Record

November 2000 *Federal Election Commission* *Volume 26, Number 11*

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Reports

New FEC Forms for 2001

To comply with new statutory reporting requirements, the Commission has updated its campaign finance disclosure forms 1, 1M, 2, 3, 3X, 3P, 4, 5, 6 and 8. These forms have been revised, as appropriate, to respond to reporting requirements such as mandatory electronic filing for committees whose contributions or expenditures exceed $50,000 per year and election-cycle reporting for authorized committees—both of which take effect for reporting periods beginning on or after January 1, 2000—and the state filing waivers program already in effect in many states.[1] Additionally, forms 1, 3 and 3X have been reformatted so that staff can process them faster and more easily and so that they can eventually be read electronically through optical character recognition (OCR), in anticipation of the Commission's future use of this technology. The new forms were transmitted to Congress on September 15, 2000. The Commission will make the new forms available for use in the first reporting periods covering activity in 2001.[2] They will be included, for the first time, in prior notices of reporting obligations mailed to treasurers in 2001.

Because they have been reformatted, the new forms differ in appearance from the current forms. Other notable changes to the forms are listed below:

- New codes for categorizing the "purpose of disbursements" (Schedule B for Forms 3 and 3X; Schedules E, F and H4 for Form 3X). Committees will be asked to voluntarily assign a code to identify the purpose of the disbursement in addition to providing the required written description. These codes will be included in the instructions.
- Revised instructions that inform committees of the new rules governing election-cycle reporting, mandatory electronic filing and waivers from filing with certain states, as appropriate.
- Separate booklets of instructions for filling out forms 3, 3X and 3P.

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[1] *For a list of states that have qualified for the filing waiver, see page 3.*

[2] *The first regular reports required to be filed on the new forms are the February 20 report for monthly filers, the mid-year report for quarterly filers and the April 15 report for Presidential committees that file quarterly. Reports that cover activity for 2000, such as the year-end report filed January 31, 2000, will use the current forms.*

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These instructions will be included with the forms in the prior notices mailed to committees and will also be viewable on the FEC's Web site at www.fec.gov.

- Space on Form 1 for e-mail address and Web site. Form 1 has been revised to provide space for a committee's e-mail address (required of electronic filers only), as well as the committee's Internet Web site address if the committee has such a site (required of all committees under the new regulations).
- A new Post-Election Detailed Summary Page for authorized candidate committees only. Candidate committees will use this new form in place of the Detailed Summary Page and portions of the Summary Page when they file the first report after the general election.[3] Candidate committees will use this form only at this time, when the committee must disclose activity for two election cycles in one report (under the new election-cycle reporting rules). For all other reports filed during the election cycle, candidate committees will use the regular Detailed Summary Page.

For more information about mandatory electronic filing or election-cycle reporting, see page 1 of this issue. For information on state waivers, see page 3 of this issue.✥

New Reporting Requirements

New reporting requirements will be in effect for reporting periods that begin on or after January 1, 2001:

- Mandatory electronic filing, which affects most committees, individuals and organizations that receive contributions or make expenditures in excess of $50,000 in a calendar year; and
- Election Cycle Reporting, which affects authorized candidate committees only.

Mandatory Electronic Filing

Beginning with the reporting periods that start on or after January 1, 2001, all committees that receive contributions or make expenditures in excess of $50,000 in a calendar year, or that have reason to expect to do so,[1] must submit their reports electronically. Any filers who are required to file electronically, but who file on paper, will be considered nonfilers and may be subject to enforcement action. The mandatory electronic filing provisions (11 CFR 104.18) apply to any political committee or other person required to file reports, statements and designations with the FEC. This includes all filers except Senate

[3] For candidates who are nominated for the general election, the new page must be included with the Post-General report filed 30 days after the general election. For candidates who do not participate in the general election, the new page must be included with the first report filed after the close of the election cycle, normally the year-end report.

[1] Once filers actually exceed the threshold, they have "reason to expect" to exceed the threshold in the following two calendar years. 11 CFR 104.18 (a)(3)(i). This means they must continue to file electronically for the next two years (January through December). Filers with no historic data on which to base their calculations should expect to exceed the threshold if they either receive contributions or make expenditures that exceed one-quarter of the threshold amount in the first quarter of the calendar year, or they receive contributions or make expenditures that exceed one-half of the threshold amount in the first half of the calendar year. 11 CFR 104.18 (a)(3)(ii). The regulations allow an exception to the requirement of filing for the following two calendar years for candidate committees:

• That have $50,000 or less in net debts outstanding on January 1 of the year following the election;

• That anticipate terminating prior to the next election year; and

• Whose candidate has not qualified as a candidate for the next election and does not intend to become a candidate in the next election. 11 CFR 104.18 (a)(3)(i).

While all committees must file electronically in the year in which they exceed the threshold, authorized candidate committees meeting these requirements do not "expect to exceed the threshold" in the following two calendar years and, therefore, need not file electronically during those periods unless they actually exceed the threshold.

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Washington, DC 20463

800/424-9530
202/694-1100
202/501-3413 (FEC Faxline)
202/219-3336 (TDD for the hearing impaired)
800/877-8339 (FIRS)

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candidate committees, which file with the Secretary of the Senate.[2]

Application of the $50,000 Threshold. Each unauthorized committee (PAC or party committee) must file electronically if the total contributions or total expenditures of that committee exceed, or are expected to exceed, the $50,000 threshold. The threshold is calculated on a per-committee basis, and each committee calculates its own contributions and expenditures separately and files separately, even if it is affiliated with another committee.

By contrast, all committees authorized by one candidate must file electronically if their *combined* total contributions or *combined* total expenditures exceed, or are expected to exceed, the threshold.

Individuals and qualified nonprofit corporations whose independent expenditures exceed, or are expected to exceed, the $50,000 threshold must also file electronically.

Voluntary Electronic Filing. Voluntary electronic filers must continue to file electronically for the remainder of the calendar year unless the Commission determines that unusual circumstances make continued electronic filing impractical. 11 CFR 104.18(b). No such waiver by the Commission, however, has been established for mandatory electronic filers.

Election Cycle Reporting for Candidate Committees

Beginning with the reporting periods that start on or after January 1, 2001, authorized committees of federal candidates must aggregate and report receipts and disbursements on an election-cycle basis. The new rules do not affect unauthorized committees, such as PACs and party committees.

