Record

March 2000 *Federal Election Commission* *Volume 26, Number 3*

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Electronic Filing

FEC Invites Comments on Electronic Filing

"Suggestion Box"

In the interest of ensuring the best FEC electronic filing system possible, the Commission is pleased to provide you with an electronic filing "suggestion box." The Commission invites you to e-mail to electronic@fec.gov any suggestion that you think would improve the current electronic filing system.

Advantages to Beginning Early

The electronic filing office would like to remind those committees which will be filing electronically in 2000 or 2001 that there are significant advantages to beginning now while the year is still young.

- For the many committees that will be required to file electronically beginning in January 2001, [1] switching to the new system now will be much easier than waiting until the end of the year. Changing or upgrading software systems and becoming comfortable with them are more easily done over the course of a year than a few weeks before a filing deadline.
- Starting early minimizes data entry, which saves time and decreases the possibility for errors.
- The overall ease of using the electronic filing system and the built-in file validator also increase productivity and help reduce filing errors.
- Electronic reports can be amended in a matter of minutes.
- The automatic fax or e-mail confirmation of receipt arrives moments after filing to let you know that your report has been received by the FEC.

Calendar Year Commitment

Another reminder from the electronic filing office: filing electronically is a year-long commitment. Commission regulations require that, once a committee files electronically, it must continue to do so for the rest of the calendar year. 11 CFR 104.18(a).

For more information, or to download the free FECFile 3 software, visit the Commission's Web site at www.fec.gov/electron.html. ✦

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[1] *In the next few months, the Commission will announce electronic filing thresholds. Any committee that exceeds or expects to exceed these thresholds in 2001 will be required to file electronically in 2001. It is expected that approximately 2,000 committees will be required to file electronically.*

800 Line

Allocating Expenses for Generic Voter Drives Conducted by Third Parties

Commission Actions

A party committee must use federally permissible funds for at least a portion of the costs of generic voter drives conducted prior to an election in which both federal and nonfederal candidates appear on the ballot. 11 CFR 106.5(a)(2)(iv). This is the case even when a party committee, instead of conducting a voter drive itself, provides funds to a third party, e.g., a nonprofit corporation, to conduct the drive. The party committee may choose to pay all of the costs of the voter drive with federally permissible funds or to allocate the costs between federal and nonfederal monies in accordance with the party committee's allocation ratio.

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The Commission emphasized this point in two recent enforcement actions. The FEC found probable cause to believe that the California Democratic Party (CDP) and the National Republican Senatorial Committee (NRSC) violated the Federal Election Campaign Act (the Act) and Commission regulations on allocating generic voter activity when they failed to allocate, between their federal and nonfederal accounts, payments made to outside organizations to conduct generic voter drives. Both the CDP and the NRSC made payments to the organizations to conduct the drives, but they made the payments entirely with nonfederal funds. In the case of the CDP, the matter was resolved in court, when the U.S. District Court for the Eastern Division of California issued a consent order and judgment in which the CDP agreed to pay a civil penalty of $70,000 and to transfer $354,500 from its federal account to its nonfederal account. The district court earlier had found constitutional the Commission's application of this requirement to the CDP's voter drive disbursements. See *FEC v. California Democratic Party*, 13 F.Supp.2d 1031 (1998).

The matter involving the NRSC (MUR 3774) was settled by a conciliation agreement between the FEC and the NRSC. In that agreement, the NRSC agreed to pay a civil penalty of $20,000 and to transfer $88,207.60 from its federal account to its nonfederal account.

Allocation Ratios

State and local party committees use the ballot composition method when allocating generic voter drive expenses. Costs are allocated according to the ratio of federal offices to total federal and nonfederal offices expected to be on the ballot in the next federal general election held in the state or geographic area of the committee. With certain exceptions, the allocation ratio must be calculated at the beginning of the two-year election cycle (for example, in January 1999 for the 1990-2000 cycle).[1] The committee calculates the ratio by assigning points to the federal and nonfederal offices to be listed on the general election ballot. The federal allocation percentage is obtained by dividing the number of federal points by the total number of points. 11 CFR 106.5(d)(1).

House and Senate campaign committees of a national party allocate costs for generic voter drives according to the ratio of funds spent on behalf of federal candidates to total money spent on behalf of federal and nonfederal candidates during a two-year federal election cycle. The calculation includes only funds contributed to—or spent on behalf of—specific candidates. The calculation does not include overhead or other generic costs not attributable to any particular candidate. A minimum of 65 percent of such costs must be allocated as federal expenses.

National party committees use a fixed ratio when allocating generic voter drive expenses. At least 65 percent of such expenses must be allocated as federal expenses during a Presidential election year; in other years, at least 60 percent must be allocated as federal. 11 CFR 106.5(b).

For a summary of *FEC v. California Democratic Party, et al.*, see page 4 of the December 1999 Record. For a summary of MUR 3774 involving the National Republican Senatorial Committee, see page 3 of this issue of the *Record*. ◆

[1] *There are five states—Kentucky, Louisiana, Mississippi, New Jersey and Virginia—for which the calculation method is different because those states do not hold federal and nonfederal elections during the same year. See 11 CFR §106.5(d)(2).*

Compliance

MUR 3774
Failure to Allocate Expenses Between Federal and Nonfederal Accounts for Get-Out-the-Vote Drive Conducted by Third Party

The National Republican Senatorial Committee (NRSC) and Stan Huckaby, its treasurer, have paid a civil penalty of $20,000 and will transfer $88,207.60 from the NRSC's federal account to its nonfederal account for failing to allocate, between its federal and nonfederal accounts, payments made to a third party to conduct get-out-the-vote drives (GOTV).

Background

Between October 31 and November 4, 1994, the NRSC disbursed a total of $175,000 from its nonfederal account to the National Right to Life Committee (NRLC), which made payments of at least $135,704 for GOTV phone calls targeting pro-life supporters in states with elections that included federal candidates. The supporters were reminded to vote in a U.S. House or Senate election and then informed as to which candidate(s) supported or opposed abortion. While the scripts did not mention party affiliation, those federal candidates named who supported abortion were all Democrats, and those who opposed it were all Republicans.

Although the NRSC attached a cover letter to each disbursement instructing the NRLC that it could not "utiliz[e] any of this money in any way to influence a federal election" and contended that it did not specify how the funds should be used, the NRSC knew and intended that the nonfederal funds it transferred to the NRLC would be used for GOTV activities in connection with elections that included federal candidates. The NRSC considered pro-life supporters to be a key Republican constituency.[1]

Analysis

The Federal Election Campaign Act (the Act) prohibits corporations and labor organization from making contributions in connection with federal elections. 2 U.S.C. §441b(a).

