

# Record

April 2005

Federal Election Commission

Volume 31, Number 4

## Table of Contents

### Court Cases

- 1 EMILY's List v. FEC
- 3 Kean for Congress v. FEC
- 3 Judicial Watch v. FEC
- 4 Alliance for Democracy v. FEC

### Reports

- 1 April Reporting Reminder

### Regulations

- 4 Notice of Proposed Rulemaking on Candidate Solicitation at State, District and Local Party Fundraisers
- 5 Federal Register

### Advisory Opinions

### Compliance

- 6 MUR 5020: Corporate Facilitation

### Public Funding

- 8 Matching Fund Certification

### Publications

- 8 2005 Edition of Directory of Federal and State Disclosure and Election Offices Available

### Alternative Dispute Resolution

- 9 ADR Program Update

### Outreach

- 10 Roundtable
- 10 FEC Conferences

- 10 Index

## Court Cases

### EMILY's List v. FEC

On February 25, 2005, the U.S. District Court for the District of Columbia denied the plaintiff's request for a preliminary injunction in this case.

EMILY's List, a nonconnected political action committee (PAC) that maintains both federal and nonfederal accounts, filed a complaint on January 12 challenging the Commission's regulations regarding the treatment of funds received in response to certain solicitations and its amended rules regarding federal/nonfederal fund allocation ratios for PACs.<sup>1</sup> The plaintiff alleged that the Commission's rules violate the Administrative Procedure Act (APA) and the First Amendment, and asked the court to enjoin the Commission from administering or enforcing the regulations.

### Background

The rules in question, which were published on November 23, 2004, define as "contributions":

*(continued on page 3)*

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<sup>1</sup> The final rules were published in the November 23, 2004, Federal Register (68 FR 68056). The rules took effect on January 1, 2005. See the December 2004 [Record](#), page 1.

## Reports

### April 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 April 15. 11 CFR 104.5(a).

Principal campaign committees of Presidential candidates must file a report on April 15, if they are quarterly filers, or on April 20, if they are monthly filers.

Political action committees (PACs) and party 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 April 20. (See the April 2003 [Record](#), page 5, for more information on monthly filing for state, district and local party committees.)

Committees that were involved in the March 8, 2005, Special General Election in California's Fifth Congressional District may have special filing requirements in April. See the February 2005 [Record](#), page 3, for more details.

### New Reporting Forms and Electronic Filing Software

The Commission recently updated its electronic filing format to Version

*(continued on page 2)*

## Reports

(continued from page 1)

5.2 0.1 in order to reflect changes in Commission regulations that took effect on January 1.<sup>1</sup> FECFile Version 5.2, supported by the new format, is available for download from the FEC web site at <http://www.fec.gov/electfil/updatelist.html>. Committees using commercial software should contact their vendors for more information about the latest software release. Only reports filed in the new format version will be accepted.

Political action committees and party committees that file on paper reporting forms must use the FEC's revised Form 3X, which contains updated H Schedules that conform to the new allocation rules for PACs. These rules took effect on January 1. (See the December 2004 *Record*,

<sup>1</sup> See "Final Rules on Political Committee Status" in the December 2004 *Record*, page 1.

**Federal Election Commission**  
999 E Street, NW  
Washington, DC 20463

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

**Scott E. Thomas**, Chairman  
**Michael E. Toner**, Vice Chairman  
**David M. Mason**, Commissioner  
**Danny L. McDonald**,  
Commissioner  
**Bradley A. Smith**, Commissioner  
**Ellen L. Weintraub**, Commissioner

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

Published by the Information Division

**Greg J. Scott**, Assistant Staff Director  
**Amy Kort**, Editor

<http://www.fec.gov>

page 1.) The new version of the form is available on the FEC web site at <http://www.fec.gov/info/forms.shtml>. Filers will receive a copy of the revised Form 3X with their report notices.

### Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations<sup>2</sup> who receive contributions or make expenditures in excess of \$50,000 in a calendar year—or expect to do so—must file all reports and statements with the FEC electronically. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program will be considered nonfilers and may be subject to enforcement actions, including administrative fines. 11 CFR 104.18.

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 Commission in order to speed disclosure.

### Timely Filing for Paper Filers

Reports sent by registered or certified mail, by Express or Priority Mail with delivery confirmation or by overnight mail with an on-line tracking system must be postmarked, or deposited with the mailing service, by the filing deadline. A committee sending its reports by certified mail should keep its mailing receipt with the postmark as proof of filing because the U.S. Postal Service does not keep **complete** records of items sent by certified mail. A committee sending its reports by

<sup>2</sup> The regulation covers individuals and organizations required to file reports with the Commission, including any person making an independent expenditure. Disbursements made by individuals or unregistered entities for electioneering communications do not count toward the \$50,000 threshold for mandatory electronic filing. See 11 CFR 104.18(a).

registered, Express or Priority mail, or by an overnight delivery service, should also keep its proof of mailing (or other means of transmittal) of its reports.

