leadership PAC.

In addition, the Commission considered whether the new regulations should draw a distinction between a mailing list developed over time by the political committee for its own use and one developed to generate revenue.

Sale. The proposed rules would establish conditions—similar to those for the rental of a mailing

list—under which the proceeds from the sale of a political committee's mailing list would not be a contribution by the purchaser to the committee. However, the Commission noted that, unlike the rental of a list, the outright sale of a mailing list by an ongoing political committee would be unusual. The NPRM asked whether the sale of a mailing list by a committee that is not in the process of terminating is so unusual that it would be *per se* commercially unreasonable.

Proceeds from rental or sale.

Under the proposed rules, a rental or sale transaction that did not comply with the conditions described above would be considered fundraising. Thus, the entire amount of the sale price or rental charge paid to the political committee (not just the difference between the usual and normal charge and any amount paid in excess of that charge) would be considered an in-kind contribution to the committee and would be subject to the limits and source prohibitions of the Act. See 11 CFR 100.53. The Commission sought comments on whether the proposed rules should instead set the amount of the contribution as the amount paid in excess of the usual and normal charge for the transaction.

Reporting and recordkeeping.

The proposed rules would require that proceeds from the rental or sale of a mailing list that are not considered contributions under these rules must be reported as "other receipts." The rules would also require committees to maintain sale and rental agreements and documentation of the usual and normal charge for the list. The Commission sought comments on how to ascertain and document the fair market value of lists that are not listed in the SRDS Direct Marketing Lists Source.

Allocation of Rental Proceeds.

Finally, the Commission asked whether, in a case where a list is developed with federal and nonfederal funds, the full proceeds

from the sale or rental of that list may be deposited in the committee's federal account.

Exchange. The Commission has previously determined that when a political committee that is exchanging mailing lists, or list portions, with another entity makes an exchange of equal value, a contribution is not made to the political committee. See AOs 2003-16, 2002-14, 1982-41 and 1981-46. Under the proposed rules, an exchange would not be considered a contribution or a reportable receipt if it is an exchange of equal value and the exchange is a *bona fide* arm's length transaction with commercially reasonable terms. "Equal value" would be defined as the usual and normal rental value of each list, as well as the agreed upon use by the organization and other services provided.

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.

If, on the other hand, a political committee makes an exchange that is not of equal value, any excess amount given to the political committee would be considered a contribution to the committee. While the proposed regulations governing the sale or rental of mailing lists by political committees would treat a sale or rental at greater than the usual or normal charge as a fundraising activity, the proposed rule for the exchange of mailing lists would treat an unequal exchange as a good or service provided at less than the usual or normal charge. Consequently, only the difference in value between the use of the two mailing lists exchanged would be an in-kind contribution. The Commission sought comments on whether this characterization of the exchange of mailing lists of unequal value is appropriate.

Conversion of Mailing List to Personal Use

The proposed rules would explicitly ban a candidate's conversion to personal use of his or her campaign committee's mailing list. In the alternative, the Commission sought comments on whether a candidate's receipt of proceeds from the rental or sale of a mailing list could be permissible under the Act's personal use prohibitions, depending on whether the candidate incurred the cost for developing or purchasing the list. See 2 U.S.C. §439a.

Publicly Financed Campaigns

Under the proposed rules, an authorized committee of a publicly financed Presidential candidate may sell or rent its mailing list only if the list's fair market value is included as an asset on the statement of net outstanding campaign obligations (NOCO) and statement of net outstanding qualified campaign expenses (NOQCE), and the sale or rental complies with the above-described proposed regulations as to list rental or sale. The proposed rules explain how fair market value

would be determined for the NOCO and NOQCE statements:

- For primary candidates, the list would be valued at either the usual and normal rental revenue that the committee would receive if it rented out the list over an 18 month period beginning on the date of ineligibility or the usual and normal sale price at this date; and
- For general candidates, the list would be valued at either the usual and normal rental revenue that the committee would receive over a 12 month period beginning on the date of the general election or the usual and normal sale price on that date

Additional Information

The NPRM was published in the September 4, 2003, *Federal Register* (68 FR 52531), and is available on the Commission's web site at <http://www.fec.gov/register.htm>. The Comment period for this NPRM closed on September 25, 2003. The Commission plans to hold a public hearing on these proposed rules on October 1 if sufficient requests to testify are filed with the Commission. ♦

—Amy Kort

Advisory Opinions

AO 2003-11

State Party Committee's Payment of Employee Benefits

The Michigan Democratic State Central Committee (MDSCC) may treat its employee-specific fringe benefits in the same manner as it treats salaries and wages for the purposes of determining whether the expense should be paid from federal or nonfederal funds. Additionally, MDSCC's nonfederal accounts may

make a one-time reimbursement to its federal accounts for federal funds expended for employee-specific fringe benefits compensating work performed since January 1, 2003. MDSCC has treated fringe benefits as allocable administrative expenses since this date and paid a portion of the expenses from its federal accounts. However, during this period no employee has spent more than 25 percent of his or her compensated time on activities in connection with a federal election, and thus no employee's salary, wages or benefits were required to be paid from federal funds. See 11 CFR 300.33(c)(2).

Background

Under the Bipartisan Campaign Reform Act of 2002 (BCRA), state, district and local party committees must use only federal funds to pay the salaries and wages of an employee who spends more than 25 percent of his or her compensated time in a given month on federal election activity (FEA) or activities in connection with a federal election. Salaries and wages for employees who spend 25 percent or less of their compensated time on such activities must be paid with funds that comply with state law. 2 U.S.C. §431(20)(A)(iv); 11 CFR 106.7(c)(1) and (d)(1) and 300.33(c)(2).