Each organization, including a party committee, that finances political activity in connection with both federal and nonfederal elections, and has established separate federal and nonfederal accounts, must make all disbursements in connection with federal elections from its federal account. Only funds subject to the Act's prohibitions and limitations can be deposited into the federal account. 11 CFR 102.5(a)(1)(i). See also 11 CFR 106.5(a). The nonfederal account, however, can accept corporate contributions prohibited by 2 U.S.C. §441b and contributions in excess of the limits prescribed by 2 U.S.C. §441a(a).

A national party committee, such as the NRSC, must allocate expenses for generic voter drive activities[2] between its federal and nonfederal accounts according to the formula set out at 11 CFR 106.5(c)(2): a minimum of 65 percent of these costs must be allocated to the federal account. (The Act does not, per se, prohibit the disbursement of nonfederal funds by a party committee to nonparty organizations.)

The Commission found probable cause to believe that the NRSC's disbursements of 100 percent nonfederal funds to the NRLC in 1994, which the NRLC used to finance GOTV activities, was not in accordance with the Act or Commission regulations. Had the NRSC conducted this activity itself, it would have had to finance these activities with a minimum of 65 percent federal funds. The NRSC contended that no violations occurred or were proven by the record in this matter. However, in order to settle the matter, the NRSC and Mr. Huckaby agreed to not further contest the Commission's probable cause findings that it had violated 2 U.S.C. §§441a(f) and 441b(a) and 11 CFR 102.5(a)(1)(i), 106.5(c) and 106.5(g)(1)(i). ◆

[1] In addition to these disbursements, the NRSC made a number of other disbursements from its nonfederal account to other organizations for purposes of GOTV activities conducted prior to four elections held in 1992 and 1993. Altogether, in connection with the 1992 and 1993 elections, the NRSC disbursed a total of $665,000 in nonfederal funds to the National Right to Life Committee, the American Defense Foundation and the Coalitions for America, three nonprofit corporations exempt from federal income taxes under 26 U.S.C. §501(c)(4).

[2] Generic voter drives include voter identification, voter registration, and get-out-the-vote drives, or any other activity that urges the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate. 106.5(a)(2)(iv).

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How to Obtain a Taxpayer ID Number

To obtain a taxpayer ID number, please call the IRS at 800/TAX-FORM (800/829-3676). Taxpayer ID numbers are not available through the FEC.

Compliance

(continued from page 3)

MUR 4648
Failure to Disclose Purpose of Expenditures and Other Violations

The New York Republican Federal Campaign Committee (the Committee), its current treasurer, Michael Avella, its Chairman, William D. Powers, and Jeffrey T. Buley have paid a $128,000 civil penalty for failing to properly report disbursements, for failing to maintain proper records, and for making disbursements in the form of cash rather than by check—all during the 1994 and 1996 election cycles. This is the largest civil penalty ever paid by a national or state party committee.

All political committees are required to report, *inter alia*, the purpose of every expenditure. "Purpose" means a brief statement or description of why the disbursement was made. 11 CFR 104.3(b)(3)(i)(A). On its 1994 30-Day Post-General Report, the Committee reported the "purpose" of six disbursements to Committee personnel totaling $60,000 as being for "election day expenses." Commission regulations expressly hold that the statement "election day expenses" is not a sufficient description for reporting the purpose of a disbursement. 11 CFR 104.3(b)(3)(i)(B). After receiving notification from the Commission that it had misreported the purpose of these disbursements, the Committee amended its report.

On its 1996 30-Day Post-General Report, despite previous instruction from the FEC, the Committee again misreported the purpose of eight disbursements to Committee personnel totaling $22,500 as being for "election day expenses." After once again receiving notification from the Commission, the Committee amended its report.

In both instances, Mr. Buley obtained a combined total of $72,500 in cash ($50,000 in 1994 and $22,500 in 1996) through checks made out to himself and others. Mr. Buley disbursed the cash in one lump sum to Mr. Powers on the day before the day of the general election in each year. Mr. Powers then disbursed the funds in amounts over $200 to numerous individuals who in turn disbursed the funds to others. In both cases, the Committee only reported the payees of the initial checks as recipients of disbursements.

The Committee failed to report the full names and addresses and the amounts of disbursements to recipients of disbursements of $200 or more, in violation of 2 U.S.C. §434(b) and 11 CFR 104.3(b)(3).

With respect to keeping records on $82,500 spent in 1994 and 1996, the Committee failed to maintain receipts, invoices or canceled checks for disbursements in excess of $200. It also failed to keep records of the names and addresses of those to whom it had made these disbursements, along with the dates, amounts and purposes of the disbursements. Both record-keeping failures violated 2 U.S.C. §432(c)(5) and 11 CFR 102.9(b)(1) and (2).

Additionally, in 1994 and 1996, the Committee, Mr. Buley and Mr. Powers each made disbursements in excess of $100 in the form of cash, rather than by check, in violation of 2 U.S.C. §432(h)(1).

The Commission entered into a conciliation agreement with the respondents after finding probable cause to believe that they had knowingly and willfully violated the Act. The agreement accepted by the Commission in settlement of this matter did not contain admissions by the respondents that they had knowingly and willfully violated the Act. ✥

Advisory Opinions

AO 1999-32
Indian Tribe's Utility Authority Treated as Separate from the Tribe

The Tohono O'odham Nation, an Indian tribe, may make contributions to influence federal elections even though its Utility Authority (TOUA) is a government contractor, because TOUA is a separate entity from the Nation

TOUA is an unincorporated entity that provides utility services on the Nation's territories. Its customers include Federal agencies, such as the Bureau of Indian Affairs. Under 2 U.S.C. §441c, it is unlawful for a Federal contractor to make contributions in connection with a federal election. TOUA qualifies as a federal contractor because it has a utility service contract with a government agency; therefore, it may not make contributions. However, TOUA is a separate entity from the Nation. Consequently, the Nation is permitted to make contributions.

