

# Record

May 2007

Federal Election Commission

Volume 33, Number 5

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## Regulations

### Best Efforts Defense Replaces the Extraordinary Circumstances Defense

On March 22, 2007, the Commission voted to revise its rules to allow committees to use “best efforts” as a defense for challenges in the Administrative Fines Program (AFP). The “best efforts” defense is effective April 30, 2007. Previously, the only acceptable defenses in these cases were the existence of “factual errors” in the Commission’s reason-to-believe finding or certain “extraordinary circumstances” set forth in the regulations. To use best efforts as a defense, respondents must demonstrate that they could not file due to reasonably unforeseen circumstances beyond their control, and that they filed the late report within 24 hours after those circumstances ended. 11 CFR 111.35(c) and (d).

### Background

The final rules respond to the U.S. District Court for the District of Massachusetts’ decision in *Lovely v. FEC*. (See the [May 2004 Record](#), page 12.) That case involved a political committee’s challenge to an administrative fine the Commission assessed for late filing. The committee argued that it had made

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## Compliance

### Safe Harbor for Embezzlement Misreporting

On March 22, 2007, the Commission approved a policy statement creating a safe harbor for committees that have specified safeguards in place, but nevertheless file incorrect reports due to a misappropriation of committee funds. Under the policy, the Commission will not seek civil penalties in relation to such misreporting.

The policy statement responds to a recent increase in the number of enforcement cases involving misappropriation of committee funds, often by committee employees. Inaccurate reports often accompany misappropriations, leaving committees open to an FEC enforcement action and potential liability for reporting errors, including fines.

The policy statement is not a new legal requirement for political committees; rather, it creates a safe harbor for committees that have the stated internal controls in place at the time of the misappropriation and follow certain post-discovery steps. Committees operating within that safe harbor will not be subject to a monetary fine for filing incorrect reports as a result of the misappropriation. The Commission will also consider it a mitigating factor if a

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## Compliance

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committee uses some, but not all, of the safeguards and a misappropriation occurs.

The following minimum internal controls will qualify a committee for the safe harbor:<sup>1</sup>

- All bank accounts are opened using the committee's name and Employer Identification Number, not in an individual's name or Social Security Number;
- Bank statements are reviewed for unauthorized transactions and reconciled to the accounting records each month and to reports prior to filing. The reconciliations are done by someone other than a check

<sup>1</sup> The Commission has also issued guidance concerning other internal controls that committees may wish to implement. See the related article on page 3.

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signer or an individual responsible for handling the committee's accounting.

- Checks in excess of \$1,000 are authorized in writing and/or signed by two individuals. Further, all wire transfers are authorized in writing by two individuals. The individuals who may authorize disbursements or sign checks should be identified in writing in the committee's internal policies.
- An individual who does not handle the committee's accounting or have banking authority receives incoming checks and monitors all other incoming receipts. This individual makes a list of all committee receipts and places a restrictive endorsement, such as: "For Deposit Only to the Account of the Payee" on all checks.
- If the committee has a petty cash fund, an imprest system<sup>2</sup> is used, and the value of the petty cash fund should be no more than \$500.

Upon discovery of a misappropriation, a committee must notify the FEC and relevant law enforcement and voluntarily file amended reports to correct any errors resulting from the misappropriation.

The policy statement is available on the Commission's web site at [http://www.fec.gov/law/cfr/ej\\_compilation/2007/notice\\_2007-9.pdf](http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-9.pdf).

—Meredith Metzler

<sup>2</sup> An imprest fund is one in which the sum of the disbursements recorded in the petty cash log since the last replenishment and the remaining cash always equals the stated amount of the fund. When the fund is replenished the amount of the replenishment equals the amounts recorded since the prior replenishment and should bring the cash balance back to the stated amount. Only one person should be in charge of the fund.

## Policy Statement on Self Reporting of Violations

On March 22, 2007, the Commission approved a policy designed to encourage committees and other persons to self-report possible violations of the Federal Election Campaign Act (the Act). To encourage self-reporting, the Commission will generally offer penalties between 25 and 75 percent lower than those for matters arising by other means, such as complaints or the Commission's own review of reports. In certain circumstances, the Commission may allow committees who voluntarily report their violations and make a complete report of their internal investigation to proceed directly into conciliation before the Commission determines whether the committee violated the Act or Commission regulations. Additionally, the new policy addresses issues that could arise when self-reported violations are the subject of parallel criminal, administrative or civil proceedings.

Through this policy statement, the Commission seeks to increase the number of self-reported submissions in order to expedite the enforcement process and decrease the number of enforcement matters and subsequent litigation that the Commission must address. The policy statement details the various factors the Commission may consider in deciding how to proceed with self-reported violations. The factors include the nature of the violation, the extent of corrective action and new self-governance measures taken by the respondent and the level of cooperation and disclosure with the Commission once the violation has been reported.

*Fine Reduction.* Based on its consideration of these factors, the Commission may choose to reduce the amount of the civil money penalty it would otherwise have sought in the enforcement process. The amount of the reduction will depend on the facts and circumstances of a particular case and the Commission will be the sole party deciding whether the

facts of the case warrant a reduction in the penalty. A reduction generally will not be available to respondents whose violations already are the subject of a criminal or other government investigation. Additionally, in the reduction determination, the Commission will also consider aggravating factors weighing against a reduction, such as knowing and willful conduct or involvement by senior officials of an entity.

*Fast Track Resolution.* A limited number of self-reported matters may be eligible for an expedited “Fast-Track Resolution,” (FTR) which may be granted at the Commission’s discretion. FTR cases will allow respondents an opportunity to resolve certain matters before the Commission makes any formal findings in the matter. It is expected that the FTR process will allow for a faster resolution of certain types of violations where factual and legal issues are fairly clear. Examples include matters where: an individual discovers that he or she inadvertently violated the biennial limit (see 2 U.S.C. 441a(a)(3)); a political committee seeks to disclose and correct straightforward reporting violations; a political committee and contributor seek to resolve liability for a simple and inadvertent excessive or prohibited contribution; and a self-reporting submission is very thorough, requiring little, if any, follow-up by the Office of General Counsel to complete the factual record.