Reports sent by other means—including first class mail and courier—must be *received* by the FEC before it closes its doors on the filing deadline. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

For those filers who are not required to file their reports electronically, paper forms are available on the FEC's web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency's automated fax system (202/501-3413).

### Filing Frequency for PACs

PACs may file on either a semiannual or a monthly basis in non-election years. Committees wishing to change their filing frequency must notify the Commission in writing when filing a report under the committee's current schedule. Electronic filers must file this request electronically. A committee may change its filing frequency only once per calendar year. 11 CFR 104.5(c).

### Filing Frequency for Party Committees

A state, district or local party committee that filed monthly in 2004 due to its federal election activity must notify the Commission in writing if it wishes to file semiannually in 2005. 11 CFR 104.5(b)(2). Electronic filers must file this request electronically.

### Additional Information

For more information on 2005 reporting dates:

- See the reporting tables in the January 2005 *Record*;
- Call and request the reporting tables from the FEC at 800/424-9530 or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or
- Visit the FEC's web page at [http://www.fec.gov/info/report\\_dates](http://www.fec.gov/info/report_dates).

[shtml](#) to view the reporting tables online.

—Amy Kort

## Court Cases

(continued from page 1)

- All funds received in response to a communication that indicates that any portion of the funds received will be used to support or oppose the election of a clearly identified federal candidate; and
- At least 50 percent of the funds received from such a communication if it refers to both federal and nonfederal candidates.

The rules also provide that a PAC that maintains federal and nonfederal accounts must use at least 50 percent federal funds to pay for administrative and voter drive expenses and the costs of public communications that refer to a political party, but not to any clearly identified candidate. Voter drives and communications that refer to a clearly identified federal candidate, but no clearly identified state candidate, must be paid for entirely with federal funds.

The plaintiff alleged that the Commission exceeded its statutory authority in these regulations by requiring that funds be considered “contributions” under the Federal Election Campaign Act even if they will also be used for nonfederal elections or other nonfederal activities. Similarly, the plaintiff alleged that the new allocation rules exceed the Commission’s statutory authority by requiring federal funds to be used to pay for nonfederal activities.

The plaintiff further alleged that the regulations violate the APA because the Commission failed to give proper notice of the final regulations and failed to provide a rational explanation for its decisions.

### Court Decision

When deciding whether to grant a preliminary injunction, courts consider whether:

- The party requesting the injunction is substantially likely to win the case on its merits;
- The requester would suffer irreparable injury if the injunction were not granted;
- An injunction would substantially injure other interested parties; and
- The public interest would be furthered by the injunction.

In this case, the court found that each of these standards weighed in favor of the FEC and that “the interests of both Defendant and the public would be disserved by the granting of Plaintiff’s motion.” Thus the court ordered that EMILY’s List’s motion for a preliminary injunction be denied.

U.S. District Court for the District of Columbia, 1:05CV00049.

—Amy Kort

### Kean for Congress Committee v. FEC

On February 15, 2005, the U.S. District Court for the District of Columbia granted the FEC’s motion for this case to be voluntarily remanded to the Commission so that it can apply the Supreme Court decision in *McConnell v. FEC* to the facts of the plaintiff’s administrative complaint.

### Background

On January 5, 2004, Kean for Congress Committee (the Committee) asked the court to find that the Commission acted contrary to law when it dismissed the plaintiff’s administrative complaint, designated MUR 5024. The administrative complaint alleged that a Virginia corporation known as the Council for Responsible Government and its so-called “Accountability Project” (collectively, CRG) funded mailings which attempted to influence a New Jersey Congressional Seventh District Republican primary, in violation of federal law. On November 4, 2003, the Commission unanimously dismissed the administrative complaint after splitting 3-3 on whether

to find reason to believe the CRG violated the Federal Election Campaign Act.

### Order

The court remanded MUR 5024 to the Commission until April 15, 2005, to permit the FEC to reconsider its dismissal of the administrative complaint in light of the *McConnell* decision. The court also granted the FEC’s motion to hold summary judgment in abeyance.

U.S. District Court for the District of Columbia, 1:04CV00007.

—Amy Kort

### Judicial Watch, Inc. v. FEC

On February 17, 2005, the U.S. District Court for the District of Columbia granted the FEC’s motion for summary judgment in this case, and denied the plaintiff’s cross motion for summary judgment.

### Background

On August 17, 2001, Judicial Watch, Inc., a nonprofit, public interest organization, asked the court to find that the Commission acted contrary to law when it failed to initiate an investigation in response to the organization’s administrative complaint. The April 10, 2001, complaint alleged that Representative Tom DeLay and the National Republican Congressional Committee (NRCC) sold meetings with top Bush Administration officials in exchange for campaign contributions to the NRCC. Judicial Watch contended that the NRCC was required to report these meetings to the Commission as “offsets to contributions” under the Federal Election Campaign Act (the Act). 2 U.S.C. §434(b)(4) and 11 CFR 104.3.

