Wiley Rein & Fielding

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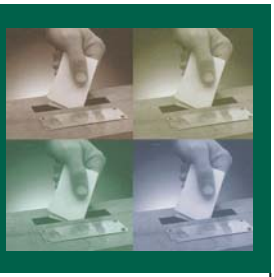
Election Law News

A Publication of the WRF Election Law Practice Group



Supreme Court Upholds BCRA

On December 10, 2003, the Supreme Court of the United States issued its ruling upholding substantially all of the Bipartisan Campaign Reform Act (BCRA). The Court's ruling is the culmination of an expedited appeal of the May 2, 2003 decision of the special three-judge court ordered by Congress to hear constitutional challenges to the BCRA.

The result means that corporations will need to beef up their PACs in order to make radio and television communications near elections. Corporations also may want to explore communications to their "restricted classes." Finally, corporations will want to be especially careful in their interactions with members of Congress and presidential aides given the Federal Election Commission's coordination regulations and the fact that the election year is upon us.

The Supreme Court issued three separate majority opinions to address the BCRA's five challenged "Titles." Justices Stevens and O'Connor—joined by Justices Souter, Ginsburg and Breyer—delivered the opinion of the Court with respect to Titles I and II. Chief Justice Rehnquist—joined by all members of the Court to varying degrees—delivered the opinion of the Court with respect to Titles III and IV. Justice Breyer—joined by Justices Stevens, O'Connor, Souter and Ginsburg—delivered the opinion of the Court with respect to Title V. Separate dissents and opinions were authored by Chief Justice Rehnquist and Justices Stevens, Scalia, Thomas and Kennedy. In broad outline, the results were as follows:

- **Title I and II** (Soft Money and Issue Ads): The Court upheld the BCRA's most contested provisions, the regulation of "soft money" and "electioneering communications," as well as the "coordination" provision.

Under a less rigorous standard of review allowing Congress to weigh competing constitutional interests, the Court held that "soft money" contributions to political parties can be restricted to protect the integrity of the political process without unconstitutionally burdening party speech and associational activities financed with "soft money."

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Rules for Two-Year Individual Aggregate Limits Changed

The Federal Election Commission (FEC) recently amended its rules regarding the federal biennial aggregate contribution limits for individuals. FEC, *Multicandidate Committees and Biennial Contribution Limits*, 68 Fed. Reg. 64,512 (Nov. 14, 2003). The new rules became effective on December 15, 2003. In short, these revisions mean that contributions to federal candidates made by individuals on or after January 1, 2004 will apply against the two-year aggregate contribution limits for the two-year election cycle in which the contributions are made. The new rules are described in more detail below:

- Individuals face contribution limits of $2,000 per election per candidate for contributions to federal candidates and their committees. The contribution limit for contributions by individuals to federal PACs (including leadership PACs) is $5,000 per year, and the contribution limit for contributions to a national political party committee is $25,000 per year. Further, an individual may not contribute more than $10,000 per year to a state, district or local party committee.

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Also in This Issue

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New FEC Airplane Reimbursement Rules Effective January 2004

On December 4, 2003, the Federal Election Commission (FEC) amended its regulations pertaining to reimbursement by federal candidates and committees to corporations or other entities for the use of airplanes owned or leased by them. FEC, *Travel on Behalf of Candidates and Political Committees*, 68 Fed. Reg. 69,583 (Dec. 15, 2003). The amendments made three changes to the regulations. The new regulations will be effective January 14, 2004. The specific changes are summarized below:

1. Timing of Reimbursement

Candidates and other political committees are no longer required to reimburse owners or lessors of airplanes in advance. Candidates and committees now have seven days after the flight began in which to make the proper reimbursement. For travel by means other than airplane, reimbursement must be made within 30 days of receiving the invoice but no later than 60 days after the travel began. Notwithstanding this change, we recommend that clients continue to seek advance reimbursement from candidates and committees for airplane travel because, among other things, the failure of the candidate or committee to make payment in seven days results in an illegal corporate contribution by the airplane owner/lessor.