*Parallel Proceedings.* Self-reported submissions may also be the subject of simultaneous criminal investigations, state administrative proceedings and/or civil litigation. Persons who self-report should make any parallel proceedings known to the Commission and are encouraged to self-report their activity to any law enforcement agency with jurisdiction over the activity. Such disclosure increases the possibility that the Commission could work with other federal, state and local agencies to resolve the issues at the same time. In some cases, the Com-

mission may enter into conciliation with respondents who self-reported their violations without requiring an admission that the conduct was knowing and willful, even if evidence might support such a finding. The Commission also may consider the fact that a matter was self-reported when deciding whether to refer a matter to another agency.

The policy statement regarding the self-reporting of violations is available on the Commission’s web site at [http://www.fec.gov/law/cfr/ej\\_compilation/2007/notice\\_2007-8.pdf](http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-8.pdf).

—Meredith Metzler

### Internal Controls for Political Committees

On March 22, 2007, the Commission approved guidance concerning internal controls and best practices designed to help political committees meet their goals, protect their assets and file accurate disclosure reports.

#### Background

In recent years, the Commission has noticed an increase in cases involving misappropriation of committee assets. Often these committees had no systems of internal control in place to provide an independent check on their operations and assets.

To help committees comply with the requirements of the Federal Election Campaign Act (the Act) and simultaneously protect their assets, the Commission has published guidance on best practice internal controls. While the Act does not require any particular set of internal controls, it does require that committees file accurate and complete disclosure reports. Implementing effective internal control can help committees meet that requirement since misappropriations of funds or unintentional errors generally lead to the filing of inaccurate disclosure reports.

### Selected Procedures for Internal Controls

The suggested internal controls focus on areas that represent particular vulnerabilities the Commission has identified based on its regulatory experience and emphasize a separation of duties and protection of cash and non-cash assets. Some of the key suggestions are outlined below.

*Bank Accounts.* Limit the number of persons authorized to sign checks. In addition, checks in excess of a certain dollar amount should require the signature of two responsible individuals. The recommended threshold is \$1,000. Facsimile signatures should be prohibited unless controlled by a check-signing machine with a numerical sequence counter. No signature stamps should be allowed.

*Receipts.* Make a list of receipts when the mail is opened. Ideally, the person opening the mail and preparing the list should be independent of the accounting function. A responsible official should periodically (during the monthly bank reconciliation if not more often) compare the list with the recorded amount for the deposit and the deposit amount on the bank statement. Some committees have found using a lockbox service (to independently open mail, record the contributions and make bank deposits) to perform this part of the receipt processing beneficial. Such services may be available through the bank.

*Disbursements.* Mail all checks promptly and directly to the payee or, if they are to be delivered by committee staff, require that the person taking control of the checks signs for them. The person mailing the check should be independent of those requesting, writing and signing it.

These and other elements identified in “Internal Controls and Political Committees” can significantly reduce the opportunity for intentional misappropriation of funds

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## Compliance

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and any related false reporting. The discussion of internal controls is not intended to be exhaustive or to prescribe any one set of controls. It is up to each political committee to carefully consider what internal controls are valuable and feasible. The “Internal Controls and Political Committees” document is available on the Commission’s web site at [http://www.fec.gov/law/policy/guidance/internal\\_controls\\_polcmtes\\_07.pdf](http://www.fec.gov/law/policy/guidance/internal_controls_polcmtes_07.pdf).

—Carrie Hoback

## MUR 5645: Prohibited Corporate In-kind Contributions

The Commission has collected a total of \$81,578 in civil penalties resulting from Highmark Inc.’s payment of fundraising costs associated with events held for former Senator Rick Santorum’s (R-PA) campaign committees and his leadership PAC, America’s Foundation. The Commission assessed penalties against Highmark Inc., America’s Foundation and Bruce Hironimus, Highmark Inc.’s former Vice President of Government Affairs. The Commission took no further action regarding Senator Santorum’s campaign committee, Santorum 2006, because the evidence did not show that Santorum 2006 had reason to know of the impermissible contributions.

### Background

Under the Federal Election Campaign Act (the Act), a corporation may not use its treasury funds to make a contribution or expenditure in connection with a federal election. 2 U.S.C. 441b(a). Commission regulations include in the definition of “contribution” any payment made for the purpose of influencing any election to federal office. 11 CFR 100.52(a).

Highmark Inc., a Pittsburgh based insurance company, made a volun-

tary submission notifying the FEC that it appeared to have violated the Act by using corporate funds to defray fundraising costs for events held for Santorum 2000, Santorum 2006 and America’s Foundation. Between 1999 and 2003, Highmark Inc. made payments totaling \$54,078 related to four fundraising events: three golf tournaments and an event at a private home. Highmark officer Bruce Hironimus arranged all of these payments. None of the three committees reported in-kind contributions related to fundraising costs for these events.

### Conciliation Agreements

The Commission found reason to believe that Highmark Inc. violated the Act by making corporate contributions to the Santorum committees and that Highmark officers Bruce Hironimus, George Grode and David O’Brien violated the Act by consenting to those corporate in-kind contributions. In separate conciliation agreements, Highmark Inc. and Mr. Hironimus agreed to pay civil penalties of \$54,078 and \$20,000, respectively. No further action was taken regarding Mr. Grode and Mr. O’Brien.

The Commission also found reason to believe that America’s Foundation and Santorum 2006 violated the Act by accepting prohibited corporate contributions and failing to report in-kind contributions related to fundraising events. In its conciliation agreement, America’s Foundation agreed to pay a \$7,500 civil penalty and to disgorge \$14,604.45 to the U.S. Treasury to offset the prohibited contributions that it received.

The Commission took no further action regarding Santorum 2006 because the evidence did not indicate that the committee had reason to think an outside party had paid any prohibited costs. Thus, the Commission had no evidence that the committee knowingly accepted a contribution from an impermissible source. Santorum 2006 was in-

structed to pay \$7,938.81 to the U.S. Treasury to offset prohibited contributions that it received unknowingly.