### Court Decision

The standard for judicial review in a case such as this, where one party alleges that an agency’s actions are contrary to the statute, is called

(continued on page 4)

## Court Cases

(continued from page 3)

*Chevron* review, after the Supreme Court's decision in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). In *Chevron* review, the court asks first whether Congress has spoken to the precise issue at hand. If so, then the agency's interpretation of the statute must implement Congress's unambiguous intent. If, however, Congress has not spoken explicitly to the question at hand, then the court must defer to the agency's interpretation of the statute if the interpretation is reasonable and is consistent with the statute's purpose.

In its arguments before the court, the Commission explained that, since its inception in 1975, it has interpreted the statutory requirement of reporting "offsets" to contributions in its strict accounting sense as referring only to financial transactions. Thus, the Commission did not find that the NRCC was required by the Act to report the meetings described in Judicial Watch's administrative complaint as "offsets" to contributions.

In looking at the language at 2 U.S.C. §434(b)(4), the court found that Congress had not spoken directly to the issue of whether this statutory requirement was meant also to include other non-monetary offsets, such as the alleged contributions-for-access scheme detailed in the plaintiff's administrative complaint. Furthermore, the court found that the Commission's interpretation of the statute was not unreasonable, and the "FEC's decision not to further investigate Judicial Watch's administrative complaint with regard to section 434(b)(4)(F) was therefore neither contrary to law, arbitrary, capricious, nor an abuse of discretion."

The plaintiffs had also challenged the Commission's decision not to investigate beyond the scope of possible violations of this particular provision of the statute, as well as its decision not to report to other law

enforcement agencies some or all of the alleged illegal activity described in the administrative complaint. The court, however, found that it is within the FEC's discretion to determine whether a violation of the Act has occurred, and only then is it directed to conduct an investigation. Furthermore, the court found that while the Commission can refer apparent violations of the law to other law enforcement agencies, such action "is clearly not mandated by the statute and failure to report does not constitute an abuse of discretion."

U.S. District Court for the District of Columbia, 1:01CV01747.

—Amy Kort

### Alliance for Democracy v. FEC

On February 28, 2005, the U.S. District Court for the District of Columbia granted the Commission's motion to dismiss this case, finding that the plaintiffs lacked standing.

#### Background

On January 26, 2004, the Alliance for Democracy, a non-profit, non-partisan advocacy group, Hedy Epstein and Ben Kjelshus (collectively the plaintiffs) filed a court complaint alleging that the Commission wrongfully dismissed the central allegations of the plaintiffs' administrative complaint, designated MUR 5181. The administrative complaint alleged that Spirit of America PAC (SOA) unlawfully donated a fundraising list of approximately 100,000 donors to Ashcroft 2000, former Attorney General John Ashcroft's 2000 Senate campaign committee. According to the administrative complaint, the two committees also failed to disclose the donation of the list or its value.

The FEC closed the investigation of MUR 5181 on December 11, 2003, with a conciliation agreement that imposed a \$37,000 civil penalty for violations stemming from the

transfer of list rental income.<sup>1</sup> The Commission failed to find probable cause to believe that the transfer of the mailing list constituted an in-kind contribution, or that the value of the list had to be reported as a contribution. See the March 2001 *Record*, page 8.

#### Court Decision

In order to have standing in court, the plaintiffs must show an "injury-in-fact" that is fairly traceable to the challenged actions of the defendant and is likely to be redressed by a favorable decision by the court. In this case, the plaintiffs claimed that they suffered an "informational injury" resulting from SOA's and Ashcroft 2000's failure to report the exact value of the mailing list in question. However, the court found that, because the Commission has already made public all of the information that it is statutorily required to disclose regarding MUR 5181, the plaintiffs have not suffered an informational injury based on the Commission's actions. The court granted the Commission's motion to dismiss the case for lack of jurisdiction.

U.S. District Court for the District of Columbia, 1:04CV00127.

—Amy Kort

## Regulations

### Notice of Proposed Rulemaking on Candidate Solicitation at State, District and Local Party Fundraising Events

On February 14, 2005, the Commission approved a Notice of Proposed Rulemaking (NPRM) seeking

<sup>1</sup> The conciliation agreement and supporting documents are available through the FEC's Enforcement Query System on the FEC web site at [www.fec.gov](http://www.fec.gov).

comments on proposed changes to its rule governing appearances by federal candidates and officeholders at state, district and local party fundraisers. 11 CFR 300.64.

### Background

Under the Federal Election Campaign Act (the Act), federal candidates, officeholders and their agents may not solicit, receive, direct, transfer or spend nonfederal funds in connection federal or nonfederal elections. However, the Act permits them to speak or be featured guests at state, district and local party fundraisers, where nonfederal funds may be raised. See 2 U.S.C. §441i(e).

Currently, Commission regulations permit federal candidates and officeholders to speak at such fundraisers “without restriction or regulation.” However, in *Shays v. FEC* the court found that, although this regulation was a permissible interpretation of the statute, the Commission had not satisfied the “reasoned analysis” requirement of the Administrative Procedure Act (APA). The court remanded the regulation to the Commission for further action consistent with its opinion. Accordingly, the Commission is revisiting the exemption for federal candidates and officeholders speaking at party fundraising events.