MDSCC has treated employee-specific "fringe benefits" consisting of retirement benefits, health insurance, disability insurance, life insurance and standard payroll taxes as administrative expenses, and allocated these expenses according to its fixed allocation ratio. 11 CFR 106.7(c)(2). Since January 1, 2003, no employee has spent more than 25 percent of his or her compensated time on activities in connection with a federal election. Thus, to compensate employees for work performed

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Advisory Opinions

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during this time, MDSCC has paid all expenses that strictly constitute salaries and wages from its nonfederal account, but has paid employees' fringe benefits from a mix of federal and nonfederal funds.

Analysis

Treatment of fringe benefits.

Funds spent by state party committees for the employee-specific fringe benefits described above fall into the category of compensated time. The fringe benefits provided by MDSCC—like salaries and wages—are easily attributed to the employee who benefits from them, and there is no evident reason to distinguish between monetary compensation paid directly to the employee and employee-specific compensation provided in another form. Moreover, prior to the enactment of the BCRA, Commission regulations and advisory opinions did not treat salary and wages differently than the costs of employee-specific fringe benefits for allocation purposes. See 11 CFR 106.5(a)(2)(i) and AOs 2001-14 and 1992-2. Thus, when an MDSCC employee spends 25 percent or less of his or her compensated time during a month on FEA or activities in connection with a federal election, these fringe

benefits may be paid entirely from the nonfederal account. In the alternative, if the funds deposited in MDSCC's federal account on or after January 1, 2003, and in the future, are permissible under Michigan law, these fringe benefits may be paid in whole or in part from the federal account. See 11 CFR 106.7(c)(1) and (d)(1).

Reimbursement from nonfederal account. Under Commission regulations, a state party committee may transfer funds from its nonfederal account to its federal account only to cover the nonfederal portion of a payment for an allocable expense. The transfer must be made no more than 10 days before and no more than 60 days after the payments for which they are designated are made by the committee. 11 CFR 106.7(f)(2)(i). Transfers from the nonfederal account to the federal account made outside this window are presumed to be loans from the nonfederal to the federal account, in violation of the Federal Election Campaign Act. 11 CFR 106.7(f)(2)(ii).

In the past, however, following major changes in the allocation regulations, the Commission has allowed retroactive adjustment or allocation reimbursements that would otherwise fall outside of the permissible transfer window. In these cases, the Commission recognized that a brief period of adjustment should be granted on a case-by-case basis to committees acting in good faith. Similarly, in this case MDSCC's request comes in response to significant changes to the allocation rules implemented when the BCRA took effect on November 6, 2002. Thus, MDSCC may make a one-time transfer of nonfederal funds to its federal account to cover the portion of fringe benefits paid by that account for employees' compensated time worked since January 1, 2003, even though much of the transfer relates to fringe benefit payments made more than 60 days ago. This one-

time transfer must be made within 30 days of MDSCC's receipt of this advisory opinion and must be disclosed on the committee's next regularly scheduled report.

Date issued: August 7, 2003;
Length: 6 pages. ♦

—Amy Kort

AO 2003-15

Legal Fees Related to Election System

Donations to a legal expense trust fund (the Fund) established by U.S. Representative Denise Majette for the sole purpose of defending against a lawsuit challenging Georgia's open primary election system are not subject to the limits, restrictions and reporting requirements of the Federal Election Campaign (the Act), because the donations are not in connection with a federal election. Thus, corporate and union donations may be solicited for the Fund, so long as the donations are not raised or spent by a political committee and other fundraising procedures are followed.

Background

Following Representative Majette's victory in the 2002 Democratic primary in Georgia's 4th U.S. Congressional District, five supporters of the defeated incumbent filed suit in federal court challenging Georgia's open primary election system. The initial complaint asked the court to enjoin Georgia officials from conducting the general election, and, after Representative Majette's victory in the general election, the complaint was amended to seek a special primary and a special general election for the seat now held by Representative Majette. The plaintiffs initially named Representative Majette as a defendant, but later amended their complaint to exclude her. Nevertheless, she incurred legal expenses seeking dismissal of the complaint, and she continues to incur legal fees related to monitor-

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ing the ongoing litigation. These fees now exceed \$90,000.

Analysis

In previous advisory opinions, the Commission has determined that funds received and spent to pay legal expenses stemming from challenges to a candidate's access to the primary ballot were not contributions or expenditures, provided the funds were placed in an account that was separate from the principal campaign committee and the committee itself did not establish the account or conduct the fundraising. See AO 1996-39.

Similarly, previous advisory opinions provide guidance on how to collect donations to pay legal costs. The entity that engages in the fundraising must be separate and independent from the candidate's principal campaign committee, and solicitations should be accompanied by a letter stating the purpose of the fund and noting that no donations to the fund will be used to influence any federal election. Such solicitations should be conducted separately from campaign solicitations. See AOs 1983-21 and 1981-13.

The Bipartisan Campaign Act of 2002 (BCRA) amended the Act to prohibit federal candidates and officeholders from soliciting, receiving, directing, transferring or spending "funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act." Amendments under the BCRA do not, however, change the results of these past advisory opinions.

The Commission found no indication in the legislative history of the BCRA that Congress intended the new fundraising restrictions to change long-standing interpretations found in Congressional policy and Commission advisory opinions concerning legal defense funds. In fact, after it enacted the BCRA, the

U.S. House of Representatives adopted a House Rule that permits Members to accept donations for their legal expense funds subject to certain restrictions. H.R. Res. 5, 108th Cong. (2003).

