

# Record

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## Table of Contents

### Regulations

- 1 Final Rules on Payroll Deductions for Trade Association SSFs
- 4 Federal Register
- 4 Public Hearing

### Court Cases

- 1 Shays and Meehan v. FEC
- 3 New Litigation

### 6 Advisory Opinions

### Reports

- 6 California Special Election

### Statistics

- 8 Six-Month Fundraising

### Administrative Fines

- 9 Penalties Assessed

### Audits

- 10 DRIVE Audit

### Compliance

- 10 "Millionaire" Cases

### 800 Line

- 11 Updating Registration Information

### Alternative Dispute Resolution

- 12 ADR Update

### Publications

- 13 Federal Elections 2004

### Outreach

- 13 FEC Conferences
- 14 Nonconnected Committee Seminar
- 14 Roundtable

### 14 Index

## Regulations

### Final Rule on Payroll Deductions for Trade Association SSFs

On July 14, 2005, the Commission voted to revise its rules to allow corporate members of a trade association to provide incidental services, including the use of a payroll deduction or check-off system, to collect and forward voluntary employee contributions to the trade association's SSF. The rules require any member corporation that provides such incidental services, and the corporation's subsidiaries, divisions, branches and affiliates, to make the same services available to a labor organization representing employees of the corporation or the corporation's subsidiaries, divisions, branches or affiliates, at cost, upon written request of the labor organization.

### Background

Under the Federal Election Campaign Act (the Act), a trade association may solicit contributions to its SSF from a corporate member's stockholders and executive and administrative personnel and their families (the restricted class) so long as the corporation approves the solicitation ahead of time and does not

(continued on page 4)

## Court Cases

### Shays and Meehan v. FEC

On July 15, 2005, the U.S. Court of Appeals for the District of Columbia upheld the appealed portion of the U.S. District Court for the District of Columbia's September 18, 2004, decision invalidating several Commission regulations. The district court had upheld four of the regulations challenged in this case, but found that other regulations implementing provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) either were inconsistent with Congress's intent in enacting the BCRA or violated the Administrative Procedure Act's rules for promulgating regulations. The Commission subsequently appealed the district court's decision concerning five of the invalidated regulations. (See the November 2004 [Record](#), page 1.)

### Background

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

(continued on page 2)

## Court Cases

(continued from page 1)

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, the court must consider whether the agency's rules are based on a permissible reading of the statute.

In this case, the district court also found that in some instances the FEC failed to engage in a reasoned analysis when it promulgated its regulations. Under the Administrative Procedure Act (APA), regulations that are promulgated without a reasoned analysis may be found "arbitrary and capricious" and may be set aside by a reviewing court. 5 U.S.C. §706(2)(A).

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## Appeals Court Decision

The appeals court affirmed the district court's decision to invalidate each of the regulations addressed in the Commission's appeal, as discussed below.<sup>1</sup>

*Coordinated communications.* Under the Commission's regulations, a communication is considered a coordinated communication if it meets a three-pronged test regarding who paid for the communication, the communication's content and whether the payer's interaction with a candidate or party satisfies specified conduct standards. At issue here was the element of the conduct prong stating that a communication made within 120 days of a primary or general election and directed to the relevant electorate may be a coordinated communication if it refers to a political party or clearly identified federal candidate. Before the 120-day mark, the rule covers only communications that republish official campaign materials or contain express advocacy.

The plaintiffs argued in their complaint that the 120-day window offers a safe harbor for communications made outside of this window, which is not authorized by the statute. The district court found that, while Congress had not spoken directly to content restrictions, the regulation undercut the Federal Election Campaign Act's statutory purpose, and, thus, did not pass the second step of *Chevron* review.

The appeals court disagreed in part with the district court and found that a standard based on content, time and place could be permissible. Nevertheless, the appeals court affirmed the district court's decision to invalidate the regulation, finding that the rule was arbitrary and capricious under the APA. The appeals court

found that the Commission offered no persuasive justification when it promulgated the rule for why 120 days is an appropriate time period for the content standard.

*"Solicit" and "direct."* During its rulemaking process, the Commission defined "solicit" and "direct" to mean "ask." The district court found that these regulations failed the second step of *Chevron* analysis because interpreting these terms to cover only direct requests created a potential for abuse that would defy Congress's purpose in the BCRA.

However, the appeals court found that these regulations failed the first stage of *Chevron* review. According to the appeals court, Congress "has clearly spoken to this issue and enacted a prohibition broader than the one the FEC adopted. In context, BCRA's terms 'solicit' and 'direct' cover indirect requests." The appeals court therefore upheld the district court's invalidating the regulations.

*Electioneering Communications.* An electioneering communication is defined in the BCRA as "any broadcast, cable or satellite communication" that (1) refers to a clearly identified federal candidate, (2) "is made within" 60 days before a general or 30 days before a primary election and (3) is "targeted to the relevant electorate." 2 U.S.C. §434(f)(3). The appeals court agreed with the district court's finding that the FEC violated the intent of Congress by adding a provision in its regulations that a communication must be made "for a fee" in order to be considered an electioneering communication—thus exempting unpaid broadcasts such as public service announcements. According to the court, the Commission added a fourth qualification to the definition of electioneering communication that was not authorized by the statute. As a result, the regulation failed

<sup>1</sup> As a threshold issue, the appeals court found that the plaintiffs, Christopher Shays and Martin Meehan, have standing to bring this suit and that the issues at hand are ripe for judicial decision.

the first step of *Chevron* review.<sup>2</sup> The appeals court affirmed the district court's invalidation of the regulation.

**Salary Allocation.** Federal election activity (FEA) is a new concept under the BCRA that identifies activities that state and local party organizations must finance with federal funds. One category of FEA includes the salaries of state and local party employees devoting more than 25 percent of their paid time in any month to activities related to federal elections or FEA. Once an employee's work in a month crosses this 25 percent threshold, the employee's entire salary for that month must be paid exclusively with federally permissible funds. The plaintiffs took issue with the fact that the regulations eliminated any allocation requirement for salaries of employees devoting 25 percent or less of their time to federal activities, thus freeing state and local party committees to pay those salaries entirely with nonfederal funds.

The district court invalidated this regulation, finding that it did not pass the second step of *Chevron* review. The district court found that, because state party committees could avoid paying any salaries with federal funds by dividing the federal election workload among multiple employees working 25 percent of their time on federal activities, the exclusive use of nonfederal funds to pay for salaries and wages compromised the purposes of the BCRA.

The appeals court, in contrast, found that the regulation was arbitrary and capricious under APA requirements because the Commission did not provide a reasoned justification for not requiring allocation of these salaries. The appeals court

therefore affirmed the district court's invalidation of the regulation.