The change to election-cycle reporting is intended to simplify recordkeeping and enhance reporting. Under current regulations, candidate committees monitor contribution limits on a per-election basis, but disclose their financial activity on a calendar-year-to-date basis. Under the new system, committees will report all of their receipts and disbursements on an election-cycle basis. 11 CFR 104.3

Definition of Election Cycle. Under FEC regulations, an election cycle begins the day after the general election for a seat or office and ends on the day of the next general election for that seat or office. 11 CFR 100.3(b). The length of the election cycle, thus, depends on the office sought. For example, the election cycle is generally two years for House candidates, six years for Senate candidates and four years for Presidential candidates.

Transition to Election-Cycle Reporting. Because the new regulations will take effect after the post-general and year-end reporting periods for 2000 have closed, some candidate committees will have already reported receipts and disbursements related to the 2002, 2004 or 2006 election cycles. These committees will need to include this previously-disclosed activity in their election-cycle-to-date figures, beginning with their first report under the new system.[3] In some cases, the activity may span several years. For example, a Senate candidate for a 2002 election who has been receiving contributions and making disbursements since the last election for that seat (in 1996) will need to account for that activity as part of his or her election-cycle-to-date reporting.

Aggregating election-cycle contributions for reporting purposes may differ from aggregating these amounts for the purposes of calculating contribution limits. For reporting purposes only, committees must include all contributions received during an election cycle even if a contribution is designated for another election cycle. For example, if, *after* an election, a committee receives a check that the contributor has designated to pay the debts of that past election, the committee will disclose this contribution as part of the total contributions for the reporting period and election cycle in which it received the contribution, even though the contribution will count against the contributor's limit in the prior election cycle.

Revised Forms

The Commission recently revised reporting forms 1, 1M, 2, 3, 3X, 3P, 4, 5, 6 and 8 in order to reflect changes in the reporting requirements. The revised forms will be available for reporting periods that start on or after January 1, 2001. Revised software will also be made available, and the FEC is now conducting regular workshops on using the FEC's electronic filing software. For more information about these workshops, call 202/694-1250.

For more information on the new forms, see page 1 of this issue. For more information on mandatory electronic filing, see the August 2000 Record, page 1. To learn more about election-cycle reporting, see the August 2000 Record, page 4.✥

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[2] *Senate candidates, however, are encouraged to voluntarily file electronically with the FEC to ensure faster disclosure.*

[3] *For most campaigns, the first report under the new system will be the mid-year report, due July 31, 2001.*

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Commission Extends State Filing Waiver to Senate Elections

On September 27, 2000, the Commission extended the State Filing Waiver Program to include campaigns for U.S. Senate and other political committees that support only U.S. Senate candidates.

Under the State Filing Waiver program, filers whose reports are available on the FEC Web site need not file duplicate copies of their reports in states that provide adequate public access to the Commission's site.

In the past, the waiver did not apply to Senate committees because their reports—which are filed with the Secretary of the Senate—were not available on the FEC Web site. Now, through a joint effort of the Commission and the Secretary of the Senate, computer images of those reports are available on the FEC's site. As a result, beginning with the October 15, 2000, quarterly report, Senate committees are no longer required to file copies of their reports in states certified for the State Filing Waiver Program.[1] ✥

[1] *The Commission has certified that the following states and territories qualify for filing waivers: Alabama, American Samoa, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon , Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin and Wyoming. Committees that file their reports at the FEC need not file copies in these states.*

Commission Certifies Georgia for State Filing Waiver

On September 29, 2000, the Commission certified that Georgia qualified for a state filing waiver. Consequently, federal committees and candidates in Georgia did not have to file duplicate copies of their federal reports with the Georgia state election office, beginning with the October 15th Quarterly Report.✥

Advisory Opinions

AO 1999-38

Reporting Disputed and Unpayable Debts

The Ken Calvert for Congress Committee (the Committee) may stop reporting three disputed or unpayable debts, so long as it follows certain reporting procedures to account for the disposition of these debts.

The Committee has, through several Form 3 reports dating back to 1994, reported, on Schedule D, three specific debts that the Committee contends it does not owe.[1] For the reporting period ending June 30, 1999, the Committee "charged off" these amounts simply by deleting the creditors from the report. However, the Commission found that this method created a discrepancy in the report and that the Committee's amended reports did not meet the obligation of accounting for these debts.

Under Commission regulations, committees filing with the FEC must disclose their outstanding debts and obligations. If these obligations are settled for less than their reported value, each report filed under 11 CFR 104.1 must contain a statement explaining how the obligation was discharged. Debts must be reported in every report until they are no longer outstanding. 11 CFR 104.11(a).[2]

In this case, the Committee was correct to report the disputed debts in its earlier reports since the vendors initially made demands for payment for services rendered to the committee. However, given that all three vendors have ceased their efforts to obtain payment, have not challenged the Committee's contention that the payments were unwarranted and have let the California statute of limitations expire, the Committee is not obligated to indefinitely report these debts. Before discontinuing its reporting of these debts, however, the Committee must explain how each debt was resolved using the guidelines that follow.

In its next report, the Committee must take two steps. First, it should file a Schedule D on which it:

[1] *The vendors in question are Fieldworks Development, Pacific West Communications and Gangi Graphics. In the case of Fieldworks Development, the Committee claims that the debt was not paid because the services provided were unsatisfactory and that the California Statue of Limitations has now expired on the claim. According to the Committee, Pacific West Communications' and Gangi Graphics' disputed amounts represent overcharges, which the Committee did not feel obligated to pay and which they erroneously reported as Schedule D debts. Moreover, Pacific West no longer exists as a business.*

[2] *In cases where a committee might not know the exact amount of the debt, they must report an estimated amount and must either amend the report(s) containing the estimate or indicate the correct amount once the correct amount is determined. 11 CFR 104.11(b). Commission regulations explain the method for reporting disputed debts at 11 CFR 104.3 and 104.11.*

- Lists the three disputed debts, each with an outstanding balance of zero as of the close of the billing period; and
- Enters in parentheses, in the column provided to show payments made during the reporting period, an amount indicating that each debt was paid in full.

Second, the Committee should include a memo entry on Schedule D to explain its representation that the debts have been, in effect, paid. The memo entry should cite this advisory opinion and explain that:

- The debts were disputed;
- The vendors no longer seek payment;
- The statute of limitations for the debts has expired; and
- The Committee will no longer list these debts on its Schedule D.