2. Rate of Reimbursement

The new rules set out the reimbursement rates, which are as follows:

- In the case of travel between cities served by regularly scheduled first-class commercial airline service, the lowest unrestricted and non-discounted first-class air fare;
- In the case of travel between a city served by regularly scheduled coach commercial airline service, but not served by regularly scheduled first-class commercial airline service, and a city served by regularly scheduled coach commercial airline service (with or without first-class commercial airline service), the lowest unrestricted and non-discounted coach airfare; or
- In the case of travel to or from a city not served by regularly scheduled commercial airline service, the normal and usual charter fare or rental charge for a comparable commercial airplane of sufficient size to accommodate all campaign travelers, including members of the news media traveling with the candidate and security personnel, if applicable.

The applicable fares are "walk-up" unrestricted fares publicly available for travel on the actual travel dates or within seven days of the actual travel dates. Reimbursement for trips with multiple stops must be made in accordance with the availability of commercial airline service for each leg of the trip. Finally, every candidate or committee sharing a flight must each pay the first-class or coach fare for each person traveling on its behalf or the appropriate share of the charter rate.

3. Application to Noncommercial Airplanes

The FEC has clarified that reimbursement may be made to any owner or lessor of a private airplane used for candidate or committee travel. The reimbursement provision is no longer limited to airplanes owned or leased by corporations

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FEC Fines Corporations $168,000 for Factoring Political Contributions into Employee Bonuses

On December 18, 2003, the Federal Election Commission (FEC) announced a settlement for $168,000 in civil penalties with two construction companies and their former and current employees for actions relating to bonuses for political contributions.

The conciliation agreement with Centex Construction Group, Inc., Centex-Rooney Construction Co., Inc. and their former and current employees stemmed from the reimbursement with corporate funds of $56,125 in federal contributions by corporate officers. According to the FEC, officers sent the CEO copies of contribution checks that they had written. The CEO, in turn, considered these contributions when making year-end bonuses, even grossing them up to account for tax liability.

The conciliation agreement resulted from a *sua sponte* submission and complaint submitted by the parent company—Centex Corporation.

Finally, according to local press reports, Centex-Rooney Construction Co., Inc. also reached a settlement with the Florida Election Commission for $131,000. This settlement was based upon a reimbursement scheme for state and local political contributions. ✦

For more information, contact Jan Witold Baran (202.719.7330 or jbaran@wrf.com) or D. Mark Renaud (202.719.7405 or mrenaud@wrf.com).

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Interpreting BCRA

Showtime's *American Candidate* Entitled to "Media Exemption"

The Federal Election Commission (FEC) has issued an advisory opinion recognizing Showtime Networks Inc.'s entitlement to the "media exemption" to produce and televise a new reality documentary series called the *American Candidate*. The television series will feature ordinary citizens from all walks of life competing to prove they have what it takes to be President of the United States. Through three months of intensive campaigning, each participant will compete against each other for the title "The American Candidate" and the national acclaim and attention their television candidacies generate. The series also will engage viewers who will vote online for their favorite candidates each week.

WRF sought the advisory opinion on behalf of Showtime and its parent corporation, Viacom, in order to obtain the FEC's assurance that all aspects of the television series comply with the Federal Election Campaign Act (FECA) and FEC regulations. In particular, Showtime sought the FEC's assurance that the television program could feature appearances by actual federal presidential candidates and that no campaign contribution or expenditure would be triggered in the event a contestant might decide to launch a candidacy for public office following his or her participation on the program.

The FEC concluded that Showtime and Viacom are "press entities" entitled to the FECA's "media exemption" from regulation. Accordingly, the FEC ruled:

> "*American Candidate* is 'commentary' within the meaning of the Act and the regulations. If the *American Candidate* series is produced as indicated in your request, Viacom, Showtime or [the producer] will be engaging in a legitimate press function."

As such, the television series is exempted from regulation by the FEC. *See* FEC Advisory Opinion 2003-34 (approved December 18, 2003). ✦

For more information, contact Jan Witold Baran (202.719.7330 or jbaran@wrf.com) or Lee E. Goodman (202.719.7378 or lgoodman@wrf.com).

IRS Issues Guidance About Political Taxation

On the eve of an election year, the Internal Revenue Service (IRS) has issued Revenue Ruling 2004-6 in order to help clarify when organizations exempt from taxation under sections 501(c)(4), 501(c)(5), and 501(c)(6) of the Internal Revenue Code may face taxation for public advocacy that mentions a candidate for office.

