

# Record

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Federal Election Commission

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## Compliance

### MUR 5328: Excessive Contributions to and from Affiliated Leadership PACs

The Commission recently entered into conciliation agreements with PAC to the Future and Team Majority, leadership PACs that are associated with Representative Nancy Pelosi, and three candidate committees. The conciliation agreements resolved violations of the Federal Election Campaign Act (the Act) and resulted in total civil penalties of \$28,000. The investigation stemmed from a complaint filed by Kenneth F. Boehm, Chairman of the National Legal and Policy Center.

### Background

The Act and Commission regulations state that political committees that are established, financed, maintained or controlled by the same person or group of persons are "affiliated committees." 11 CFR 100.5(g)(2). Affiliated committees must disclose their affiliated status. 2 U.S.C. §433(b)(2). Contributions made to or by such committees shall be considered to have been made to or by a single committee. 2 U.S.C. §441a(a)(5); 11 CFR 110.3(a).

Under the Act, a multicandidate PAC is limited to receiving

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## Regulations

### Notice of Proposed Rulemaking on Inaugural Committees

On April 1, 2004, the Commission approved a Notice of Proposed Rulemaking (NPRM) seeking comments on proposed regulations to implement provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) that affect inaugural committees. The proposed rules specifically address:

- New disclosure requirements for inaugural committees; and
- The prohibition on donations by foreign nationals to inaugural committees.

The NPRM was published in the April 7, 2004, *Federal Register* (69 FR 18301) and is available on the FEC web site at <http://www.fec.gov/register.htm>.

The BCRA amended the Federal Election Campaign Act (the Act) by establishing new requirements for inaugural committees. (An inaugural committee is the committee appointed by the President-elect to coordinate the Presidential inaugural ceremony and activities con-

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## Regulations

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nected with the ceremony.)<sup>1</sup> Prior to enactment of the BCRA, inaugural committees had no disclosure requirements and could accept donations from foreign nationals. Under the BCRA, however, in order for a committee to be considered the inaugural committee, it must agree to disclose all donations received aggregating \$200 or more, and it must not accept a donation from any foreign national. See 36 U.S.C. §510.

<sup>1</sup> Chapter 5 of Title 36, U.S.C., provides the inaugural committee with special privileges in the District of Columbia for the five days before and the four days after the inauguration ceremony. Under 36 U.S.C. §511, Congress may make appropriations for the District of Columbia to pay for the swearing-in ceremony. All other activities, however, are paid for by the inaugural committee.

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## Proposed Disclosure Requirements

Under the proposed regulations, an inaugural committee must file a letter with the Commission within 15 days after being appointed. The letter must contain contact information for the inaugural committee as well as an affirmative statement that the committee will comply with the new disclosure requirements and the new ban on accepting donations from foreign nationals. See proposed 11 CFR 104.21(b). The Commission seeks comment on whether such a filing requirement is necessary. If it is, is a form preferable to a letter-filing, and who should be designated as the inaugural committee's point of contact with the Commission?

To implement the BCRA's reporting requirements for inaugural committees, the proposed rules require the inaugural committee to file a report with the FEC no later than the 90 days after the inauguration ceremony, using a form to be developed by the Commission. The Commission has tentatively concluded that an inaugural committee is not subject to the mandatory electronic filing requirements.<sup>2</sup> Thus the proposed rules permit inaugural committees to file using paper or electronically on a voluntary basis. The report must contain the name and address of each person making a donation aggregating \$200 or more, the amount of each such donation and the date of receipt by the inaugural committee. The NPRM seeks comment on the following reporting issues:

- Should the committee officer identified in the inaugural committee's

<sup>2</sup> The Act requires electronic filing by filers who receive or make, or have reason to expect to receive or make, contributions or expenditures in excess of \$50,000 in a calendar year. Technically, funds raised and spent by an inaugural committee are not defined as "contributions" or "expenditures" under the Act as amended by the BCRA.

initial letter-filing sign the report, or could another official sign?

- Should the Commission require inaugural committees to file electronically?
- Should the Commission require inaugural committees to comply with the Commission's longstanding recordkeeping regulations for political committees, or, alternatively, must there be recordkeeping rules specific to inaugural committees? Should there be any recordkeeping requirements?

## Proposed Regulations Banning Foreign National Donations

To implement the BCRA's ban on donations from foreign nationals, the Commission proposes to amend its existing foreign national regulations by adding a paragraph to prohibit foreign nationals from directly or indirectly donating to an inaugural committee, and also to prohibit any person from knowingly soliciting, accepting or receiving donations to an inaugural committee from a foreign national.

On its face, section 510(c) of Title 36 merely forbids acceptance of a foreign national donation by an inaugural committee. The Commission seeks comments on whether the proposed rule's explicit prohibition on donations by foreign nationals constitutes a permissible interpretation of the BCRA. The Commission also notes that, although the BCRA did not include a "knowledge" standard regarding the prohibition on acceptance of foreign national donations by an inaugural committee, the Commission's current regulations banning the acceptance of foreign national contributions and donations do include such a standard. See 11 CFR 100.20(g).

## Commission Authority

Section 508 of Title 36, U.S.C., provides that the "Mayor of the District of Columbia, or other official having jurisdiction in the premises, shall enforce" the chapter of Title

36 under which the BCRA amendments regarding inaugural committees were codified. The Commission seeks comments on whether its authority is limited to receiving and making public the reports required by the BCRA. Does the Commission have the authority to enforce these proposed regulations, including the authority to audit inaugural committees?

### Comments

Public comments on these proposed regulations must be submitted, in written or electronic form, to John C. Vergelli, Acting Assistant General Counsel. Comments may be sent by:

- E-mail (encouraged) to [Inaugural04@fec.gov](mailto:Inaugural04@fec.gov) (e-mailed comments must include the full name, e-mail address and postal address of the commenter in order to be considered);
- Fax to 202/219-3923 (send a printed copy follow-up to ensure legibility); or
- Mail to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463.

All comments must be received by May 7, 2004. If sufficient requests to testify at a public hearing are received, the Commission may hold a public hearing on these proposals. Commenters who wish to testify at such a hearing must indicate such in their written or electronic comments.

—Dorothy Yeager

### Notice of Proposed Rulemaking on Contributions by Minors

On April 1, 2004, the Commission approved a Notice of Proposed Rulemaking (NPRM) seeking comments on proposed amendments to its rules governing contributions and donations by minors to candidates and political committees. The proposed amendments would conform

to the Supreme Court's decision in *McConnell v. FEC*, which found unconstitutional a provision of the Bipartisan Campaign Reform Act (BCRA) that barred minors from making contributions to candidates or from making contributions or donations to political party committees.

The NPRM was published in the April 9, 2004, *Federal Register* (69 FR 18841) and is open to public comments until May 10, 2004.

### Proposed Rules

Prior to the BCRA's enactment, Commission regulations provided that individuals under 18 years of age (minors) could make contributions to candidates or political committees in accordance with the limits of the Federal Election Campaign Act (the Act), so long as the minor knowingly and voluntarily made the decision to contribute, and the funds, goods or services contributed were owned or controlled exclusively by the minor. Additionally, the contributions could not come from the proceeds of a gift given to the minor for the purpose of making a contribution or in any other way be controlled by an individual other than the minor. The rules proposed in the NPRM would essentially return the regulations to their pre-BCRA state.

In addition, the NPRM seeks comments on whether the Commission has the authority to establish a minimum age, lower than had been set by the BCRA, for making contributions with the following questions in mind:

- Should the Commission prohibit individuals below a certain age from making contributions, recognizing that those individuals lack the capacity to manage their finances and to dispose of property and therefore could not knowingly and voluntarily contribute on their own behalf;
- If so, what would be the appropriate age;
- Should the Commission instead establish a rebuttable presumption

that individuals below a certain age could not make contributions; and

- If the Commission chooses the latter approach, what should the Commission require from the individual and his or her parents or guardian to rebut that presumption.

### Comments

The Commission invites comments on any of these proposals. The full text of the NPRM is available on the FEC web site at <http://www.fec.gov/register.htm> and from the FEC Faxline, 202/501-3413.

All comments should be addressed to John C. Vergelli, Acting Assistant General Counsel, and must be submitted in either electronic or written format. If the Commission receives sufficient requests to testify, it will hold a public hearing. Written comments should be sent via overnight mail to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to 202/219-3923, with a printed copy follow-up to ensure legibility. Electronic mail comments should be sent to [Minors04@fec.gov](mailto:Minors04@fec.gov) and must include the full name and postal service address of the commenter. Comments that do not contain this information will not be considered. No oral comments can be accepted.