Although TOUA is not a corporation (and thus not formally separate from the Nation), the Commission concluded that it can be treated as a separate entity based on the following considerations:

- TOUA has its own bank account, employees, personnel policies, employee benefits and legal counsel.
- In other areas of the law, tribal commercial entities receive specialized and unique treatment.
- TOUA enjoys autonomous attributes considered significant in other litigation cases: TOUA is patterned on a public service corporation with a management board comparable to a corporate board of directors. A majority of this management board may come

from outside the Nation, and no member of the Nation's council may be a member of TOUA's board. TOUA does not have the power to appropriate the general funds of the Nation. [1]

The Nation would not, however, be able to make contributions if it received any revenues from TOUA. See Advisory Opinion 1998-11.

This opinion supersedes the portion of Advisory Opinion 1993-12 concerning the analysis of procurement contracts between tribal enterprises and the federal government. The superseded portion concluded that the procurement contracts between an Indian tribe and the Bureau of Indian Affairs made the tribal authority a federal contractor, for purposes of the Federal Election Campaign Act.

Issued: January 28, 2000; Length: 9 pages. ✥

AO 1999-33 Delayed Transmittal of Payroll Deductions

MediaOne PAC, a separate segregated fund (SSF), may deposit payroll deduction contributions, despite a delay in the transmittal of the funds. However, the PAC must amend its past reports to disclose the contributions as receipts for the periods in which the payroll deductions occurred.

Under FEC regulations, an organization that sponsors an SSF—the connected organization—may collect and forward contributions to the PAC, including contributions made through payroll deduction (thereby acting as a "collecting agent"). 11 CFR 102.6(b)(1) and (2). The connected organization must forward individual contributions of $50 or less to the PAC within 30 days. Larger contributions must be forwarded within 10 days, and must include the name and address of the contributor and the date the connected organization received the contribution. For contributions over $200, the connected organization must also provide the contributor's occupation and employer. 11 CFR 102.6(c)(4) and (5) and 102.8(b)(1) and (2).

MediaOne instituted a payroll deduction program for its PAC in January 1998, at which time the majority of the company used a centralized payroll system. On October 1, 1999, MediaOne discovered that one of its regional payroll offices—not yet part of the centralized system—had been collecting PAC contributions, but had not forwarded the funds to the PAC. The regional office had collected nearly $8,000 from 20 employees between January 1998 and August 1999.

Based on the unique circumstances, MediaOne PAC may deposit the delayed contributions, so long as it amends its past reports to reflect the date that the regional office received each contribution. As a monthly filer, MediaOne PAC may need to amend up to 20 reports. These amendments must be filed within 30 days of the PAC's receipt of the advisory opinion. In addition, the PAC must include, with each amended report, an explanation of the changes and why they were necessary and a reference to this advisory opinion.

Three factors were essential to this decision:

- MediaOne PAC discovered an error and asked for guidance in a timely manner;
- The error appeared to have been inadvertent; and
- The amounts of the contributions at issue were not large.

The Commission cautioned that its conclusions in this opinion should not be viewed as a precedent for any other situation involving delayed transmittal of contributed funds.

Issued: January 28, 2000; Length: 5 pages. ✥

AO 1999-36 Fundraising Via Electronic Checks and Internet Fund Transfers

Under recently revised regulations, candidates may collect contributions (including matchable contributions to Presidential candidates) via electronic check transmitted over the Internet, using a system developed by Advantage, a Maryland corporation. Advantage plans to offer federal candidates a system for receiving contributions over the Internet via electronic check using electronic funds transfer. The system will work as follows:

1. The option of contributing to the campaign via electronic check will be built into the campaign's Web site.
2. The Web site will permit online contributions by credit card or by "online check."
3. If the donor clicks on the "online check" option, a contribution form will appear on the screen. It will include the disclaimer and "best efforts" language required by Commission regulations and the source restrictions and contribution limitations of the Federal Election Campaign Act (the Act).
4. To contribute, the donor will complete the form by providing his or her name, address, various phone numbers, e-mail address, occupation and employer, and either a social security number or driver's license number. The Web site will prompt the donor to provide any missing information.

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[1] *See* Navajo Tribe v. Bank of New Mexico, 700 F.2d.1285 (10th Cir. 1982) *and* Navajo Tribal Utility Authority v. Arizona Department of Revenue, 608 F.2d 1228 (9th Cir. 1979).

Advisory Opinions

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5. Once the information is complete, the donor's Web browser will connect with the Web site of eMoney, an electronic payment processing company.
6. The donor then will receive, via email, within a few seconds, a digital signature authentication code.
7. The site will display a check form in which the donor enters his or her check number, uniform bank routing (ABA) number, account number, bank name and the digital signature authentication code.
8. The form will ask the donor to check a series of boxes attesting that the contribution is made with federally permissible funds, is within the contribution limitations of the Act and consists of the donor's personal funds; and that the donor is not a minor, a corporation, a labor organization, a national bank or a federal contractor. The Web site will prompt the donor to correct any missing or inaccurate information, or to cancel the transaction.
9. The donor will then be asked to "submit contribution." The site will inform the donor if the amount exceeds the contribution limits. Before the contribution is processed, the Internet payments processing company will automatically screen the accuracy of:
   - The donor's ABA transit number;
   - The checking account number;
   - The check number; and
   - The donor's phone number.

   All of this information will be transmitted in encrypted form.
10. The candidate may choose an additional screening process that compares the information provided by the contributor to a database of information about problem checking accounts.
11. Once the contributor information is accepted by the Web site, an Automated Clearing House (ACH) debit entry will be submitted through the system of a third party processor to a bank offering electronic funds transfer services. This "originating financial institution" has its own Federal Reserve System line account, allowing it to clear transactions with other banks over the "fed wire." The originating financial institution directly debits the bank account of the donor. Seventy-two hours later, the originating financial institution will directly credit the bank account of the campaign.
12. Within seconds, a confirmation of the transaction will be generated to the donor on the screen and via e-mail. The donor's Web browser will then be transferred back to the candidate's Web site.
13. After the electronic check "clears," that is, the campaign's account is credited, the campaign will receive, on a timely basis, in electronic form or on paper, all necessary information about the contribution for inclusion (electronically if possible) in the campaign's database used to generate its reports to the Commission. Confirmation will also be received by the campaign via e-mail.
14. For purposes of itemizing an electronic contribution, the date of receipt of the contribution will be the date of the credit to the campaign's account.
15. Each participating campaign will pay fees to Advantage for the use of this system.