In its Revenue Ruling, the IRS first notes that tax-exempt organizations may engage in advocacy and lobbying related to their exempt purpose. Any ads that clearly identify candidates for office are subject to the Federal Election Campaign Act, as amended, as well as the Internal Revenue Code. Under the Code, expenditures by 501(c) organizations for "exempt function" activities are subject to taxation under section 527(f) of the Code. ("Exempt function" is defined as influencing or attempting to influence the selection, nomination, election or appointment of any individual to any federal, state, or local public office or an office in a political organization.)

In order to clarify taxable events for 501(c) organizations under section 527(f), the IRS provides six new factual situations or scenarios. Rather than providing concrete rules, the IRS' holdings about these hypothetical situations are based upon a facts and circumstances analysis and provide general guidance. Underlying the finding of taxable exempt function expenditures are the following six factors: (1) whether the communication identifies a candidate; (2) whether the timing coincides with an electoral campaign; (3) whether the communication identifies the candidate's position on an issue of public policy that is the subject of the communication; (4) whether the communication targets voters in a particular election; (5) whether the position of the candidate on the public policy issue has been raised to distinguish the candidate from others in the campaign; and (6) whether the communication is part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

The same six factors are also used to find a communication not to be an exemption-function activity. The finding of a lack of a taxable event also is bolstered by the following additional factors: (i) the communication identifies specific legislation or a specific event outside the control of the organization that the organization hopes to influence; (ii) the timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote; (iii) the communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with a specific event, such as a vote; and (iv) the communication identifies the candidate solely in the list of key or principal sponsor of the legislation that is the subject of the communication. ✦

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TV and Radio Disclaimer Requirements of BCRA

Required Disclaimers for Electioneering Communications, Independent Expenditures and Other Public Communications

Under the Bipartisan Campaign Reform Act of 2002 (BCRA) and rules promulgated thereunder by the Federal Election Commission (FEC), all electioneering communications, independent expenditures and certain other public communications by candidates, PACs, political parties and other persons must contain certain disclaimers. For television and radio advertisements, two sets of disclaimers are required: 1) general disclaimers and 2) disclaimers for candidate and non-candidate ads that are referred to colloquially as the FEC's "Stand By Your Ad" disclaimers. The rules also specifically regulate how the disclaimers should appear in various types of broadcast advertisements. The pertinent disclaimer regulations are discussed below.

Communications to Which Disclaimers Apply

The FEC, pursuant to BCRA, requires disclaimers on the following types of communications:

- All public communications paid for by federal political committees, which includes federal PACs, federal candidate committees and party committees;
- All public communications that expressly advocate the election or defeat of a clearly identified candidate for federal office;
- All public communications that solicit contributions; and
- All electioneering communications—*i.e.*, those broadcast, cable and satellite ads that refer to a federal candidate within 30 days of a primary, caucus or convention or within 60 days of a general, special or run-off election.

"Public communications" include those disseminated via radio, television, cable, satellite and newspapers, among others.

Content of the General Disclaimers

The FEC provides specific disclaimer language depending on the type of political advertisement involved. All of the disclaimers must be "presented in a clear and conspicuous manner" and must give the "observer or listener adequate notice of the identity of the person or political committee that paid for" and/or authorized the advertisement. The three categories of required language follow. (Special requirements for print ads are discussed in our March 2003 *Election Law News*, available at www.wrf.com/publications/publication.asp?id=931143112003.)

- **Candidate ads**. If the communication is paid for and authorized by a candidate for federal office, an authorized committee of a candidate or an agent of either of the foregoing, the disclaimer must clearly state that the ad has been paid for by the authorized political committee of the candidate.
- **Third party ads authorized by candidates**. If the communication is authorized by a candidate for federal office, an authorized committee of a candidate or an agent of either of the foregoing, but is paid for by another person, the disclaimer must clearly state that the communication is paid for by such other person and is authorized by the candidate, authorized committee or agent.
- **Third party independent ads (not authorized by candidates)**. If the communication is not authorized by a candidate for federal office, authorized committee of a candidate or agent of either of the foregoing, the disclaimer must clearly state the full name and permanent street address, telephone number or web address of the person who paid for the communication, and state that the communication is not authorized by any candidate or candidate's committee.
- **Party coordinated ads**. For communications paid for by a political party committee and coordinated with a candidate for federal office, the communication must identify the political party committee that makes the expenditure as the person who paid for the communication, regardless of whether the political party committee was acting in its own capacity or as the designated agent of another political party committee.