—Kathy Carothers

### Public Hearing on Proposed Rules on Definition of "Political Committee"

On April 14th and 15th, 2004, the Commission hosted public hearings concerning its Notice of Proposed Rulemaking (NRPM) on political committee status. More than 30 witnesses offered opinions as to whether the current definition of "political committee" should be revised to state explicitly that so-called "527

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## Regulations

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organizations”<sup>1</sup> and other groups would be subject to the limitations, prohibitions and reporting requirements of the Federal Election Campaign Act (the Act). The Commission also heard testimony on proposed changes to the definition of “expenditure” and on the rules for allocating funds for activities involving both federal and nonfederal elections. For more information on the NPRM, see the April issue of the *Record*, page 1.

Over the course of the two-day hearings, the Commission heard from election law practitioners, representatives from nonprofit political, religious and social welfare organizations and tax attorneys, some of whom testified that the proposed rules are overbroad and questioned whether the Commission has sufficient statutory authority to promulgate these rules without Congressional or judicial direction. Others emphasized the affects the new rules could have on the work of nonprofit advocacy groups, particularly nonpartisan voter registration and issue advocacy. Still others worried that the speed at which the rules are being drafted does not allow the Commission adequate time for substantial inquiry and felt that it would be irresponsible to issue new rules six months before a Presidential election.

### Deliberative Process

Jan Baran, representing the Chamber of Commerce, remarked

<sup>1</sup> “527 organizations” refers to organizations that are tax exempt pursuant to section 527 of the Internal Revenue Code, 26 U.S.C. §527. Such organizations are organized and operated primarily to influence or attempt to influence the “selection, nomination, election, or appointment” of any individual to, inter alia, any federal, State, or local public office. See 26 U.S.C. §§527(e)(1) and (2).

that this rulemaking represents a type of major overhaul not seen since the Bipartisan Campaign Reform Act (BCRA) was undertaken. Mr. Baran noted that, while the BCRA was the product of seven years of political negotiation and deliberation, these rules are being drafted in mere months. Other commenters suggested that the Commission not act in haste and promulgate rules without substantial inquiry and deliberation. Instead, many who testified recommended that in lieu of promulgating new rules, the Commission should bring this issue before Congress, possibly in its legislative recommendations. In the same vein, commenters noted that many groups have made important decisions regarding their election year activities based on an understanding of the current set of rules; to change the regulations halfway through an election cycle would do a great disservice to them.

### Tax-Exempt Status as Distinguishing Feature

Craig Holman, representing Public Citizen, recommended that the FEC defer to IRS regulations when regulating 501(c) and 527 groups. Specifically, he suggested that the Commission consider 527 groups to have the major purpose of influencing elections and 501(c) groups not to have that major purpose. A panel of tax law experts, on the other hand, cautioned that the IRS “facts and circumstances” tests, if employed in this context, might not survive constitutional analysis and urged the FEC not to rely on the IRS code to police campaign finance. Others cautioned against assuming that the chosen tax-status of an organization is a declaration that the organization’s purpose is to elect federal candidates, noting that groups organized under section 527 of the tax code engage in a many activities, very few of which fall under the scope of the FEC’s regulatory authority. Carl Pope, representing the Sierra Club, remarked that resolution may be im-

possible if the Commission cannot separate those groups who have the potential to corrupt from those that do not and that the tax code may not provide the necessary precision.

### Utilization of Existing Enforcement Regulations

The Commission also heard testimony suggesting that the FEC should focus on the actions of certain 527s by enforcing existing federal law. Rather than draft new rules that redefine long-standing statutory terms, Cleta Mitchell, from Foley & Lardner, urged the Commission enforce the rules that already exist and conduct investigations to determine if groups are operating outside the parameters of the statute. Similarly, some who testified made reference to the “creeping effect”—that inaction by the Commission to stop the flow of soft-money eventually allowed soft-money spending to become the *status quo* prior to the passage of BCRA in 2002. Enforcement action by the Commission at this point could prevent the activities of 527s from similarly becoming the *status quo*.

### Impact on Nonprofit Groups

Representatives from several nonprofit organizations expressed strenuous objections to the new regulations, stating that legitimate issue advocacy groups could be swept into the new definition of “political committee,” thus “chilling” their advocacy activities. Classification as a political committee could potentially limit both the sources of funding and activities of certain nonpartisan advocacy groups, forcing some nonprofit groups organized under section 501(c)(3) of the tax code to choose between restricting their activities or limiting their fundraising to contributions within the limits and prohibitions of the Act. Rabbi David Saperstein, representing the Religious Action Center of Reform Judaism, pointed out that many of the religious organizations that signed on to his comments often en-

gage in praising public officials for their moral or religious work. Under the proposed rules, such activity would run the risk of being labeled “overt political work” and might confer political committee status on religious organizations.

At the same time, however, many panelists recommended that the Commission *not* carve out special exemptions for certain 501(c) organizations because large organizations often have both 501(c) and 527 arms. Curtailing activities by 527s could result in organizations simply shifting those same activities over to 501(c) organizations.

### Support for Modified NPRM Alternatives

Some witnesses expressed support for the concept of Commission regulation of certain 527 organizations. Comments submitted jointly by Democracy 21, the Campaign Legal Center and the Center for Responsible Politics favored one of the NPRM’s proposed alternatives, with a slight modification. In his testimony, Donald Simon, representing Democracy 21, expressed support for the proposed new regulation that defines political committee not just by whether a group exceeds the \$1,000 threshold in contributions or expenditures but additionally, whether the group’s “major purpose” is the “nomination or election of one or more Federal candidates.” This “major purpose” test is further defined by the organization’s status under section 527 of the tax code and includes several exemptions for groups active in nonfederal elections.

### Additional Information

The full text of the NPRM and public comments submitted to the Commission are available on the FEC web site at <http://www.fec.gov/register.htm>.

—Amy Pike

## Compliance

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\$5,000 per calendar year from individual contributors. 2 U.S.C. §§441a(a)(1)(C) and 441a(f). Further, a candidate may only accept \$5,000 per election from a multicandidate PAC. 2 U.S.C. §§441a(a)(2)(A) and 441a(f). If a committee accepts contributions that exceed these limits, its treasurer must either refund the excessive contributions or seek redesignation to another election or reattribution to another donor within 60 days. 11 CFR 103.3(b)(3).

According to the conciliation agreement with PAC to the Future and Team Majority, the PACs failed to identify each other as affiliated committees when they registered with the Commission,<sup>1</sup> and both PACs made contributions to several candidates for the 2002 general election, which, when aggregated, exceeded their shared \$5,000 contribution limit. The PACs also received contributions from individuals that exceeded their shared \$5,000 contribution limit and did not refund the excessive portion of the contributions within 60 days.

As a result of the PACs’ excessive contributions, Julie Thomas for Congress Campaign Committee, Van Hollen for Congress and Joe Turnham for Congress also received excessive contributions from the two PACs when they did not refund the excessive contributions or receive redesignations for the excessive contributions within 60 days.

PAC to the Future and Team Majority will pay a \$21,000 civil penalty. The committees also agreed to cease and desist from further violations of sections 433 and 441a of the Act, and they waived any right to refunds of excessive contributions. Julie Thomas for Congress Cam-

paign Committee and Van Hollen for Congress will each pay a \$2,500 civil penalty, and Joe Turnham for Congress will pay a \$2,000 civil penalty. The three campaigns have also agreed to cease and desist from further violations of section 441a of the Act, and agreed to disgorge the excessive contributions to the U.S. Treasury.

Documents from this matter are available through the Enforcement Query System (EQS) on the Commission’s web site at <http://www.fec.gov> by entering 5328 under the case number.

—Jim Wilson

## Advisory Opinions

### AO 2004-3

#### Conversion of Authorized Committee to Multicandidate Committee

Dooley for the Valley, a multicandidate committee that was formerly U.S. Representative Calvin M. Dooley’s principal campaign committee, may keep its status as a multicandidate committee. However, funds the committee received while it was a principal campaign committee may only be spent for the four permissible uses of campaign funds provided for in the Federal Election Campaign Act (the Act).