Therefore, in this case donations to and disbursements by the Fund for the sole purpose of defending against this lawsuit are not subject to the limits and prohibitions of the Act. 2 U.S.C. §§441a and 441b. Nor are they subject to the Act's reporting requirements, so long as they are not deposited in Representative Majette's campaign accounts. 2 U.S.C. §434.¹

Date issued: August 14, 2003;
Length: 5 pages. ♦

—Kathy Carothers

[AO 2003-16](#)

Affinity Credit Card Program Between National Bank and National Party Committee

Providian National Bank (Providian) may offer an affinity credit card program (the Affinity Program) that gives credit card holders the option of making political contributions to a national party committee using rewards and rebates that cardholders have earned through the use of their credit cards. The proposed program will not result in any prohibited contributions under the Federal Election Campaign Act (the Act). Therefore, Providian may enter into an agreement with any national party to implement the Affinity Program.

Background

Standard benefits provided by a bank to an affinity sponsor include background information on cardholders and co-branding

opportunities. Under Providian's plan, any national party that serves as a sponsor will be given the opportunity to receive contributions from affinity cardholders. The arrangement will be commercially reasonable and arrived at through an arm's length negotiation between Providian and the national party committee.

Unlike previous proposed credit card arrangements that were not approved by the Commission, Providian's Affinity Program includes a rebate credit card and bonus feature. Cardholders may choose to forward rebates and bonuses they accumulate by the using their card through Providian to the national party committee. Three types of affinity credit cards will be test marketed: a basic card, a rebate card and a value added card.

For the basic card, the cardholder will not receive any rebate or value added benefit. The rebate card, however, will enable cardholders to acquire rebates by charging purchases or accruing finance charges on their accounts. Rebates will be forwarded to the national party committee if the cardholder elects to make a voluntary contribution and sent to the account holder if he or she does not. The national party committee sponsoring the Affinity Program will pay all expenses related to transmitting or forwarding the check, making automated transactions or using other commercially reasonable means of forwarding the contribution to the party committee. Finally, the affinity card or value added card will offer cardholders incentives for frequent use of their credit cards. Incentives may be redeemed for air flights, travel, hotel stays, merchandise and entertainment. Although the national party committee will not be involved with this part of the incentive program, cardholders will be offered the opportunity to earn additional points if they contribute a certain

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¹The Commission determined that Representative Majette's methods for soliciting and depositing the funds were sufficient because they were similar to those approved in AO 1996-39.

Advisory Opinions

(continued from page 9)

amount to a national party committee. The national party committee will pay third-party vendors the fair market value of any rewards claimed by cardholders as a result of the additional rewards or incentives earned.

In addition to the preceding benefits, the Affinity Program will offer a bonus feature with all three types of cards. Providian will pay cardholders a certain fixed dollar amount when they have charged a certain number of purchases or a certain dollar amount on an affinity credit card. Cardholders will be given the option of receiving the accrued bonuses or forwarding them to the national party committee.

The national party committee will not be charged for the services provided by Providian under the Affinity Program, but the committee will provide a mailing list and the use of its trademark in exchange for the services rendered.¹ In addition, the national party committee will pay the fair market value charged to non-affinity sponsors for advertisements placed in Providian's communications to cardholders or prospective cardholders.²

¹ The party will also pay the aforementioned fees and expenses, as well as the costs for the reward points for value added cards that are directly attributable to contributions made by cardholders, and any expenses related to the transmission of funds to the committee.

² Providian does not generally charge affinity sponsors for ad space. The national party committees' ads will not contain the names of federal candidates or refer to elections, and will provide appropriate disclaimers describing the limits and prohibitions of the Act. Additionally, a disclaimer will appear that indicates that the communication was paid for and authorized by the national party committee.

The Act and Commission Regulations

Under the Act, "a national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U.S.C. §441i(a)(1). Furthermore, the Act prohibits national banks from making a "contribution or expenditure in connection with any election to a political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office." 2 U.S.C. §441b(a).

In past advisory opinions, the Commission concluded that proposals for affinity credit card programs resulted in banks making impermissible contributions to local and national party committees. See AOs 1988-12 and 1979-17. However, the Commission concluded that contributions made by individuals using "900-line" services and telemarketing arrangements were permissible under the Act because individuals, not the telemarketing firms, made contributions to the political committees. The telemarketing firms, which collected fees from political committees only for phone services, served as a pass-through for the contributions.³

Conclusions

In this case, the Affinity Program proposed by Providian is more analogous to the "900-line" services and telemarketing arrangements described above than past proposed affinity credit card programs, which the Commission found impermissible. The goods and services

³ See AOs 1995-34, 1991-26, 1991-20, 1990-14 and 1990-1.

provided by the national party committee and Providian will be equal exchanges of bargained-for consideration in a commercial transaction, and the contributions resulting from rebates and rewards will be made by the individual cardholders and not Providian.

Types of credit cards. Affinity basic credit cards will not involve a contribution from Providian to the national party committee as long as the exchange of the use of the committee's mailing list and trademark for Providian's services rendered to the committee are of equal value.

Affinity rebate cards will also not result in a contribution from Providian because rebates that have vested are the property of the cardholder. When an individual elects to make contributions to the national party using such rebates, they will be treated as contributions from personal funds. The proposed "bonus feature" is permissible for similar reasons.

Finally, affinity value added credit cards are permissible because the national party committee will pay the fair market value of rewards offered to value added cardholders, where they have made contributions to the committee through their credit card. Therefore, Providian will not provide an impermissible incentive to its cardholders for their contributions.⁴ Furthermore, contributions arising out of the use of the affinity value added credit cards will be made directly by the cardholders.

Advertising. Solicitations through advertising do not result in prohibited contributions from Providian to the national party committee so long as the committee pays the same rate and advertises under the same terms and conditions as non-affinity

⁴ Advisory Opinion 1986-41 examines incentives that were offered to employees in the form of bonuses that were found impermissible by the Commission under the Act.

sponsors who purchase similar ad space. Providian should not incur any additional processing expenses involved with the production or dissemination of materials from the committee sponsoring the Affinity Program.