Once the Committee has taken these steps, it will have no future reporting obligations regarding these three debts.

Date issued: June 14, 2000; Length: 6 pages.✥

Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* starting with January 1996 are available through the Internet as PDF files. Visit the FEC's World Wide Web site at http://www.fec.gov and click on "What's New" for this issue. Click "Campaign Finance Law Resources" to see back issues. Future *Record* issues will be posted on the web as well. You will need Adobe® Acrobat® Reader software to view the publication. The FEC's web site has a link that will take you to Adobe's web site, where you can download the latest version of the software for free.

AO 2000-20

Creation of Nonconnected Committee

The proposed Committee for Quality Cancer Care will qualify as a nonconnected PAC, despite its ties to various cancer-related professional and trade associations.

Each of the five cancer-care professionals who will comprise the committee's board of directors is involved with one or more professional or trade associations concerned with cancer patient care. Only two, however, have ties to the same association. The committee will share office space with one of the associations—the Oncology Nursing Society (ONS)—but will pay all of its own establishment, administrative and solicitation expenses from the contributions it receives. The committee will pay ONS for its use of office space, photocopiers and telephones, based on the amount of time or space it uses.

The Federal Election Campaign Act (the Act) provides for two types of PACs: separate segregated funds (SSFs) and nonconnected committees. An SSF is directly or indirectly established, administered or financially supported by a "connected organization"—an incorporated entity, such as a trade association. A nonconnected committee cannot receive support from incorporated organizations. Instead, it must defray its operating costs from the contributions it receives.

None of the professional or trade associations with ties to the Committee for Quality Cancer Care, including the ONS, will function as the committee's connected organization. This conclusion is based on two factors:

- Since the committee will pay its own expenses—including commercially-reasonable payments to ONS for use of its facilities—none of the associations will provide financial support to the committee; and
- The committee's leadership is diversified enough to demonstrate an organizational independence from the associations.

As a result, the committee will be a nonconnected committee rather than a separate segregated fund.

Issued: September 15, 2000; Length: 5 pages.✥

AO 2000-22

Use of Electronic Signature for Trade Associations' "Permission to Solicit" Authorizations

The Air Transportation Association of America, along with a number of other incorporated trade associations (the Associations),[1] may accept corporate members' electronic signatures as written authorization to solicit these members' restricted class for the Associations' respective separate segregated funds (SSF).

Under Commission regulations, a trade association must obtain written authorization from a member corporation before soliciting the member's restricted class. 11 CFR 114.8(d) and (e). The Associations propose to implement a system whereby they would obtain electronic written authorization by one of two methods:

- Sending e-mail to corporate representatives, requesting their approval to solicit their members and attaching an SSF solicitation form; and
- Placing the corporate approval form on the secured "members-only" portion of its Internet Web

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[1] *The additional trade associations requesting this advisory opinion were the American Land Title Association, the Council of Insurance Agents and Brokers, the Independent Insurance Agents of America and the Society of Independent Gasoline Marketers of America.*

Advisory Opinions

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site and restricting access to the form to the corporate representatives through coded passwords.

Under both methods, the corporate representative would provide written approval via an electronic signature, and the Associations, in turn, would send a notice to the representative, confirming receipt of the signed approval. Additionally, the Associations would comply with all regulations governing corporate approvals. 11 CFR 114.7(a), 114.7(c) and 114.8(c).

In two past advisory opinions involving contributor authorization of deductions for contributions to an SSF, the Commission approved the use of an electronic signature by computer and the use of a phone process involving a unique account number accompanied by other safeguards, concluding that, like a traditional signature, they were unique identifiers of the authorizing individuals. See AOs 1999-3 and 1999-6. In this case, the Associations' proposal is permissible so long as security measures are taken to verify that the permission-to-solicit forms are only available to authorized corporate representatives, and so long as the Associations have the ability to verify that each electronically signed authorization came from the corporate representative. Additionally, as with any prior approvals wherein the corporate representative grants approval on behalf of the corporate member, the electronic approval form should indicate that the approval is on behalf of the specified, named corporation. A copy of the electronic approval must be maintained, in a readily available form, for three years, including a record that verifies that the electronic signature came from the particular corporate representative.

Date: September 15, 2000; Length: 5 pages.✥

AO 2000-23

Preemption of New York Election Code

The Federal Election Campaign Act (the Act) and Commission regulations preempt a New York State statute that prohibits certain pre-primary spending by political parties as it applies to the New York State Democratic Committee's (the Committee) contributions, expenditures and exempt payments in support of federal candidates.

Section 2-126 of the New York Election Code prohibits parties from spending money to support any candidate until after the primary election.[1] Under the Act, however, the Committee, as a qualified, multicandidate committee filing with the Commission, may:

- Contribute up to $5,000 per election to a House or Senate candidate;
- Make unlimited exempt party expenditures on behalf of its nominees; and
- Make expenditures supporting its Senatorial and Congressional candidates within the limits provided under 2 U.S.C. §441a(d)(3). See 2 U.S.C. §§441a(a)(2), 441a(d)(3) and 431(9)(B)(iv), (ix) and (x).

The Act and Commission regulations preempt any state law with respect to federal elections. 2 U.S.C. §453 and 11 CFR 108.7. Section 108.7(b)(3) specifically preempts state laws concerning limits on contributions and expenditures in connection with federal candidates and committees.

In this case, the Commission determined that the New York provision, as applied to federal candidates, does not regulate those areas defined as interests of the state, but rather places restrictions on the federal election activities of party committees. The New York provision not only prevents the Committee from making contributions, but also limits its ability to take advantage of other opportunities specifically granted under the Act. See also AOs 1995-48, 1993-25, 1989-12.

The Commission recognized, however, that the Act and Commission regulations do not compel New York officials to defer to its conclusion in this opinion, and that judicial review was the appropriate process for making a final determination of federal preemption questions such as those addressed in this opinion.✥

[1] *The New York Congressional primary elections were held September 12, 2000.*

AO 2000-29

Determining Number of Federal Elections in Louisiana

Louisiana federal candidates may accept contributions for a primary election, which the Federal Election Commission (the Commission) determined was held on August 18, 2000, and a general election, which will be held on November 7, 2000. In congressional districts where no candidate receives over 50 percent of the vote in the general election, candidates may also accept contributions for a December 9, 2000, runoff election. Because of Louisiana's unique circumstances and federal election schedule, candidates may consider contributions received earlier in this election cycle, that are otherwise lawful under the Federal Election Campaign Act (the Act), as within the Act's limits if they were:

- Received before the issuing of this advisory opinion; and
- Within the combined limits of either $2000 per donor or $10,000 per multicandidate committee donor.