### Proposed Revisions to Explanation and Justification

The Commission proposes revising the Explanation and Justification for the final rule on federal candidate/officeholder activities at party fundraisers in order to comply with the court’s findings. According to the court, the Commission’s explanation and justification for the fundraising provision at 11 CFR 300.64(b) did not satisfy the APA’s reasoned analysis requirement in two respects. First, the court held that the Commission’s construction of the statute as permitting federal candidates and officeholders to speak without restriction or regulation at these events was not compelled by the language

of the statute. 2 U.S.C. §441i(e)(3). Second, the court stated that “the FEC has not explained how examining speech at fundraising events implicates constitutional concerns that are not present when examining comments made at other venues.” The NPRM provides proposed amendments to the Explanation and Justification for the final rule at 11 CFR 300.64(b) that would address the court’s concerns. The Commission requests comments on these proposed amendments. Additionally, commenters are invited to submit other rationales for the current regulation.

### Proposed Revision to Regulations

Although amending the Explanation and Justification would be sufficient to comply with the court’s order, the Commission proposes, as a second alternative, to replace the current regulation at section 300.64 with a rule barring federal candidates and officeholders from soliciting, receiving, directing, transferring or spending any nonfederal funds when speaking at party fundraising events. The Commission seeks public comments on this approach, as well as on other considerations. For example, the Commission asks whether, under this approach, federal candidates and officeholders should be permitted to solicit Levin funds at party fundraising events. The Commission also requests comments on whether it would be appropriate to permit written notices or oral disclaimers similar to those discussed in AOs 2003-3 and 2003-36. Those advisory opinions permit federal candidates and officeholders to solicit federally permissible funds at other types of fundraising events by using either written notices or oral disclaimers.

### Comments

All comments should be addressed to Ms. Mai T. Dinh, Assistant General Counsel, and must be submitted in either written or electronic form by March 28, 2005.

Written comments should be sent to the Federal Election Commission, 999 E Street NW, Washington, DC 20463. Faxed comments should be sent to 202/219-3923, with a printed copy follow-up to insure legibility. Electronic mail comments should be sent to [statepartyfr@fec.gov](mailto:statepartyfr@fec.gov) and may also be submitted through the Federal eRegulations Portal at [www.regulations.gov](http://www.regulations.gov). All electronic comments must include the full name, electronic mail address and postal service address of the commenter. Comments that do not contain this information will not be considered. No oral comments can be accepted. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Commenters wishing to testify must indicate this in their comments.

The full text of the NPRM is available on the FEC web site at [http://www.fec.gov/law/law\\_rule-makings.shtml](http://www.fec.gov/law/law_rule-makings.shtml) and from the FEC faxline, 202/501-3413.

—Amy Kort

## Federal Register

*Federal Register* notices are available from the FEC’s Public Records Office, on the web site at [http://www.fec.gov/law/law\\_rulemakings.shtml](http://www.fec.gov/law/law_rulemakings.shtml) and from the FEC faxline, 202/501-3413.

### Notice 2005-6

Candidate Solicitation at State, District and Local Party Committee Fundraising Events, Notice of Proposed Rulemaking (70 FR 9013, February 24, 2005)

### Notice 2005-7

Price Index Increases for Expenditure and Contribution, Corrected Notice of Expenditure and Contribution Limitation Increases (70 FR 11658, March 9, 2005)

## Advisory Opinions

### AO 2004-43

#### Sale of Ad Time Not a Contribution

A broadcaster's decision to offer Senator Christopher Bond the Lowest Unit Charge (LUC) for airing campaign ads did not result in an in-kind contribution under the Federal Election Campaign Act (FECA).

#### Background

The Communications Act generally requires broadcasters to charge a candidate the LUC for his or her political ads in the 45 days before a primary election and during the 60 days before a general election. However, a federal candidate is not entitled to the LUC if any of his or her ads make a direct reference to his or her opponent and fail to contain a statement identifying the candidate and stating that the candidate approved the communication.<sup>1</sup> 47 U.S.C. §315(b).

The Missouri Broadcasters Association (MBA), a voluntary association of broadcasters who are Federal Communications Commission (FCC) licensees, asked the FEC to assume that Senator Bond's broadcast ads did not satisfy this requirement and then asked whether a broadcaster's sale of ad time at the LUC would result in a contribution to Senator Bond. The FECA and Commission regulations provide that a contribution results from the provision of services, such as advertising services, at less than the usual

and normal charge. See 11 CFR 100.53(d)(1).

#### Analysis

In this case, a broadcaster's provision of the LUC to Senator Bond did not result in an in-kind contribution. The Commission reviewed Senator Bond's ads as provided by MBA and concluded that there was no violation of any disclaimer requirement over which the Commission has jurisdiction. The Commission noted that the FECA's disclaimer requirements are substantially similar to those of the Communications Act, and that the Commission has substantial expertise in evaluating disclaimer issues. Moreover, the Commission noted that the FCC has not yet promulgated regulations implementing the stand-by-your-ad requirements in the Communications Act and has not put forth a different conclusion on the merits of this case. Thus, because the Commission found that there was no violation of the disclaimer requirements, in this instance, providing the LUC did not result in an in-kind contribution.