Contributor Information. A political committee is required to disclose certain contributor information, such as the contributor's name, address, occupation and employer. 2 U.S.C. §§ 431(13) and 434(b)(3)(A). The Commission suggests that Providian obtain this information and forward it to the national party committee at the time that the contribution is authorized from the affinity credit cardholder.

Other provisions of the Act. Providian's proposed activities do not constitute improper facilitation of the making of contributions to the national party committee under 11 CFR 114.2(f), provided that these activities are in Providian's ordinary course of business as a commercial vendor and it charges the national party committee the usual and normal rate for its services.⁵ All contributions made through the Affinity Program must comply with the limits and prohibitions of the Act. Individual cardholders may make contributions as long as they do not exceed the \$25,000 annual limit or the \$57,500 biennial limit, and they are not foreign nationals, minors or government contractors under 2 U.S.C. §§ 441e, 441k and 441c.

Date issued: August 14, 2003;
Length: 9 pages. ♦

—Michelle Ryan

AO 2003-19 **National Party Committee's Sale of Office Equipment**

The Democratic Congressional Campaign Committee (DCCC) may sell its used office equipment and furniture to corporations, labor

organizations and other sources prohibited from contributing to a national party committee. So long as certain conditions are met, proceeds from the sale will not be a prohibited contribution, donation, transfer of funds or anything of value under the Federal Election Campaign Act (the Act).

Background

Following renovations at the Democratic Party headquarters, the DCCC plans to sell its outdated and incompatible equipment and furniture in arm's length transactions at fair market value. Among the purchasers may be corporations, labor organizations and other prohibited sources.

Analysis

Under the Bipartisan Campaign Reform Act, national party committees may not "solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions and reporting requirements of this Act." 2 U.S.C. §441i(a). Corporations and labor organizations are prohibited sources under the Act. See 2 U.S.C. §441b(b)(2).

In the past, the Commission has used certain criteria to determine whether a market transaction by a national party committee would constitute a prohibited receipt of funds. See AO 2002-14. Applying those criteria to this case, the DCCC may sell its office equipment and furniture at a price that does not exceed the usual and normal charge because:

- The goods were purchased for everyday business and not as a means of raising funds;
- The goods have an ascertainable market value; and
- It is an isolated disposal of unwanted and depreciated committee assets, and thus is not inherently

susceptible to use for political fundraising.

In addition, to ensure that the assets are sold for the usual and normal charge, the sale may not be advertised in any contribution solicitation.

Payments received through these transactions are not subject to the Act's contribution limits and may come from otherwise prohibited sources. The payments will be considered federal funds and may be used by the DCCC for federal election purposes.

Concurring Opinion

Commissioner Thomas submitted a concurring opinion on August 22, 2003.

Date issued: August 25, 2003;
Length: 4 pages. ♦

—Phillip Deen

AO 2003-20 **Officeholder Solicitation for Scholarship Fund**

U.S. Representative Silvestre Reyes may solicit donations for a scholarship fund established in his name by the Hispanic College Fund, Inc. (HCF), a non-profit corporation. The amounts raised by Representative Reyes on behalf of the scholarship fund will not be used in connection with a federal or nonfederal election and, thus, are not subject to the limits, prohibitions and reporting requirements of the Federal Election Campaign Act (the Act).

Background

The HCF plans to establish a scholarship fund in Representative Reyes' name for the purpose of providing scholarships to Hispanic undergraduate students living in El Paso, Texas. The scholarship will be need- and merit-based, and will be awarded based on criteria established by HCF with input from

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⁵ See 11 CFR 114.2(f)(1).

Advisory Opinions

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Representative Reyes. Scholarship recipients will not be expected to engage in election activity as part of, or in exchange for, the scholarship program. Solicitations for the scholarship will be made via direct mail using stationery bearing Representative Reyes's signature. Public promotion for the scholarship will not include any television, radio or satellite advertising.

Analysis

The Bipartisan Campaign Reform Act (BCRA) prohibits any federal candidate or officeholder from raising or spending any funds in connection with a federal or nonfederal election, unless those funds are within the limits and prohibitions of the Act. 11 CFR 300.61 and 300.62. The prohibition is not intended to prevent federal officeholders or candidates from soliciting for charitable organizations and organizations that do not engage in any election activity.

Because HCF's funds are used entirely for scholarships and scholarship recipients do not engage in election activity as part of, or in exchange for, the scholarship, the funds are not considered to be used in connection with a federal or nonfederal election. Therefore, the funds raised for HCF by Representative Reyes would not be subject to the limits and prohibitions of the Act. Furthermore, Representative Reyes may sign solicitation letters on HCF stationery, and the money he raises for HCF is not subject to the reporting requirements of the Act.

Date Issued: August 29, 2003;
Length: 4 pages. ♦

—Gary Mullen

AO 2003-22

Contributions Collected and Forwarded to Trade Association SSF by Executives of Member Corporations

Executives of member corporations may collect and forward contribution checks to the SSF of the American Bankers Association (ABA), a trade association for the banking industry, so long as a payroll deduction or check-off system is not used. The member corporations must first give ABA permission to solicit their restricted class.

Background

The Federal Election Campaign Act (the Act) prohibits corporations from making any contribution or expenditure in connection with a federal election. 2 U.S.C. §441b(a). A trade association may, however, solicit contributions to its SSF from the restricted class of member corporations that have given the trade association specific permission to do so. A corporation may only give such permission to one trade association in a calendar year. 2 U.S.C. §441b(b)(4)(D). All contributions must be strictly voluntary and without coercion. 2 U.S.C. §441b(b)(3).