In July 2000, the Commission sent notices to Louisiana federal candidates apprising them of its interpretation that the 2000 federal

election cycle in Louisiana had only a general election, on November 7, 2000, and a December runoff election, but only for candidates in races where no one obtained over 50 percent of the vote. In response, all nine Members of Congress representing Louisiana [1] requested an advisory opinion on this matter.

Elections

Because November 7, 2000, is prescribed by federal statute as the national election date, it cannot be considered a primary election date in Louisiana. 2 U.S.C. §7. However, Commission regulations allow an independent candidate, or one that seeks election without nomination by a major political party, to choose one of three possible dates as his/her "primary election date." One choice is the last day to qualify for the general election ballot in a given state. 11 CFR 100.2(c)(4)(i). In this case, federal candidates in Louisiana had no opportunity to seek nomination in a Congressional primary election because Louisiana no longer includes Congressional offices on its open primary election ballots. Moreover, neither of the two major state political parties offered an alternative nomination process. Thus, in effect, all candidates for Congress are seeking office in the November general election without nomination by a political party. They may consider, as their primary election date, the last day to qualify for the November 7 ballot in Louisiana. That filing date was August 18, 2000. 11 CFR 100.2(c)(4).

Candidates who qualify to participate in the December 9, 2000, runoff election may also accept and retain contributions for this election. 11 CFR 100.2(d)(2). Candidates may not, however, ask contributors to redesignate contributions designated for the runoff election to another election if the runoff election is not held or if they do not qualify for it. Instead, candidates must refund these contributions no later than January 6, 2001 (60 days after the general election). Under Commission regulations, the redesignation option is only available with respect to contributions made for an election that has already occurred or is certain to occur in the future. A runoff election is contingent upon the outcome of the general election.

Contribution Limits and Designations

The Act and Commission regulations apply contribution limits on a per contributor, per election, basis. Contributions are presumed to be for the next upcoming election, unless otherwise designated by the contributor. 11 CFR 110.1(b)(1)—(6) and 110.2(b)(1)—(6). But, in the 2000 election cycle, Louisiana candidates may treat contributions received before the date when this opinion was issued (October 19, 2000) differently. Contributions received during this time period that are within the contributor's *combined* limits for the 2000 primary and general elections (and are otherwise permissible) will be considered within the Act's limits. Contributions received after October 19, 2000, however, must be governed by the Commission's designation regulations and the rules relating to the possible return of contributions for a runoff election, if not held.

Reporting

Because the August 18 "primary election" date has passed, and because candidates and committees were required to file their October 15 reports as though there were no primary election, candidates and committees need not file a retroactive 12-day pre-election report. All other reports should be filed as usual.

Future Elections

Candidates in future Louisiana election cycles may rely on this opinion and accept otherwise permissible contributions for both the primary and the general elections, assuming that the Louisiana Congressional electoral system remains the same. Undesignated contributions received up to the last day for ballot qualification for the general election will count against the limits for the primary election, and undesignated contributions received after this date will count against the limits for the general election.

Date Issued: October 19, 2000; Length: 7 pages.✥

Advisory Opinion Requests

AOR 2000-28

Disaffiliation of trade associations and their PACs (American Seniors Housing Association, September 26, 2000)

AOR 2000-29

Defining primary and general elections in 2000 for Louisiana Congressional candidates (W.J. "Billy" Tauzin et al., October 2, 2000)

AOR 2000-30

Valuing in-kind contribution of stock (pac.com, October 3, 2000)

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[1] *Requesters are U.S. Representatives W.J. "Billy" Tauzin, Richard H. Baker, John Cooksey, Jim McCrery, David Vitter, William Jefferson and Chris John, as well as Senators John Breaux and Mary Landrieu.*

Court Cases

Lenora B. Fulani v. FEC (1:00CV01018 (WBB))

On May 5, 2000, Lenora B. Fulani asked the U.S. District Court for the District of Columbia to find that the FEC's dismissal of her complaint against the Democratic National Committee (DNC), President Clinton, the Clinton/Gore '96 Primary Committee and others was arbitrary, capricious, an abuse of discretion and contrary to law.

In her FEC complaint, Dr. Fulani had alleged that the respondents conspired "to prevent a challenge to President Clinton in the 1996 presidential primaries." Among other things, Dr. Fulani contended that the DNC, in coordination with the Clinton campaign, had spent "tens of millions of dollars in soft money on a television advertising campaign to promote Clinton's candidacy . . . ."

In its consideration of Dr. Fulani's complaint, the Commission was equally divided on whether the DNC, the primary committee and President Clinton violated statutory provisions or regulations with respect to television advertisements funded by the DNC.[1] On March 9, 2000, the Commission found "no reason to believe" the Federal Election Campaign Act had been violated with respect to actions undertaken by Mr. Harold Ickes (a 1996 campaign worker), which were unrelated to the DNC's advertisements. The Commission then closed the files in this matter. Dr. Fulani's petition seeks judicial review of the Commission's dismissal pursuant to 2 U.S.C. §437g(a)(8).

1:00CV01018 (WBB), U.S. District Court for the District of Columbia.❖

[1] *The Commission took action on Dr. Fulani's complaint, MUR 4713, along with MURs 4407 and 4544.*

Becker et al. v. FEC

On September 1, 2000, the U.S. District Court for the District of Massachusetts denied Ralph Nader and his organizational supporters' motion for a preliminary injunction to set aside the Federal Election Commission's Debate Regulations. 11 CFR 110.13(a)(1), 114.4(f)(1) and 114.4(f)(3). The court found that these regulations are not in excess of the FEC's statutory authority under the Federal Election Campaign Act. The court also dismissed the complaint for lack of standing with regard to the individual-voter plaintiffs.

By consent of the parties, the district court entered a final judgment in favor of the FEC on September 14, 2000. The plaintiffs filed an appeal of this decision on September 15, 2000, and asked for an expedited review. The U.S. Court of Appeals for the First Circuit granted the motion for expedited review, and heard oral argument on October 5, 2000.