—Gary Mullen

## MUR 5690: Reporting Joint Fundraising Proceeds

On April 11, 2007, the Commission announced that the Jim Gerlach for Congress Committee agreed to pay a \$120,000 civil penalty for failing to comply with several reporting provisions of the Act.

### Background

The Act and Commission regulations require participants in a joint fundraiser to disclose the total amount received from the joint fundraising committee and to itemize individual contributor information for the original sources for each joint fundraising disbursement. 11 CFR 102.17(c)(8)(i)(B) and 2 U.S.C. § 434(b)(2)(F), (3)(A). Furthermore, each report from an

## Federal Register

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

### Notice 2007-7

Best Efforts in Administrative Fines Challenges (72 FR 14662, March 29, 2007)

### Notice 2007-8

Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions) (72 FR 16695, April 5, 2007)

### Notice 2007-9

Statement of Policy; Safe Harbor for Misreporting Due to Embezzlement (72 FR 16695, April 5, 2007)

authorized political committee must disclose the total amount of receipts for the election cycle, including contributions, and the total amount of contributions received from persons other than committees for the reporting period. 2 U.S.C. 434(b)(2), 434(b)(2)(A).

### Reporting Violations

The Commission found reason to believe that the Gerlach Committee and Michael DeHaven, in his official capacity as treasurer (“the Committee”), violated the Act by failing to itemize \$8,832 in contributions received from a joint fundraising committee in its 2004 Year End Report. The Committee also incorrectly reported election-cycle-to-date totals by \$2,156,770 for contributions in several 2004 and 2005 reports and misreported \$8,911.21 of refunded contributions as unitemized contributions received in the 2005 October Quarterly Report.

The Commission also found reason to believe that the Committee incorrectly reported contributions from persons other than a political committee, total election cycle to date contributions for an individual and the committee’s cash on hand. The Commission voted to take no further action regarding those violations, but sent the Committee an admonishment letter.

### Conciliation Agreement

The Committee agreed to pay \$120,000 in civil penalties and will cease and desist from violating the Act.

—Amy Pike

### Regulations

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“best efforts” to file the report on time and that this constituted a valid and complete defense against the fine. The court concluded that the statutory language at 432(i) requires the Commission to entertain a “best efforts” defense in the administrative fines context, and that it was unclear

from the record in the case whether the Commission had considered the committee’s “best efforts” defense. The court remanded the case to the Commission for further proceedings.<sup>1</sup> On remand, the Commission determined that the committee had failed to show best efforts, and left the administrative fine in place.

Historically, the Commission interpreted the “best efforts” defense as applying only outside of the AFP to a treasurer’s attempts to obtain, maintain and disclose the name, address, occupation and employer of donors who contribute more than \$200 per year. Now, the Commission has decided to adopt the *Lovely* court’s interpretation of 432(i) and to incorporate a “best efforts” defense into the AFP.

In December 2006, the Commission published a Notice of Proposed Rulemaking (NPRM) that set forth proposed rules on the subject. See the [January 2007 Record](#), page 6. The comments received and an audio recording of the March 22 meeting at which the Commission adopted the final rules are available at [http://www.fec.gov/law/law\\_rulemakings.shtml](http://www.fec.gov/law/law_rulemakings.shtml).

### Final Rules

To address the concerns raised by the *Lovely* court and to provide greater clarity regarding permissible grounds for challenging a reason to believe finding, the Commission has amended four aspects of its rules governing the AFP. The revised rules:

- Clarify the scope of the factual errors defense;

<sup>1</sup> *The Lovely case did not involve a challenge to the validity of the administrative fines program rules, and those rules have continued in full force and effect since the district court order. The court stated that the Commission could “refine by regulation what best efforts means in the context of submitting a report.”* *Lovely*, 307 F. Supp. 2d at 300.

- Clarify when the Commission determines that no violation has occurred;
- Explain that the Commission’s statement of reasons for its final decision in the AFP matter usually consists of the reasons set forth by the Commission’s reviewing officer, as adopted by the Commission; and
- Replace the “extraordinary circumstances” defense with a defense for committees that demonstrate that they used their “best efforts” to file reports timely.

To claim best efforts as a defense, committees must demonstrate that they could not file due to reasonably unforeseen circumstances beyond their control, and they must show that they filed the late report within 24 hours after those circumstances ended. Examples of circumstances that will be considered “reasonably unforeseen” and beyond control of a respondent include a failure of Commission computers or Commission-provided software, a widespread disruption of information transmissions over the Internet (not caused by a failure of the Commission’s or committee’s computers or Internet service providers) and severe weather or other disaster-related incidents. The regulations also list examples of circumstances that will not be considered as qualifying for the “best efforts” defense, including negligence, illness, inexperience, unavailability of committee staff or treasurer, a failure to know filing dates and a failure to use Commission software properly. These examples are not exhaustive, but illustrate the types of situations that are, and are not, reasonably unforeseen and beyond the respondent’s control.

The final rule was published in the March 29, 2007, *Federal Register* (72 FR 14662) 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.

—Kathy Carothers

## Public Funding

### Estimated Presidential Spending Limitations

Under the Presidential Election Campaign Fund Act (the Fund Act) and the Presidential Primary Matching Payment Account Act (the Matching Act), Presidential candidates who accept public funding agree, among other things, to abide by overall spending limits as well as by state-by-state spending limits.<sup>1</sup> These limits are calculated using the cost of living adjustment (COLA) since 1974 and the voting age populations (VAPs) of each state for the year in which the election is held. However, in order to help Presidential campaigns estimate the limits for the upcoming elections, the Commission releases spending limit figures for the year preceding the Presidential election year.

If the Presidential election were held in 2007, the Commission calculates that each primary contender would be able to spend roughly \$55 million seeking his or her party's nomination. Party nominees would be able to spend nearly \$82 million in the general election. These figures merely provide an estimate of what the actual spending limits will be. Official spending limits for the 2008 Presidential elections, which must be updated for changes in state VAPs and the COLA, will not be available until early 2008.

The overall "base" spending limit for Presidential primary campaigns is \$10 million, adjusted for the cost of living. For 2007, the inflation adjusted overall spending limit is \$40,890,000. The additional state-by-state limits are keyed to the VAP

<sup>1</sup> These limits apply only to those campaigns choosing to accept federal matching funds. Campaigns that opt to forego federal funding may spend unlimited amounts of money.