#### The Act and Commission Regulations

The Act defines a “multicandidate committee” as a political committee that has been registered with the FEC for at least six months, has received contributions from more than 50 persons and, except for a state political party organization, has made contributions to at least five federal candidates. 2 U.S.C.

<sup>1</sup> PAC to the Future registered with the Commission on March 24, 1999; Team Majority registered on April 1, 2002.

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## Advisory Opinions

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§441a(a)(4). Nothing in the Act or Commission regulations explicitly addresses the conversion of a candidate's authorized committee into a multicandidate committee. However, in past advisory opinions, the Commission permitted a principal campaign committee to become a multicandidate committee. AOs 1994-31, 1993-22, 1988-41, 1987-11, 1985-30, 1985-13, 1983-14, 1982-32 and 1978-86. See also AO 2000-12.

The Act lists four permissible uses for contributions received by a federal candidate:

- Otherwise authorized expenditures in connection with the candidate's campaign for federal office;
  - Ordinary and necessary expenses incurred in connection with the duties of the individual as a federal officeholder;
  - Contributions to charitable organizations described in 26 U.S.C. §170(c); and
  - Unlimited transfers to national, state or local political party committees.
- 2 U.S.C. §439a(a); 11 CFR 113.2(a), (b) and (c).<sup>1</sup>

In the Bipartisan Campaign Reform Act of 2002 (BCRA), which took effect on November 6, 2002, Congress deleted "any other lawful purpose" from the list of permissible uses of campaign funds, making this list of permissible uses exhaustive. See AOs 2003-30 and 2003-26.

<sup>1</sup> Campaign funds must not be converted to "personal use" by any person. 2 U.S.C. §439a(b)(1). Commission regulations define "personal use" as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g); 2 U.S.C. §439a(b)(2).

## Transition to Multicandidate Committee

On September 2, 2003, Representative Dooley announced his decision to retire from Congress as of January 2005. His principal campaign committee, Dooley for Congress, filed an FEC Form 1M, Notification of Multicandidate Status, on September 30, and subsequently filed an amended Statement of Organization reflecting the new status as a multicandidate committee and changing the committee's name to Dooley for the Valley (the Committee).

The BCRA's amendments to the Act do not *per se* bar an authorized committee from becoming a multicandidate committee. When the Committee was converted to an unauthorized committee after Representative Dooley ceased to be a federal candidate, it became a multicandidate committee because it had already met the requirements for multicandidate committee status. 2 U.S.C. §441a(a)(4). See AOs 1993-22, 1988-41 and 1985-30. Accordingly, the Committee may accept contributions of up to \$5,000 per contributor per calendar year. 2 U.S.C. §441a(a)(1)(C).

However, when the Committee converted to a multicandidate committee it had a large amount of cash-on-hand—money that it had raised when it was a principal campaign committee. The Act's restrictions on the use of campaign funds apply expressly to "contribution[s] accepted by a candidate." 2 U.S.C. §439a(a). Thus, funds that the Committee received when it was a principal campaign committee must be spent only for the permissible uses listed above, and must not be converted to the personal use of any individual. 2 U.S.C. §439a(b).

In addition, the Committee must limit to \$1,000 per election any contributions it makes to other federal candidates using funds it received while it was a principal campaign committee. 2 U.S.C. §432(e)(3)(B).

The Act and regulations provide that, in general, a political committee that supports more than one candidate may not be designated as a principal campaign committee or authorized committee of a candidate. 2 U.S.C. §432(e)(3)(A); 11 CFR 102.12(c)(1) and 102.13(c)(1). A candidate's committee may contribute only up to \$1,000 per election to another federal candidate's principal campaign committee or authorized committee without being considered to "support" another candidate. 2 U.S.C. §432(e)(3)(B); 11 CFR 102.12(c)(2) and 102.13(c)(2).

The Committee may, however, use its other funds—funds not from contributions received while it was a principal campaign committee—in a manner consistent with lawful uses by any other multicandidate committee. Therefore, contributions and other funds received after the Committee's September 30, 2003, conversion date may be spent for purposes other than the four uses listed above, as long as the Committee complies with the other provisions of the Act and Commission regulations.

## Determining the Sources of Committee Funds

If the Committee makes disbursements that, in total, exceed the amount it received since it became a multicandidate committee, then it will be considered to be spending funds it received as a principal campaign committee. The spending of amounts exceeding its post-conversion receipts will be subject to 2 U.S.C. §§439a and 432(e)(3)(B).

When the Committee spends funds from its cash-on-hand as of September 30, 2003, that cash-on-hand figure will be reduced by the amount of the disbursements that are lawful under the Act's restrictions on principal campaign committees. As a practical matter, this means that, once a permissible disbursement of pre-conversion funds has been determined to have been made, that disbursement will not be included in

total post-conversion disbursements for the purposes of determining the source (*i.e.*, pre-or post-conversion) of any subsequent disbursement.

### Refunds

If the Committee made any contribution that would constitute an impermissible use of funds by a principal campaign committee using funds that it received while it was a principal campaign committee, then it must seek a refund.<sup>2</sup> The Committee cannot make donations to nonfederal candidates and other non-party committees for state and local elections from funds it received as a principal campaign committee, because these donations would not be a permissible use of a candidate's campaign funds. 2 U.S.C. §439a. Such donations are only permissible in the furtherance of a candidate's campaign.<sup>3</sup> Representative Dooley was no longer a candidate for reelection to federal office after the conversion date and the donations would not fit into any of the categories of permitted uses in 2 U.S.C. 439a(a).

Date Issued: March 11, 2004;  
Length: 5 pages.

—Amy Kort

<sup>2</sup> *The amounts of any refunds received by the Committee will not count toward total post-conversion receipts in determining whether total post-conversion disbursements exceed post-conversion receipts. However, any permissible portion of a disbursement after the receipt of a refund (for example, \$1,000 of a \$5,000 contribution to a federal candidate after \$4,000 has been refunded) will draw down the pre-conversion cash-on-hand.*

<sup>3</sup> *See the Explanation and Justification for the regulations at 11 CFR Part 113 (67 FR at 76975), where the Commission explained that such donations are permissible "[i]n furtherance of a Federal candidate's election."*

### AO 2004-4

#### Abbreviated Name of Trade Association SSF

The Air Transport Association of America Political Action Committee (the Committee), which is the separate segregated fund (SSF) of the Air Transport Association of America, Inc. (ATA), may use the abbreviation "AirPAC" for common uses, such as on stationery and checks.

Under the Act and Commission regulations, an SSF's name must include the full name of its connected organization. 2 U.S.C. §432(e)(5) and 11 CFR 102.14(c). See also AOs 1993-7, 1989-8 and 1988-42. The regulations also allow the use of a clearly recognized abbreviation or acronym for common uses, such as on stationery and checks, as long as the SSF uses both the abbreviation (or acronym) and the full name on all reports, including the Statement of Organization, and in all disclaimer notices. The SSF may make contributions using the abbreviation or acronym. 11 CFR 102.14(c). See also AOs 2003-34, 1987-26 and 1980-23.

ATA is the only trade association representing the American airline industry. "AirPAC" incorporates the first and most important word in the connected organization's full name and provides the public with sufficient information as to the identity of the industry trade association that sponsors the Committee. Thus, the Committee may identify itself as "AirPAC" on its checks and stationery, but must use its full name on all FEC reports and in disclaimer notices required by 11 CFR 109.11 and 110.11.

Length: 3 pages; Date Issued: March 11, 2004.

—Amy Kort

### AO 2004-6

#### Web-Based Meeting Services for Candidates and Political Committees

Meetup, Inc. (Meetup) may provide both its free and fee-based web services to federal candidates, political committees and their supporters as long as it does so on the same conditions available to the general public.

#### Background

Meetup offers a commercial, web-based platform for arranging local gatherings. Meetup's basic service, which it provides to *all* persons free of charge, allows users to list suggested topics for local gatherings on its web site and allows interested people to register to meet at a specific location. For additional fees, Meetup allows sponsors to control a fixed amount of text describing the gathering on Meetup's web site and emails, provides the sponsors with the names and other data of its users and includes the sponsored event in the "Featured Meetups" list on Meetup's web site. A candidate or political committee meetup would *not* be listed as a "Feature Meetup" unless it is a sponsored event.