#### Concurring and Dissenting Opinions

Chairman Thomas issued a concurring opinion on February 16, and Commissioner Mason issued a concurring opinion on February 17, 2005. Vice Chairman Toner and Commissioner Smith issued a dissenting opinion on February 17, 2005.

Date Issued: February 14, 2005; Length: 3 pages.

—Amy Kort

### Advisory Opinion Requests

#### AOR 2005-2

Fundraising in connection with nonfederal elections by federal officeholder who is candidate for state office (Senator Jon Corzine and Corzine for Governor, Inc., February 23, 2005)

#### AOR 2005-3

Affiliation of membership organizations and solicitation of members of one for contributions to the SSF of the other. (American College of Obstetricians and Gynecologists, March 2, 2005)

## Compliance

### MUR 5020: Corporate Facilitation

The Commission has entered into conciliation agreements with Atlantic City Showboat, Inc. (Showboat), Marina Associates, Mirage Resorts, Inc. (Mirage), Herbert Wolfe, David Jonas and the Gormley for Senate Primary Election Fund (the Committee) to resolve violations of the Federal Election Campaign Act (the Act) resulting from contributions facilitated by Showboat, Marina Associates and Mirage to William Gormley's 2000 Senate campaign in New Jersey. The three conciliation agreements entered into by these respondents resulted in total civil penalties of \$115,000.

#### Background

The Act prohibits a corporation from making a contribution of money or anything of value in connection with any election for federal office. 2 U.S.C. §441b(a). Corporations, including officers, directors or other representatives acting as agents for the corporation, are also prohibited from "facilitating the making of contributions to candidates or political committees, other than to the separate segregated funds of the corporations." Facilitation means "using corporate . . . resources or facilities to engage in fundraising activities in connection with any federal election. 11 CFR 114.2(f)(1).

Generally, communications by a corporation to its executives or administrative personnel are not considered contributions. 2 U.S.C.

<sup>1</sup> Note that the stand-by-your-ad requirements in both the FECA and the Communications Act were added by the Bipartisan Campaign Reform Act of 2002. The FECA requires a similar, but not identical, statement in political ads. 2 U.S.C. §441d(d)(1). See also 11 CFR 110.11(c)(3).

§441b(b)(2)(A). However, if the activity goes beyond mere communication and becomes facilitation, that activity results in a prohibited contribution by the corporation or its officers or directors because the corporation has provided something of value to the candidate or campaign committee. See 11 CFR 114.2(f)(1) and (2) and AOs 1987-29 and 1986-4.<sup>1</sup>

### Conciliation Agreements

*Agreement with Showboat, Marina Associates, Mr. Jonas and Mr. Wolfe.* According to the conciliation agreement with Showboat, Marina Associates, Mr. Jonas and Mr. Wolfe, Mr. Gormley contacted Mr. Wolfe, an executive at Showboat, in early 2000 and asked him to raise funds for the campaign. During an executive meeting at Showboat, Mr. Wolfe invited employees to contribute to the campaign, telling them that contributions left with his secretary would be forwarded to the Committee.

Mr. Wolfe asked Mr. Jonas, an executive at Marina Associates, to raise funds for the campaign at Marina Associates. Mr. Jonas and his supervisor sent a memorandum to management team members asking them to consider making a contribution. Marina Associates employees who contributed to the Committee delivered their contributions to Mr. Jonas's office, as requested by the memorandum, and left them with his secretary, who kept them in her desk. Thereafter, a representative from the Committee went to Mr. Wolfe's and Mr. Jonas's casino offices to pick up the contribution checks that had

been collected. The campaign committee reported depositing \$13,000 in contributions from Showboat employees and their spouses. It reported depositing \$24,275 in contributions from Marina Associates employees and their spouses.

In order to settle the matter, Showboat, Marina Associates and their employees did not contest the finding that they violated the Act by using corporate resources improperly to facilitate contributions. Showboat, Marina Associates., Mr. Jonas and Mr. Wolfe are jointly and severally responsible for a \$53,000 civil penalty, and they will cease and desist from violating the Act.

*Agreement with Mirage.* According to the conciliation agreement with Mirage, Mirage held a fundraiser for the Committee on February 9, 2000, at the Le Cirque restaurant in Las Vegas, Nevada. Mirage planned and organized the fundraiser, including reserving a location, arranging for catering, sending invitations and soliciting contributions. Mirage initially sent invitations only to executives within its restricted class. Subsequently, Punam Mathur, then a Mirage executive, talked to other people about the fundraiser, including several people outside the restricted class and outside the corporation. She invited these individuals to attend the fundraiser and contribute. Ms. Mathur also instructed her assistant to fax invitations to individuals outside the corporation, work out a catering menu for the fundraiser, obtain a contribution commitment from some non-attendees and send a messenger to collect contribution checks—all as part of her work responsibilities. Following the fundraiser, which was attended by 29 individuals, Mirage collected and forwarded \$28,000 in contributions, including checks dated before and after the fundraiser, to the Committee.