'Stand by Your Ad' Disclaimer Requirements

Congress also mandated that certain additional disclaimers be attached to radio and television advertisements for candidates for federal office. These disclaimers have commonly been referred to as "Stand by Your Ad"

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TV and Radio Disclaimer Requirements of BCRA

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disclaimers, versions of which are already mandated by several states. Below is a discussion of the disclaimers applicable to candidate advertisements as well as the disclaimers required for radio and television advertisements aired by persons other than candidates.

- **Ads paid for or authorized by a candidate.** A radio advertisement paid for or authorized by a candidate for federal office must include an audio statement spoken by the candidate, which identifies the candidate and states that the candidate has approved the communication.

The requirements for television spots are slightly more involved. The candidate may convey the required statement of identification and approval in one of two ways. First, the candidate may use an unobscured, full-screen view of himself or herself making the statement. Second, the candidate may use a voice-over by himself or herself accompanied by a clearly identifiable picture of the candidate that fills at least 80% of the screen.

In addition, all television advertisements, which include those made by means of broadcast, cable and satellite transmissions, must include the candidate identification and approval message in writing at the end of the ad. This statement must appear in letters equal to or greater than four percent of the vertical picture height, be visible for a period of at least four seconds and appear with a reasonable degree of color contrast between the background and the text of the statement.

For guidance, the FEC has included two, nonexclusive examples of appropriate "Stand by Your Ad" disclaimers. The two examples are as follows:

- I am [insert name of candidate], a candidate for [insert federal office sought], and I approved this advertisement.
- My name is [insert name of candidate]. I am running for [insert federal office sought], and I approved this message.

- **Ads not paid for or authorized by a candidate.** In addition to the general disclaimer requirements discussed above, the FEC's regulations also impose additional disclaimer requirements on certain ads that are not paid for or authorized by a candidate for federal office. These additional disclaimers are similar to the "Stand by Your Ad" disclaimers discussed for candidate advertisements above. These requirements are applicable to ads that solicit contributions for purpose of influencing federal elections, ads that expressly advocate the election or defeat of a clearly identified candidate for federal office, electioneering communications and all ads by federal political committees, federal PACs and political parties.

Radio ads must include the audio statement "____ is responsible for this advertising," and the statement must be spoken clearly. The name of the political committee or other person paying for the communication must be inserted into the blank. The name of the connected organization of the person paying for the communication must also be inserted into the blank, unless the name of the connected organization is already contained in the name of the payor. For example, an advertisement for a political committee entitled "Wiley Rein & Fielding LLP PAC" would not have to repeat the name of the connected organization, Wiley Rein & Fielding LLP, because doing so would be redundant.

Television advertisements not paid for or authorized by a candidate must include a statement similar to that prescribed for radio ads and can do so in one of two ways. First, the statement can be conveyed by an "unobscured full-screen view of a representative of the political committee or other person making the statement." Second, the statement can be read by a representative of the payor in a voice-over. No photograph of the payor's representative is required with this voice-over. In addition, the television advertisement must include a writing of the statement at the end of the ad in letters equal to or greater than four percent of the vertical picture height that is visible for a period of at least four seconds and appears with a reasonable degree of color contrast between the background and the text of the statement.

Lowest Unit Charge Certifications

BCRA also requires federal candidates (and their authorized committees) to provide a written certification to broadcast stations stating that the candidate will not refer directly to any opponent without:

- For a radio ad, including an audio identification of the candidate and office sought and a statement of approval from the candidate on whose behalf the ad is run or;

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FEC Approves Final Rules for National Conventions

This summer, the Federal Election Commission (FEC) approved final rules regarding political party convention host committees and corporate donations to host committees, municipal funds and convention committees.

1. Goods and Services to Conventions

The FEC left unchanged its rule in 11 CFR 9008.9, which allows a commercial vendor to sell, lease, rent or provide its goods and services to a national party committee with respect to its presidential nominating convention through (1) the provision of standard reductions or discounts, (2) the provision of items for promotional consideration, and (3) the provision of items of *de minimus* value to convention attendees. The FEC's proposal to move this provision and make it applicable only to host committees and municipal funds was not included in the final rules. Therefore, the rules for commercial vendors remains as they were before. Accordingly, companies will be permitted again to provide goods and services to conventions in exchange for promotional consideration.