Meetup intends to charge all Senate candidates one set of fees and all House candidates smaller fees. These fees are based on fixed criteria that also apply to non-candidate sponsors, including the volume of users, the geographical reach of the gathering and the use of Meetup's resources. As a result, Meetup will provide the same services for the same fees and terms to all individuals who are similarly situated in accordance with Meetup's fixed criteria, irrespective of whether they are federal candidates, political committees, businesses or other groups or individuals.

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## Advisory Opinions

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Under the Federal Election Campaign Act (the Act) and Commission regulations, corporations are prohibited from making contributions or expenditures in connection with federal elections. 11 CFR 114.2(b). Contributions include the provision of goods or services for free or for less than the “usual and normal charge.” The Commission’s regulations define the “usual and normal charge” for goods as the price in the market from which the goods would have been purchased at the time of the contribution. 11 CFR 100.52(d)(2).

### Application to Proposal

Although a corporation’s provision of a good or a service to a candidate for free ordinarily results in a contribution, the provision of a service for free that is *always* provided without charge to *every* person does not generally constitute a contribution. The usual and normal charge for Meetup’s basic service is always zero. Meetup, therefore, does not make a contribution when it makes its basic services available to federal candidates for free.

Meetup also would not make a contribution by providing federal candidates and political committees with premium services as long as it does so in the ordinary course of its business, at the usual and normal charge and does not exercise its discretion in featuring a candidate or political committee event. This charge must be in accordance with the fixed set of fee criteria described above, applied equally among all similarly situated political and non-political clients and paid within the ordinary amount of time.

Date Issued: March 25, 2004;  
Length: 5 pages.

—Amy Kort

## AO 2004-7

### MTV’s Mock Presidential Election Qualifies for Press Exemption

MTV Networks may produce and promote a mock Presidential election without making a prohibited corporate contribution or expenditure. Most of MTV’s proposed activities fall within the network’s legitimate press functions and therefore are exempt from the definitions of contribution and expenditure. Additional nonpartisan voting activities are similarly permissible.

### Background

MTV Networks, a division of Viacom International, Inc., plans to conduct an online survey of young people to determine their choice for President of the United States. On- and off-air promotion of this so-called “Prelection” will be done in conjunction with MTV’s Movie Awards and Video Music Awards, and with concerts, grassroots initiatives and online communications. Voter education activities, including candidate information on the Prelection web site, links to the presidential candidates’ web sites, links to nonpartisan web sources of information and candidate statements for on-air or online usage, will be a critical part of the Prelection. Voting in the Prelection will take place online and potentially via a toll-free telephone number with the results being announced before the November 2, 2004, general election. These results may be reported as an endorsement of a presidential candidate by MTV News.

Prelection participants will receive follow-up messages encouraging them to vote in the November general election. These messages will be sent to all participants who are registered to vote in the general election, regardless of whom they voted for in the Prelection. The messages may refer to the results of the Prelection, but will not be coordinated with any candidate, po-

litical party or political committee. Corporate advertisers and sponsors may choose to run advertisements on MTV during Prelection programming, but will have no role in determining content or choosing the recipient of MTV News’ endorsement. MTV will also identify corporate sponsors as such in various Prelection promotions and materials.

### Analysis

The Federal Election Campaign Act (the Act) prohibits any corporation from making a contribution or expenditure in connection with a federal election. 2 U.S.C. §441b(a). However, certain exemptions from the definitions of contribution and expenditure permit corporations to engage in some activities that might otherwise be prohibited. The exemptions include any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcast station unless the facility is owned or controlled by any political party, political committee, or candidate—often referred to as the “press/media exemption.” 2 U.S.C. §431(9)(B)(i); 11 CFR 100.73 and 100.132. The Act and Commission regulations also include a similar exemption at 2 U.S.C. §434(f)(3)(B)(i) and 11 CFR 100.29(c)(2) with respect to electioneering communications. Unless an exception exists, a corporation may not make communications to the general public that expressly advocate the election or defeat of a clearly identified federal candidate. 11 CFR 114.4(c).

In considering the scope of the press exemption, the Courts and the Commission have concluded specific factors must be present for the press exemption to apply. First, the entity engaging in the activity must be a press entity as described by the Act. (AOs 2003-34, 2000-13, 1998-17, 1996-48, 1996-41, 1996-16.) Second, an application of the press exemption depends on the two-part



framework presented in *Reader's Digest Association v. FEC*<sup>1</sup>:

1. Whether the press entity is owned or controlled by a political party, political committee or candidate; and
2. Whether the press entity is acting as a press entity in conducting the activity at issue.<sup>2</sup>

*Production and promotion costs of the Prelection.* Because MTV is a press entity that is not owned or controlled by any political party, political committee or candidate, the costs it incurs in covering or carrying a news story, commentary, or editorial are exempt from the definitions of contribution and expenditure. The Commission considers funds expended to produce or promote the Prelection to be exempt, and thus MTV will not violate 2 U.S.C. §441b by expending funds for these purposes.

*Broadcasting Prelection Activities.* The broadcasting of Prelection activities constitutes covering or carrying a news story, commentary, or editorial, and thus falls within the press exemption.

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<sup>1</sup> *Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981). The court noted that the exemption seemed applicable if the magazine was acting in its publishing function by, for example, disseminating a video tape to television stations publicizing the issue of the magazine containing the specific article in question.

<sup>2</sup> *Phillips Publishing v. FEC*, 517 F. Supp. 1308, 1312-1313 (D.D.C. 1981). A mailing soliciting subscriptions to a biweekly newsletter contained, inter alia, a combination subscription form and opinion poll that referred to a clearly identified federal candidate. The press exemption applied because the purpose of the solicitation letter was to publicize the newsletter and obtain new subscribers, both of which are legitimate press functions. See also AOs 2000-13, 1996-48 and 1982-44.

*Promoting participation.* Promoting and encouraging participation in the Prelection through communications made on air, via the web or at events would publicize the program and would be within MTV's legitimate press function; thus, the press exemption would apply.

*Providing election-related educational materials.* Providing election-related educational materials via MTV's web site is within MTV's legitimate press functions because the news media disseminates news stories and related information in this manner, and because these materials will be distributed in conjunction with the Prelection. Providing election-related materials at community events, however, does not qualify as a press function because this activity is not one typically performed by a press entity.<sup>3</sup> Because the press exemption would not apply, MTV would be acting as a corporate entity when engaging in such activity, and therefore may not expressly advocate the election or defeat of a clearly identified candidate or political party. Additionally, voter guides must comply with the nonpartisan criteria set forth at 11 CFR 114.4(c)(5).

*Candidate air time.* MTV's proposal to interview candidates on the air and/or to provide air time for candidates falls within the media exemption, provided that MTV complies with all of the applicable requirements of the Communications Act and FCC regulations. MTV may also use statements or position papers submitted by participating candidates on air or online if they are part of a news story, commentary, or editorial.

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<sup>3</sup> *McConnell v. FEC*, 540 U.S., 124 S.Ct. 619, 697 (2003). The Supreme Court noted that the media exemption is "narrow" and "does not afford carte blanche to media companies generally to ignore FECA's provision."

*Publicizing prelection results.* Announcing and publicizing the Prelection results via cable broadcast constitutes "covering or carrying a news story, commentary, or editorial," regardless of whether the results are framed as an endorsement. Thus, associated costs would not violate 2 U.S.C. §441b. Similarly, posting the results on the web site is within the entity's legitimate press functions. MTV's proposal to announce and publicize Prelection results via electronic mail or text messages, contemporaneous with the on air broadcast and web display of the results would cause the electronic mails and text communications to fall within the press exemption. While MTV may not have historically performed such activity, the Commission views it as consistent with established industry practice and therefore within the exemption.

*Follow-up messages containing Prelection results.* Follow-up communications via electronic mail or text messages sent some time after the results have been announced that refer to the Prelection results and encourage participants to vote in the general election would not constitute promotion or publicizing of the Prelection programming. Furthermore, these communications will be directed to Prelection participants whose voting preferences have been ascertained by MTV. Accordingly, such messages are corporate get-out-the-vote activities subject to 11 CFR 114.4(c)(2)<sup>4</sup> and must not contain express advocacy.

*Follow-up messages not containing Prelection results.* Any encouragement to vote made to the general public that does not expressly advocate the election or defeat

(continued on page 10)

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<sup>4</sup> The Commission is currently undertaking a rulemaking that may affect the analysis of such messages under 11 CFR 114.4. See "Notice of Proposed Rulemaking, Political Committee Status," 69 FR 11736, 11743 (Mar. 11, 2004).