For purposes of Presidential federal matching payments, the term contribution means "a gift of money made by a written instrument...." When a contribution is made by credit card or debit card over the Internet, Commission regulations define "written instrument" to mean an electronic record of the transaction created and transmitted by the cardholder, and including the name of the cardholder and the card number, which can be maintained electronically and reproduced in a written form by the recipient candidate. 11 CFR 9034.2(b).

In the case of a contribution made by credit or debit card made over the Internet, the term signature means the full name and card number of the donating cardholder, entered and transmitted by the cardholder. 11 CFR 9034.2(b) and (c). Contributions made by credit or debit card are matchable provided that the committee submits evidence that the contributor has affirmed that the contribution is from personal funds and not from funds otherwise prohibited by law. 11 CFR 9034.2(c)(8)(ii).

These regulations describing the matchability of credit or debit card contributions are applicable to contributions made by the online electronic check system described above.

The screening procedures in Advantage's proposal are well within the "safe harbor" discussed in Advisory Opinion 1999-9 for matchable contributions. See also AO 1999-22. The procedures will permit a Presidential campaign to submit evidence that the contributor has affirmed that the contribution is from personal funds.

The documentation requirements developed for credit and debit cards, as discussed in the Commission's Guideline for Presentation in Good Order, also apply to the on-line check system. See 11 CFR 9033.1(b)(9). The information required from third party processors documenting the transmission of funds in a credit or debit card situation will also be required where an electronic check transaction is

transmitted through a third party processor.

Additionally, Advantage must provide to Presidential campaigns seeking matching funds (and these committees must provide to the Commission) each contributor's checking account number and bank transit number for that account. As an agent of the political committee it assists, Advantage is required to furnish, to any client Presidential committee receiving matching funds, all documents and records that may be necessary for the Commission to conduct its audit of that committee. See 26 U.S.C. §9033(a)(1),(2),(3); see also 11 CFR 9033.1(b), 9033.11, and 9033.12.

Date Issued: January 14, 1999; Length: 12 pages. ◆

Advisory Opinion Requests

AOR 2000-1

Partially paid leave of absence for candidate who is employee of law firm (Angel Taveras, January 19, 2000)

AOR 2000-2

Campaign payment to candidate for use of office space and equipment owned by candidate (Rick Hubbard for U.S. Senate, January 27, 2000)

AOR 2000-3

Candidate appearance before members of membership organization at event paid for by its PAC (American Society of Anesthesiologists, January 28, 2000)

AOR 2000-4

Solicitation of individual share account holders of credit unions by national association of credit unions (National Association of Federal Credit Unions, January 28, 2000) ◆

Court Cases

Shrink PAC v. Nixon

On January 24, 2000, the Supreme Court issued a ruling reaffirming the distinction set out in *Buckley v. Valeo* between expenditures and contributions, and upholding the constitutionality of contribution limits. Furthermore, the Court rejected the argument that the Missouri government was required to provide concrete evidence substantiating a need for limits to curtail corruption or the appearance of corruption. The Court concluded that the threat of corruption, and public concern about that threat, were sufficient.

Shrink Missouri Government PAC (Shrink PAC) and Zev David Fredman, a candidate for Missouri's Republican nomination for state auditor in 1998, filed suit alleging that Missouri contribution limits (ranging from $275 to $1075 to candidates for state office) violated their First and Fourteenth Amendment rights. The district court, relying on *Buckley v. Valeo*, sustained the statute in a summary judgment, finding that limits on political contributions were based on the belief that large contributions raise suspicions of influence peddling, which tend to undermine citizens' confidence in government integrity.

The district court rejected the respondents' claim that inflation since the *Buckley* decision had rendered the state limit unconstitutional today.

In reversing the district court's decision, the Eighth Circuit Court of Appeals held that Missouri had to demonstrate that it had a compelling interest and that the contribution limits at issue served that interest. Missouri claimed a compelling interest in avoiding corruption or the perception of corruption caused by large campaign contributions. The appeals court, however, found this insufficient and required Missouri to provide demonstrable evidence that genuine problems resulted from contributions that exceeded the statutory limits. It ruled that the state's evidence was inadequate for this purpose.

The Supreme Court, in its opinion delivered by Justice Souter, reversed the Eight Circuit's decision and held that *Buckley v. Valeo*, a 1976 Supreme Court decision, was the authority for comparable state limits on contributions to state political candidates.

The *Buckley* court struck down the Act's $1,000 limit on independent expenditures made by individuals on behalf of candidates for federal office, maintaining that the limits infringed upon the free speech and association guarantee of the First Amendment and the Equal Protection Clause of the Fourteenth. By contrast, the *Buckley* Court upheld provisions limiting individual contributions to a candidate to $1,000 per election. The Court drew a line between independent expenditures and contributions, treating expenditure restrictions as direct restraints on speech but saying, in effect, that limiting contributions to candidates did not violate an individual's right to free speech. The *Buckley* Court found the prevention of corruption and the appearance of corruption to be constitutionally sufficient justification for the contribution limits at issue.

In this case, the Supreme Court rejected the appeals court's requirement that the government demonstrate that corruption among public officials is real, and not merely conjectural. Acknowledging that conflicting academic studies both assert and deny that large contributions to candidates change candidates' positions, the Court concluded that there is little reason

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to doubt that sometimes large contributions will corrupt our political system and no reason to doubt a corresponding suspicion among voters.

Further, the Court found no support for the respondents' arguments that Missouri's contribution limits were so different from those sustained in *Buckley* as to raise a new issue about the adequacy of the Missouri limits. In fact, the Court found no indication that contribution limits had a dramatic adverse effect on the funding of campaigns and political associations and, thus, no evidence that the limitations had prevented candidates from raising the resources necessary for effective advocacy.

Justice Stevens filed a concurring opinion. Justice Breyer filed a concurring opinion, in which Justice Ginsburg joined. Justice Kennedy filed a dissenting opinion. Justice Thomas also filed a dissenting opinion, in which Justice Scalia joined. ✦

Virginia Society for Human Life, Inc. v. FEC

On January 4, the U.S. District Court for the Eastern District of Virginia, Richmond Division (the District Court), granted the Virginia Society for Human Life's (VSHL's) motion for summary judgment. After finding the regulation at 11 CFR 100.22(b) to be "blatantly unconstitutional" under *Buckley v. Valeo*, the District Court issued an order prohibiting the FEC from enforcing it "against the VSHL or against any other party in the United States of America."