U.S. District Court for the District of Massachusetts; 00-cv-11192 (PBS); on appeal, 00-2124. See the August Record, p. 13.❖

Missouri Republican Party, et al. v. Charles F. Lamb, et al.

On September 11, 2000, the U.S. Court of Appeals for the Eighth Circuit reversed the district court's judgment and ruled that Missouri's limitations on political party contributions to candidates were unconstitutional. The court concluded that this case differed from the *Buckley v. Valeo* and *Nixon v. Shrink Missouri Government PAC* cases because it involved limits on contributions from a political party whereas the other two involved contributions from individuals.

In *Buckley*, the Supreme Court ruled that individual contribution limits were constitutional because they imposed "only a marginal restriction upon the contributor's ability to engage in free communication." The circumstances are different in this case, however, because the contributor is a political party, the court said. The court noted that the relationship between candidates and individuals is not nearly as close as that between candidates and parties. The identities of candidates and parties are often "virtually indistinguishable from each other." Whereas an individual can potentially corrupt a candidate with a contribution, parties and candidates have such "a unity of purpose" that the threat of corruption is "not a very realistic one." In addition, the court said that "a party's contribution provides an ideological endorsement and carries a philosophical imprimatur that an individual's contribution does not, and thus it cannot properly be called a 'contribution' in the same sense that the individual contributions in *Buckley* were."

The court also maintained that, in this case, there was no evidence that limiting parties' contributions would reduce corruption or measurably decrease the number and instances when individuals circumvented their own contribution limits. Finally, the court held that its ruling also applied to Missouri's limits on party in-kind contributions.

U.S. District Court for the Eighth Circuit, 00-1773/2686.❖

Federal Register

Federal Register Notices are available from the FEC's Public Records Office.

Notice 2000-18
Mandatory Electronic Filing; Final Rules and Announcement of Effective Date (65 FR 38415, June 21, 2000)

Wertheimer et al. v. FEC

On September 13, 2000, Fred Wertheimer, Scott Harshbarger and Archibald Cox (plantiffs referred to as Wertheimer) filed a complaint against the Federal Election Commission in the U.S. District Court for the District of Columbia. The court dismissed the complaint for lack of standing.

Complaint

Wertheimer asked that the court require the Commission to determine whether, under the Presidential Matching Fund Act (the Fund Act), political parties' expenditures for "issue ads" that are coordinated with, and further the election of, presidential candidates constitute contributions to and expenditures by the candidates.

The Fund Act requires major party Presidential nominees who accept public funding to limit their spending to those public funds. They are not permitted to accept any contributions for their campaigns.[1] 26 U.S.C. §9003(b).

With regard to the 2000 Presidential election, both major party nominees have accepted public funds. At the same time, Wertheimer alleged, the national parties of both candidates (in addition to the coordinated expenditures they are permitted to make on behalf of their respective candidates) had made expenditures in the form of issue ads, often paid for with nonfederal funds (frequently called "soft money" in the popular press).[2]

According to Wertheimer, the national parties claimed that the use of soft money contributions to fund these advertisements was not for the purpose of influencing a federal election—and thus not a contribution—because the ads did not contain specific phrases of "express advocacy"[3] such as "vote for" or "vote against" a particular candidate. Wertheimer, however, contended that these ads—even if they did not contain "express advocacy"—were contributions to the candidates, because they had been closely coordinated with the candidates. Under the Federal Election Campaign Act (the FECA), any expenditure made "by any person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents" is considered a contribution. 2 U.S.C. §441a(a)(7)(B)(i). Moreover, these expenditures were, according to Wertheimer, "in kind" contributions—contributions of goods or services—which are both contributions to the candidate and expenditures by the candidate.

As a result, Wertheimer contended, Presidential candidates had both accepted private contributions and exceeded the spending limit set by the Fund Act. Wertheimer further alleged both that the FEC knew of these practices in the 1996 election and failed to implement or construe the law to prohibit such uses, and that these practices continued in the 2000 election cycle.

Wertheimer asked that the court declare that:

- Under the Fund Act, all expenditures by political parties that further the election of their respective Presidential candidates, and that are coordinated with those Presidential candidates, are contributions to and expenditures by the Presidential candidates—including party expenditures on advertisements that do not contain "express advocacy;" and
- Except as expressly provided by the FECA, major party candidates (and their committees) who choose to finance their campaigns with public funds may not lawfully coordinate with their respective political parties on party expenditures—including party expenditures for advertisements that further their candidate's election to federal office.

District Court

On October 10, 2000 the court granted the Commission's motion to dismiss the complaint for lack of jurisdiction. Plaintiffs alleged that they had standing because they had marked the box on their income tax returns directing the Treasury to place $3 of their taxes in the Presidential Election Campaign Fund. But "a tax payer's disagreement with an appropriation" is not sufficient to confer standing, the court said. Plaintiffs also alleged an interest in knowing whether candidates were complying with the law, but the court found that a generalized claim of harm does not confer standing. Finally, the court concluded it did not have the jurisdiction to analyze the disclosure provisions in the context of allegations under the Fund Act.

U.S. District Court for the District of Columbia, 1:00 cv 02203 (CKK).✥

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[1] The campaign may, however, accept contributions designated for its general election legal and compliance (GELAC) fund. This fund is a special account maintained to pay for legal and accounting expenses related to complying with the campaign finance law. Compliance expenses do not count against the expenditure limit. Contributions to the GELAC fund are, however, subject to the limits and prohibitions of the federal campaign finance laws.

[2] The national parties are permitted to make limited coordinated expenditures on behalf of their nominees in the general election. 2 U.S.C. §441a(d).

[3] Under the FECA, "express advocacy" refers to a communication that expressly advocates the election or defeat of a clearly identified candidate.

Court Cases

(continued from page 9)

Buchanan et al. v. FEC

On September 14, 2000, the U.S. District Court for the District of Columbia granted the FEC's motion for summary judgment and denied the plaintiffs' motion for summary judgment in this case. The district court ruled that, although the plaintiffs had standing to challenge the FEC's dismissal of their administrative complaint against the Commission on Presidential Debates, they failed to show that the FEC's interpretation of the debate regulations at 11 CFR 110.13 was arbitrary and capricious.

The plaintiffs appealed, and were granted an expedited appeal concerning the single issue of whether a debate must include all nominees who have qualified for public funding in order to comply with the "objective criteria" standard set out in the Commission's debate regulations. The U.S. Court of Appeals for the District of Columbia Circuit affirmed the district court's order on this issue on September 29, 2000. The remaining issues will be decided on a non-expedited schedule.