## Advisory Opinions

(continued from page 9)

of a clearly identified candidate or political party is permissible under 11 CFR 114.4(c)(2).

*Corporate sponsors.* With respect to acknowledgements of MTV's corporate sponsors in any of the follow-up messages described above, MTV may acknowledge its sponsors where such activity has been deemed permissible.

*Electioneering communications.* The definition of an "electioneering communication" applies only to broadcast, satellite or radio communications that are publicly distributed for a fee. 11 CFR 100.29. None of the proposed activities outlined above would constitute an electioneering communication.

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Length: 8 pages.

—Meredith Trimble

### AO 2004-9

#### Status of State Party as State Committee of Political Party

The Green Rainbow Party (the Party) satisfies the requirements for state committee status.

The Federal Election Campaign Act (the Act) defines a state committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. §431(15). In order to achieve state committee status under Commission regulations, an organization must meet three requirements. 11 CFR 100.14 and 100.15. It must:

- Have bylaws or a similar document that "delineates activities commensurate with the day-to-day operation" of a party at a state level;
- Be part of the official party structure; and

- Gain ballot access for at least one federal candidate who has qualified as a candidate under the Act.<sup>1</sup>

The Green Rainbow Party meets all three requirements. It satisfies the first requirement because its bylaws delineate activity commensurate with the day-to-day functions of a political party on the state level and are consistent with the state party rules of other political organizations that the Commission has found to satisfy this requirement for state committee status. See AOs 2003-27, 2002-10, 2002-6 and 2002-3. It is also an affiliate of the Green Party of the United States, which qualified for national committee status in 2001. See AOs 2002-10, 2002-6 and 2002-3. As the Green Party's state party organization in Massachusetts, the Party is part of the official party structure and, thus, meets the second requirement as well. See AO 2003-27.

Finally, the Party satisfies the third requirement—ballot access for at least one federal candidate. Ralph Nader appeared as the Party's candidate on the Massachusetts ballot in 2000, and he met the requirements for becoming a federal candidate under 2 U.S.C. §431(2).<sup>2</sup>

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—Amy Kort

<sup>1</sup> *Gaining ballot access for a federal candidate is an essential element for qualifying as a political party. See 11 CFR 100.15.*

<sup>2</sup> *An individual becomes a candidate for the purposes of the Act once he or she receives contributions aggregating in excess of \$5,000 or makes expenditures in excess of \$5,000. 2 U.S.C. §431(2) and 11 CFR 100.3. The Commission has granted state committee status to a state affiliate of a qualified national party committee where its only federal candidates, as defined under the Act, were the Presidential and Vice Presidential candidates of the national party. AOs 2000-39, 1999-26 and 1997-3.*

## Advisory Opinion Requests

### AOR 2004-10

Application of "stand by your ad" disclaimer requirement to ten-second candidate sponsorship message read live by radio host (Metro Networks Communications, Inc., March 30, 2004)

### AOR 2004-11

Federal candidate's receipt of appearance fees from speeches about his book (Paul Streitz, March 31, 2004)

### AOR 2004-12

Creation of regional party committee by certain Western state party committees (Democratic state party committees of Alaska, Arizona, New Mexico, Nevada, Colorado, Utah, Wyoming, Idaho and Montana, March 23, 2004)

—Amy Kort

## Reports

### Convention Reporting for Connecticut and Virginia

The reporting dates for committees involved in conventions held in Connecticut and Virginia are now available—please note that reporting dates for the Connecticut conventions have been revised to reflect changes in the dates of those elections. The chart on page 11 shows the reporting schedule for convention reports due in May. A full schedule of reporting dates is available on the FEC web site at [http://www.fec.gov/pages/charts/primary\\_dates.htm](http://www.fec.gov/pages/charts/primary_dates.htm).

—Amy Kort

## Connecticut Convention Reports

### Republican Party

	Election Day	Close of Books	Mailing Date <sup>1</sup>	Filing Date	48-Hour Notice Period
House Districts 2, 3	May 15	April 25	April 30	May 3	April 26—May 12
House District 5	May 22	May 2	May 7	May 10	May 3—May 19
House District 1	May 24	May 4	May 9	May 12	May 5—May 21

## Virginia Convention Reports

### Democratic Party

	Election Day	Close of Books	Mailing Date <sup>1</sup>	Filing Date	48-Hour Notice Period
House Districts 1, 6, 7, 9, 10	May 15	April 25	April 30	May 3	April 26—May 12
House District 4	May 22	May 2	May 7	May 10	May 3—May 19

### Republican Party

	Election Day	Close of Books	Mailing Date <sup>1</sup>	Filing Date	48-Hour Notice Period
House Districts 3, 8	May 15	April 25	April 30	May 3	April 26—May 12
House District 9	May 22	May 2	May 7	May 10	May 3—May 19

<sup>1</sup> Twelve day pre-election reports sent by registered or certified mail are considered timely filed if they are postmarked no later than the 15th day before any election, and reports sent via express or priority mail with an on-line tracking system are considered timely filed if received by the delivery service no later than the 15th day before any election.

## Court Cases

### Lovely v. FEC

On March 9, 2004, the U.S. District Court for the District of Massachusetts, having denied both the defendant's and the plaintiffs' motions for summary judgment, vacated this case and remanded it to the FEC for further proceedings in accordance with the court's order. The court found that the FEC erred in not interpreting the Federal Election Campaign Act's (the Act) "best efforts" provision to apply to the submission of reports and that the Commission should have issued a statement of reasons with its final determination, under the administrative fines regulations, that the plaintiffs filed their 2001 Year-End report late.

#### Background

The Committee to Elect Bill Sirota (the Committee) and its treasurer, William A. Lovely, III, filed a complaint in the district court on December 31, 2002, challenging the Commission's final determination that the Committee filed its 2001 Year-End report late and its assessment of a \$1,800 civil money penalty under the administrative fines regulations. 11 CFR 111.30-111.45.

According to that complaint, the plaintiffs were unable to file the report over the internet on the January 31, 2002, deadline because of computer problems. At FEC staff's suggestion, they filed the report by sending the Commission a diskette postmarked on January 31. The Commission informed the plaintiffs on February 13, the day the disk was received, that this disk was not in an acceptable electronic format and did not pass the Commission's

validation program.<sup>1</sup> On February 26, the plaintiffs sent the report on diskette in an acceptable electronic 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. An FEC Reviewing Officer, after considering 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 until February 27, when the Commission received a properly formatted report. On November 25, 2002, 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 counting for the irradiation process which resulted in mail delays." See the March 2004 *Record*, page 4.

#### Court Decision

*Best efforts.* The plaintiffs alleged that they made "best efforts" to file their report on time. The Act provides that a committee's report is in compliance with the statute "when the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act." 2 U.S.C. §432(i). See also 11 CFR 104.7 and 102.9(d). The FEC argued that it has long interpreted the "best efforts" provision as only creating a limited safe harbor regard-

ing a committee's failure to provide substantive information that may be beyond its ability to obtain, such as a contributor's occupation and employer, and that the "best efforts" provision does not therefore apply to a committee's obligation to file its reports on time. Under the administrative fines regulations, challenges to civil money penalties may only be based on three grounds set out in the regulations, and they may not be based on a committee's computer failure. 11 CFR 111.35.

The court found that the FEC's interpretation that the "best efforts" provision does not apply to the submission of reports "conflicts with the plain statutory language."<sup>2</sup> According to the court, "While the Commission can refine by regulation what best efforts means in the context of submitting a report, it cannot define it away by providing that submission of reports is governed by a 'strict liability' standard."

*Rationale for Commission decision.* The court also noted that in its final determination the Commission "did not make findings of fact, make a statement of reasons, incorporate the reviewing officer's recommendation by reference, or issue any opinion at all." As a result, the court found that it is not clear "how the Commission evaluated the plaintiffs' 'best efforts' arguments, or whether it applied the correct legal standard." In addition, the court noted that neither the Commission nor the Reviewing Officer investigated the alleged unavailability of technical support from the FEC or whether the formatting error on the disk resulted

<sup>1</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.

<sup>2</sup> In *Chevron U.S.A. , Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984), the Supreme Court found that courts must give effect to the unambiguously expressed intent of Congress if it has spoken "to the precise question at issue." If the statute is silent or ambiguous with respect to the precise question at issue, the court should defer to an agency's interpretation if it is reasonable.

despite Mr. Lovely's best efforts to follow advice from FEC staff, or from his own negligence or last-minute compliance efforts.