Mirage admitted to violating the law by using corporate resources to facilitate contributions to the Com-

mittee. Mirage must pay a \$40,000 civil penalty and will cease and desist from violating the Act. The Commission found reason to believe that Ms. Mathur violated the law for consenting to the facilitation. As part of the conciliation agreement with Mirage, Ms. Mathur, without admitting or denying any violations of the Act, agreed to cease and desist from violating the Act. The Commission took no further action against Ms. Mathur and sent her an admonishment letter.

*Agreement with Gormley for Senate Primary Election Fund.* According to the conciliation agreement with the Committee, the Committee accepted \$63,275 in contributions facilitated by Showboat, Marina Associates and Mirage (one contribution for \$2,000 was returned to the donor). In addition, the Committee accepted an excessive in-kind contribution of \$723 in the form of an airline ticket to attend the Las Vegas fundraiser and failed to report the contribution, and it failed to report an in-kind contribution of \$220 from the candidate for payment of his hotel bill in Las Vegas. The Committee must pay a \$22,000 civil penalty and will cease and desist from violating the Act.

### Additional Information

For additional information on this case, please visit the Commission's Public Records Office or consult the [Enforcement Query System](#) on the FEC's web site and enter case number 5020.

—Amy Kort

<sup>1</sup> *Exceptions to the general prohibition against corporate facilitation include soliciting contributions to be sent directly to candidates so long as the solicitation is directed to the corporation's restricted class and soliciting contributions that are to be collected and forwarded by the corporation's separate segregated fund. 11 CFR 114.2(f)(3)(ii) and (4)(ii).*

## Public Funding

### Commission Certifies Matching Funds for Presidential Candidate

On February 24, 2005, the Commission certified \$5,142.50 in federal matching funds to one Presidential candidate for the 2004 election. The U.S. Treasury Department made the payment on March 1, 2005. This certification raises to \$28,380,648.61 the total amount of federal funds certified thus far to eight Presidential candidates under the Matching Payment Account Act.

### 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 committee's spending, limit their personal spending for the campaign to \$50,000 and submit to an audit by the Commission. 26 U.S.C. §§9033(a) and (b) and 9035; 11 CFR 9033.1, 9033.2, 9035.1(a)(2) and 9035.2(a)(1).

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. 26 CFR 702.9037-2. Only contributions from individuals in amounts of \$250 or less are matchable.

The chart above lists the amount most recently certified to each eligible candidate who elected to

### Matching Funds for 2004 Presidential Primary Candidates: February Certification

Candidate	Certification February 2005	Cumulative Certifications
Wesley K. Clark (D) <sup>1</sup>	\$0	\$7,615,360.39
John R. Edwards (D) <sup>2</sup>	\$0	\$6,654,161.44
Richard A. Gephardt (D) <sup>3</sup>	\$0	\$4,104,319.82
Dennis J. Kucinich (D) <sup>4</sup>	\$0	\$3,291,962.59
Lyndon H. LaRouche, Jr. (D) <sup>5</sup>	\$0	\$1,456,019.13
Joseph Lieberman (D) <sup>6</sup>	\$0	\$4,267,796.85
Ralph Nader (I) <sup>7</sup>	\$5,142.50	\$891,028.39
Alfred C. Sharpton (D)	\$0	\$100,000.00 <sup>8</sup>

<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> Ralph Nader became ineligible to receive matching funds on September 2, 2004.

<sup>8</sup> On May 10, 2004, the Commission determined that Reverend Sharpton must repay this amount to the U.S. Treasury for matching funds he received in excess of his entitlement. See the July 2004 Record, page 8.

participate in the matching fund program, along with the cumulative amount that each candidate has been certified to date.

—Amy Kort

## Publications

### Directory of Federal and State Disclosure and Election Offices Available

The 2005 edition of the *Combined Federal/State Disclosure and Election Directory* is now available.

This annual publication provides a listing of the federal and state agencies responsible for the disclosure of campaign finances, lobbying, personal finances, public financing, candidates on ballots, election results, spending on state initiatives and other financial filings. Additionally, it includes contact information for national and international associations that deal with campaign finance and elections. The contact information for each agency includes e-mail and Internet addresses.

The Directory is available in paper copy, on diskette and on the FEC web site at <http://www.fec.gov>.

[gov/pubrec/cfsdd/cfsdd.shtml](http://gov/pubrec/cfsdd/cfsdd.shtml). The web version, which provides hyperlinks directly to the web pages of the federal and state agencies listed, will be updated periodically throughout the year.

Free paper copies may be obtained by calling the Public Records Office at 800/424-9530 or 202/694-1120.