**Levin Funds.** The final district court finding appealed by the Commission involved the "Levin Amendment," which allows state and local party committees to finance certain types of FEA (generic party campaigning, get-out-the-vote activity and voter identification and registration drives) with monies called Levin funds that are subject to fewer controls than federal funds. Generally, party committees must allocate these FEA costs between Levin funds and federal funds, or use entirely federal funds. A regulatory exception, however, provides that committees need not allocate if they spend no more than \$5,000 total on allocable expenditures, an amount the Commission considers to be *de minimis*. The appeals court found that the Commission presented no justification for this exemption. Accordingly, the district court's invalidation was affirmed because the regulations fell short of APA standards.

U.S. Court of Appeals for the District of Columbia Circuit, No. 04-5352.

—Meredith Trimble

## New Litigation

### FEC v. Odzer

On June 27, 2005, the Commission asked the U.S. District Court for the Eastern District of New York to find that Tzvi Odzer knowingly and willfully made excessive contributions and contributions in the name of another to Friends of Weiner (Weiner Committee) in violation of the Federal Election Campaign Act (the Act). 2 U.S.C. §§441a(a)(1)(A) and 441f.

**Background.** An FEC audit of the Weiner Committee found that in December 1999, Mr. Odzer gave the committee a \$1,000 check for the 2000 primary and in May 2000 gave an additional \$1,000 check for the general election. At the time, these

contributions represented the maximum amount an individual could give to a federal candidate's campaign.<sup>1</sup> In June 2000, Odzer wrote three \$2,000 checks, totaling \$6,000, to the Weiner Committee drawn from his personal checking account. Each check was signed "Tzvi Odzer," but bore the name of one of Mr. Odzer's children in the "for" line. Upon receipt of the checks, the Weiner Committee recorded the contributions as having been made by Odzer's children.

On June 16, 2004, the Commission entered into a conciliation agreement with the Weiner Committee, which paid a civil penalty for accepting excessive contributions and refunded the \$6,000 to Odzer. During 2004 and 2005, the Commission notified Mr. Odzer that it had found reason to believe and then probable cause to believe that he had knowingly and willfully violated the law by making excessive personal contributions in the names of his children. Mr. Odzer failed to file a written response and the Commission was unable to secure an acceptable conciliation agreement with him, prompting this suit.

**Request for Relief.** The Commission requests that the court declare that Mr. Odzer knowingly and willfully violated the Act by making excessive contributions and by making contributions in the names of his three children. Additionally, the Commission asks the court to permanently enjoin Mr. Odzer from violating the Act and assess an appropriate civil penalty for each violation he is found to have committed.

U.S. District Court for the Eastern District of New York, 05-CV-3101.

—Meredith Trimble

<sup>2</sup> The district court also invalidated other parts of the electioneering communications regulations. However, the "for a fee" provision was the only aspect of the district court's ruling on this regulation that the Commission appealed.

<sup>1</sup> The Bipartisan Campaign Reform Act of 2002 subsequently raised the individual contribution limit and indexed it for inflation. The individual limit for the 2005-06 election cycle is \$2,100 per candidate, per election.



## Regulations

(continued from page 1)

approve a solicitation by any other trade association for the same calendar year. 2 U.S.C. §441b(b)(4)(D); 11 CFR 114.8(c). Once these conditions are met, the regulations do not limit the methods that a trade association may use to solicit and facilitate the making of voluntary contributions to its SSF. Before this rulemaking, however, the regulations did limit the methods that a consenting member corporation could use to collect and forward contributions to a trade association's SSF. Specifically, 11 CFR 114.8(e)(3) stated that a "member corporation may not use a payroll deduction or check-off system for executive or administrative personnel contributing to the separate segregated fund of the trade association."

In 2003, the Commission received a rulemaking petition from America's Community Bankers and its SSF, the America's Community Bankers Community Campaign Committee, asking the Commission to change its rules to allow a corporate member of a trade association to make payroll deductions and check-off systems available to the corporation's restricted class employees for their voluntary contributions to the

trade association's SSF. The Commission issued a Notice of Availability for the petition, and received 30 comments, all of which supported the proposed change.

In December 2004, the Commission published a Notice of Proposed Rulemaking (NPRM) that set forth draft rules on the subject. See the February 2005 *Record*, page 2. The Commission held a public hearing on the proposed rules on May 17, 2005. The written comments and the transcripts of the hearing are available at [http://www.fec.gov/law/law\\_rulemakings.shtml](http://www.fec.gov/law/law_rulemakings.shtml).

### Final Rules

After considering public comments and testimony, the Commission issued final rules. The final rules:

- Remove the prohibition on corporate use of a payroll deduction or check-off system for contributions by executive and administrative class employees to the SSF of a trade association of which the corporation is a member (11 CFR 114.8(e)(3));
- Authorize a member corporation to provide incidental services to collect and transmit voluntary contributions from its solicitable class employees to a trade association's SSF, including a payroll deduction or check-off system, upon written request of the trade association (new 11 CFR 114.8(e)(4));
- Require any corporation that provides these incidental services, and its subsidiaries, divisions, branches and affiliates, to make the same services available upon written request to a labor organization representing members who work for the corporation or its subsidiaries, divisions, branches or affiliates, for contributions to the labor organization's SSF, at a cost not to exceed any actual expenses incurred (new 11 CFR 114.8(e)(4)); and
- Clarify that the provision of incidental services pursuant to new 11 CFR 114.8(e)(4) is not a prohibited

form of corporate facilitation (new 11 CFR 114.2(f)(5)).

In making these changes to the rules, the Commission focused on the special relationship that exists between a trade association and its member corporations. The Commission also recognized that recent advisory opinions had given corporate members of trade associations some latitude in collecting and forwarding contributions to their trade associations' SSFs,<sup>1</sup> other than through a payroll deduction or check-off system, and that technological and societal changes support a change in the treatment of payroll deductions when used by member corporations.

The final rule was published in the July 21, 2005, *Federal Register* (70 FR 41939) and is available on the FEC 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.

—Meredith Trimble

### Public Hearing on Proposed Rules

On August 4, 2005, the Commission held public hearings to receive testimony on proposed rules regarding the definition of "federal election activity" (FEA) and state, district and local party committee (state committee) payments for the salaries and wages of employees who spend 25 percent or less of their compensated time during a month on activities in connection with a federal election or FEA. The proposed rules respond to the district court decision in *Shays v. FEC*, which invalidated several Commission regulations that were found to be inconsistent with the intent of Congress or improperly

<sup>1</sup> See AO 2003-22, in which the Commission interpreted the regulations to permit a corporate member of a trade association to collect voluntary contributions in the form of paper checks from its solicitable class, and to forward those to the trade association's SSF.

### 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 2005-18

Payroll Deductions by Member Corporations for Contributions to a Trade Association's Separate Segregated Fund, Final Rules (70 FR 41939, July 21, 2005)

promulgated.<sup>1</sup> Of the six individuals who testified, three generally supported the Commission's proposed rules as proper interpretations of the statute, while the others expressed concerns over the proposals' practical implications.