### Order

The court vacated this case and remanded it to the FEC, finding that "the lack of clarity in the administrative decisions and a possible error of law compel a reversal and remand."

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

—Amy Kort

### FEC v. Malenick, et al.

On March 30, 2004, the U.S. District Court for the District of Columbia granted partial summary judgment to the FEC in this case, and denied defendant Carolyn Malenick's cross-motion for summary judgment. The court found that Triad Management Services (Triad), which subsequently became Triad Management Services, Inc. (Triad Inc.), was a political committee under the Federal Election Campaign Act (the Act) in 1996, that it failed to register and report with the Commission and that it accepted contributions in excess of the Act's limits.

### Federal Register

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

#### Notice 2004-7

Inaugural Committee Reporting and Prohibition on Accepting Foreign National Donations; Notice of Proposed Rulemaking (69 FR 18301, April 7, 2004)

#### Notice 2004-8

Contributions and Donations by Minors, Notice of Proposed Rulemaking (69 FR 18841, April 9, 2004)

### Background

According to its 1996 promotional materials, Triad was a consulting firm devoted to keeping the Republican majority in Congress. From 1995 to 1996, Carolyn Malenick operated Triad as a sole proprietorship, and she became the president, sole director and owner of Triad Inc. when Triad incorporated in May 1996. Robert Cone was the primary source of funding for Triad and Triad Inc. in 1996, and provided the organization with well over \$1,000 in funding.

The Commission began its investigation of Triad/Triad Inc. in response to a series of administrative complaints filed between 1996 and 1998. After failing to reach a conciliation agreement with the defendants, the Commission filed a court complaint on June 21, 2002, alleging that Miss Malenick, Triad and Triad Inc. violated the Act by, among other things, failing to register and file as a political committee and accepting and making excessive and prohibited contributions. 2 U.S.C. §§433, 434, 441a(1), 441a(f) and 441b.

### Court Decision

Under the Act, a political committee is defined in part as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. §431(4)(A). A contribution includes any gift, loan or deposit of money, or any thing of value, given for the purpose of influencing a federal election. 2 U.S.C. §431(8)(A)(i). An organization that is regulated under the Act as a "political committee" must also have as its major purpose the nomination or election of a federal candidate. See *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), and *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).

The court found that Triad/Triad Inc.'s major purpose was the nomination or election of specific federal candidates in 1996. The court also found that the funds Mr. Cone

provided to Triad/Triad Inc. were contributions under the Act and exceeded \$1,000. Triad/Triad Inc. thus became a political committee under the Act, but failed to register and file reports as required by the Act. 2 U.S.C. §§433 and 434. The court additionally found that, while the total amount of contributions Triad/Triad Inc. received from Mr. Cone is uncertain, these contributions certainly exceeded the \$5,000 limit on contributions that a political committee may permissibly receive from an individual. 2 U.S.C. §441a(f). The court granted the Commission a declaratory judgment on these points.<sup>1</sup>

The FEC also alleged in its court complaint that Triad Inc. accepted prohibited corporate contributions and that Triad/Triad Inc. made excessive contributions to federal candidates through its contributions combined with the contributions of two affiliated committees, the American Free Enterprise PAC and the Citizens Allied for Free Enterprise PAC. 2 U.S.C. §§441b and 441a(a). The court, however, found that the record was not sufficient on these two issues to grant summary judgment to the FEC; it did find that American Free Enterprise PAC was affiliated with Triad/Triad Inc., but stated that further information would be needed to determine the amount of excessive contributions.

The court declined to impose penalties by way of summary judgment or to grant injunctive relief without further action first being taken in this case.

U.S. District Court for the District of Columbia, 02CV1237.

—Amy Kort

<sup>1</sup> The court also found two of the FEC's causes of action, presented as an alternative theory if Triad/Triad Inc. was not adjudged to have been a political committee, to be moot based on its other rulings in this case.

## Audits

### Audit of Friends of Marilyn F. O'Grady

On March 22, 2004, the Commission approved the final audit report on Marilyn O'Grady's principal campaign committee, Friends of Marilyn F. O'Grady (the Committee). The audit found that the Committee:

- Received prohibited corporate contributions;
- Received excessive contributions from the candidate's spouse;
- Failed to file 48-hour notices;
- Failed to disclose loans;
- Failed to disclose contributions correctly; and
- Misstated financial activity.

### Corporate Contributions

Under the Federal Election Campaign Act (the Act), a political committee may not accept contributions made from the general treasury funds of any corporation, including a non-stock corporation, incorporated membership organization or incorporated cooperative. 2 U.S.C. §441b. If a committee receives a contribution that appears to be prohibited, the treasurer must within ten days either return the contribution or deposit it. If the treasurer deposits the contribution, he or she must make at least one written or oral request for evidence that the contribution is legal, including, for example, a written statement from the contributor explaining why the contribution is legal or an oral statement to that effect that is recorded in writing by the committee. During this period, the committee must not spend the funds in question. It must also keep written records explaining why the contribution may be prohibited and include this information when reporting the receipt of the contribution. If the committee cannot confirm the legality of the contribution within 30 days, it must refund the question-

able contribution and note the refund on the report covering the period in which the refund was made. 11 CFR 103.3(b).

The committee received 37 contributions from 33 different corporations totaling \$9,195. Approximately 38 percent of these contributors were identified as professional corporations. Ms. O'Grady explained to Audit staff that she was unaware that contributions from professional corporations were prohibited and stated that the contributors probably intended to use their personal accounts and inadvertently used their business checks instead. Ms. O'Grady indicated that she would contact the individuals to offer refunds, and the committee subsequently provided evidence showing refunds to 20 contributors totaling \$6,650.

### Excessive Contributions

While a federal candidate may make unlimited expenditures from personal funds, the Act limits the amount that the candidate or his or her campaign may receive from any person—including the candidate's spouse.<sup>1</sup> See 11 CFR 110.10(a). Personal funds of the candidate include any assets which, at the time he or she became a candidate, the candidate has legal right of access to or control over and with respect to which he or she has either legal and rightful title or an equitable interest. Personal funds also include salary and other earned income from *bona fide* employment and dividends and proceeds from the sale of the candidate's stock or other investments. The Commission relies on the applicable state law to determine the candidate's ownership of or relationship to assets. 11 CFR 110.10(b)(2).

<sup>1</sup> During the period covered by this audit, a candidate's authorized committee could only accept \$1,000 per election from any person. On January 1, 2003, this contribution limit was raised to \$2,000 per candidate per election. 2 U.S.C. §441a(a)(1)(A) and (f); 11 CFR 110.1(a) and (b) and 110.9(a).

The Committee received \$25,000 in loans from a business bank account in the name of Ms. O'Grady's husband that is maintained for his dental practice. The loans were made via checks imprinted with only Mr. O'Grady's name and credentials as the account holder. Ms. O'Grady stated that, according to the laws of the state of New York, the account was a joint asset and therefore permissible for campaign use.

New York marital property laws provide that any property acquired by either spouse during the marriage is "marital property," regardless of how the property was acquired or titled, and, upon dissolution of the marriage, marital property is equally divided between the spouses. However, several courts have concluded that a spouse has no vested rights in marital property titled in the name of the other spouse unless the marriage has been dissolved. Thus, even if the funds in question were "marital property" under New York law, Ms. O'Grady did not have any vested right to property titled in Mr. O'Grady's name, unless the marriage was legally dissolved.

Audit staff recommended that the Committee provide evidence that the funds were in fact made from Ms. O'Grady's personal funds or, absent such evidence, refund \$23,000 to Mr. O'Grady (the \$25,000 loan amount minus permissible contributions of \$1,000 for the primary and \$1,000 for the general election). The Committee subsequently provided evidence that \$23,000 had been refunded to Mr. O'Grady, and the same amount was taken from the O'Grady's joint checking account and given to the campaign.

### 48-Hour Notices

Campaign committees must file special notices disclosing contributions for \$1,000 or more, including loans and contributions from the candidate, received less than 20 days, but more than 48 hours, before any election in which the candidate is running. 11 CFR 104.5(f). Audit

staff found that the Committee failed to file 48-hour notices for eight contributions totaling \$85,000. The Committee stated that these notices were in fact filed, but could not produce evidence of these filings.