In general, corporations, their officers, directors and other agents are prohibited from "facilitating" the making of contributions to candidates or political committees other than the corporation's own SSF. 11 CFR 114.2(f)(1). Thus, corporations cannot use their facilities to fundraise for other political committees, including collecting and forwarding contributions by providing a payroll deduction or check-off system or providing envelopes and stamps to transmit or deliver contributions. 11 CFR 114.1(f), 114.2(f)(1) and 114.2(f)(2)(ii).

However, under Commission regulations, a trade association may use any method to solicit voluntary

contributions or facilitate the making of voluntary contributions to its SSF, except that a member corporation may not use a payroll deduction or check-off system for executive and administrative personnel contributing to the association's SSF. 11 CFR 114.8(e)(3).¹

Analysis

The Commission regulations described above appear to contemplate that executives of member corporations may collect and forward contribution checks for the trade association SSF by means other than a payroll deduction or check-off system. Thus, executives of ABA member corporations may collect and forward contributions to ABA's SSF by using the corporation's inter-office mail system, by hand collection, by providing envelopes and postage for contributors to send their checks to ABA's SSF or by other similar means, where those corporations and the association's SSF have complied with 11 CFR 114.5(a) and 114.8(b), (c) and (d).

Date Issued: August 28, 2003;
Length: 3 pages. ♦

—Amy Kort

Advisory Opinion Requests

AOR 2003-23

Permissibility of earmarking contributions to party's "presumptive nominee" for President and forwarding contributions to nominee once he or she is identified (WE LEAD Women Engaged in Leadership, Education, and Action in Democracy, August 7, 2003)

¹ Similarly, under 11 CFR 114.8(d)(1) a member corporation must approve any solicitation for a trade association, whether the solicitation is conducted by the trade association, its SSF or "the corporation or any of its personnel."

AOR 2003-24

Nonpolitical, nonprofit advocacy organization's use of contributor information from FEC reports to create mailing list for organization's use (National Center for Tobacco Free Kids, August 14, 2003)◆

Court Cases

FEC v. Freedom's Heritage Forum

On August 14, 2003, the U.S. District Court for the District of Kentucky at Louisville issued an agreed order regarding Timothy Hardy's involvement in this case. Under the agreement Mr. Hardy, a Congressional candidate in the 1994 elections:

- Acknowledged that an inadvertent error by a campaign staff member caused his committee—without his knowledge or authorization—to violate 2 U.S.C. §441b by accepting an in-kind corporate contribution through the use of a corporate bulk mail permit;
- Agreed to pay the FEC \$250 within thirty days of the agreement pursuant to 2 U.S.C. §437g(a)(6)(B); and
- Agreed to make a good faith effort to establish procedures to prevent his campaign from accepting corporate contributions should he run for federal office in the future.

The Commission agreed that all of its remaining claims against Mr. Hardy are resolved by this agreement. See the May 2003 *Record*, page 5, and the August 2002 *Record*, page 2.

U.S. District Court for the District of Kentucky at Louisville, 3:98CV-549-S.

—Amy Kort

Cannon v. FEC

On August 18, 2003, the U.S. District Court for the District of South Carolina, Columbia Division, granted the Commission's motion for summary judgment in this case.

The plaintiff had appealed a \$5,500 civil money penalty the Commission imposed on the Joe Grimaud for Congress Committee and its treasurer Peter J. Cannon for failure to file the Committee's 2001 Year-End Report. Although the Committee filed the report on paper, they were required to file electronically. 11 CFR 104.18(a)(1)-(2). Mr. Cannon alleged that the Committee's computer system was infected with a virus, destroying their records and preventing them from filing electronically.

The district court adopted and incorporated the Report and Recommendation of a U.S. Magistrate Judge after Mr. Cannon failed to file an objection to the report with the district court. In the Report and Recommendation, the Magistrate Judge determined that Mr. Cannon waived all arguments by failing to file objections with the Commission during the Commission's administrative process. The Magistrate further concluded that the Commission imposed the proper penalty called for in its regulations, and Mr. Cannon's claim that he was unable to file electronically because of a computer virus was not an "extraordinary circumstance" under 11 CFR 111.35(b).

U.S. District Court for the District of South Carolina, Columbia Division, 3:02-4073-24BC.◆

—Amy Kort

Greenwood for Congress v. FEC

On August 18, 2003, the U.S. District Court for the Eastern District of Pennsylvania granted summary judgment in favor of Greenwood for Congress, Inc. (the Committee) in this case. Greenwood

for Congress filed suit against the Commission on January 22, 2003, appealing a civil money penalty assessed against it by the Commission under its administrative fines regulations for the Committee's failure to timely file its 2001 Year-End Report. 11 CFR 111.30-111.45. The Committee argued that the Commission's determination that the Committee and its treasurer violated 2 U.S.C. §434(a) and its assessment of a \$3,100 civil money penalty were arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law.

Background

The Committee alleged that it sent an electronic version of its 2001 Year-End Report on a high-capacity ZIP disk, along with a paper copy

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Campaign Guides Available

For each type of committee, a *Campaign Guide* explains, in clear English, the complex regulations regarding the activity of political committees. It shows readers, for example, how to fill out FEC reports and illustrates how the law applies to practical situations.

The FEC publishes four *Campaign Guides*, each for a different type of committee, and we are happy to mail your committee as many copies as you need, free of charge. We encourage you to view them on our web site (go to www.fec.gov, then click on "Campaign Finance Law Resources" and then scroll down to "Publications").

If you would like to place an order for paper copies of the *Campaign Guides*, please call 800-424-9530, press 1, then 3.

Court Cases

(continued from page 13)

version, to the Commission via overnight delivery on January 29, 2002. The Year-End Report was due on January 31. The Committee was required to file its report electronically under the Commission's mandatory electronic filing regulations. 11 CFR 104.18(a)(1). Reports that are required to be filed electronically but are instead submitted on paper do not satisfy a committee's filing requirement. 11 CFR 104.18(a)(2).