### Definition of FEA

*Background.* As part of its decision in *Shays*, the district court invalidated portions of the definition of FEA that describe voter registration activity, get-out-the-vote activity (GOTV) and voter identification. With regard to voter registration and GOTV, the court found the definitions were improperly promulgated because the initial NPRM did not indicate that the definitions would be limited to activities that "assist" individuals in registering or voting. The court also invalidated the portion of the current definition of GOTV that excludes communications by associations or similar groups of state or local candidates and/or officeholders that refer only to state or local candidates. With regard to the current definition of voter identification, the court found that the exclusion of voter list acquisition and of the activities of groups of state and local candidates/officeholders runs contrary to Congress's expressed intent. The Commission subsequently proposed rules to conform to the court's ruling.

*Hearing testimony.* Larry Noble, representing the Center for Responsive Politics, and Paul Ryan, representing the Campaign Legal Center, testified in favor of proposed rules that, among other things, expand the definitions of voter registration and GOTV to include "efforts to encourage" individuals to register and to vote and eliminate an exemption for associations of state and local candi-

dates. They argued that such changes were required by the statute and that, while local party committees could be adversely affected by the rules, possible harm to local committees should not outweigh the statute's requirements.

Mr. Ryan further argued that making such changes would not overwhelm the Commission from an administrative standpoint because any additional activities that would be captured by the proposed definitions of FEA are already regulated by other provisions of the campaign finance law that require allocation of certain federal/nonfederal activities. Donald Simon, from Democracy 21, agreed. He additionally suggested that unless the rules were changed to include "efforts to encourage" voter registration or GOTV, there could be no guarantee that a court would find the rules consistent with Congressional intent.

Joseph Sandler, of Sandler, Reiff & Young P.C., argued, to the contrary, that the Commission should retain its current voter registration activity rules, suggesting that more encompassing rules might negatively affect voter registration levels. Mark Brewer, representing the Association of State Democratic Chairs, agreed and argued that many of the proposed changes to the regulations might make it harder, and thus less likely, for state and local party committees to undertake grassroots political activity. For example, Mr. Brewer noted that, under the proposed rules, a local party committee's placement of voter registration forms in the reception area of its office, or even an employee's answers to a caller's question about voter registration procedures, might be considered FEA. According to Mr. Brewer, many local party committees chose not to undertake any activities that could be considered FEA during the last election because they found the federal campaign finance laws too complex.

Brian Svoboda, representing the Democratic Legislative Campaign Committee, encouraged the Commission to retain the FEA exemption for communications by associations or similar groups of state or local candidates and/or officeholders that refer only to state or local candidates. He discussed how state-level legislative caucuses are fundamentally different from other groups regulated by the FEC, and noted that recent Congressional action regarding legislation currently under Congressional consideration suggests that Congress recognizes this distinction.

With regard to the current definition voter identification, Mr. Simon and Mr. Ryan suggested that, if a mailing list is used in connection with a federal election, then the costs of its purchase or maintenance should be considered FEA even if it was purchased or enhanced outside of the FEA time period. Others, however, drew a distinction between the purchase or enhancement of a list and regular list maintenance, suggesting that under this proposed rule all list activity would eventually become FEA.

### Salary Payments.

*Background.* Under the current regulation, state committees may use any funds that comply with the requirements of state law to pay the salaries and wages of employees who spend 25 percent or less of their compensated time in a month on activity in connection with a federal election or FEA. However, the district court in *Shays* ruled that this regulation compromised the Congress's purpose of stemming the flow of nonfederal money into activities that impact federal elections by permitting state committees to divide their federal-related workload among multiple employees. The court of appeals in *Shays* found that the Commission had not adequately

<sup>1</sup> On July 15, 2005, the U.S. Court of Appeals for the District of Columbia upheld the appealed portion of the district court's decision. See the related article on page 1.

(continued on page 6)

## Regulations

(continued from page 5)

justified the regulation and for that reason upheld the district court's invalidation of the regulation.

*Hearing testimony.* Mr. Simon and Mr. Ryan supported the Commission's proposal to require state and local party committees to allocate salary payments for employees who spend 25 percent or less of their compensated time on federal activities. Mr. Simon stressed the possibility for circumvention of the law if party committees were to divide federal activities among several employees working on such activities for only 25 percent of their time each month.

Mr. Brewer, on the other hand, argued that state committees lack the resources to allocate their workload among employees in this way. He suggested that the Commission retain the current rule with a new explanation and justification. Barring that, he suggested allowing salaries for employees who spend 25 percent or less of their time on federal activities to be allocated as an administrative expense. Mr. Sandler agreed and additionally suggested that the Commission allow for payroll accounts that would function similarly to allocation accounts for the payment of salaries. He argued that such accounts would aid committees that might not know until the end of each month what type of funds could be used to pay each employee's salary.

### Extended Comment Period

At the request of one of the witnesses, the Commission has extended the comment period for this rulemaking until mid-September. Additional information is available on the FEC web site at [http://www.fec.gov/law/law\\_rulemakings.shtml](http://www.fec.gov/law/law_rulemakings.shtml), including the proposed rules and instructions for submitting comments, written comments and a transcript of this hearing. See also the June 2005 *Record*, pages 1 and 3.

—Amy Kort

## Advisory Opinions

### Advisory Opinion Requests

#### AOR 2005-09

Use of campaign funds for travel expenses of Senator's minor children when Senator and spouse travel between home district and Washington, D.C., to participate in officially-connected events (Friends of Chris Dodd 2004, June 27, 2005)

#### AOR 2005-10

Federal officeholders' and candidates' ability to raise funds for independent committees that solely support or oppose ballot initiatives in conjunction with a special election in which no federal candidates appear on the ballot (U.S. Representative Howard L. Berman and U.S. Representative John T. Doolittle, June 24, 2005)

#### AOR 2005-11

Candidate's use of campaign funds for legal expenses stemming from grand jury investigation of his conduct as federal candidate and officeholder (Friends of "Duke" Cunningham, August 8, 2005)

#### AOR 2005-12

Federal officeholder's solicitation and spending of nonfederal funds for exploratory committee for nonfederal office (Representative Chaka Fattah, August 10, 2005)

## Reports

### California Special Election Reporting

The Special General Election to fill the U.S. House seat in California's 48th Congressional District, vacated by Representative Christopher Cox, will be held on October 4, 2005. Under California law, a

majority winner in a special election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on December 6, 2005, among the top vote-getters of each qualified political party, including qualified independent candidates.

Candidate committees involved in one or both of these elections must follow the reporting schedule on page 7. Please note that the reporting period for the Post-General election report spans two election cycles. For this report only, authorized committees must use the Post-Election Detailed Summary Page (FEC Form 3, pages 5-8) rather than the normal detailed summary page. These committees must also file the Form 3Z-1 with their Year-End report.

PACs and party committees that file on a semiannual schedule and participate in one or both of these elections must follow the same schedule, except that they need not file the October Quarterly report. These committees must instead file the next scheduled report following the Pre-General (the Post-General, Pre-Runoff or Year-End report, as appropriate) covering a reporting period that begins on September 15 and ends on the "close of books" date for that report. PACs and party committees that file monthly should continue to file according to their regular filing schedule.