### **Disclosure of Loans and Contributions**

The Committee also received \$55,000 in loans during the campaign that were not reported in the committee's FEC disclosure reports, and it failed to disclose properly 42 contributions that were itemized in the disclosure reports. 2 U.S.C. §434(b); 11 CFR 100.12, 104.3(a)(4) and (d) and 104.11(a). In response to the audit findings, the Committee filed amended reports to correct these errors.

### **Misstatement of Financial Activity**

Each report must disclose the amount of cash on hand at the beginning and end of each reporting period and the total amount of receipts and disbursements for the reporting period and for the election cycle. The Committee misstated receipts, disbursements and cash balances during 2002 but filed amended reports to correct the misstatements.

—Amy Kort

## **Public Funding**

### **Repayment Determinations for Presidential Campaigns from 2000**

The Commission recently approved repayment determinations for several publicly funded Presidential campaign committees from the 2000 elections. The Commission made final determinations of the repayment amounts for these committees in 2002, and the repayment amounts detailed below reflect the Commission's findings after administrative review of those determinations. See

the February 2003 *Record*, page 10, and the June 2003 *Record*, page 9. The Commission is required to audit committees that receive public funding under the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. 26 U.S.C. §§9007, 9008(g) and 9038(a).

### **Buchanan Committee**

The Commission has determined that Patrick Buchanan, Ezola Foster and Buchanan Foster, Inc. must repay \$24,554 to the U.S. Treasury representing interest received on public funds. 11 CFR 9004.5, 9007.2(b)(4). Mr. Buchanan, Mr. Foster and Buchanan Foster, Inc. need not, however, repay an additional \$33,479 in surplus funds as mandated in the Commission's 2002 final repayment determination. That repayment amount stemmed from Buchanan Foster Inc.'s overpayment for a mailing list. In light of the committee's response to the final determination, the Commission concluded that no surplus repayment is required as a result of the mailing list transaction.

### **Gore Committee**

Al Gore and Gore 2000, Inc. must repay \$170,591 to the U.S. Treasury for surplus funds. 26 U.S.C. §9038(b)(3); 11 CFR 9038.2(b)(4) and 9038.3(c). The Commission determined, upon administrative review and consideration of the committee's responses, that its 2002 repayment determination was accurate.

### **Keyes Committee**

Alan Keyes and Keyes 2000, Inc. must repay \$75,841 to the U.S. Treasury for nonqualified campaign expenses stemming from the committee's insufficient documentation of its activities, use of cash, costs associated with continuing to campaign, winding down expenses, duplicate payments and convention-related activity. 11 CFR 9038.2(c)(3). In response to

additional documentation provided by the committee, the Commission revised this payment amount downward from its 2002 final determination of a \$104,448 repayment.

### **LaRouche Committee**

Lyndon LaRouche Jr. and LaRouche's for Committee for a New Bretton Woods must repay \$224,185 to the U.S. Treasury, consisting of a \$67,988 pro-rata repayment for non-qualified campaign expenses due to vendor overpayments and \$154,046 for matching funds received in excess of the candidate's entitlement. 26 U.S.C. §§9038(b)(1)-(2) and 11 CFR 9038(b)(1)-(2).

—Amy Kort

### **Adjustment to National Convention Entitlements**

The Commission has revised upwards the amount of public funds that the Democratic and Republican parties may receive to finance their 2004 national conventions. The Commission's initial entitlement of \$14,592,000, approved in July of 2003, was based on the 2002 Consumer Price Index (CPI). However, the Secretary of Labor has now released the 2003 CPI, and the FEC has recalculated the 2004 convention entitlement to be \$14,924,000—an amount \$332,000 greater than the initial calculation. The Commission certified this additional amount to the U.S. Treasury in order to have full payment of the 2004 convention entitlement made to the two major parties. See 2 U.S.C. §441a(c).

—Amy Kort

### **Commission Certifies Matching Funds for Presidential Candidates**

On March 31, 2004, the Commission certified \$2,491,654.27 in federal matching funds to five Presidential candidates for the 2004 elec-

(continued on page 16)

## Public Funding

(continued from page 15)

tion. The U.S. Treasury Department made the payments on April 1, 2004. In addition, the Commission certified \$79,708.99 to Reverend Alfred Sharpton on April 1.<sup>1</sup> Thus far, the seven eligible candidates have been certified \$26,430,450.46.

### Presidential Matching Payment Account

Under the Presidential Primary Matching Payment Account Act, the federal government will match up to \$250 of an individual's total contributions to an eligible Presidential primary candidate. A candidate must establish eligibility to receive matching payments by raising in excess of \$5,000 in each of at least 20 states (i.e., over \$100,000). Although an individual may contribute up to \$2,000 to a primary candidate, only a maximum of \$250 per individual applies toward the \$5,000 threshold in each state. Candidates who receive matching payments must agree to limit their spending and submit to an audit by the Commission. 26 U.S.C. §§9033(a) and (b); 11 CFR 9033.1 and 9033.3.

Candidates may submit requests for matching funds once each month. The Commission will certify an amount to be paid by the U.S. Treasury the following month. Only contributions from individuals in amounts of \$250 or less are matchable.

The chart at right lists the amount most recently certified to each eligible candidate who has elected to participate in the matching fund program, along with the cumulative

<sup>1</sup> On March 11, 2004, the same day that the Commission determined Reverend Sharpton eligible to receive matching funds, the Commission initiated an investigation to resolve whether Reverend Sharpton had exceeded his \$50,000 personal expenditure limitation. See 26 U.S.C. §9035 and 11 CFR 9035.2(a)(1). This investigation is ongoing.

amount that each candidate has been certified to date.

—Amy Kort

## Statistics

### PAC and Party Committee Activity for 2003

#### Political Action Committees

Federal political action committees (PACs) raised \$376 million, spent \$288.1 million and contributed \$105.7 million to federal candidates during 2003, representing a 19 percent increase in receipts and a 16 percent increase in disbursements

when compared with 2001 activity. Contributions to candidates were also 6 percent higher than during the last non-election year. In addition, PACs ended 2003 with \$269.4 million on hand, 20 percent more than was available when they entered the 2002 election year. These changes were generally consistent with the pattern of growth in PAC activity over the past several election cycles.

However, in contrast to previous non-election years, contributions to House Democratic candidates in 2003 were lower for corporate, labor, nonconnected and trade, membership and health PACs than they had been in 2001. Contributions to House Republican candidates from

### Matching Funds for 2004 Presidential Candidates: March Certification

Candidate	Certification March 2004	Cumulative Certifications
Wesley K. Clark (D) <sup>1</sup>	\$613,950.92	\$7,552,570.68
John R. Edwards (D) <sup>2</sup>	\$1,634,768.14	\$6,108,375.37
Richard A. Gephardt (D) <sup>3</sup>	\$102,078.00	\$4,104,319.82
Dennis J. Kucinich (D) <sup>4</sup>	\$0	\$3,075,300.72
Lyndon H. LaRouche, Jr. (D) <sup>5</sup>	\$86,365.06	\$1,276,465.03
Joseph Lieberman (D) <sup>6</sup>	\$54,492.15	\$4,233,709.85
Alfred C. Sharpton (D) <sup>7</sup>	\$79,708.99*	\$179,708.99

<sup>1</sup> General Clark publicly withdrew from the Presidential race on February 11, 2004.

<sup>2</sup> Senator Edwards publicly withdrew from the Presidential race on March 3, 2004.

<sup>3</sup> Congressman Gephardt publicly withdrew from the Presidential race on January 2, 2004.

<sup>4</sup> Congressman Kucinich became ineligible to receive matching funds on March 4, 2004.

<sup>5</sup> Mr. LaRouche became ineligible to receive matching funds on March 4, 2004.

<sup>6</sup> Senator Lieberman publicly withdrew from the Presidential race on February 3, 2004.

<sup>7</sup> Reverend Sharpton became ineligible to receive matching funds on March 15, 2004.

\* Because the \$79,708.99 certification amount was approved on April 1, this payment will not be made by the U.S. Treasury until May.



these PACs increased at rates generally similar to years past.

The charts below shows PAC contributions to House and Senate candidates by PAC by party affiliation, 1993-2003.<sup>1</sup>

**National Party Committees**

The Democratic and Republican national party committees raised a total of \$370.8 million between January 1, 2003, and February 29, 2004. The national Republican committees (the Republican National Committee, the National Republican Senatorial Committee and the National Republican Congressional Committee), reported receipts of \$256.1 million and Democratic national committees (the Democratic National Committee, Democratic Senatorial Campaign Committee

and the Democratic Congressional Campaign Committee) raised \$114.7 million. The parties reported spending a total of \$285.2 million—\$193.8 by Republican committees and \$91.4 million by Democratic committees.