U.S. District Court for the District of Columbia, 00-1775 (RWR); U.S. Court of Appeals for the D.C. Circuit, 00-5337. See also the September 2000 Record, page 8.❖

Reform Party of the United States v. John Hagelin et al. and Reform Party of the United States v. Gerald M. Moan et al.

On September 15, 2000, the Superior Court of the State of California for the County of Los Angeles, South District, enjoined John Hagelin and his agents from representing Dr. Hagelin and Nat Goldhaber to the public as the Reform Party (the Party) Presidential and Vice-Presidential nominees. The court found that the votes taken first to remove Gerald Moan as the Chair of the Party and to nominate James Mangia to that position, and subsequently to nominate John Hagelin as the Party's Presidential candidate, violated the requirements of the Party's constitution. The court further found that Patrick J. Buchanan and Ezola Foster were the properly nominated candidates of the Reform Party.

The court granted a preliminary injunction enjoining Dr. Hagelin and his agents from:

- Soliciting donations on behalf of the Party, either from party members or from the general public;
- Distributing press releases or making any communications on behalf of the Party;
- Operating a Web site on behalf of the Party;
- Making expenditures on behalf of the Party;
- Undertaking any effort or committing any act to promote John Hagelin and Nat Goldhaber as the official candidates of the Reform Party; and
- Using the name of the "Reform Party of the United States" or any of the Party's logos.

The U.S. District Court for the Western District of Virginia had previously dismissed a similar complaint filed by the Party against Dr. Hagelin and Sue Harris DeBauche. That court found that the complaint did not fall within its jurisdiction.

Superior Court of the State of California for the County of Los Angeles, South District, NC 028469.❖

Natural Law Party of the United States of America, et al. v. FEC

On September 21, 2000, the U.S. District Court for the District of Columbia granted the FEC's motion for summary judgment in this case, ruling against the Natural Law Party of the United States of America, Dr. John Hagelin and John Moore (the plaintiffs). The court held that, although the plaintiffs had standing to challenge the FEC's dismissal of their administrative complaint against the Commission on Presidential Debates (CPD), they failed to show that the FEC's interpretation of the debate regulations at 11 CFR 110.13 was arbitrary and capricious.

The plaintiffs appealed. After expedited briefing on the issue of whether the 15 percent electoral support requirement in CPD's selection criteria is illegal, the Court of Appeals affirmed the district court's order on this issue on September 29, 2000. The remaining issues will be decided on a non-expedited schedule.

U.S. District Court for the District of Columbia, 00-2138 (ESH); U.S. Court of Appeals for the D.C. Circuit, 00-5338.❖

Compliance

Commission Launches Alternative Dispute Resolution Program

Launched on October 1, 2000, the Commission's new Alternative Dispute Resolution (ADR) program is in full swing. The ADR office has contacted five committees against whom complaints of violating the Federal Election Campaign Act (the Act) have been filed. The office explained the program to

[1] *See 2 U.S.C. §438(b).*

them and offered them the option of having their cases considered for processing in the ADR program.

The ADR program aims to resolve complaints and Title 2 audits for cause[1] through direct and, when necessary, mediated negotiations.

When a complaint or an internal referral is filed with the Commission, the Office of General Counsel (OGC) provides the respondent with information about the ADR option and makes an initial determination as to whether the case is appropriate for the ADR program. OGC—or FEC Commissioners—refer cases to the ADR office, which operates under the direction of the Staff Director. Cases are referred to the ADR office prior to the Commission's finding "Reason to Believe" that the respondent violated the law. The ADR office evaluates each case to decide whether it meets the requirements for the program. In order to have a case considered for treatment within the ADR program, respondents must:

- Express a willingness to engage in the ADR process;
- Agree to set aside the statute of limitations while the complaint is pending in the ADR office; and
- Agree to participate in bilateral negotiations and, if necessary, mediation.

Once the Commission approves a case for ADR processing, the ADR office notifies the respondent and forwards proposed dates and times for engaging in bilateral negotiations and/or mediation.

Bilateral Negotiations

The bilateral negotiation phase involves direct negotiations between the respondent and a representative from the ADR office. Negotiations aim to resolve the complaint or referral in a way that is both satisfying to the respondent and in compliance with the Act. While compliance with the Act is stressed in the negotiations, the negotiated settlement may not always include an admission of guilt on the part of the respondent.

Mediation

If a settlement is not reached in bilateral negotiations, the case proceeds to mediation. Respondents select a mediator from a pool of 15 mediators from across the country who are uniquely qualified to mediate within this program because they have received a thorough orientation on the Act and the Commission.

The mediator meets with the parties both jointly and separately as needed. In accordance with Section 574 of the ADR Act and 2 U.S.C. §437g (a) (4) (B) and (a) (12) (A), information disclosed in mediation remains strictly confidential. Information discussed in closed "caucus" meetings between the mediator and a single party cannot be shared with the other party unless that party has given the mediator express permission to do so. If no settlement is reached, the records are purged and the case is referred back to OGC for normal processing. At this point, the statute of limitations begins again. If a settlement is reached, only the parties' summaries of their case are placed on the public record.

Settlement

Settlements reached, either through negotiations or mediation, will be sent by the ADR office to the Commissioners for their approval. An approved settlement is a matter of public record, which states that the settlement was negotiated or mediated and that it cannot serve as a precedent for the resolution of future cases. Complaints and referrals will be processed, on average, within five months following their receipt by the ADR office.❖

PACronyms, Other PAC Publications Available

The Commission annually publishes *PACronyms*, an alphabetical listing of acronyms, abbreviations and common names of political action committees (PACs).

For each PAC listed, the index provides the full name of the PAC, its city, state, FEC identification number and, if not identifiable from the full name, its connected, sponsoring or affiliated organization.

The index is helpful in identifying PACs that are not readily identified in their reports and statements on file with the FEC.

To order a free copy of *PACronyms*, call the FEC's Disclosure Division at 800/424-9530 (press 3) or 202/694-1120. *PACronyms* also is available on diskette for $1 and can be accessed free under the "Using FEC Services" icon at the FEC's web site—http://www.fec.gov. Other PAC indexes, described below, may be ordered from the Disclosure Division. Prepayment is required.