2. Corporate Donations to Host Committees

The FEC continued to allow corporate and union donations to convention host committees that are 501(c) organizations. It also removed the requirement that those entities making donations to convention host committees for certain costs be "local businesses." Now, all businesses including banks, may make such donations, as long as they are for, among other things, to defray the expenses in promoting the suitability of the city as a convention site, the expenses incurred for welcoming the convention attendees, the expenses incurred in facilitating commerce and the administrative expenses incurred by the host committee. The donors need not be "local." These donations may be in monetary form or in-kind.

3. Hospitality Suites and Social Events

The FEC decided that private hospitality events taking place in close temporal and geographic proximity to the convention did not trigger regulation in and of themselves. Of course, depending on the identity of the invitees, such events may be required to comply with House and Senate, federal Executive Branch and/or state lobbying and gift rules.

4. Party and Officeholder/Candidate Fundraising for Host Committees

The FEC stated that political parties could not raise funds for host committees and municipal funds from corporations, but that federal candidates and officeholders could make general solicitations for host committees where the solicitation did not specify how the funds were to be spent. ✦

For more information, contact Jan Witold Baran (202.719.7330 or jbaran@wrf.com) or Carol A. Laham (202.719.7301 or claham@wrf.com).

TV and Radio Disclaimer Requirements of BCRA

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- For a television ad, airing an identifiable image of the candidate with, at the end of the ad for at least four seconds, both a written statement of approval from the candidate and a written statement that the authorized committee paid for the ad.

[The statute on its face does not apply to candidates for state or local office. Thus, state and local candidates apparently would not have to provide a certification to be entitled to the lowest unit charge (LUC).] If the federal candidate or committee does not meet these requirements, then it does not qualify for the lowest unit charge from a broadcast station. If the candidate airs an advertisement directly referring to an opponent without the required disclaimer, then he or she will not be entitled to receive the LUC for that broadcast or any subsequent broadcast during the 60-day period before a general election or the 45-day period before a primary election.

The FEC's regulations do not address this provision of BCRA, and the Federal Communication Commission has yet to issue applicable regulations. ✦

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Changes in the States

Illinois

In the past two months, the Illinois legislature has enacted two pieces of legislation affecting the state's ethics, lobbying and campaign finance laws. Public Act 93-615 (former H.B. 3412) was passed over the Governor's veto and became effective November 19, 2003. This act was itself amended by Public Act 93-617 (former S.B. 702), which was signed by the Governor and became effective on December 9, 2003. A brief discussion of the three areas affected by this legislation follows below.

New Ethics Provisions. The new laws repealed the state's Gift Ban Act and inserted gift provisions into the State Officers and Employees Ethic Act. First, state law now *excepts* from the gift rules the following items:

- Food and refreshments not exceeding $75 per day that are consumed on the premises where they are bought or that are catered,
- Activities associated with a fundraising event in support of a political organization or candidate,
- Opportunities available to the general public,
- Travel expenses for a meeting to discuss State business and
- Educational materials and missions.

Second, the new law permits state agencies to adopt tighter rules for their own employees. Local governments and school boards must adopt in the next six months ordinances that are at least as strict as the new law.

Third, the new law *removed* several exceptions to the gift ban, including those specifically related to golf and tennis, widely-attended events, contributions to legal defense funds, and informational materials. The new law also repealed the statutory exception for reimbursement from a private source for non-recreational speaking engagements, meetings, etc.

Fourth, the new law created several new agencies and institutions to enforce and administer the gift provisions and other statutes. Specifically, the statute created the Executive Ethics Commission, Executive Inspectors General, the Legislative Ethics Commission, Legislative Inspectors General and the Auditor General's Inspector General.

Finally, the new law instituted a one-year revolving door prohibition on employees involved in negotiating contracts for the state worth $25,000 or more. Those state employees are now prohibited from accepting employment for one year with private parties to those contracts.