### State Spending Limits if Presidential Primaries Were Held in 2007

State	Voting Age Population (in thousands)	Expenditure Limit
Alabama	3,485	\$2,280,026
Alaska*	460	\$817,800
Arizona	4,538	\$2,968,941
Arkansas	2,120	\$1,386,989
California	26,925	\$17,615,412
Colorado	3,584	\$2,344,796
Connecticut	2,687	\$1,757,943
Delaware*	650	\$817,800
Florida	14,068	\$9,203,848
Georgia	6,909	\$4,520,144
Hawaii*	987	\$817,800
Idaho*	1,072	\$817,800
Illinois	9,617	\$6,291,826
Indiana	4,736	\$3,098,481
Iowa	2,272	\$1,486,433
Kansas	2,068	\$1,352,968
Kentucky	3,207	\$2,098,148
Louisiana	3,198	\$2,092,260
Maine*	1,041	\$817,800
Maryland	4,255	\$2,783,791
Massachusetts	4,988	\$3,263,349
Michigan	7,617	\$4,983,346
Minnesota	3,910	\$2,558,078
Mississippi	2,151	\$1,407,270
Missouri	4,426	\$2,895,666
Montana*	727	\$817,800
Nebraska	1,323	\$865,560
Nevada	1,861	\$1,217,541
New Hampshire*	1,017	\$817,800
New Jersey	6,635	\$4,340,882
New Mexico	1,446	\$946,031
New York	14,792	\$9,677,518
North Carolina	6,701	\$4,384,062
North Dakota*	491	\$817,800
Ohio	8,708	\$5,697,122
Oklahoma	2,685	\$1,756,634
Oregon	2,844	\$1,860,659
Pennsylvania	9,636	\$6,304,257
Rhode Island*	830	\$817,800
South Carolina	3,282	\$2,147,216
South Dakota*	587	\$817,800
Tennessee	4,596	\$3,006,887
Texas	17,014	\$11,131,239
Utah	1,759	\$1,150,808
Vermont*	491	\$817,800
Virginia	5,836	\$3,818,145
Washington	4,870	\$3,186,149
West Virginia	1,429	\$934,909
Wisconsin	4,244	\$2,776,595
Wyoming*	393	\$817,800

\* In these states, the limit is the minimum \$200,000 plus COLA, resulting in a \$817,800 spending limit. This limit also applies to the U.S. Territories.

of each state, with a minimum of at least \$200,000, plus a COLA for those states with a low VAP. The formula for setting state limits is 16¢ multiplied by the VAP + COLA. A less populated state, such as New Hampshire, would have a limit of \$200,000, plus COLA, or \$817,800. A larger state, such as California, would have a limit of [16¢ x 26,925,000 (VAP), plus COLA,] or \$17,615,412.

Commission regulations exempt certain expenses from the overall spending limits. For example, an exemption for 20 percent of a campaign's fundraising expenses effectively raises the total amount primary contenders may spend in the pre-convention period to \$49,068,000. Campaigns may also spend up to an additional 15 percent of the overall spending limit on legal and accounting expenses. Thus, the maximum amount that a primary committee could spend—taking both of these exemptions into account—is \$55,201,500.

While these exemptions are derived from the overall spending limit, they also affect state spending limits. The Commission provides guidance on how campaigns must allocate expenses to particular state primaries. A campaign may consider 50 percent of all expenses that are allocable to a given state to be “exempt fundraising” and need not count these expenses toward the spending limit for that state.<sup>2</sup> Thus, a campaign may use its available fundraising exemption selectively to assure that the 20 percent overall exemption is not exhausted before particular primaries where the state spending limitation is of greatest concern. A campaign availing itself of the maximum fundraising exemp-

<sup>2</sup> Direct mail expenses for mailings occurring more than 28 days before the primary election may be considered 100 percent exempt fundraising. Direct mailings sent within 28 days before the election may only be considered 50 percent exempt fundraising.

tion in New Hampshire, for example, might permissibly spend as much as \$1.64 million on the New Hampshire primary, even though the calculated spending limit is \$817,800.

In the general election, major party nominees who choose to accept public funding will receive at least \$81.78 million each to finance their campaigns (\$20 million, plus COLA over 1974). The nominees must spend only those funds and not supplement the public funds with any private contributions for the campaign. The nominees may, however, raise private funds to cover certain legal and accounting costs, which are not subject to the spending limit. Additionally, the two major parties will be able to spend at least \$18,773,200 million on their respective Presidential nominees in coordinated expenditures.

—Elizabeth Kurland

## Advisory Opinions

### Advisory Opinion 2007-01: Federal Officeholder May Raise Nonfederal Funds to Retire State Campaign Debt

A U.S. Senator may solicit, receive and spend funds that are in excess of federal limitations and are from sources prohibited under federal law in order to retire existing debt incurred in connection with her campaigns for Governor and State Auditor. Any solicitation for these purposes that refer to “Senator McCaskill” are permitted under the Act, subject to certain conditions. The Senator may also solicit and receive federally permissible funds for the same purpose.

#### Background

Senator Claire McCaskill of Missouri was elected to the U.S. Senate in 2006 and is currently a candidate for reelection in 2012. Prior to her

election as a U.S. Senator, she was a candidate for Governor in 2004 and State Auditor of Missouri in 1998 and 2002. Debts previously owed by Friends of McCaskill, the nonfederal committee for Senator McCaskill's candidacies for Governor and State Auditor, were transferred to McCaskill for Auditor, the Senator's committee for reelection to State Auditor.

#### Analysis

The Federal Election Campaign Act (“the Act”) prohibits federal candidates and officeholders from raising or spending funds in connection with an election for federal office unless those funds are subject to the limitations and prohibitions set forth within the Act. 2 U.S.C. 441i(e)(1)(A); 11 CFR 300.61. The Act also prohibits federal candidates and officeholders from raising or spending funds in connection with an election other than an election for federal office unless the funds are subject to the limitations and prohibitions of the Act. 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62.