### Filing Methods

Reports filed electronically must be submitted by midnight on the filing date. A committee that is required to file electronically but instead files on paper reporting forms will be considered a nonfiler and may be subject to enforcement action, including administrative fines.

Reports filed on paper and sent by registered or certified mail must be postmarked by the mailing date. Committees should keep the mailing receipt with its postmark as proof of filing. If using overnight mail, the delivery service must receive the report by the mailing date. "Overnight



mail” includes Priority or Express Mail having a delivery confirmation, or an overnight delivery service with an on-line tracking system. Reports sent by other means must be received by the Commission’s close of business on the filing date.

#### 48-Hour Notices of Contributions

Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more between September 15 and October 1, for the Special General Election, and between November 17 and December 3, for the Special Runoff Election, if that election is held.

#### 24- and 48 Hour Notices of Independent Expenditures

Political committees and other persons must file 24-hour notices of independent expenditures that aggregate at or above \$1,000 between September 15 and October 2, for the Special General, and between November 17 and December 4, for the Special Runoff, if that election is held. This requirement is in addition to that of filing 48-hour notices of independent expenditures that aggregate \$10,000 or more at other times during a calendar year.

#### Electioneering Communications

The 60-day electioneering communications<sup>1</sup> period in connection with the Special General Election runs from August 5 through October 4, 2005, and the electioneering communications period for the Special Runoff Election, if that election is held, runs from October 7 through December 6, 2005.

—Amy Kort

<sup>1</sup> Individuals and other groups not registered with the FEC who make electioneering communications costing more than \$10,000 in the aggregate in the calendar year must disclose this activity to the Commission within 24 hours of the distribution of the communication. See 11 CFR 100.29 and 104.20. For more information, see the December 2003 Record, page 5.

## California Special Election

### If Only the Special General Is Held, Committees Involved Must File:

	Close of Books	Reg./Cert./Overnight Mailing Date	Filing Date
Pre-General	September 14	September 19	September 22
October Quarterly	September 30	October 15	October 15 <sup>1</sup>
Post-General	October 24	November 3	November 3
Year-End	December 31	January 31, 2006	January 31, 2006

### If Two Elections Are Held Committees Involved in Both Elections Must File:

	Close of Books	Reg./Cert./Overnight Mailing Date	Filing Date
Pre-General	September 14	September 19	September 22
October Quarterly	September 30	October 15	October 15 <sup>1</sup>
Pre-Runoff	November 16	November 21	November 24 <sup>2</sup>
Post-Runoff	December 26	January 5, 2006	January 5, 2006
Year-End	December 31	January 31, 2006	January 31, 2006

### If Two Elections are Held, Committees Involved in Only the Special General Must File:

	Close of Books	Reg./Cert./Overnight Mailing Date	Filing Date
Pre-General	September 14	September 19	September 22
October Quarterly	September 30	October 15	October 15 <sup>1</sup>

<sup>1</sup> Note that the October Quarterly filing deadline falls on a weekend. Filing deadlines are not extended when they fall on weekends.

<sup>2</sup> Note that the Pre-Runoff filing deadline falls on a federal holiday. Filing deadlines are not extended when they fall on holidays.

# Statistics

## 2005 Six-Month Fundraising Summary

Fundraising by party committees in the first half of the year increased over fundraising during recent comparable periods. Fundraising for Congressional campaigns is also growing as the 2006 races get underway.

### Party Committees

During the first six months of 2005, federally registered Republican party committees raised \$142.7 million and spent \$98.1 million, while the Democratic committees raised \$86.3 million and spent \$60.2 million. This is a two percent increase in receipts for Republicans and a 53 percent increase for Democrats when compared to the same period in 2003.

Contributions from individuals constituted the bulk of the receipts for both parties. Democrats reported \$63.6 million from individuals and \$11.4 million from PACs, while Republicans reported \$125.9 million

from individuals and \$11.7 million from PACs.

At the end of the reporting period, Democrats had \$32.7 million in cash-on-hand and debts of \$4.6 million. Republicans showed a cash-on-hand balance of \$72.5 million and debts of about \$800,000.

### Congressional Campaigns

Candidates seeking election to the 33 Senate seats up in 2006 raised \$84.8 million and spent \$20.2 million in the first six months of 2005. These Senate candidates ended the period with \$103.1 million cash-on-hand and debts of \$6.9 million, some of which remains from previous elections.

Campaign finance reports filed by House candidates during the same six-month period show 428 House incumbents reporting receipts of \$116.5 million, a 25.5 percent increase from the comparable period in 2003. Republican incumbents reported median receipts of \$245,137 compared to \$188,745 for Democrats. The charts below detail both the total median receipts and the median receipts from individuals raised by incumbent House candidates

through June 30 of the nonelection year, dating back to 2005.

Non-incumbents raised a total of \$14.3 million for House races during the first six months of 2005, with 79 Democrats raising \$6.8 million and 60 Republicans raising \$7.5 million.