While the Commission received a package containing the paper version of the report on January 30 (Initial Package), it subsequently informed the Committee that it had not received an electronic version of the report. The Committee then sent an electronic version of the report on a ZIP disk, which the Commission received on February 7. On that same day, a staff member in the Commission's Electronic Filing Office informed Eric Clare, the Committee's campaign manager, by telephone that the Committee's filing was rejected because it had not been submitted on a 3.5 inch floppy disk and because it was not accompanied by the required summary page signed by the treasurer. Mr. Clare then sent another copy of the report, on a 3.5 inch floppy disk along with a signed summary page, which the Commission received and validated on February 8, 2002.

On June 14, 2002, the Commission found reason to believe (RTB) that the Committee and its treasurer had violated 2 U.S.C. §434(a), which requires the timely filing of reports by political committees like Greenwood for Congress. The Commission assessed a civil money penalty in the amount of \$3,100 in accordance with 11 CFR 111.43. After reviewing the Committee's response to the Commission's RTB finding, the Commission's reviewing officer recommended that the

Commission make a final determination that the Committee had violated 2 U.S.C. §434(a) by filing its 2001 Year-End report eight days late and that the \$3,100 civil penalty assessed was appropriate. After reviewing the Committee's submissions and the recommendations of the reviewing officer, on December 20, 2002, the Commission voted unanimously to make the final determination recommended by the reviewing officer. The Committee filed its petition for review of the Commission's final determination on January 22, 2003.

Court Decision

The granting of summary judgment by a court is appropriate where there is "no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Under the Administrative Procedure Act, a court can set aside an agency action it finds "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. §706(2)(A); *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 414 (1971).

The court found that the FEC ignored relevant, although circumstantial, evidence presented by the plaintiffs during the administrative challenge. In his affidavit submitted to the Commission's reviewing officer, Mr. Clare claimed to have sent the Committee's report on a ZIP disk in the Initial Package. He indicated that he weighed the different items that the Committee alleged it sent to the Commission. He reported that a ZIP disk, a hard-copy version of the report with a binder clip, a copy of the cover letter and a manila envelope weighed 2 1/8 pounds. The same package weighed without the ZIP disk weighed 1 7/8 pounds, according to Mr. Clare. The Federal Express airbill for the Initial Package, as filled out by Mr. Clare, indicated a weight of 2.20 pounds, and Federal Express listed the

weight of the package as three pounds. Because Federal Express will round up to the next whole number in calculating a package's weight, the Committee argued that this was evidence that the Initial Package contained a ZIP disk.

The Commission argued that its determination that the Committee filed its report late was reasonable because:

- The Commission relied on statements by staff that the procedures followed indicated that no disk was contained in the Initial Package; and
- Later searches of FEC files revealed no record of the Commission having received the disk in that package.

Nevertheless, the court held that the Commission failed "to exercise independent judgment in arriving at its decision" in this matter and "arbitrarily and capriciously determined that the Committee had erred in failing to include a disk in the January 30, 2002 package."

Additionally, the Commission argued that it was immaterial whether the Initial Package contained a ZIP disk, because a ZIP disk is an improper medium and the report would have been rejected in any case. The court found, however, that it is not clear that a ZIP disk is an improper medium—the language of the applicable regulation requires only the submission of the reports on "computerized magnetic media." 11 CFR 104.18(a) and(d).

Thus, the court denied the Commission's motion for summary judgment and granted summary judgment in favor of the Committee.

U.S. District Court for the Eastern District of Pennsylvania, 03-0307.

—George Smaragdis

Alternative Dispute Resolution

ADR Program Update

The Commission recently resolved six 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 Gerald C. “Jerry” Weller for Congress and its treasurer Roger Forcash concerning corporate contributions and excessive contributions. In their negotiated settlement, the respondents acknowledge that violations of the Act occurred and agreed to pay a \$2,500 civil penalty. The respondents contend that they refunded questionable contributions and provided additional information to reflect that several of the contributions questioned in the Commission’s audit were not prohibited. The respondents also contend that they retained, on an ongoing basis, a professional firm to ensure the committee’s compliance with the Act’s financial and record maintenance requirements, including periodic review of those financial systems. The respondents agreed to appoint an FEC compliance officer. (ADR 101/AR 02-12)

2. The Commission closed the matter concerning Staton for Congress, its treasurer Ronald Payne and Cecil P. Staton, Jr., concerning an alleged violation of the Act’s disclaimer rules. The ADR Office recommended the case be closed and the Commission agreed to close the file. (ADR 128/MUR 5265)

3. The Commission closed the matter concerning the American Indian Sovereignty Self Determination and Economic PAC of the

National Indian Gaming Association and its treasurer John Harte, Pequot PAC and its treasurer Daniel Little, Holland and Knight Committee for Effective Government and its treasurer Richard M. Gold, Friends of Jim Oberstar and its treasurer Joseph Moran, Lockridge Grindal Nauen Political Fund, Mah Mah Wi No Min II and its treasurer James W. Genia, Tunica—Biloxi Indian PAC and its treasurer Douglas Burke and Melanie Benjamin. The matter concerned allegations of excessive contributions and failure to disclose affiliated committees. The ADR Office recommended the case be closed and the Commission agreed to close the file. (ADR 131/MUR 5327)

4. The Commission closed the matter concerning Mark Kennedy ’02 and its treasurer James Loizeaux concerning the alleged failure to file 48-hour reports. After a review of the respondents’ amended report, the ADR Office concluded that the alleged violation of the Act was unsubstantiated. The Commission concurred by dismissing the matter. (ADR 119/MUR 5325)