- An alphabetical list of all registered PACs showing each PAC's identification number, address, treasurer and connected organization ($13.25).
- A list of registered PACs arranged by state providing the same information as above ($13.25).
- An alphabetical list of organizations sponsoring PACs showing the PAC's name and identification number ($7.50).

The Disclosure Division can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St., N.W.

Public Funding

Hagelin-Goldhaber Denied Public Funding

On September 12, 2000, the Commission made an initial determination to deny John Hagelin and Nat Goldhaber's request for public funding as the Presidential and Vice Presidential nominees of the Reform Party. The Commission found that Hagelin-Goldhaber did not have ballot access as the Reform Party ticket in enough states to qualify for public funds under the Presidential Election Campaign Fund Act (the Fund Act).

The Reform Party qualifies as a "minor party" under the Fund Act because its nominee received more than 5 percent, but less than 25 percent, of the total number of popular votes received by all Presidential candidates in the last general election. 26 U.S.C. §9002(7). As a result, its Presidential nominees are eligible for a portion of the public funds allotted to major party candidates. However, in order to receive these funds, the minor party nominees must also meet a series of additional requirements, one of which is that the candidates qualify for ballot access as their party's nominees in at least ten states. 11 CFR 9002.2(a)(2).

Although Hagelin-Goldhaber submitted documentation showing that they had ballot access in at least ten states, the Commission found that they had qualified to appear as the Reform Party's candidates in only three states. As a result, the Commission made an initial determination that Hagelin-Goldhaber did not meet the eligibility requirements necessary to receive public funds.◆

Matching Funds for 2000 Presidential Candidates: September Certification

Candidate	Certification September 2000	Cumulative Certifications
Gary L. Bauer (R) [1]	$35, 106.01	$4,860,166.94
Bill Bradley (D) [2]	$0.00	$12,462,047.69
Patrick J. Buchanan (Reform) [3]	$202,103.93	$4,326,522.44
Al Gore (D) [4]	$0.00	$15,456,083.75
John Hagelin (Natural Law) [5]	$76,677.00	$650,347.06
Alan L. Keyes (R) [6]	$226,214.69	$4,247,219.60
Lyndon H. LaRouche, Jr. (D) [7]	$90,012.65	$1,375.129.60
John S. McCain (R) [8]	$0.00	$14,475,333.10
Ralph Nader (G) [9]	$59,156.70	$723,307.65
Dan Quayle(R) [10]	$0.00	$2,087,749.46

[1] Gary L. Bauer publicly withdrew from the race on February 4, 2000.

[2] Bill Bradley publicly withdrew from the race on March 9, 2000.

[3] Patrick J. Buchanan became ineligible for matching funds on August 11, 2000.

[4] Al Gore became ineligible for matching funds on August 16, 2000.

[5] John Hagelin became ineligible for matching funds on August 31, 2000.

[6] Alan L. Keyes became ineligible for matching funds on April 20, 2000.

[7] Lyndon H. LaRouche, Jr., became ineligible for matching funds on August 16, 2000.

[8] John S. McCain publicly withdrew from the race on March 9, 2000.

[9] Ralph Nader became ineligible for matching funds on August 17, 2000.

[10] Dan Quayle publicly withdrew from the race on September 27, 1999 .

September Matching Fund Payments

On September 29, 2000, the Commission certified $689,270.98 in matching funds to six Presidential candidates. The U.S. Treasury Department made the payments the first day of September.

With these latest certifications, the FEC has now declared ten candidates eligible to receive a total of $60,663,907.69 in federal matching funds for the 2000 election. The above chart lists the most recent certifications and cumulative certifications (and payments) for each candidate. ◆

Statistics

Fundraising and Contributions Increase for Congressional Campaigns, Parties and PACs

The Commission has compiled summaries of the financial disclosure reports of Congressional campaign committees, Democratic and Republican party committees and political action committees (PACs) for the period between January 1, 1999, and June 30, 2000. The summaries show an increase in fundraising for, and contributions to, federal candidates during the first 18 months of the 2000 election cycle as compared with the same period in the prior election cycle.

Congressional Campaign Committees

Congressional candidates raised a record $652.7 million between January 1, 1999, and June 30, 2000, representing a 35 percent increase over the same period of the 1998 election cycle. House candidates raised $393 million (up 34 percent over the same period in 1997-98) and Senate candidates raised $259.7 million (up 36 percent over the same period in the previous election cycle).

Democratic and Republican Party Committees

Both Republican and Democratic party committees showed increased fundraising during the first 18 months of the 2000 cycle, compared with fundraising from the same period in the 1998 election cycle. The federal accounts of Republican party committees raised $245.7 million, spent $193 million and had cash-on-hand of $65.3 million. Democratic committees raised $143.6 million, spent $105.5 million and ended the period with cash-on-