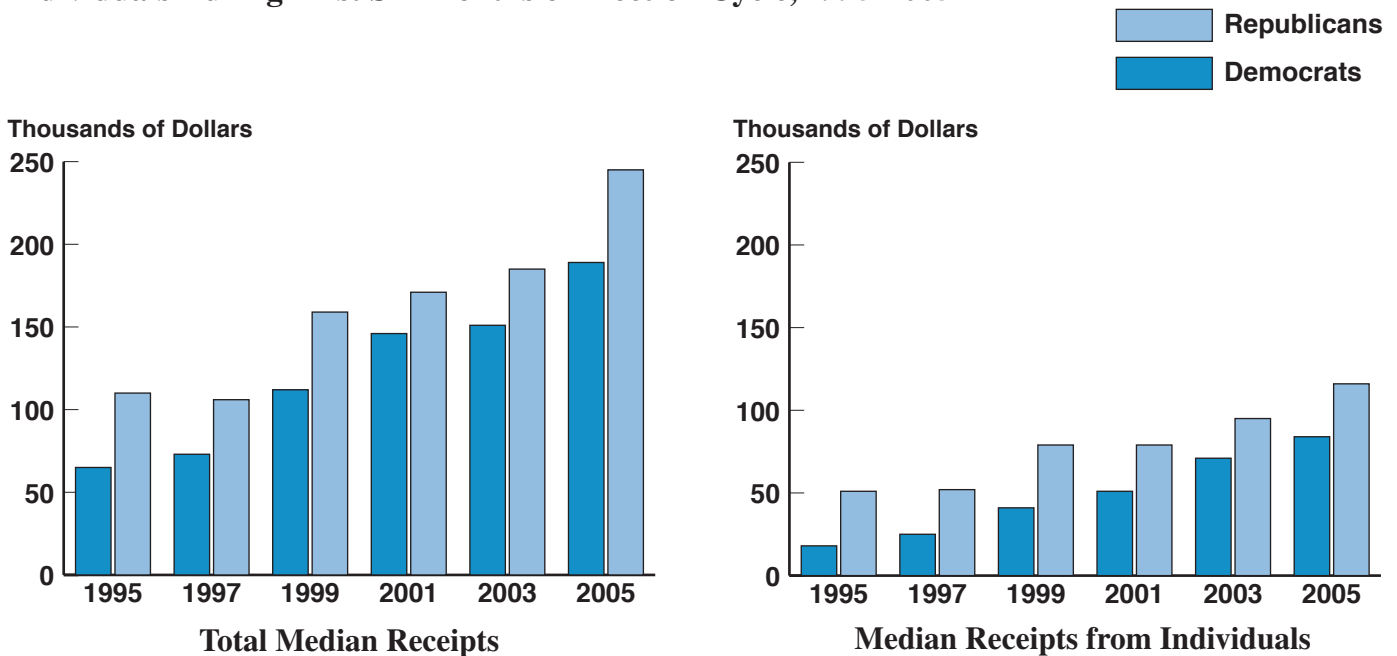
### Additional Information

More information on campaign finance statistics for the first six months of 2005 is available in press releases dated July 21, 2005, (party committees) and July 27, 2005, (Congressional). The releases are available:

- On the FEC web site at <http://www.fec.gov/press/press2005/20050721party/20050721party.html> and <http://www.fec.gov/press/press2005/20050727candidate/20050727candidate.html>;
- From the Public Disclosure Office (800/424-9530, press 2) and the Press Office (800/424-9530, press 1); and
- By fax through the FEC Faxline (202/501-3413).

—Meredith Trimble

**Incumbent House Candidates' Total Median Receipts and Median Receipts from Individuals During First Six Months of Election Cycle, 1995-2005**





## Administrative Fines

### Committees Fined for Nonfiled and Late Reports

The Commission recently publicized its final action on 33 new Administrative Fine cases, bringing the total number of cases released to the public to 1,105, with \$1,486,182 in fines collected by the FEC during the four years that the program has been in place.

Civil money penalties for late reports are determined by the number of days the report was late, the amount of financial activity involved and any prior penalties for violations under the administrative fines regulations. Penalties for nonfiled reports—and for reports filed so late as to be considered nonfiled—are also determined by the financial activity for the reporting period and any prior violations. Election sensitive reports, which include reports and notices filed prior to an election (i.e., 12-day pre-election, October quarterly and October monthly reports), receive higher penalties. Penalties for 48-hour notices that are filed late or not at all are determined by the amount of the contribution(s) not timely reported and any prior violations.

The committee and the treasurer are assessed civil money penalties when the Commission makes its final determination. Unpaid civil penalties are referred to the Department of the Treasury for collection.

The committees listed in the charts below at left, along with their treasurers, were assessed civil money penalties under the administrative fines regulations.

Closed Administrative Fine case files are available through the FEC Press Office and Public Records Office at 800/424-9530.

—Amy Kort

### Committees Fined and Penalties Assessed

1. Americans for Democratic Action Inc. PAC	\$600
2. Arent Fox PLLC PAC (AFPAC)	\$600
3. AXA Equitable Life Insurance Company PAC (AXA Equitable PAC)	\$3,000
4. Blue Shield of California PAC	\$600
5. Brian Higgins for Congress	\$4,847
6. Calumet PAC	\$500
7. Campbell for Senate	\$60 <sup>1</sup>
8. Charlie Comisionado 2004, Inc.	\$250 <sup>1</sup>
9. Citizens of Cochran	_____ <sup>2</sup>
10. Draft Clark 2004 for President Committee April Quarterly 2004	\$0 <sup>1</sup>
11. Draft Clark 2004 for President Committee July Quarterly 2004	\$0 <sup>1</sup>
12. Draft Clark 2004 for President Committee October Quarterly 2004	\$0 <sup>1</sup>
13. Experian PAC	\$600
14. First Citizens Bancshares Inc. PAC (First Citizens Bancshares PAC)	\$500
15. Fleming for Congress 2004	\$900 <sup>3</sup>
16. Friends of Richard Hoffman	\$120
17. Hostetler for Congress	\$250 <sup>3</sup>
18. IUOE Local 542 Operating Engineers Political Action Fund	\$900
19. Livestock Marketing Association PAC (LMA-PAC)	\$500
20. Lott for Congress Committee	\$600
21. Mark McBride for the U.S. Senate	_____ <sup>2</sup>
22. The New Democrat Network-PAC (NDN PAC)	\$220
23. Newmont Mining Corporation PAC (NEWPAC)	\$500
24. Paul Van Dam for U.S. Senate	\$170
25. Randy Camacho for Congress	\$900
26. Sparta Inc. Employees' PAC	\$500
27. Sugar Cane Growers Cooperative of Florida (PAC)	\$500
28. Syngenta Corporation PAC (Syngenta PAC)	\$120
29. Tashenberg for Congress	\$0 <sup>1</sup>
30. Welch for Wisconsin	\$3,200
31. Women Working for the Future AKA The Future PAC	\$500 <sup>1</sup>
32. WV Republican State Executive Committee	\$7,500
33. United Brotherhood of Carpenters/Joiners of American New England Reg. Carpenters Legis. Emp. Cmte.	\$1,125

<sup>1</sup>This civil money penalty was reduced due to the level of activity on the report.

<sup>2</sup>The committee provided documentation to show the report was timely filed, and the Commission took no further action in this case.

<sup>3</sup>This civil money penalty has not been collected.

## Audits

### Audit of the Democratic, Republican, Independent Voter Education Political Campaign Committee

On July 5, 2005, the Commission approved the final audit report on the Democrat, Republican, Independent Voter Education Political Campaign Committee (DRIVE). The audit found that the committee:

- Received two bank loans that appear to be unsecured;
- Failed to maintain contributor payroll deduction authorizations;
- Did not deposit contributions in a timely manner; and
- Misstated financial activity.

### Apparent Prohibited Contributions—Bank Loans

A bank's loan of money to a political committee is not a contribution by the lending institution if the loan is made in the ordinary course of business. A loan is considered to be made in the ordinary course of business if it bears the usual and customary interest rate, is made on a basis which assures repayment, is evidenced by a written instrument and is subject to a due date or amortization schedule. 11 CFR 100.7(b)(11). DRIVE received two bank loans in October and November 2002 that totaled \$500,000. Neither loan was secured by collateral. The FEC's Audit staff therefore concluded that the loans were not made on a basis that assured repayment. In addition, DRIVE did not properly disclose the loans as outstanding on its 2002 Year-End report. The Audit staff recommended that DRIVE either demonstrate that the loans were secured, made in the ordinary course of business and therefore not a prohibited contribution or file amended reports disclosing each loan as unsecured. To date, DRIVE has done neither.