The Act, however, provides a limited exception for federal candidates and officeholders who seek state or local office. The Act's restrictions do not apply to any federal candidate or officeholder who is or was also a candidate for state or local office so long as the raising or spending of funds is 1) solely in connection with his or her state or local campaign; 2) refers only to him or her or to other candidates for that same state or local office; and 3) is permitted under state law. 11 CFR 300.63.

The Commission has previously concluded that funds raised after an election to retire campaign debt are as much in connection with the election for that office as contributions received by the committee before the election. Therefore, the first criterion is satisfied if funds raised by Senator McCaskill are in connection with debt retirement for

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## Advisory Opinions

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her state office. The second criterion is satisfied if the solicitations refer only to Senator McCaskill or other candidates for the same state or local office. The final criterion is satisfied if the proposed activities comply with relevant Missouri law.

Senator McCaskill is also permitted to raise federally permissible funds to retire her state committee's debt, assuming those funds would comply with state law.

In addition, Senator McCaskill, as a current federal officeholder who was previously a candidate for state office, is not subject to the Act's provisions that prohibit state candidates from paying for public communications that promote, support, attack or

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oppose federal candidates with funds not subject to federal limits and reporting requirements.

Date Issued: March 22, 2007

Length: 8 pages

—Myles Martin

## Advisory Opinion Requests

### AOR 2007-6

Whether the Libertarian Party of Indiana qualifies as a state party committee (Libertarian Party of Indiana, March 21, 2007)

### AOR 2007-7

Whether a candidate may raise funds to be repaid when personal funds from the candidate were reported by the committee as contributions, not loans to the committee (Craig for U.S. Congress, April 13, 2007)

## Audits

### Audits of Bush/Cheney '04 and Clark for President

On March 22, 2007, the Commission approved the final audit reports on Clark for President, Inc. (CFP) and Bush-Cheney '04, Inc. (General Committee) and the Bush-Cheney '04 Compliance Committee, Inc. (Compliance Committee). The agency has now completed 10 of the 14 required audits from the 2004 Presidential election.

Federal law requires the Commission to audit every political committee that receives public funds to ensure that those funds were not misused and that the committee maintained proper records and filed accurate reports. If a committee received funds in excess of its entitlement, incurred non-qualified campaign expenses, had surplus funds or committed an apparent violation of the law, the Commission requires it to repay public funds to the U.S. Treasury.

### Clark for President Audit

Clark for President, Inc. (CFP) was the principal campaign committee of General Wesley K. Clark, a candidate for the Democratic Party's nomination for President in 2004. The audit of CFP's finances included six findings and recommendations, two of which resulted in payments to the U.S. Treasury. CFP's \$257,226 payment is the result of the audit finding that the committee:

- Received excessive in-kind contributions resulting from improper payment for travel on private aircraft; and
- Failed to properly remedy excessive monetary contributions.

*Excessive in-kind contributions.* The term "contribution" is defined as a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. An in-kind contribution is most typically the provision of goods or services at less than the usual and normal charge. 11 CFR 100.52(a) and (d).

Some of CFP's campaign flights involved private aircraft owned by Cullman Ventures LLC (Cullman), a Limited Liability Company that had not elected corporate status with the Internal Revenue Service. CFP reimbursed Cullman for these flights using the 1<sup>st</sup> Class rate between the cities served. The audit revealed that the flights in question were on aircraft operating under a FAA commercial certification, and according to the travel rules in place at the time, the flights should have been paid at the usual and normal charter rate. 11 CFR 100.52(a) and (d); 100.93(a)(2). Since the 1<sup>st</sup> Class rate paid is less than the required reimbursement amount, the difference results in an excessive in-kind contribution from Cullman to CFP. As a result, CFP must pay \$9,315 to the U.S. Treasury—the amount of the excessive in-kind contribution.

*Receipt of Excessive Monetary Contributions.* Under Commission regulations, if a committee receives contributions that appear to exceed the limits, the committee may remedy the violation by refunding the excessive amount or, if the check is drawn off a joint checking account, the committee may seek a reattribution of the excessive portion to the other account holder, within 60 days of receipt. 11 CFR 110.1(k)(3).

CFP retained a consultant, The Synetech Group (Synetech), to collect, process and record contributions. This service included sending reattribution notices and other notification letters to contributors who appeared to have made excessive contributions. CFP states that Synetech failed in many instances to send reattribution letters to cure excessive contributions in a timely manner. As a result, CFP must pay \$247, 911 to the U.S. Treasury—the amount of unresolved excessive contributions.

### **Bush/Cheney Audit**

Bush-Cheney '04, Inc. (General Committee) was the principal campaign committee for President George W. Bush, the Republican Party's nominee for the office of President in 2004. The Bush-Cheney '04 Compliance Committee, Inc. (Compliance Fund) was established to accept contributions solely for legal and accounting services to ensure compliance with federal campaign finance laws. Based upon an examination of the reports and statements filed by the Compliance Fund, no material non-compliance was discovered. The General Committee's audit raised questions about its receipt of possible in-kind contributions from air charter providers and expenditures that might have exceeded the general election expenditure limit, but neither resulted in a repayment.

*Potential in-kind contributions from air charter providers.* For a candidate to be eligible to receive

any payments from the Presidential Election Campaign Fund, the candidate of a major party in a presidential election shall certify to the Commission that no contributions to defray qualified campaign expenses will be accepted, except to make up any deficiency in payments received out of the Fund. 26 U.S.C. 9003.3(b)(2).

During the course of the general election campaign, a number of flights were taken using aircraft owned by individuals, corporations and others. The flights were all reimbursed by the General Committee using the 1<sup>st</sup> Class airfare rate. The audit called into question whether the flights should have been reimbursed at the higher usual and normal charter rate. If so, the resulting underpayments would be prohibited general election contributions from the aircraft service providers. In the end, the audit found no repayment necessary since the flights in question were either not flown under an FAA commercial operating certificate or were flown on corporate-owned aircraft, justifying, at the time, the 1<sup>st</sup> Class rate payment made. 11 CFR 100.52(a)(d); 100.93(a)(2).