—Amy Kort

## Alternative Dispute Resolution

### ADR Program Update

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

1. The Commission reached agreement with Carol Moseley Braun for President and Moti Agarwal, its treasurer, concerning the committee's failure to disclose outstanding debt. The respondents contended there is a *bona fide* disagreement about whether they owe a debt to an individual who filed the complaint with the Commission that became the source of this ADR case. The respondents cite a lack of evidence to support that complaint. Nevertheless, committees are generally obliged to report a debt, even if that debt is in dispute. In this case, the respondents agreed that if the complainant provides sufficient evidence to support his claim of an outstanding debt, then they will amend their FEC reports to list the claim as a *bona fide* debt. In the interim, the respondents agreed to comply with FEC regulations and to file an amended 2003 Year End Report listing the amount in dispute. The respondents also agreed to note

the amount of the disputed debt on the next appropriate monthly report and to continue to list the disputed debt on subsequent reports until the debt is resolved or the committee is terminated. (ADR 162/MUR 5412)

2. The Commission reached agreement with U.S. Cuba Democracy PAC and Gus Machado, its treasurer, regarding excessive contributions and failure to report disbursements accurately. These respondents contended that the violation in question resulted from an inadvertent reporting error. The committee listed an expenditure for a luncheon as an incurred debt and independent expenditure, rather than as an operating expense. Upon learning of the error, the respondents filed an amended report correctly identifying the debt as an operating expense. The respondents acknowledged their unintended error in the subject report filed with the Commission. In order to resolve this matter and ensure consistent and accurate compliance with FEC regulations—including any future regulatory changes—the respondents agreed to select and send two representatives from the committee to attend an FEC seminar on federal election campaign reporting requirements within 14 months of the effective date of this agreement.

With respect to two additional respondents named in this case, Martinez for Senate and its treasurer Charles W. Pluckett, the ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR 182/MUR 5448)

3. The Commission closed the file regarding Kerry for President, Inc. and Robert Farmer, its treasurer, concerning the committee's alleged failure to accurately report a contribution. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR219/MUR 5478)

4. The Commission reached agreement with Victory 2004/Calif-

ornia Republican Party and Douglas Boyd, its treasurer, regarding failure to report receipts, reimbursements and debts and failure to report accurately allocable operating expenditures and contributions. The respondents acknowledged that continuing software problems resulted in inadvertent violations of the Act and agreed to pay a \$15,000 civil penalty. In an effort to avoid similar errors in the future, the respondents agreed to work with the Commission's Reports Analysis Division to ensure all reports are accurate and to have committee staff attend an FEC seminar within 12 months of the effective date of this agreement. (ADR 187\*)

5. The Commission reached agreement with Congressional Majority Committee and Robin L. Foster, its treasurer, regarding the committee's failure to report disbursements. The respondents stated that they inadvertently failed to include disbursements for a portion of the period covered by the 2003 July Quarterly Report and agreed to pay a \$1,000 civil penalty. In an effort to avoid similar errors in the future, the respondents agreed to develop a compliance/financial manual for use by committee staff and to have the compliance/financial manager attend an FEC seminar within 12 months of the effective date of this agreement. (ADR 188\*)

6. The Commission closed the file involving Steven Fulop for Congress, Inc., Dave Lankelevich, its treasurer, Reform Democratic Organization of Jersey City and Edward Santiago, its treasurer, regarding allegations involving failure to file a timely Statement of Candidacy and to report in-kind contributions. The ADR Office recommended that the case be closed, and the Commission

(continued on page 10)

\*Cases marked with an asterisk were internally generated within the FEC.

## Alternative Dispute Resolution

(continued from page 9)

agreed and closed the file. (ADR 206/MUR 5462)

7. The Commission closed the file involving Friends of Larry Klayman, its treasurer, James R. Graham, and Larry Klayman regarding the alleged personal use of campaign funds. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR 214/ MUR 5532)

8. The Commission closed the file involving Robert G. Whittel for Congress, its treasurer, Jason Melton, and Robert G. Whittel regarding the alleged failure to report disbursements and to file timely disclosure reports. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR 220/ MUR 5482)

9. The Commission closed the file involving Friends of Schumer and Steven Goldenkranz, its treasurer, regarding the alleged use of government funds to pay for travel in a federal election. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR 221/ MUR 5490)

—Amy Kort

## Outreach

### Roundtable for Committee Treasurers

On April 6, 2005, the Commission will host a roundtable session on reporting requirements for candidates and their campaign committees. Individuals responsible for filing FEC reports for candidate committees are invited to attend. Participants will have an opportunity to speak with representatives from the FEC's Reports Analysis and Electronic Filing offices at a reception following the roundtable. See the chart below for details.

The roundtable will be held at 9:30 a.m. at the FEC, 999 E. St., NW., Washington DC. Attendance is limited to 30 people, and registration is accepted on a first-come, first-served basis. Please call the FEC before registering or sending money to ensure that openings remain. The registration form is available on the FEC web site at <http://www.fec.gov> and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call the Information Division at 800/424-9530, or locally at 202/694-1100.

—Amy Kort

### FEC Campaign Finance Law Conferences in 2005

Each year the Federal Election Commission sponsors a number of conferences where Commissioners and FEC staff conduct a variety of technical workshops on the campaign finance law. Discussion topics include fundraising, reporting and communications. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. The schedule on page 11 lists the dates and locations for conferences to be held in 2005. This year, conferences held in Washington, DC, will feature an opportunity for each participant to meet the FEC Campaign Finance Analyst who reviews his or her committee's FEC reports.