New Lobbyist Provisions. Further, the new law also amended some of the lobbyist provisions. Now, lobbyists must re-register by January 31 and July 31 of each year. In addition, lobbyists also must make amendments to their registration within 14 days of a change of information, except that new retainer agreements must be reported before lobbying, but no later than two business days after the agreements are executed. The new law also raised the annual lobbyist registration fee to $350 per year ($150 for 501(c)(3) organizations). Finally, lobbyist reports must now include (a) the name of each government entity lobbied, (b) whether the lobbying involved executive, legislative or administrative action or a combination of each, (c) the names of the person who performed the lobbyist services and (d) a brief description of the legislative, executive or administrative action involved.

New Campaign Finance Provisions. In Illinois, contributions may not be solicited, accepted, offered or made on state property by officials, public employees, candidates, political organizations or lobbyists. Furthermore, "expenditure" under state law now includes "electioneering communications," which are defined as "any form of communication, in whatever medium, including but not limited to, newspaper, radio, television, or Internet communications, that refers to a clearly identified candidate, candidates, or political party and is made within (i) 60 days before a general election for the office sought by the candidate or (ii) 30 days before a general primary election for the office sought by the candidate."

Texas

Texas recently amended the reporting obligations of federal PACs and other "out-of-state" committees that participate in Texas non-federal elections. An "out-of-state" committee is defined as a political committee that:

- Makes political expenditures outside of Texas; and
- Makes 80 percent or more of the committee's total political expenditures in any combination of elections outside of Texas and federal offices not voted on in Texas in the 12 months immediately preceding the making of a political expenditure by the committee in Texas (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder).

The amendments to the Texas Election Code explain that an "out-of-state" committee must file a copy of the reports it files with the Federal Election Commission, or the proper filing authority of at least one other state, which disclose the committee's Texas political activity. The reports must be filed on the same deadlines as those required by federal law or the law of the other state.

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Upcoming Dates to Remember

December 20, 2003–January 19, 2004	Electioneering Communication Blackout Period for Iowa Caucus
December 28, 2003–January 27, 2004	Electioneering Communication Blackout Period for New Hampshire Primary
January 19, 2004	Iowa Caucus
January 27, 2004	New Hampshire Primary
January 31, 2004	2003 Year-End FEC Report due for Federal PACs and political committees
January 31, 2004	2003 Year-End IRS Form 8872 due for nonfederal PACs*
February 14, 2004	Lobbyist Disclosure Act Forms due
February 20, 2004	February Monthly FEC Report due for Federal PACs filing monthly
February 20, 2004	February Monthly IRS Form 8872 due for nonfederal PACs filing monthly*

Deadlines are not extended if they fall on a weekend.

* Note: Qualified state and local political organizations are not required to file Form 8872 with the IRS.

If you have any questions or would like any additional information, please contact a member of Wiley Rein & Fielding's Election Law & Government Ethics Group at 202.719.7000 or visit the website at www.wrf.com. We welcome the opportunity to discuss any matter of specific concern to you or to tell you more about our practice and our capabilities. ✦

Changes in the States

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The Texas Ethics Commission also amended its administrative rules to allow an "out-of-state" committee to file only copies of the cover sheets and the relevant pages that disclose the contributions or expenditures the committee made in Texas. The amended rule further provides that if the committee files electronically in another jurisdiction, the committee may simply send a letter to the Texas Ethics Commission indicating the location of the committee's electronic report on the website of the agency in the other jurisdiction. Such a letter must still be sent within the other jurisdiction's reporting deadlines. ✦

For more information, contact Carol A. Laham (202.719.7301 or claham@wrf.com) or Caleb P. Burns (202.719.7451 or cburns@wrf.com).

New FEC Airplane Reimbursement Rules Effective January 2004

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and unions. For example, a candidate now may travel on an airplane owned or leased by an individual and then reimburse that individual pursuant to these regulations.

However, the regulations only apply to airplanes not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 C.F.R. parts 121, 129, or 135. The reimbursement schedule does not apply to flights by candidates or committees on commercial airplanes. ✦

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Upcoming Speeches

January 21, 2004

Innovate to Motivate: The National Conference for Political Involvement Professionals
Captiva Island, FL

Carol A. Laham will speak on "Avoiding Fines, Keeping Your Name Out of the News and Preserving Your Job: Answers to All of Your Legal Questions...Including a BCRA Update"

For more information, please visit www.innovatetomotivate.com or contact Carol A. Laham (202.719.7301 or claham@wrf.com).