VSHL is a nonprofit, tax-exempt membership corporation, which accepts corporate contributions. The group plans to distribute voter guides to the general public in connection with the upcoming federal election cycle. The guides will outline VSHL's stance on abortion-related issues and tabulate candidates' positions on these issues. Although VSHL alleges that the voter guides will not expressly advocate the election or defeat of a particular candidate, VSHL acknowledges that recipients of the voter guide could reasonably determine VSHL's preference for one of the candidates over the others.

The regulation at 11 CFR 100.22(b) defines express advocacy as a communication that, when taken as a whole and with limited reference to external events (such as proximity to an election), can only be interpreted by a reasonable person as unambiguously advocating the election or defeat of a clearly identified candidate.

The FEC adopted the regulation on the basis of the Ninth Circuit's decision in *FEC v. Furgatch*, in which the court concluded that "speech need not include any of the words listed in *Buckley* [*v. Valeo*, such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," etc.] to be express advocacy under the [Federal Election Campaign] Act, but it must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate."

Relying on *Buckley v. Valeo*, the district court concluded that the regulation at 100.22(b) was unconstitutional despite the Ninth Circuit's holding in *Furgatch*. The district court said that the *Buckley* court defined express advocacy as "communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office," and thus funds spent on such advocacy could be regulated by the FEC. On the other hand, the district court said, funds spent on issue advocacy could not be regulated by the FEC because "discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution." According to the district court, the *Buckley* court stated that, although the distinction between express advocacy and issue advocacy could be "fuzzy," express advocacy should not be classified "according to an audience's reasonable interpretations of the communication at issue."

The district court held that, by allowing the FEC to regulate advocacy based upon the understanding of the audience rather than the actual message of the advocate, the regulation at 100.22(b) fails the *Buckley* test. Moreover, the district court concluded, the regulation empowers the FEC to regulate issue advocacy, which was "clearly forbidden by *Buckley*." The district court also pointed out that even the Ninth Circuit's decision in *Furgatch* "acknowledges that express advocacy must contain a 'clear plea for action,' but the regulation contains no such requirement—it in fact is broader than *Furgatch*, which itself runs afoul of *Buckley*."

Finally, concluding that "First Amendment protections do not cease at the boundaries of the Eastern District," the court stated that it is "unwilling to perpetuate the state of uncertainty faced across the land by potential participants in the public arena" and therefore enjoined the FEC from enforcing 11 CFR 100.22(b) "against VSHL or any other party in the United States of America."

In February, the Commission voted to appeal the court's decision that the VSHL had standing to sue the FEC and the court's order prohibiting the FEC from enforcing 11 CFR 100.22(b) against any party in the United States. ✦

New Litigation

Christine Beaumont, et al. v. FEC

North Carolina Right to Life, Inc. (NCRL), a non-profit corporation, and four individuals — Christine Beaumont, a resident of North Carolina, and Loretta Thompson, Stacy Thompson and Barbara Holt, — all members of the board of directors of NCRL filed suit against the FEC for declaratory and injunctive relief. Plaintiffs rely on a recent Fourth Circuit decision, *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705 (4th Cir. 1999), in support of their claim. They assert that Section 441b of the Federal Election Campaign Act (the Act), which prohibits corporations from making contributions or expenditures in connection with a federal election, is unconstitutional because it makes no exception for nonprofit, ideological corporations. The lawsuit also challenges the constitutionality of two FEC regulations: one that prohibits all corporations from making contributions (11 CFR 114.2(b)) and another that creates an exemption from the ban on corporate expenditures for certain nonprofit corporations, pursuant to the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) (11 CFR 114.10). Plaintiffs ask the court to:

- Declare that 2 U.S.C. §441b's prohibition of corporate contributions and expenditures is overly broad and unconstitutional on its face or as applied to NCRL;
- Declare that 11 CFR 114.2(b)'s prohibition of corporate contributions, and 114.10's exemption allowing certain nonprofit corporations to make independent expenditures, are facially unconstitutional or are unconstitutional under 5 U.S.C. §706 or as applied to NCRL; and
- Issue a permanent injunction barring the FEC from enforcing the Act and 11 CFR 114.2(b) and 114.10 against the plaintiffs with regard to contributions to federal candidates and independent expenditures expressly advocating the election or defeat of federal candidates.

NCRL alleges that it accepts an insignificant amount of donations from other corporations. According to the complaint, NCRL has purposes other than the promotion of political ideas and engages in business activities which it alleges are incidental to its overall purposes. The corporation claims that it wishes to make contributions to, and independent expenditures on behalf of, federal candidates before the 2000 general election.

U.S. District Court for the Eastern District of North Carolina, Northern Division, 2:00-CV-2-BO(2), January 3, 2000. ❖

FEC Conference Schedule

The FEC will continue its series of conferences through May. See below for details. To register for any conference, call Sylvester Management at 800/246-7277 or send an e-mail to tsylvester@worldnet.att.net. For program information, call the FEC's Information Division at 800/424-9530 or 202/694-1100. A regularly updated schedule for the conferences and a downloadable invitation/registration form appear at the FEC's Web site. Go to http://www.fec.gov/pages/infosvc.htm for the latest information.

Regional Conference (includes candidate, corporate/labor and party workshops)
Date: March 8-10, 2000
Location: Miami, FL
(Sheraton Biscayne Bay)
Registration: $240

Corporate and Labor Conference
Date: April 6-7, 2000
Location: Washington, DC
(Hyatt Regency on Capitol Hill)
Registration: $265

Membership and Trade Association Conference
Date: May 16-17, 2000
Location: Washington, DC
(Hilton Crystal City)
Registration: To be determined

FEC v. Friends for Fasi

Frank F. Fasi was a former Mayor of Honolulu and gubernatorial candidate in Hawaii. Friends for Fasi was and is Mr. Fasi's campaign committee.

The Commission's civil complaint alleges that Mr. Fasi and his campaign committee violated section 441e of the Federal Election Campaign Act (the Act) by accepting prohibited contributions from foreign nationals in the form of reduced rental costs for space owned, managed and/or controlled by foreign nationals at the time of the alleged violations.

The Commission asks the court to:

- Declare that Mr. Fasi and Friends for Fasi violated 2 U.S.C. §441e (which prohibits foreign national contributions in connection with any election in the United States);

(continued on page 10)

Court Cases

(continued from page 9)

- Enjoin Mr. Fasi and Friends for Fasi from accepting contributions in violation of 2 U.S.C. §441e; and
- Assess appropriate civil penalties against Mr. Fasi and Friends for Fasi. ❖

On Appeal?