5. The Commission reached agreement with Ally and Yvonne Visram concerning corporate contributions and contributions in the names of others. In order to conclude this *sua sponte* matter and avoid similar violations in the future, the respondents agree to educate themselves on the provisions of the Act—particularly the prohibitions on corporate contributions to influence federal elections—and to promulgate a corporate policy affirming this prohibition. The respondents agreed to pay a \$450 civil penalty. (ADR 122/Pre-MUR 410)

6. The Commission reached agreement with Pappas Telecasting Companies, Inc., regarding corporate contributions and excessive contributions. The respondent’s *sua sponte* submission noted steps it took to refund the contribution in

question 42 days after it was received and that the events in question were reported in the 2002 Year-End report. In order to conclude this matter and avoid similar errors in the future, the respondent agrees to adopt and distribute to corporate officers and appropriate personnel a policy statement describing the Act’s prohibition against corporate contributions to influence federal elections and advising any officer or director of the corporation that they are prohibited from consenting to any federal election contribution or expenditure. The respondent will also select appropriate Committee representatives to attend an FEC-sponsored workshop within 12 months of the effective date of this settlement. (ADR 125/Pre-MUR 411)◆

—Amy Kort

Public Appearances

October 6, 2003
Washington and Lee University
School of Law Federalist Society
Lexington, VA
Vice-Chairman Smith

October 12-13, 2003
National Association of
Secretaries of State, National
Conference of State Legislatures
and electionline.org
Hollywood, FL
Penelope Bonsall

October 23-25, 2003
Association of Central and
Eastern European Election
Officials
London, England
Vice-Chairman Smith
Evan Rikyhe

Statistics

Semiannual PAC Count Shows Decrease in 2003

According to the FEC’s semiannual political action committee (PAC) count, 3,945 PACs were registered with the Commission on July 1, 2003. This figure represents a 82-committee decrease from the January 1 count.

Corporate PACs remain the largest category, with 1,534 committees. Nonconnected PACs remain the second-largest group, with 1,040 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 August 29, 2003, press release. The press release is available:

- On the FEC web site at 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). ♦

—Amy Kort

Congressional and Party Fundraising Climbs

During the first six months of 2003, fundraising by national party committees and Congressional candidates increased, in some cases substantially, over fundraising during recent comparable periods.

National Party Committees

During the first half of the year, Republican party committees raised

\$139.1 million, while the Democratic committees raised \$56.4 million. These fundraising levels represent a 47 percent increase in receipts for Republicans when compared to the same period in 2001, and a 39 percent increase for Democrats. When compared to the same period in 1999—the last Presidential cycle—Republicans registered a 109 percent increase in receipts, while the Democrats showed a 48 percent increase.¹

Contributions from individuals constituted the bulk of the receipts for both parties. Democrats reported \$42.7 million from individuals and \$8.1 million from PACs. Republicans reported \$129.1 million from individuals and \$6.7 million from PACs.

The charts on page 17 detail Republican and Democratic party fundraising over several election cycles specifically from PACs, with \$8.1 million as the highest dollar amount raised, and from all sources, with \$139.1 million as the highest dollar amount raised.

House Candidates

The 435 House incumbents reporting receipts from January to June raised \$92.8 million, a \$9.7 million increase from the comparable period for incumbents in 2001. The 228 Republicans in this group reported raising \$52.1 million, while 205 Democrats raised \$40.7 million. Median receipts for Republican incumbents were \$184,932, com-

¹ Prior to the Bipartisan Campaign Reform Act of 2002 (BCRA), national political parties could also raise nonfederal funds that were not subject to the limitations and prohibitions of the Federal Election Campaign Act (the Act). During the first six months of 2001, Democrats raised \$37 million in soft money while the Republicans raised \$65.5 million. As of November 6, 2002, however, national party committees may only raise and spend federally permissible funds. 2 U.S.C. §441i(a).

	Corporate	Labor	Trade/ Member/ Health	Coop- erative	Corp. w/o Capital Stock	Non- connected ¹	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
Jul. 03	1,534	320	902	39	110	1,040	3,945

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

¹ 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.

pared to \$150,613 for Democrats. For the comparable period in 2001, Republicans had median receipts of \$171,469, and Democrats had \$145,748. For the first six months in 1999, Republicans had median receipts of \$158,803 and Democrats had \$111,699.

The 34 Republican freshmen had \$10.5 million in receipts, while the 20 Democratic freshmen had receipts of \$4.6 million. Median receipts for Democratic freshmen had were \$206,607, while the median for Republicans was \$268,265.

Non-incumbents raised a total of \$11.3 million during the first six months of 2003, with 38 Democrats raising \$1.8 million and 82 Republicans raising \$9.5 million. In a comparable period of 2001, 42 Democrats raised \$4.0 million and 52 Republicans raised \$3.1 million.

In 1999's first six months, 81 Democrats raised \$6.9 million and 76 Republicans raised \$7.2 million.

Senate Candidates

Candidates seeking the 34 Senate seats up for election in 2004 raised \$75.6 million during the first six months of 2003. Contributions from individuals accounted for 62 percent of this amount, and PAC money represented 19 percent.

While comparisons of Senate races are problematic because of their diversity, mid-year reports filed by the current class of 63 candidates indicate more fundraising activity than that during the first six-month of the past three election cycles. By comparison, for the first six months in 1997 (the last election cycle for the present group of 34 Senate seats) 58 candidates reported raising \$42.6 million.

Meanwhile, in 2001, 56 candidates competing for 33 seats raised \$43 million.