January 29, 2004

American Conference Institute: Corporate Compliance With the Bipartisan Campaign Reform Act
Washington, DC

Carol A. Laham will moderate a panel entitled "How American Business Can Participate in the Political Process under the BCRA."

For more information, please visit www.americanconference.com or contact Carol A. Laham (202.719.7301 or claham@wrf.com).

For more details on upcoming Election Law speeches, please visit www.wrf.com/practice/speeches.asp?group=13&archive=no

Rules for Two-Year Individual Aggregate Limits Changed

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- Individuals also face aggregate contribution limits for two-year election cycles (*e.g.*, 2003-2004). The overall limit is $95,000, but there are several sublimits. First, an individual may not contribute more than $37,500 in the aggregate to federal candidates in a two-year cycle. Second, an individual may not contribute in excess of $57,500 in the aggregate to federal PACs and party committees in a two-year cycle. Third, of this $57,500, an individual may not contribute in excess of $37,500 to federal PACs and state, district and local political party committees.

Under the new rules, the FEC now mandates that individual contributions to federal candidates made on or after January 1, 2004 be applied against the two-year aggregate contribution limit for the two-year period in which the contributions are made. For example, a contribution in 2004 to a Senate campaign for which the primary does not occur until 2006, will apply against the 2003-2004 $37,500 aggregate limits. A contribution made in 2005 for a 2008 election will apply against the 2005-2006 aggregate limits. A contribution made in 2007 to retire a debt from the 2006 House election will be attributed to the individual's 2007-2008 aggregate limits.

This is the new rule going forward. However, the old rule still applies to contributions made before December 31, 2003. Under the old rule, a candidate contribution applies against the aggregate limits for the two-year period in which the election is held. Therefore, a contribution made in 2003 for a 2006 Senate primary counts against the individual's 2005-2006 aggregate limits. This is for 2003 and prior contributions only.

Finally, the rules pertaining to PACs and party contributions have not changed. Contributions to PACs and political parties continue to apply against the two-year aggregate limits for the two-year period in which they are made. For example, a 2003 contribution to a federal PAC will count against the $37,500 and $57,500 aggregate limits for the 2003-2004 election cycle. ✦

For more information, contact Jan Witold Baran (202.719.7330 or jbaran@wrf.com) or Carol A. Laham (202.719.7301 or claham@wrf.com).

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Supreme Court Upholds BCRA

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The Court also held that regulation of "electioneering communications"—broadcast ads that refer to a federal candidate 30 days before a primary, convention or caucus or 60 days before a general, special or run-off election—was not precluded by the prior holding in *Buckley v. Valeo* which limited regulation of political speech to that which employed express words of electoral advocacy. The Court also determined that the "electioneering communication" provision did not unreasonably restrict otherwise permissible speech. Therefore, the 30/60 day provision was not unconstitutionally overbroad in scope.

Finally, the Court held that political activity coordinated with political candidates and parties can be regulated even in the absence of agreement to coordinate or formal collaboration. For example, spending at the "request" or "suggestion" of a candidate or party may establish coordination. However, the Court struck down the BCRA's requirement that national parties choose between coordinating with candidates and making independent expenditures.

- **Title III and IV** (Lowest Unit Charge Certification, "Hard Money" Limits, "Millionaire" Exemption, Expanded Disclaimers, and Minors): The Court determined that the parties to the case lacked standing to challenge (a) the BCRA's denial of the "lowest unit charge" for a candidate ad that does not include a disclaimer that the candidate approved the ad, (b) the increase of the "hard money" contribution limits, and (c) the "Millionaire" provision that allows candidates facing self-financed opponents to receive contributions in excess of the normal limits. Separately, the Court upheld the expanded disclaimer requirements in the Federal Election Campaign Act; however, the Court struck down the BCRA's prohibition on political contributions by minors.

- **Title V** (Broadcasters' Records): The Court upheld the BCRA's requirement that broadcasters maintain certain publicly available records of politically related broadcasting requests. These include "candidate requests," "election message requests" and "issue requests."

Wiley Rein & Fielding LLP represented Senator McConnell, as well as the Chamber of Commerce of the United States, the National Association of Manufacturers, the Associated Builders and Contractors and the California Republican Party in this case. ✦

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