DSCC v. FEC (96-2184 and 95-0349)

On December 17, 1999, the FEC appealed this case to the U.S. Court of Appeals for the District of Columbia Circuit. The FEC is challenging the district court's final order that the DSCC had constitutional standing to sue the FEC and that the Commission unlawfully delayed completing the administrative complaints the DSCC had filed with the Commission. ❖

Public Funding

The FEC Approves Matching Funds

The FEC certified $5,613,822.13 in February in Federal Matching Funds to seven Presidential candidates for the 2000 election. The U.S. Treasury Department will make partial payments later this month.

This raises to $39,633,318.37 the total amount of federal funds certified thus far to eight Presidential candidates eligible to receive federal primary matching funds.

The chart at right lists the amount certified to each candidate, along with the cumulative amount certified to date. Because there are insufficient funds to pay these amounts, the Department of Treasury calculates a reduced amount for each campaign. Reduced payments will continue until the fund has been replenished, at which time each campaign will receive the amount it is due. ❖

Reports

Ten More States Certified for State Waiver

Ten more states have been certified by the Commission as being qualified for the state filing waiver: Alabama, Colorado, Connecticut, Kentucky, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island and Virginia. This brings the total number of states certified to 33.

In the certified states, the public will now be able to review and copy campaign finance reports of most federal candidates by accessing the FEC's Web site (www.fec.gov) on computers located at the state's campaign finance records office.

The Commission approved the State Filing Waiver Program on October 14, 1999. Under this program, states that meet certain criteria set out by the Commission no longer have to receive and maintain paper copies of most FEC reports in their state's campaign finance records office. Additionally, most committees no longer have to file copies of their reports in the certified states.* Note, however, for the present time, the waiver does not to apply to reports filed by the campaigns for U.S. Senate candidates.

For more information on the waiver, please see page 2 of the January 2000 Record. ❖

** The Commission previously certified Arkansas, California, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Michigan, Nebraska, New Hampshire, New York, North Dakota, Ohio, South Dakota, Tennessee, Utah, Vermont, U.S. Virgin Islands, Washington, West Virginia and Wisconsin.*

Candidate	Certification January 2000	Cumulative Certifications
Gary L. Bauer (R) [1]	$287,444.43	$4,251,803.47
Bill Bradley (D)	$1,820,417.73	$10,164,271.56
Patrick J. Buchanan (Reform)	$509,860.65	$2,882,056.91
Al Gore (D)	$874,082.99	$11,944,792.81
Alan L. Keyes (R)	$316,004.75	$1,557,439.10
Lyndon H. LaRouche, Jr. (D)	$90,077.76	$823,845.48
John S. McCain (R)	$1,715,933.82	$5,906,584.04
Dan Quayle(R) [2]	$0.00	$2,012,525.00

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

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

Reporting Last-Minute Contributions: 48-Hour Notices

Campaign committees must file special notices, called 48-hour notices, disclosing contributions of $1,000 or more received less than 20 days, but more than 48 hours, before any election in which the candidate is running. The Commission has, however, exempted from this requirement, those Presidential candidates who file their reports on a monthly basis. See AO 1995-44.

The FEC or the Secretary of the Senate must receive the notice within 48 hours of the committee's receipt of the contribution. This rule applies to all types of contributions to any authorized committee, including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee.

Committees may file their 48-hour notices using FEC Form 6. Alternatively, a committee may use its own paper or stationary for the notice, provided that it contains the following information:

- The candidate's name and the office sought;
- The identification of the contributor; and
- The amount and date of receipt of the contribution.

Committees may fax the notice to the appropriate office using the following numbers: FEC, 202/219-0174; Secretary of the Senate, 202/225-1851.

A last-minute contribution must also be itemized in the committee's next scheduled report. 11 CFR 104.5(f).

The period covered by 48-hour notices is listed in the chart to the right for every state. ❖

State	Election Date	48-Hour Notice Period
Alabama	6/6/00	5/18 - 6/3/00
Runoff	6/27/00	6/8 - 6/24/00
Alaska	8/22/00	8/3 - 8/19/00
American Samoa	11/7/00	10/19 - 11/4/00
Runoff	11/21/00	11/2 - 11/18/00
Arizona	9/12/00	8/24 - 9/9/00
Arkansas	5/23/00	5/4 - 5/20/00
Runoff	6/13/00	5/25 - 6/10/00
California	3/7/00	2/17 - 3/4/00
Colorado	8/8/00	7/26 - 8/11/00
Connecticut	9/12/00	8/24 - 9/9/00
Delaware	9/9/00	8/21 - 9/6/00
District of Columbia	5/2/00	4/13 - 4/29/00
Florida	9/5/00	8/17 - 9/2/00
Runoff	10/3/00	9/14 - 9/30/00
Georgia	7/18/00	6/29 - 7/15/00
Runoff	8/8/00	7/20 - 8/5/00
Guam	9/2/00	8/14 - 8/30/00
Hawaii	9/23/00	9/4 - 9/20/00
Idaho	5/23/00	5/4 - 5/20/00
Illinois	3/21/00	3/2 - 3/18/00
Indiana	5/2/00	4/13 - 4/29/00
Iowa	6/6/00	5/18 - 6/3/00
Kansas	8/1/00	7/13 - 7/29/00
Kentucky	5/23/00	5/4 - 5/20/00
Louisiana	11/7/00	10/19 - 11/4/00
Runoff	12/9/00	11/20 - 12/6/00
Maine	6/13/00	5/25 - 6/10/00
Massachusetts	9/19/00	8/31 - 9/16/00
Michigan	8/8/00	7/20 - 8/5/00
Minnesota	9/12/00	8/24 - 9/9/00
Mississippi	3/14/00	2/24 - 3/11/00
Runoff	4/4/00	3/16 - 4/1/00
Missouri	8/8/00	7/20 - 8/5/00
Montana	6/6/00	5/18 - 6/3/00
Nebraska	5/9/00	4/20 - 5/6/00
Nevada	9/5/00	8/17 - 9/2/00
New Hampshire	9/12/00	8/24 - 9/9/00
New Jersey	6/6/00	5/18 - 6/3/00
New Mexico	6/6/00	5/18 - 6/3/00
New York	9/12/00	8/24 - 9/9/00
North Carolina	5/2/00	4/13 - 4/29/00
Runoff	5/30/00	5/11 - 5/27/00
North Dakota	6/13/00	5/25 - 6/10/00
Ohio	3/7/00	2/17 - 3/4/00