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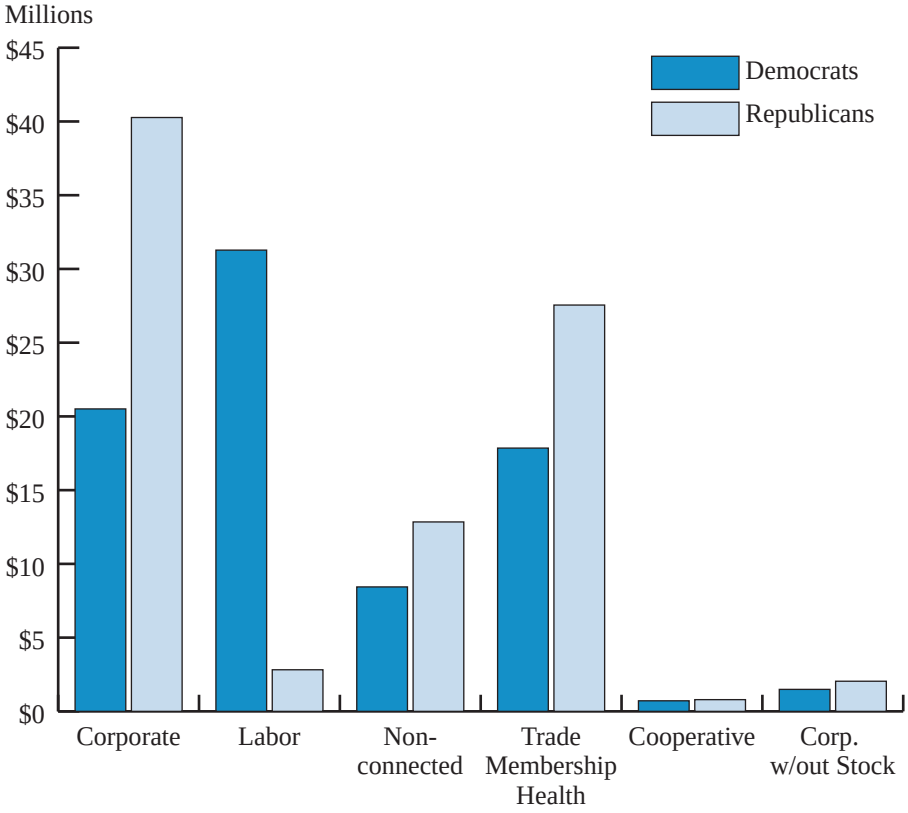
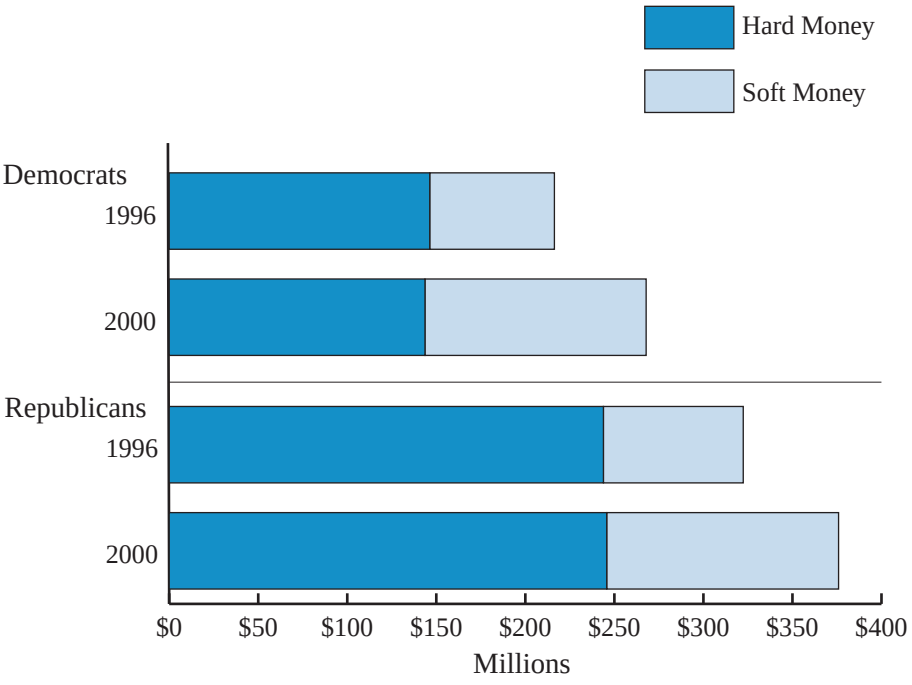
PAC Contributions: First 18 Months of 2000 Election Cycle



National Party Committee Receipts: First 18 Months of 1996 and 2000 Election Cycles



Statistics

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hand of $40.4 million. The Republican totals reflect a gain of 27 percent and the Democratic totals a gain of 33 percent, compared with the same period in the last election cycle.

Record amounts of nonfederal funds—"soft money"—were also raised during this period. In soft money, the Democrats raised $124.2 million while the Republicans raised $130.2 million—a 134 percent and an 81 percent increase, respectively, since this period in the last election cycle.

Political Action Committees

PACs contributed $167 million to federal candidates between January 1, 1999, and June 30, 2000, representing a 24 percent increase over the same 18-month period in the prior election cycle. An analysis of 4,393 PACs showed total receipts of $430.6 million and disbursements of $357.7 million for the first eighteen months of the 2000 election cycle, representing a 20 percent increase over the receipts from the same period in the last election cycle. Cash-on-hand was $212.2 million.

PACs contributed $133.4 million to incumbent candidates, $14.3 million to challengers and $19.3 million to candidates for open seats. During this period PACs contributed roughly equal amounts to Democratic and Republican candidates—$80.3 million to Democratic candidates and $86.3 million to Republican candidates. Additionally, PACs reported spending $1.9 million in independent expenditures.

Additional information is available in three news releases dated September 26 and 27, 2000. The releases, which include statistical information dating back as far as six years, are available:

- On the FEC Web site at www.fec.gov;
- From the Public Records Office (800/424-9530, press 3) and the Press Office (800/424-9530, press 5); and
- By fax (call the FEC Faxline at 202/501-3413 and request documents 612 for Congressional Campaign Committee statistics, 613 for National Party Committee statistics and 614 for PAC statistics).✥

Outreach

FEC Roundtables

The Commission will host another roundtable session on December 6, 2000. See the table for more details.

FEC roundtables, limited to 12 participants per session, are conducted at the FEC's headquarters in Washington, DC.

The registration fee is $25, and participants will be accepted on a first-come, first-served basis. Please call the FEC before registering or sending money to be sure that openings remain in the session. Prepayment is required. The registration form is available at the FEC's Web site—http://www.fec.gov/pdf/rndtabl.pdf—and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call 800/424-9530 (press 1) or 202/694-1100.✥

Roundtable Schedule

Date	Subject	Intended Audience
December 6 9:30 - 11 a.m.	**New FEC Alternative Dispute Resolution Program** • Explanation and Q/A about new program for settling complaints and audit referrals • How program works • Benefits for regulated community	• Lawyers and Consultants to PACs, Campaigns and Political Parties • Committee treasurers

Public Appearances

November 3, 2000
Mackinac Center for Public Policy
Midland, Michigan
Commissioner Smith

November 9, 2000
International Foundation for Election Systems
Washington, D.C.
Vice Chairman McDonald

November 13, 2000
Center for National Security Law
Charlottesville, Virginia
Commissioner Smith

November 15, 2000
Claremont McKenna College
Washington, D.C.
Chairman Wold
Commissioner Mason

November 15-18, 2000
National Association of Business Political Action Committees
Naples, Florida
Commissioner Smith
Bob Biersack
George Smaragdis

November 19-23, 2000
Tribunal Supremo Electoral
Antigua, Guatemala
Vice Chairman McDonald

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The first number in each citation refers to the "number" (month) of the 2000 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "3:4" means that the article is in the March issue on page 4.

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