The 2003-2004 election cycle is the first since the passage of the Bipartisan Campaign Reform Act of 2002, which prohibits unrestricted nonfederal fundraising by national parties. Thus, all funds raised and spent by national party committees during this cycle are subject to the limits, restrictions and reporting requirements of the Federal Election Campaign Act. Contributions from individuals made up the vast majority of funds raised by the two parties, accounting for 93 percent of all Republican party receipts and 83 percent of Democratic receipts. PAC contributions to Democratic party committees totaled \$12.2 million or 11 percent of receipts. PACs gave a similar amount (\$12.4 million) to Republican committees, but this amount represented only 5 percent of their receipts.

Direct contributions to candidates and coordinated expenditures on behalf of general election candidates were modest during this period, as they have been at this stage in earlier cycles. The DCCC did, however, make independent expenditures totaling \$1.6 million, while the NRCC made independent expenditures of approximately \$607,000 in the special election in Kentucky’s 6<sup>th</sup> district.

**Additional Information**

Details concerning PAC activity are available in a press release dated March 23, 2004, which contains summaries of:

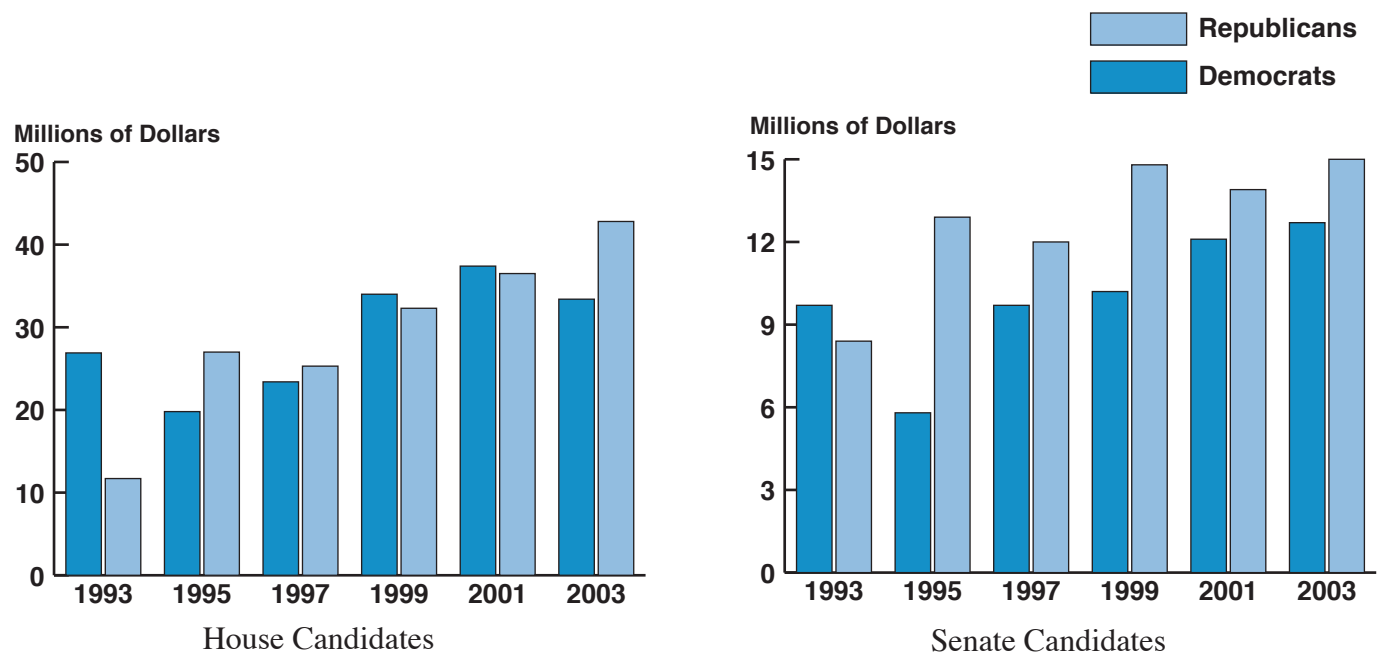
- PAC activity from 1993 through 2003;
- PAC contributions to federal candidates from 1993 through 2003;
- Receipts and disbursements by PAC type; and
- Top 50 lists of PACs by receipts, contributions to candidates and cash-on-hand.

A press release dated March 25, 2004, contains summaries for each

*(continued on page 18)*

<sup>1</sup> PAC contributions to Senate candidates vary from one election cycle to the next because different states have Senate elections each cycle—with only 33 or 34 races each year, the competitiveness of individual races can significantly affect financial activity overall.

**PAC Contributions to Republican and Democratic Congressional Candidates—1993-2003**



## Statistics

(continued from page 17)

national party committee through February of this year, along with comparisons to federal fundraising during non-election years from 1991 through 2003 showing significant growth in federal fundraising in 2003 for five of the six national committees. Only the National Republican Senatorial Committee reported raising less hard money in 2003 than in 2001.

The press releases are available on the FEC web site at <http://www.fec.gov/news.html> and from the FEC's Public Records Office (800/424-9530, press 3) and Press Office (800/424-9530, press 5).

—Amy Kort

## Nonfilers

### Nonfilers

The Bob Brady for Congress, Mark Boles for Congress and Porter for Congress committees failed to file a 12-Day Pre-Primary report for the Pennsylvania primary held on April 27, 2004.

On March 22, 2004, the Commission notified principal campaign committees active in the Pennsylvania primary that the Pre-Primary report was due on April 15. Committees that failed to file the report were notified on April 16 that their reports had not been received and that their names would be published if they did not respond within four business days.

The Federal Election Campaign Act requires the Commission to publish the names of principal campaign committees if they fail to file 12 day pre-election reports or the quarterly report due before the candidate's election. 2 U.S.C. §437g(b). The agency may also pursue enforcement actions against nonfilers and late filers on a case-by-case basis.

—Amy Kort

## Outreach

### Campaign Finance Law Conference for Trade Associations, Membership Organizations and their PACs

The FEC will hold a conference in Boston, MA, May 25-26, 2004, for 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 applies to each of these groups. Workshops will specifically address rules for fundraising and reporting and will focus on aspects of the campaign finance law that are uniquely applicable to trade associations and membership organizations. A representative from the IRS will also be available to answer election-related tax questions.

The conference will be held at the Royal Sonesta Hotel Boston. The conference registration fee is \$345, which covers the cost of the conference, materials, meals and a \$10 late fee added for registrations received after April 27.

The Royal Sonesta Hotel Boston is located just across the river from downtown Boston at Five Cambridge Parkway, Cambridge, MA. To make reservations, call toll free (1-800-SONESTA) or locally (617-806-4200) and state that you are attending the FEC conference.

### Registration

Complete conference program and registration information is available online. Conference registrations will be accepted on a first-come, first-served basis, and registrations are limited to two representatives per organization. FEC conferences are selling out quickly, so please register early. For registration information concerning any FEC conference:

- 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](mailto:lauren@sylvestermanagement.com).

—Amy Kort

## Publications

### Updated Commission Regulations

The new edition of the Commission regulations at Title 11 of the Code of Federal Regulations is now available. The Commission has mailed copies of the new edition of the regulations, current as of January 2004, to registered political committees. The Commission's regulations can be accessed on the FEC web site at <http://www.fec.gov/law/cfr/11.cfr.html>. Free printed copies are also available to the public. Simply call 800/424-9530 (press 1, then 3) or 202/694-1100.

—Amy Kort

### New and Updated Brochures Available

The Commission has recently released three new brochures on the "Millionaires' Amendment," the "Biennial Limit" and "Frequently Asked Questions on the BCRA and Other New Rules." Additionally, the Commission has updated its brochure "FEC and the Federal Campaign Finance Law" to reflect changes in the law made by the Bipartisan Campaign Reform Act of 2002 (BCRA). All of these brochures are currently available on the FEC web site at <http://www.fec.gov/brochures.html>. A limited number of printed copies will also be available for those without Internet access. To request a printed copy, call the Information

Division at 800/424-9530 (press 1, then 3) or 202/694-1100.

—Amy Kort

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