(continued on page 12)

Reports

(continued from page 11)

State	Election Date	48-Hour Notice Period
Oklahoma	8/22/00	8/3 - 8/19/00
Runoff	9/19/00	8/31 - 9/16/00
Oregon	5/16/00	4/27 - 5/13/00
Pennsylvania	4/4/00	3/16 - 4/1/00
Puerto Rico	11/14/99	10/26 - 11/11/00
Rhode Island	9/12/00	8/24 - 9/9/00
South Carolina	6/13/00	5/25 - 6/10/00
Runoff	6/27/00	6/8 - 6/24/00
South Dakota	6/6/00	5/18 - 6/3/00
Runoff	6/20/00	6/1 - 6/17/00
Tennessee	8/3/00	7/15 - 7/31/00
Texas	3/14/00	2/24 - 3/11/00
Runoff	4/11/00	3/23 - 4/8/00
Utah	6/27/00	6/8 - 6/24/00
Vermont	9/12/00	8/24 - 9/9/00
Virginia	6/13/00	5/25 - 6/10/00
Virgin Islands	9/9/00	8/21 - 9/6/00
Washington	9/19/00	8/31 - 9/16/00
West Virginia	5/9/00	4/20 - 5/6/00
Wisconsin	9/12/00	8/24 - 9/9/00
Wyoming	8/22/00	8/3 - 8/19/00

Nonfilers

Crane for Congress Committee and Billy K. McMinn, as treasurer, failed to file the 1999 Year End Report. The FEC is required by law to publicize the names of nonfiling candidate committees. 2 U.S.C. §438(a)(7). The agency pursues enforcement actions against nonfilers on a case-by-case basis. ✥

FEC Web Site

FEC Adds Open Agenda Documents to Web Site

On February 1, 2000, the FEC added agenda documents for its open public meeting to its Web site at www.fec.gov. To see the documents, click on '*Campaign Finance Law Resources*' on the home page. At the bottom of the next page, click on '*Commission Meetings.*' Documents will be found under the date of the meeting at which they were discussed, in the order they were slated for the meeting.

The Commission regularly holds its public meeting on Thursday mornings beginning at 10 a.m. at its building at 999 E Street, N.W., Washington, D.C. At these meetings Commissioners discuss and vote on staff drafts of Commission responses to Advisory Opinion requests, staff proposals for final audit reports, regulatory proposals and other policy matters.

The FEC's Web site was first launched in February 1996. Images of reports filed by Presidential campaigns, House campaigns, PACs and political party committees were added in January 1998, and expanded to include the previous 1995-96 cycle reports later that year. The full texts of all Advisory Opinions issued since 1977 have been available online since August of 1999. ✥

Statistics

Semiannual PAC Count Shows Increase Since 1999

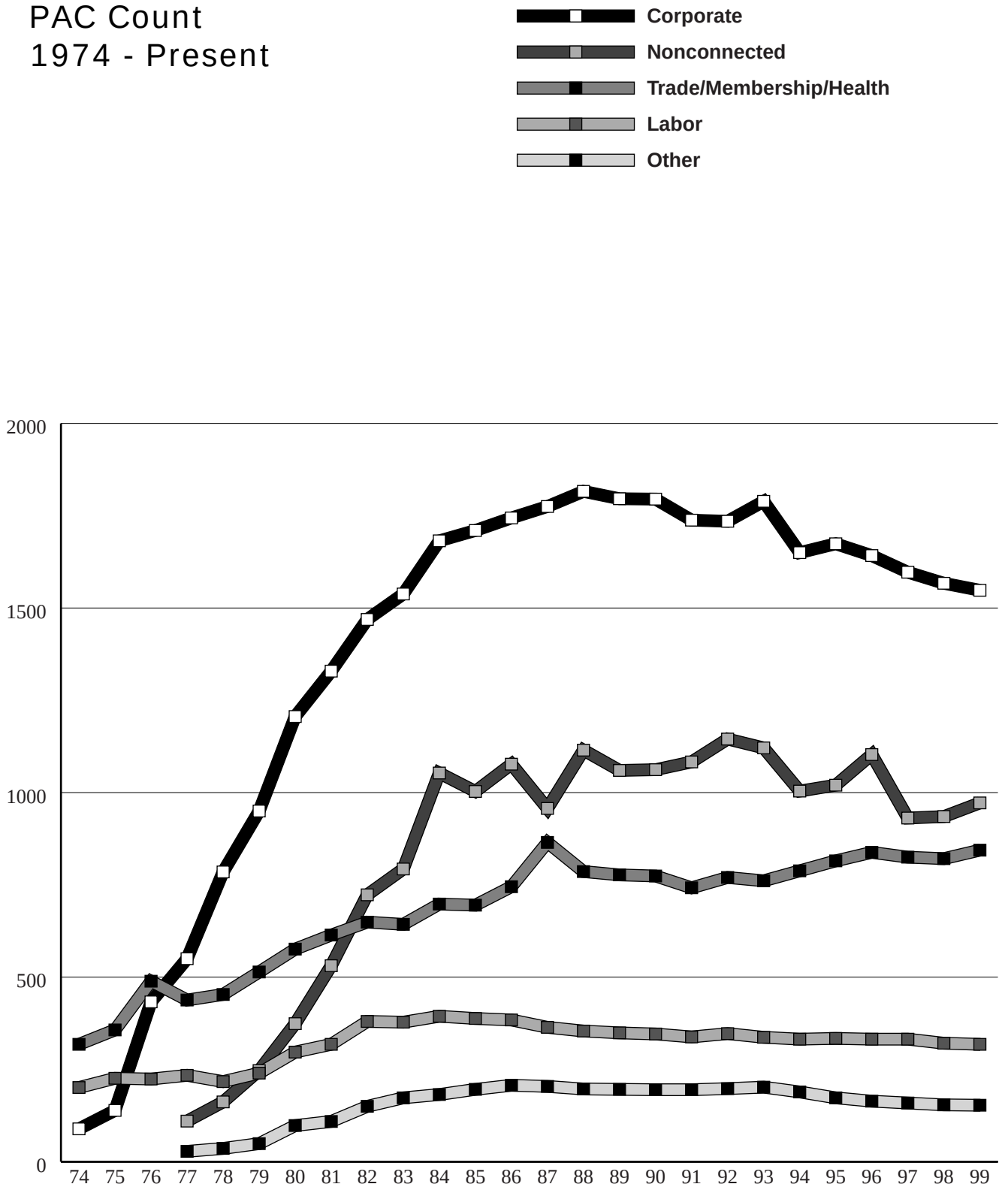
According to the FEC's semiannual survey taken January 1, the number of federally registered political action committees (PACs) has increased slightly since July 1, 1999, bringing the total number of registered PACs to 3,835.