### Failure to Maintain Contributor Payroll Deduction Authorizations

A separate segregated fund (SSF) must maintain copies of payroll deduction authorizations for each individual who makes any contribution to the SSF via automatic payroll deduction. 11 CFR 104.14(b)(1). These authorizations, like other committee records, must be kept for a period of three years from the date of the report to which they relate. The Audit staff conducted a sample review of DRIVE's contribution deposits and concluded that payroll deduction authorization forms were not available for contributions totaling \$1,235,460. In response to the interim audit report, DRIVE implemented policy and procedural changes to ensure that such authorizations are obtained and maintained in the future. These new procedures will be subject to review by the Audit staff.

### Untimely Deposit of Contributions

Under Commission regulations, all receipts by a political committee must either be deposited or returned to the contributor within 10 days of the treasurer's receipt of the contribution. 11 CFR 103.3(a). Additionally, collecting agents that receive contributions on behalf of a committee must transmit those funds and the necessary records to the committee treasurer within a specific time period—within 10 days for contributions over \$50 and within 30 days for contributions of \$50 or less. 11 CFR 102.6 and 102.8(b).

The Audit staff's sample review of contribution transmittals from local unions and/or employers to DRIVE showed that contributions made via payroll deduction totaling \$1,914,970 were not deposited timely, and some deposits were made up to 64 days late. In response to the interim audit report, DRIVE implemented new procedures, subject to review by the Audit staff, to ensure compliance.

### Misstatement of Financial Activity

FEC reports filed by SSFs must disclose the amount of cash-on-hand at the beginning and end of the reporting period, the total amount of receipts and disbursements for the reporting period and for the calendar year and certain transactions that require itemization. 2 U.S.C. §434(b)(1)-(5). DRIVE's receipts, disbursements and ending cash on hand were misstated in 2001 and 2002. In response to the interim audit report, DRIVE filed amended reports.

The full audit report can be viewed on the FEC web site at <http://www.fec.gov/audits/2002/20050718drivepac.pdf>.

—Meredith Trimble

## Compliance

### FEC Closes First "Millionaire" Cases

On July 26, 2005, the Commission announced civil penalties totaling more than \$50,000 in the first two enforcement cases to arise from the so-called "Millionaires' Amendment." Enacted as part of the Bipartisan Campaign Reform Act of 2002 (BCRA), the Millionaires' provision increases the individual contribution limits and—in some cases—the coordinated party expenditure limits for qualified candidates whose opponent's personal spending on the campaign exceeds certain threshold amounts.

### Background

Under the Millionaires' rules, a candidate registering to run for a House seat must disclose on his/her Statement of Candidacy (FEC Form 2) the amount by which he/she expects to exceed the applicable \$350,000 personal spending threshold. 2 U.S.C. §441a-1(b)(1)(B); 11 CFR 400.20. (Note that the thresholds for Senate races are different.) Then, within 24 hours after

exceeding the threshold through a personal expenditure, the candidate (or his/her campaign committee) must notify the Commission, each opposing candidate and the national party committee of each candidate in the election by filing FEC Form 10. The opposing candidates then use that information to calculate the “opposition personal funds amount” (OPFA), which compares the overall funding of the campaigns to determine whether they qualify for increased limits.

Under the Millionaires’ rules, an expenditure of personal funds includes not only direct candidate expenditures in connection with the campaign, but also campaign loans secured by the candidate’s personal funds. In addition to including loan amounts in a potential Form 10 filing, under the Federal Election Campaign Act’s reporting requirements, political committees must report all loans on Schedule C and file a Schedule C-1 with the first report due after a new loan is obtained by either the committee or the candidate to demonstrate that the loan was obtained in accordance with normal lending practices.

### **MUR 5623**

On July 18, 2005, the Commission entered into a conciliation agreement with the Mike Crotts for Congress Committee, Inc. and Vicki Gibbs, in her official capacity as committee treasurer (Respondents). According to the agreement, Mike D. Crotts filed a Statement of Candidacy (FEC Form 2) on July 8, 2003, but failed to complete the declaration of intent to expend personal funds. Upon receiving a letter from the FEC’s Reports Analysis Division (RAD) notifying him of the omission, Mr. Crotts filed an amended form declaring his intent to spend no personal funds above the threshold. In March 2004, however, the Mike Crotts for Congress Committee, Inc. received a bank loan of \$400,000 drawn on Mr. Crotts’ personal home

equity line of credit. Although the loan amount exceeded the \$350,000 personal spending threshold, the required FEC Form 10 was filed only after further correspondence from RAD—47 days late. In addition, the campaign committee did not subsequently file the required Schedule C-1 disclosing the details of the loan.

The conciliation agreement requires the Respondents to pay a civil penalty of \$40,000 and to cease and desist from future violations of the Millionaires’ provisions and other regulations implicated in this case.

### **MUR 5488**

On July 12, 2005, the Commission entered into a conciliation agreement with Brad Smith for Congress, James Bailey in his official capacity as treasurer and Bradley Smith (Respondents). According to the agreement, Bradley Smith’s opponent, Gene DeRossett, expended \$451,000 in personal funds and subsequently filed the required Form 10. In calculating the OPFA, the Respondents used the correct formula as outlined in 11 CFR 400.10(a)(3)(ii), but they mistakenly included only net loans from the candidate to determine Mr. Smith’s own personal expenditures, rather than the gross amount of those loans. By using the lesser amount in the calculation, the Respondents erroneously believed they were eligible for increased contribution limits and, in fact, accepted \$40,500 in contributions above the normal limits.

The agreement requires the Respondents to pay a civil penalty of \$14,000 and to cease and desist from violating 2 U.S.C. §441a(f). In addition, Respondents will refund to contributors or seek reattribution for all contributions they received that exceeded the normal limits.

### **Additional Information**

For additional information on these cases, please visit the Commission’s Public Records Office or con-

sult the [Enforcement Query System](#) on the FEC’s web site and enter case number 5623 or 5488.

—Meredith Trimble

## **800 Line**

### **800 Line Updating Your Registration Information**

The material that follows answers frequently asked questions about changes or corrections to registration documents, FEC Forms 1 (Statement of Organization) and 2 (Statement of Candidacy).

#### **When must a committee report any change or correction to information disclosed in its registration documents?**

A committee must report to the Commission any change in its registration information within 10 days after the change occurs. 11 CFR 102.2(a)(2). Candidates must also remember that while they may reuse an existing campaign committee for the new election cycle, they must file a new Statement of Candidacy.

#### **What types of changes would require a committee to file an amendment?**

A committee would need to file an amendment to report, for example, an updated e-mail address, a new fax number, a new treasurer, a new assistant treasurer, a change of mailing address or a new campaign depository. While these are some of the most common examples, any erroneous information on Forms 1 or 2 must be corrected within the 10-day deadline.

#### **Why is it important to update your contact information?**

The FEC uses the contact information disclosed on Forms 1 and 2 to provide important compliance

(continued on page 12)



## 800 Line

(continued from page 11)

information to committees. This newsletter, for example, is automatically sent to all committee treasurers identified on Statements of Organization, as are report notices and other official correspondence.