### **Hybrid Ads**

Another issue raised in the General Committee audit was the treatment of hybrid advertisements. These hybrid ads were communications that mentioned clearly identified Presidential candidates and generically referenced other candidates of the party. The cost of the ads was shared equally by General Committee and the Republican Party. While no determination was made during the audit, the Commission approved Notice of Proposed Rulemaking concerning hybrid ads at its open meeting on April 19, 2007. A copy of the document may be found on the FEC web site at [http://www.fec.gov/law/law\\_rulemakings.shtml](http://www.fec.gov/law/law_rulemakings.shtml), and a summary of the NPRM will appear in next month's *Record*.

Copies of the audit reports are available on the FEC web site at [http://www.fec.gov/audits/audit\\_reports\\_pres.shtml](http://www.fec.gov/audits/audit_reports_pres.shtml).

—Elizabeth Kurland

## **Enforcement Query System Available on FEC Web Site**

The FEC continues to update and expand its Enforcement Query System (EQS), a web-based search tool that allows users to find and examine public documents regarding closed Commission enforcement matters. Using current scanning, optical character recognition and text search technologies, the system permits intuitive and flexible searches of case documents and other materials.

Users of the system can search for specific words or phrases from the text of all public case documents. They can also identify single matters under review (MURs) or groups of cases by searching additional identifying information about cases prepared as part of the Case Management System. Included among these criteria are case names and numbers, complainants and respondents, timeframes, dispositions, legal issues and penalty amounts. The Enforcement Query System may be accessed on the Commission's web site at [www.fec.gov](http://www.fec.gov).

Currently, the EQS contains complete public case files for all MURs closed since January 1, 1999. In addition to adding all cases closed subsequently, staff is working to add cases closed prior to 1999. Within the past year, Alternative Dispute Resolution (ADR) cases were added to the system. All cases closed since the ADR program's October 2000 inception can be accessed through the system.

## Reports

### Georgia Special Election Reporting: 10<sup>th</sup> District

The Special General Election to fill the U.S. House seat in Georgia's 10<sup>th</sup> Congressional District formerly held by the late Representative Charlie Norwood will be June 19, 2007. Under Georgia 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 July 17, 2007, between the top two vote-getters.

Candidate committees involved in one or both of these elections must follow the reporting schedule at right. Please note that the reporting period for the Post-General election report (or Post-Runoff election report, if necessary) spans two election cycles. For this report only, authorized committees must use the Post-Election Detailed Summary Page rather than the normal Detailed Summary Page.

PACs and party committees that file on a semiannual schedule and participate in one or both of these elections must follow the same schedule at right. PACs and party committees that file monthly must continue to file according to their regular filing schedule.

#### Filing Electronically.

Reports filed electronically must be received and validated by 11:59 p.m. Eastern Time on the applicable filing deadline. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program by 11:59 p.m. Eastern Time on the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines.

### Georgia 10th District Special Election Reporting

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

	Close of Books	Reg./Cert./Overnight Mailing Date <sup>1</sup>	Filing Date
Pre-General	May 30	June 4	June 7
July Quarterly		--waived--	
Post-General	July 9	July 19	July 19
October Quarterly	September 30	October 15	October 15

#### Committees Involved in Both the Special General and Special Runoff Must File:

	Close of Books	Reg./Cert./Overnight Mailing Date <sup>1</sup>	Filing Date
Pre-General	May 30	June 4	June 7
July Quarterly		--waived--	
Pre-Runoff	June 27	July 2	July 5
Post-Runoff	August 6	August 16	August 16
October Quarterly	September 30	October 15	October 15

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

	Close of Books	Reg./Cert./Overnight Mailing Date <sup>1</sup>	Filing Date
Pre-General	May 30	June 4	June 7
July Quarterly	June 30	July 15	July 15 <sup>2</sup>

<sup>1</sup> This date indicates the end of a reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered.

<sup>2</sup> Notice that this filing date falls on a weekend. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received before the Commission's close of business on the last business day before the deadline.

#### Timely Filing for Paper Filers

*Registered and Certified Mail.* Reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by certified

or registered mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by certified mail.

*Overnight Mail.* Reports filed via overnight mail<sup>1</sup> will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Express or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports.

*Other Means of Filing.* Reports sent by other means—including first class mail and courier—must be received by the FEC before the Commission's close of business on the filing deadline. 2 U.S.C. 434(a)(5) and 11 CFR 104.5(e). Paper forms are available at the FEC's web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency's automated fax system (202/501-3413).

#### **48-Hour Contribution Notices**

Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more between May 31 and June 16, for the Special General Election; and between June 28 and July 14, for the Special Runoff Election, if that election is held.

#### **24- and 48-Hour Reports of Independent Expenditures**

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate at or above \$1,000 between May 31 and June 17, for the Special General, and between June 28 and July 15, for the Special Runoff, if that election is held. This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more at other times during a calendar year.

<sup>1</sup> "Overnight mail" includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service's on-line tracking system.

#### **Electioneering Communications**

The 60-day electioneering communications period in connection with the Special General Election runs from April 20 through June 19, 2007. The electioneering communications period for the Special Runoff Election, if that election is held, runs from May 18 through July 17, 2007.

—Elizabeth Kurland

## Legislation

#### **Commission Recommends Legislation to Congress, President**

On April 12, 2007, the Commission approved five recommendations for changes to current campaign finance law. The Commission sent its recommendations to Congress and the President, indicating that it is ready to implement all of these changes should they be enacted.

#### **Electronic Filing of Senate Reports**

The Commission recommends that Congress require electronic filing by Senatorial committees that have, or expect to have, financial activity in excess of a Commission established threshold, which is currently \$50,000 per calendar year. Currently, Senate filers are the only political committees that are not required to file official reports electronically upon reaching this threshold. Electronic filing of reports speeds disclosure and avoids the delays caused by extra data processing time for paper filings and by the security measures implemented following the anthrax incident in 2001.

#### **Fraudulent Misrepresentation of Campaign Authority**

The Commission recommends extending the current prohibition on fraudulent misrepresentation to include anyone purporting to act on behalf of candidates and real or fictitious political committees and or-

ganizations. Also, the Commission recommends that Congress remove the requirement that the fraudulent misrepresentation relate to a matter that is damaging to another candidate or political party.