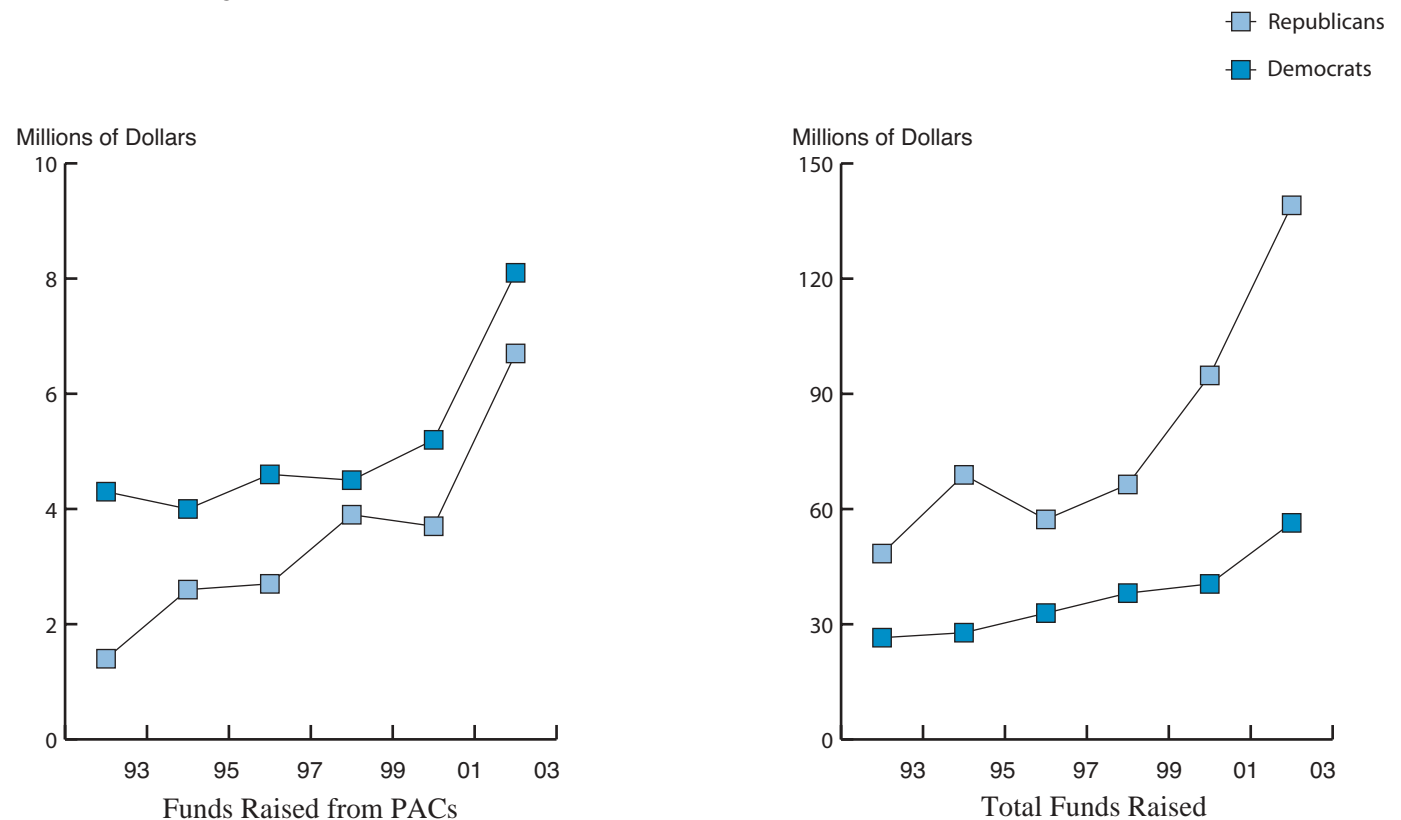
Additional Information

More information on campaign finance statistics for January 1 through June 30, 2003, are available in press releases dated August 21 (House and Senate) and August 28 (party committees). The releases are available:

- On the FEC web site at <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 numbers 618 and 619).

—Amy Kort

Fundraising for Republican and Democratic Party Committees for First Six Months of Election Cycle—1993-2003



Outreach

Campaign Finance Law Training Conference in San Diego

The FEC will hold a conference October 28-29, 2003, for House and Senate campaigns, political party committees and corporations, labor organizations, trade associations, membership organizations and their respective PACs. The conference 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.

The conference will be at the Hyatt Regency Islandia. The registration fee is \$385, which covers 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 on San Diego's Mission Bay. 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, or access the Hyatt Regency Islandia's reservations web page via the FEC web site at <http://www.fec.gov/pages/infosvc.htm#Conferences>.

Registration Information

Conference registration information is available online. Conference registrations will be accepted on a first-come, first-served basis. 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 lauren@sylvestermanagement.com. ♦

—Amy Kort

Puerto Rico Primary Election Reporting

Puerto Rico will hold its primary election on November 9, 2003. All committees involved in this election must file a pre-primary report, as described below, except for committees that file on a monthly schedule—monthly filers continue to file on their regular filing schedule.¹ Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more for the primary election between October 21 and November 6.

Committees Involved in the Primary Must File:

	Close of Books	Reg./Cert. Mail Date	Filing Date
Pre-Primary	October 20	October 25	October 28
Year-End	December 31	January 31	January 31 ²

¹The Commission has issued new reporting forms and software that allow for reporting under the Bipartisan Campaign Reform Act. All reports must be filed using the new forms or filing software, as appropriate. Reports filed electronically must be submitted by midnight on the filing date. A committee required to file electronically that instead files on paper reporting forms will be considered a nonfiler. Reports filed on paper and sent by registered or certified mail must be postmarked by the mailing date; reports sent by any other means (including reports sent via first class mail and overnight delivery) must be received by the Commission's close of business on the filing date.

²Note that this filing date falls on a weekend. Filing dates are not extended for weekends or federal holidays.

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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.

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.

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