In some cases, other committees may also need the information. Under the "Millionaires' Amendment," for example, campaigns must fax or e-mail certain spending information to opposing candidate to help them determine whether they qualify for increased contribution limits. Additionally, campaigns must inform national and state party committees when they can make coordinated expenditures that exceed the limitations. If your committee's disclosed fax or e-mail address is outdated, you could miss an opportunity to benefit from this provision. 11 CFR 400.20.

If these "carrots" aren't reason enough for you to make sure that your information is current and complete, there is a "stick." Failure to provide required information can result in an enforcement action.

### What if a committee is no longer active?

Even if a committee is no longer active, it still is required to keep its registration information current, and must continue to file regular financial reports with the FEC until the committee has been terminated.

Committees in this situation may wish to consider filing a termination report. For more information, please refer to the appropriate campaign guide for your particular committee or contact the FEC's Information Division or Reports Analysis Division for assistance.

### How do I actually make a change or correction?

If your committee files electronically, submit a completed electronic replacement Form 1 or Form 2, as appropriate. If your committee files

on paper, submit a new paper FEC Form 1 or 2, as appropriate, completing only the committee identification section and any other sections of the form that disclose new information. As with other filings, the treasurer or designated assistant treasurer must sign the form. Regardless of whether you file electronically or on paper, be sure to designate the filing as an amendment.

For additional information on updating your FEC Forms 1 and 2, contact the FEC's Information Division at 800/424-9530 or 202/694-1100.

—Kathy Carothers

## Alternative Dispute Resolution

### ADR Program Update

The Commission recently resolved ten 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 Jose L. Rivera regarding a campaign contribution from a foreign national. Mr. Rivera acknowledged that he may have misspoken when encouraging listeners to become active in the political process and to vote. He agreed to consult information available from the Commission regarding citizen and foreign national activity, and he will host at least one radio program in which he will provide information on the campaign finance law and the political process to his Spanish language speaking audience.

The additional respondents named in this case, Cannon for Congress, its treasurer Curtis S. Bramble, Christopher Cannon and Marco

Diaz, acknowledged that the host of a Spanish language radio program may have misspoken in encouraging listeners to become active in the political process. They agreed to have Mr. Bramble and Mr. Diaz attend an FEC seminar within 12 months of the effective date of this agreement. (ADR 207/MUR 5464)

2. The Commission closed the case involving Van Hollen for Congress and Jennifer L. Smith, its treasurer, regarding the committee's alleged use of Congressional staff and resources for campaign activity. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR 229/MUR 5477)

3. The Commission closed the case involving Von's Grocery Company regarding an alleged violation of the Act's prohibition on corporate contributions. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR 233/ MUR 5503)

4. The Commission reached agreement with the Nebraska Republican Party Federal Campaign Committee and its treasurer, Demarus Carlson, regarding their failure to disclose all of the Committee's financial activity on its 2003 Mid-Year Report. The respondents acknowledged reporting errors and agreed to pay a \$10,000 civil penalty. In order to avoid similar errors in the future, the respondents agreed to send a minimum of four officers and/or staff to an FEC seminar on federal election campaign reporting requirements within 12 months of the effective date of this agreement. The respondents will also maintain a resource center in the committee's office to guide the committee in complying with the Act's requirements and amend internal procedures to provide for additional review of the committee's reports



prior to submittal to the Commission. (ADR 226\*)

5. The Commission closed the case involving Your Art Here, Inc. and Owen Mundy, its treasurer, regarding an alleged violation of the Commission's disclaimer requirements. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR 250/MUR 5574)

6. The Commission closed the case involving the Republican National Committee and Michael L. Retzer, its treasurer, regarding an alleged contribution in the name of another. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR 259/MUR 5602)

7. The Commission reached agreement with the Tennessee Republican Party Federal Election Account and Joe Arnold, its treasurer, regarding accepting excessive and prohibited contributions and depositing nonfederal funds in a federal account. The respondents acknowledged receiving and depositing excessive contributions. In order to conclude this matter and avoid similar problems in the future,

*\*This case was internally generated within the Commission.*

### Need FEC Material in a Hurry?

Use FEC Faxline to obtain FEC material fast. It operates 24 hours a day, 7 days a week. Hundreds of FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

Use a touch tone phone to dial **202/501-3413** and follow the instructions. To order a complete menu of Faxline documents, enter document number 411 at the prompt.

the respondents agreed to pay a \$30,000 civil penalty and to prepare and maintain a procedural manual to provide guidance to the committee's staff in complying with Act. They also agreed to forward to the Commission copies of paid cancelled checks of refunded contributions, to disgorge to the U.S. Treasury any contributions not refunded to contributors and to send a minimum of two staff members to an FEC seminar on federal election campaign reporting requirements within 18 months of the effective date of this agreement. (ADR 224\*)

8. The Commission closed the case involving The Tides Foundation, Senator John Kerry, Teresa Heinz Kerry, George Soros, Democratic Justice Fund, Miramax Films and Michael Moore/CRM Management regarding matters that were not within FEC jurisdiction. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR 232/MUR 5501)

9. The Commission closed the case involving Friends of Bill Nojay and Eileen Semmler, its treasurer, regarding an alleged failure to file an accurate Statement of Candidacy and alleged failure to accurately report contributions. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file. (ADR 234/MUR 5484)

10. The Commission closed the case involving Jeff Fortenberry for U.S. Congress and Keith May, its treasurer, and the Nebraska Republican Party and Chris Peterson, its Executive Director, regarding an alleged violation of the Commission's disclaimer requirements and failure to report operating expenditures and in-kind contributions. The ADR Office recommended that the case be closed, and the Commission agreed and closed the file after sending an admonishment letter. (ADR 248/MUR 5528)

—Meredith Trimble

## Publications

### Federal Elections 2004 Publication Available

*Federal Elections 2004: Election Results for the U.S. President, the U.S. Senate and the U.S. House of Representatives* is now available. This biennial publication provides an historical record of federal election results, including primary, runoff and general elections. This year's edition features color maps illustrating the Presidential and Congressional data, as well as summary tables presenting the votes cast by party, office and state.

The publication is available in both PDF and Excel formats from the FEC web site at <http://www.fec.gov/general/library.shtml>. For further information, call the Public Records Office at 800/424-9530 or 202/694-1120.

—Meredith Trimble

## Outreach

### Campaign Finance Law Training Conference in San Antonio

On October 25 and 26 the Commission will hold a conference in San Antonio, TX, for House and Senate campaigns, political party committees and corporations, labor organizations, trade associations, membership organizations and their respective PACs. The conference will consist of a series of workshops conducted by Commissioners and experienced FEC staff who will explain how the federal campaign finance law applies to each of these groups. Workshops will specifically address recent changes to the campaign finance law and will focus on fundraising and reporting rules. A representative from the IRS will be

(continued on page 14)

## Outreach

(continued from page 13)

available to answer election-related tax questions.

The conference will be held at the Crowne Plaza Hotel San Antonio Riverwalk. The registration fee for this conference is \$350, which covers the costs of the conference, materials and meals. A \$10 late fee will be added to registrations received after September 30.