#### **Title 18 Immunity Orders**

The Commission recommends that Congress include the FEC in the list of agencies that are authorized to issue orders immunizing an individual from criminal prosecution based on testimony or information provided by the individual to the Commission. Such an order, once approved by the Department of Justice, would prevent an individual from refusing to testify based on his or her Fifth Amendment privilege against self-incrimination. Numerous other independent federal agencies have the ability to issue such immunity orders, and such power would allow the Commission to obtain more information relevant to the Commission's enforcement responsibilities.

(continued on page 12)

### **New Campaign Guide Available**

The 2007 Campaign Guide for Corporations and Labor Organizations is now available on the Commission web site at <http://www.fec.gov/info/publications.shtml>. Paper copies are also available.

For each type of committee, a Campaign Guide explains, in clear English, the complex regulations regarding the activity of political committees. It shows readers, for example, how to fill out FEC reports and illustrates how the law applies to practical situations.

Please contact the Information Division at 800/424-9530 to order paper copies.

## Legislation

(continued from page 11)

### Use of FEC Identification Number

In order to ensure more accurate reporting and disclosure, the Commission recommends that Congress require a political committee to include its FEC identification number on all committee-to-committee contribution checks that it issues. Additionally, a political committee should be required to disclose on its FEC reports the identification number of committees when itemizing contributions it receives from other committees and contributions it makes to other committees.

### Increasing Certain Thresholds for Inflation

The Commission recommends increasing certain registration and reporting thresholds, set in 1974 and

1979, to account for inflation. Specifically, the Commission proposes adjusting:

- The political committee definition based on contributions received or expenditures made in a calendar year from over \$1,000 to over \$5,000;
- The political committee definition for local party committees based on contributions received or expenditures made in a calendar year from over \$1,000 to over \$5,000;
- The reporting threshold for independent expenditures in a calendar year by a person other than a political committee from over \$250 to over \$1,000; and
- The exception to the definition of “contribution” for unreimbursed travel expenses by an individual on behalf of a single candidate from \$1,000 to \$2,000, and on behalf of a political party from \$2,000 to \$4,000 in a calendar year.

The 2007 legislative recommendations are available on the Commission’s web site at [http://www.fec.gov/law/legislative\\_recommendations\\_2007.shtml](http://www.fec.gov/law/legislative_recommendations_2007.shtml).

—Meredith Metzler

and international associations that deal with campaign finance and elections.

The online version is updated periodically and contains hyperlinks that allow users to access the official home pages of the agencies listed in the publication. The directory is also available as a PDF or Word file, either of which can be downloaded and printed in its entirety.

A printed version of the directory is also available from the Public Disclosure Division, 202/694-1120.

—Meredith Metzler

### Commission Calendar Always Up-to-Date

Between issues of the Record, you can stay up-to-date on the latest FEC activity by visiting the Commission Calendar on our web site at [http://www.fec.gov/Fec\\_calendar/maincal.cfm](http://www.fec.gov/Fec_calendar/maincal.cfm). The Calendar lists Commission meetings, reporting deadlines, conferences and outreach events, advisory opinion and rulemaking comment periods and other useful information. Each calendar entry links directly to the relevant documents, so you can quickly access detailed information on the subjects that interest you.

While you’re visiting [www.fec.gov](http://www.fec.gov), be sure to explore the rest of our site to review the latest campaign finance reports and data, research enforcement actions and litigation, read press releases and get help complying with the law. Visit today and add our site to your favorites.

## Statistics

### Detailed Presidential Fundraising and Spending Information Now Available

For the 2008 Presidential elections the FEC will make available on its web site detailed information from the FEC reports of selected Presidential candidates. This new function, available on the FEC web site at <http://query.nictusa.com/pres/>, allows viewers to quickly and easily see each candidate’s report information broken down into various categories. In addition to providing a Summary and Detailed Summary of each report, the new function provides an easy-to-read chart showing the candidate’s contribution totals allocated by employee, state, zip code, date and election, and by candidate’s disbursements broken down by purpose, payee and date. The site will also provide information detailing the state-by-state spending of Presidential candidates who accept public funding for the primary elections. Currently, detailed information is available for the campaign committees of nineteen Presidential candidates:

(continued on page 14)

## Publications

### Now Available: 2007 Combined Federal/State Disclosure and Election Directory

The Combined Federal/State Disclosure and Election Directory for 2007 is available on the FEC web site at <http://www.fec.gov/pubrec/cfsdd/cfsdd.shtml>. This publication identifies the state and federal agencies responsible for the disclosure of campaign finances, lobbying, personal finances, public financing, candidates on ballots, election results, spending on state initiatives and other financial filings. It also includes contact information for national

## Top Five Fundraising States for Itemized Contributions from Individuals

### Leading Democratic Fundraisers:

#### Clinton Campaign

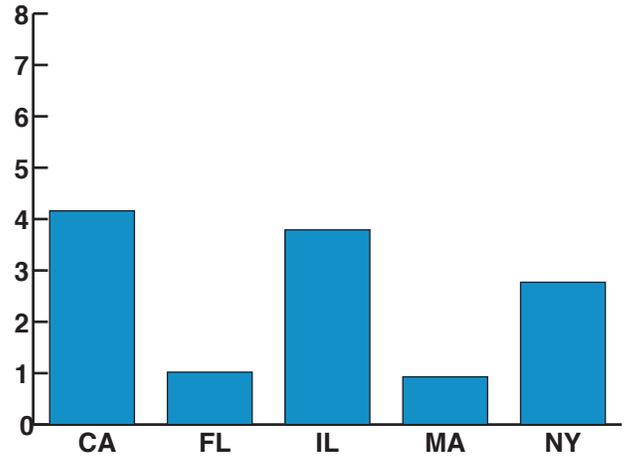
Millions of Dollars



Contributions from individuals for this period totaled \$25.8 (including itemized and unitemized contributions).