Corporate PACs remain the largest category, with 1,548 committees, followed by nonconnected with 972, trade/membership/health with 844, labor with 318, corporations without stock with 115 and cooperatives with 38.

The chart on the next page shows the number of PACs in existence since the end of 1974.

For additional information, visit the FEC's Web site (www.fec.gov) or request a copy of the agency's January 14 press release (call 800/424-9530 and press 3 for the Public Records Office or press 2 for the Press Office). ✥

PAC Count
1974 - Present



Party Activities

2000 Coordinated Party Expenditure Limits

The 2000 coordinated party expenditure limits are now available. They are:

- $13,680,292 for Presidential nominees;
- $33,780 for House nominees; [1] and
- A range from $67,560 to $1,636,438 for Senate nominees, depending on each state's voting age population.

Party committees may make these special expenditures on behalf of their 2000 general election nominees. National party committees have a separate limit for each nominee, but they share their limits with their national senatorial and congressional committees. Each state party committee has a separate limit for each House and Senate nominee in its state. Local party committees do not have their own separate limit. One party committee may authorize another party committee to make an expenditure against its limit. Local committees may only make coordinated party expenditures with advanced written authorization from another committee.

Coordinated party expenditure limits are separate from the contribution limits; they also differ from contributions in that the party committee must spend the funds on behalf of the candidate rather than give the money directly to the campaign. Although these expenditures may be made in consultation with the candidate, only the party

[1] *In states that have only one U.S. House Representative, the coordinated party expenditure limit for the House nominee is $67,560, the same amount as the Senate limit.*

Authority to Make Coordinated Party Expenditures on Behalf of House, Senate and Presidential Nominees

National Party Committee	May make expenditures on behalf of House, Senate and Presidential nominees. May authorize [1] other party committees to make expenditures against its own spending limits. Shares limits with national congressional and senatorial campaign committees.
State Party Committee	May make expenditures on behalf of House and Senate nominees seeking election in the committee's state. May authorize [1] other party committees to make expenditures against its own spending limits. May be authorized [1] by national committee to make expenditures on behalf of Presidential nominee that count against national committee's limit.
Local Party Committee	May be authorized [1] by national or state party committee to make expenditures against their limits.

[1] *The authorizing committee must provide prior, written authorization specifying the amount the committee may spend.*

Calculating 2000 Coordinated Party Expenditure Limits

	Amount	Formula
Presidential Nominee	$13,680,292	2¢ x VAP [1] x COLA [2]
Senate Nominee	See table on facing page	The greater of: $20,000 x COLA or 2¢ x state VAP x COLA
House Nominee in States with Only One Representative	$67,560	$20,000 x COLA
House Nominee in Other States	$33,780	$10,000 x COLA
Nominee for Delegate or Resident Commissioner [3]	$33,780	$10,000 x COLA

[1] *VAP means voting age population. VAP figures are not yet official.*

[2] *COLA means cost-of-living adjustment. The 2000 COLA is 3.378. This figure is official.*

[3] *American Samoa, the District of Columbia, Guam and the Virgin Islands elect Delegates; Puerto Rico elects a Resident Commissioner.*

Coordinated Party Expenditure Limits for 2000 Senate Nominees

State	Voting Age Population (in thousands)	Expenditure Limit
Alabama	3,304	$223,218
Alaska*	423	$67,560
Arizona	3,444	$232,677
Arkansas	1,891	$127,756
California	24,222	$1,636,438
Colorado	2,991	$202,072
Connecticut	2,454	$165,792
Delaware*	571	$67,560
Florida	11,541	$779,710
Georgia	5,731	$387,186
Hawaii	896	$67,560
Idaho	901	$67,560
Illinois	8,947	$604,459
Indiana	4,414	$298,210
Iowa	2,150	$145,254
Kansas	1,955	$132,080
Kentucky	2,995	$202,342
Louisiana	3,182	$214,976
Maine	963	$67,560
Maryland	3,862	$260,917
Massachusetts	4,707	$318,005
Michigan	7,303	$493,391
Minnesota	3,504	$236,730
Mississippi	2,016	$136,201
Missouri	4,069	$274,902
Montana*	659	$67,560
Nebraska	1,222	$82,558
Nevada	1,318	$89,044
New Hampshire	897	$67,560
New Jersey	6,140	$414,818
New Mexico	1,244	$84,045
New York	13,756	$929,355
North Carolina	5,710	$385,768
North Dakota*	474	$67,560
Ohio	8,413	$568,382
Oklahoma	2,476	$167,279
Oregon	2,489	$168,157
Pennsylvania	9,141	$617,566
Rhode Island	750	$67,560
South Carolina	2,930	$197,951
South Dakota*	535	$67,560
Tennessee	4,143	$279,901
Texas	14,325	$967,797
Utah	1,422	$96,070
Vermont*	454	$67,560
Virginia	5,208	$351,852
Washington	4,270	$288,481
West Virginia	1,403	$94,787
Wisconsin	3,902	$263,619
Wyoming*	353	$67,560

** In these states, which have only one U.S. House Representative, the spending limit for the House nominee is $67,560, the same amount as the Senate limit. In other states, the limit for each House nominee is $33,780.*

committee making the expenditure—not the candidate committee—must report them. (Coordinated party expenditures are reported on FEC Form 3X, line 25, and are always itemized on Schedule F, regardless of amount.)

The accompanying tables include: information on which party committees have the authority to make coordinated party expenditures; the formula used to calculate the coordinated party expenditure limits; and a listing of the state-by-state coordinated party expenditure limits. ✥

Public Appearances

March 3-4, 2000
The Federalist Society at Harvard Law School
Cambridge, Massachusetts
Commissioner David Mason

March 17-19, 2000
Center for Public Integrity
Park City, Utah
Bob Biersack

March 24, 2000
Western Carolina University
Washington, D.C.
Commissioner David Mason

March 29, 2000
Tonbridge School
Washington, D.C.
Commissioner David Mason

March 31,2000
The Voting Integrity Project
Washington, D.C.
Commissioner David Mason

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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.

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

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