The Crowne Plaza Hotel is located at 111 Pecan Street East, San Antonio, TX, 78205, in San Antonio's famous Riverwalk area. A \$129 room rate, single or double, is available for conference participants who make reservations on or before September 30. To receive this special rate, you must mention that you are attending the FEC conference. After September 30, room rates are based on availability. Call 1-888/623-2800 to make reservations.

### Upcoming 2005 Conferences and Seminars

**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

**Seminar for Nonconnected PACs and 527 Organizations**  
November 16  
FEC Headquarters  
Washington, D.C.

## 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, 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).

Please note that the FEC suggests that you wait to make your hotel and air reservations until you have received confirmation of your conference registration.

—Amy Kort

## Reporting Roundtables

On October 5, 2005, the Commission will host a roundtable session on reporting, including disclosure requirements under the Bipartisan Campaign Reform Act of 2002 (BCRA) and recent FEC regulations. See the chart below for details. The session will be followed by a half-hour reception at which each attendee will have an opportunity to meet the campaign finance analyst who reviews his or her committee's reports. Representatives from the FEC's Electronic Filing Office will also be available to meet with attendees.

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/info/outreach.shtml#roundtables> 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

## Seminar for Nonconnected Political Action Committees

On November 16, 2005, the Commission will hold a one-day seminar for nonconnected committees (i.e., PACs not sponsored by a corporation, union, trade association or nonprofit membership organization) at the FEC, 999 E Street, NW., Washington, D.C. This seminar is recommended for:

- Treasurers of leadership PACs, partnership PACs and other non-connected PACs;
- Staff of the above organizations who have responsibility for compliance with federal campaign finance laws;
- Attorneys, accountants and consultants who have clients that are nonconnected PACs or unregistered section 527 organizations; and
- Anyone who wants to gain in-depth knowledge of federal campaign finance law as it applies to non-connected PACs and unregistered section 527 organizations.

The seminar will address issues such as fundraising and reporting.

## Roundtable Schedule

Date	Subject	Intended Audience
July 13 9:30-11 a.m. Reception 11-11:30 a.m.	Reporting for Candidates and Their Committees, plus "Meet Your Analyst" reception	Individuals responsible for filing FEC reports for Candidate Committees (Up to 30 may Attend)

Commissioners and experienced FEC staff will specifically discuss recent changes to the campaign finance law, such as new allocation and solicitation rules for nonconnected PACs.

The registration fee for this seminar is \$100 per attendee, which covers the cost of the seminar, materials, a reception and refreshments. Payment is required prior to the seminar. A full refund will be made for all cancellations received before November 14. Complete registration information is available on the FEC web site at [http://www.fec.gov/info/conference\\_materials/nonconn\\_seminar.shtml](http://www.fec.gov/info/conference_materials/nonconn_seminar.shtml), along with the seminar agenda and a list of hotels located within walking distance of the FEC. Further questions about this seminar should be directed to the Information Division by phone at 1-800/424-9530 (or locally at 202/694-1100) or via e-mail at [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
- 2004-43: Discounted sale of ad time not a contribution, 4:6
- 2004-45: Accounting method for determining excess contributions under Millionaires’ Amendment, 3:7

- 2005-1: Indian tribe not a federal contractor, 5:8
- 2005-2: Fundraising for nonfederal committees by federal officeholder who is nonfederal candidate, 6:7
- 2005-3: Affiliation of membership organizations, 6:8
- 2004-4: Reporting court-ordered restitution owed to campaign committee, 6:9
- 2005-5: Federal candidate/officeholder’s use of funds from nonfederal exploratory committee, 7:8
- 2005-6: Former officeholder may donate campaign funds to charity, 8:5

### Compliance

- Administrative fines assessed, 2:13; 6:13; 9:9
- ADR program update, 1:9; 2:12; 4:9; 5:7; 6:10; 9:12
- MUR 5020: Corporate facilitation, 4:6
- MUR 5405: Contributions in the name of another and corporate contributions, 6:5
- MUR 5428: Excessive and prohibited contributions, improper allocation and reporting violations, 6:6
- MUR 5183: Corporate contributions, 7:4
- MURs 5428 and 5623: “Millionaires’ Amendment,” 9:10

### Court Cases

- \_\_\_\_\_ v. FEC
- Alliance for Democracy, 4:4
- Augusti and Augusti for Congress, 1:12
- Citizens for Responsibility and Ethics in Washington (04-2145), 2:10
- Citizens for Responsibility and Ethics in Washington (04-1672), 7:3
- EMILY’s List, 3:1; 4:1
- Hagelin, 8:4
- Judicial Watch, 4:3
- Kean for Congress, 4:3
- Shays and Meehan, 9:1
- Sykes, 6:5
- Wisconsin Right to Life, 7:1
- FEC v. \_\_\_\_\_
- Democratic Party of New Mexico, 6:1

- Friends of Lane Evans, et. al., 8:1
- Odzer, 9:3

### Regulations

- “Agent” definition for coordinated and independent expenditures and nonfederal funds regulations, Notice of Proposed Rulemaking, 3:4; public hearing scheduled, 5:5; public hearing, 7:6
- BCRA technical amendments, final rules, 1:6
- Candidate solicitation at state, district and local party committee fundraisers, Notice of Proposed Rulemaking, 4:4; public hearing scheduled, 5:5; public hearing, 7:6; Revised Explanation and Justification, 8:1
- Civil penalties adjusted for inflation, 7:5
- Contributions by minors to candidates and party committees, final rules, 3:3
- “*De minimis*” exemption for Disbursement of Levin funds by state, district and local party committees, Notice of Proposed Rulemaking, 3:6
- “Federal Election Activity” definition, Notice of Proposed Rulemaking, 6:1; public hearing scheduled, 8:3; public hearing held, 9:4
- Filing by Priority Mail, Express Mail and overnight delivery, Notice of Proposed Rulemaking, 2:1; final rules, 5:4
- Internet communications, Notice of Proposed Rulemaking, 5:1; Hearing on proposed rules, 8:2
- Party committee donations to certain tax-exempt organizations and political organizations, Notice of Proposed Rulemaking, 1:7; final rules, 5:4
- Payroll deductions for contributions to trade association SSF, Notice of Proposed Rulemaking, 2:2; public hearing scheduled, 5:5; public hearing, 7:6; final rules, 9:1
- Salaries and wages paid by state, district and local party commit-

(continued on page 16)

## Index

(continued from page 15)

tees, Notice of Proposed Rule-making, 6:3; public hearing scheduled, 8:3; public hearing held, 9:4  
Travel rules for certain Presidential candidates, effective date, 7:6

## Reports

April reporting reminder, 4:1  
California special election reporting, 2:3; 9:6  
Due in 2005, 1:3  
Electronic filing software, FEC Form 3X, updated, 2:1  
July reporting reminder, 7:1  
Ohio special election, 6:14

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