#### Obama Campaign

Millions of Dollars

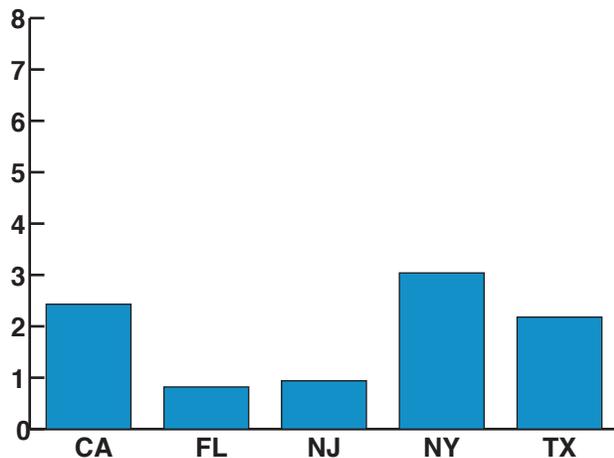


Contributions from individuals for this period totaled \$25.7 (including itemized and unitemized contributions).

### Leading Republican Fundraisers:

#### Giuliani Campaign

Millions of Dollars



Contributions from individuals for this period totaled \$14.7 (including itemized and unitemized contributions).

#### Romney Campaign

Millions of Dollars



Contributions from individuals for this period totaled \$20.8 (including itemized and unitemized contributions).

## Statistics

(continued from page 13)

- Biden for President, Inc.;
- Bill Richardson for President Exploratory Committee, Inc.;
- Brownback for President;
- Chris Dodd for President, Inc.;
- Cox 2008 Committee, Inc.;
- Hillary Clinton for President Exploratory Committee, Inc.;
- Huckabee for President Exploratory Committee, Inc.;
- Hunter for President, Inc.;
- Jim Gilmore for President—Exploratory Committee, Inc.;
- John Edwards for President;
- John McCain for President 2008, Inc.;
- Kucinich for President, Inc.;
- Mike Gravel for President 2008, Inc.;
- Obama for America;
- Romney for President, Inc.;
- Ron Paul 2008 Presidential Campaign Committee;
- Rudy Giuliani Presidential Committee, Inc.;

## FEC Accepts Credit Cards

The Federal Election Commission now accepts American Express, Diners Club and Discover Cards in addition to Visa and MasterCard. While most FEC materials are available free of charge, some campaign finance reports and statements, statistical compilations, indexes and directories require payment.

Walk-in visitors and those placing requests by telephone may use any of the above-listed credit cards, cash or checks. Individuals and organizations may also place funds on deposit with the office to purchase these items. Since prepayment is required, using a credit card or funds placed on deposit can speed the process and delivery of orders. For further information, contact the Public Records Office at 800/424-9530 or 202/694-1120.

- Tancredo for a Secure America Exploratory Committee;
- Tommy Thompson for President (Tommy 2008).

Information from these candidate's April Quarterly reports is currently available on the web site. The charts on page 13 depict, as examples of the type of information available on the web site, the top five fundraising states for the top two Democratic and Republican fundraisers in the first quarter of 2007. The per-state fundraising totals shown here are based on the itemized contributions reported by each candidate. Campaigns are not required to itemize contributions received from individuals until the contributions exceed \$200 in the aggregate.

Information from future reports will be made available shortly after each reporting deadline. To view this information, visit the FEC web site at <http://query.nictusa.com/pres>.

—Amy Kort

## Outreach

### Washington, DC Conferences

The Commission is holding conferences for various types of committees this Spring in Washington, DC. At the conferences, Commissioners and staff conduct a variety of technical workshops on federal campaign finance law designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law.

#### May 10-11 Conference for House and Senate Campaigns and Political Party Committees

The Commission will hold a conference for campaigns and political party committees on May 10 and 11, 2007, at the Hyatt Regency Washington on Capitol Hill. Attendees are responsible for making their own hotel reservations. Call 1-800-633-

7313 to make your reservations or visit <http://washingtonregency.hyatt.com/groupbooking/wasrwfec2007>. Valet parking is available for \$33 per night. The hotel is walking distance from the Union Station (served by Amtrak, Marc and VRE commuter rail and Metro subway); public transportation is recommended. (Note: Please do not finalize your travel reservations until you have received confirmation of your registration for the conference from our contractor, Sylvester Management Corporation.)

The registration fee is \$475 including a late registration fee of \$25. For additional information, or to register for the conference, please visit the conference web site at <http://www.fec.gov/info/conferences/2007/cand-party07.shtml>.

#### June 4-5 Conference for Trade Associations, Membership Organizations and Labor Organizations

The Commission will hold a conference for trade associations, membership organizations and labor organizations on June 4 and 5, 2007, at the Hyatt Regency Washington on Capitol Hill. Attendees are responsible for making their own hotel reservations. A room rate of \$229 (single) or \$254 (double) is available for hotel reservations made by May 7. Call 1-800-633-7313 to make your reservations or visit <http://washingtonregency.hyatt.com/groupbooking/wasrwfdec2007>. To receive this special rate, book online through the above address or notify the hotel that you are attending the FEC campaign finance laws conference. Valet parking is available for \$33 per night. The hotel is walking distance from the Union Station (served by Amtrak, Marc and VRE commuter rail and Metro subway); public transportation is recommended. (Note: Please do not finalize your travel reservations until you have received confirmation of your registration for the conference

from our contractor, Sylvester Management Corporation.)

The registration fee is \$450 if received by May 4. A late registration fee of \$25 will be added to registrations received after that date. Early registration is highly recommended. For additional information, or to register for the conference, please visit the conference web site at <http://www.fec.gov/info/conferences/2007/trade-member-labor07.shtml>.

### For More Information

Please direct all questions about conference registration and fees to Sylvester Management Corporation at 1-800/246-7277 or by e-mail to [tonis@sylvestermanagement.com](mailto:tonis@sylvestermanagement.com). For questions about the conference program, or to receive e-mail notification of upcoming conferences and workshops, call the FEC's Information Division at 1-800/424-9530 (press 6) or locally at 202/694-1100, or send an e-mail to [Conferences@fec.gov](mailto:Conferences@fec.gov).

—Dorothy Yeager

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