#### Conference for Corporations and their PACs

The Commission will hold a conference for corporations and their PACs April 25 through 27, 2005, at the Loews L'Enfant Plaza Hotel in Washington, DC. The registration fee for this conference is \$375 for participants who register on or before March 24, and \$385 for late registrations.

Due to the high level of interest in this conference, the FEC can only accept registrations from two individuals representing any single organization. Registration is accepted on a first-come, first-served basis, and FEC conferences often fill to capacity, so please register as early as possible.

The Loews L'Enfant Plaza Hotel is located at 480 L'Enfant Plaza SW., Washington, DC. A room rate of \$189 (single or double) is available for conference participants who make reservations on or before March 24. Call 1-800/635-5065 to make room reservations. You must mention that you are attending the FEC conference in order to receive the special group rate. After March 24, room rates are based on avail-

### Roundtable Schedule

Date	Subject	Intended Audience
April 6, 2005 9:30-11:30	Reporting Requirements for Candidates and their Committees, followed by Reception to Meet FEC Reports Analysis and Electronic Filing Staff	Individuals responsible for filing FEC reports for candidate committees

ability. Parking is available at the hotel for a fee of \$15 per day and \$22 overnight. The hotel is located near the L'Enfant Plaza Metro and the Virginia Railway Express stations.

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

The FEC will host a conference for trade associations, labor organizations and membership organizations (and the PACs of any of these groups) this spring. The conference will take place June 1-3 in Chicago, IL. The registration fee is \$400 per attendee, and a late fee of \$10 will be added to registrations received after May 11.

## **Conferences Schedule for 2005**

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

April 25-27, 2005  
Loews L'Enfant Plaza  
Washington, DC

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

June 1-3, 2005  
Hyatt Regency Chicago  
Chicago, IL

### **Conference for Campaigns, Parties and Corporate/Labor/Trade PACs**

September 14-15, 2005  
Hyatt Regency Islandia  
San Diego, CA

### **Conference for Campaigns, Parties and Corporate/Labor/Trade PACs**

October 25-26, 2005  
Crowne Plaza Hotel  
San Antonio Riverwalk  
San Antonio, TX

The conference will be held at the Hyatt Regency Chicago on the Riverwalk, 151 E. Wacker Drive, Chicago, IL 60601. The hotel is located one block off of Chicago's Magnificent Mile. Complete registration information will be available online soon.

### **Registration Information**

Complete registration information for FEC conferences is available on the FEC web site at <http://www.fec.gov/info/outreach.shtml#conferences>.

Please direct all questions about conference registration and fees to Sylvester Management Corporation at 1-800/246-7277. For questions about the conference program, or to receive e-mail notification when registration begins, call the FEC's Information Division at 1-800/424-9530 (or locally at 202/694-1100) or send an e-mail to [Conferences@fec.gov](mailto:Conferences@fec.gov).

—Amy Kort

## **Index**

The first number in each citation refers to the "number" (month) of the 2005 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "1:4" means that the article is in the January issue on page 4.

### **Advisory Opinions**

- 2004-40: Status of state party as state committee of political party, 1:8
- 2004-41: Non-affiliation of SSFs, 2:4
- 2004-42: LLC as connected organization for SSF, 2:7
- AO 2004-43: Discounted sale of ad time not a contribution, 4:6
- 2005-45: Accounting method for determining excess contributions under Millionaires' Amendment, 3:7

### **Compliance**

- Administrative fines assessed, 2:13
- ADR program cases closed, 1:9; 2:12; 4:9
- MUR 5020: Corporate facilitation, 4:6

### **Court Cases**

- \_\_\_\_\_ v. FEC
- Alliance for Democracy, 4:4
- Augusti and Augusti for Congress, 1:12
- Citizens for Responsibility and Ethics in Washington, 2:10
- EMILY's List, 3:1; 4:1
- Judicial Watch, 4:3
- Kean for Congress, 4:3

### **Regulations**

- "Agent" definition for coordinated and independent expenditures and nonfederal funds regulations, Notice of Proposed Rulemaking, 3:4
- BCRA technical amendments, final rules, 1:6
- Candidate solicitation at state, district and local party committee fundraisers, Notice of Proposed Rulemaking, 4:4
- Contributions by minors to candidates and party committees, 3:3
- "De minimis" exemption for Disbursement of Levin funds by state, district and local party committees, 3:6
- Filing by Priority Mail, Express Mail and overnight delivery, Notice of Proposed Rulemaking, 2:1
- Party committee donations to certain tax-exempt organizations and political organizations, Notice of Proposed Rulemaking, 1:7
- Payroll deductions for contributions to trade association SSF, Notice of Proposed Rulemaking, 2:2

### **Reports**

- April reporting reminder, 4:1
- California special election reporting, 2:3
- Due in 2005, 1:3
- Electronic filing software, FEC Form 3X, updated, 2:1

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