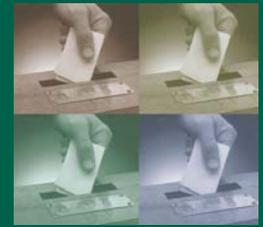




June 2002

Election Law News

A Publication of the WRF Election Law Practice Group



IRS Offers Tax Amnesty Program for 527 Organizations Until July 15

The IRS has created an amnesty program for political organizations exempt under Section 527 of the Internal Revenue Code that have failed to file disclosure reports and tax returns under the reporting requirements created by Public Law No. 106-230. The amnesty program runs until July 15, 2002 and includes political organizations that have failed to file Forms 8871, 8872, 1120-POL, 990 and 990-EZ. After July 15, the IRS will assert all applicable taxes, penalties, and interest against non-filers and late filers. Note, the amnesty program does NOT apply to political organizations who failed to file returns required by laws previous to the one enacted in July of 2000 (e.g., political organizations with more than \$100 in taxable income who failed to file Form 1120-POL).

Below are links to the four documents related to this amnesty program and the Section 527 disclosure requirements:

<http://www.irs.gov/pub/irs-news/ir-02-57.pdf>

<http://www.irs.gov/pub/irs-drop/n-02-34.pdf>

<http://www.irs.gov/pub/irs-news/fs-02-11.pdf>

<http://www.irs.gov/exempt/political/display/0,,i1%3D3%26i2%3D27%26genericId%3D81968,00.html>

For more information on the tax filing requirements of 527 Organizations, refer to the January 2002 issue of *Election Law News*, found at:

http://www.wrf.com/db30/cgi-bin/pubs/Election_LawNews0201.pdf

For additional information, please contact Carol A. Laham (202.719.7301 or claham@wrf.com).

IRS Provides Guidance for 990, 1120-POL

The IRS has recently issued Questions and Answers regarding annual tax returns required to be filed by political organizations. These Q&As help answer some questions regarding the reporting of contributions, the reporting of expenses, and other requirements of the Forms. Form 990 is due on August 15 for those previously requesting an extension, and Form 1120-POL is due on September 15 for those previously requesting an extension. For those not requesting extensions and who have yet to file either form or have incorrectly filed either form, the IRS is offering a voluntary compliance program until July 15 (see related article "IRS Offers Tax Amnesty").

The 1120-POL and 990 Questions and Answers can be found on the IRS website at www.irs.gov/polorgs.

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McConnell v. FEC Update

The landmark lawsuit challenging the constitutionality of the Bipartisan Campaign Finance Reform Act (“BCRA”) is proceeding before a three-judge panel in the United States District Court for the District of Columbia. Altogether, eleven complaints challenging the constitutionality of the BCRA have been filed and consolidated under the title of the lead case, *Senator Mitch McConnell v. Federal Election Commission*. The three-judge panel includes U.S. Circuit Judge Karen LeCraft Henderson and U.S. District Court Judges Colleen Kollar-Kotelly and Richard J. Leon.

Dozens of Plaintiffs Challenge BCRA

Lined up against BCRA’s campaign restrictions are the following diverse array of organizations and individuals asserting numerous Constitutional claims under the First, Fifth, Fourteenth and Tenth Amendments:

McConnell v. FEC: Senator Mitch McConnell (R-KY), Congressman Bob Barr (R-GA), Congressman Mike Pence (R-IN), Alabama Attorney General Bill Pryor, American Civil Liberties Union (“ACLU”), Center for Individual Freedom, Libertarian National Committee, Libertarian Party of Illinois, DuPage (Illinois) Political Action Committee, Alabama Republican Party, Jefferson County (Alabama) Republican Party, Associated Builders & Contractors, Associated Builders & Contractors Political Action Committee, Christian Coalition of America, Club for Growth, Indiana Family Institute, National Right to Life Committee, National Right to Life Educational Trust Fund, National Right to Life Political Action Committee, National Right to Work Committee, 60 Plus Association, Inc., Southeastern Legal Foundation, U.S. d/b/a ProEnglish, Martin Connors, Thomas McNerney, Trevor Southerland;

Chamber of Commerce of the United States v. FEC: U.S. Chamber of Commerce, U.S. Chamber of Commerce Political Action Committee, National Association of Manufacturers, National Association of Wholesaler-Distributors;

American Federation of Labor and Congress of Industrial Organizations v. FEC: AFL-CIO, AFL-CIO Committee on Political Education and Political Contributions Committee;

National Association of Broadcasters v. FEC: National Association of Broadcasters;

Go to the WRF Election Law Group website for links to the BCRA, all court pleadings and more at www.wrf.com/practice/detail.asp?group=13

California Democratic Party v. FEC: California Democratic Party, California Republican Party, Yolo County (California) Democratic Central Committee, Santa Cruz County (California) Republican Central Committee, Art Torres, Shawn Steel, Timothy Morgan, Barbara Alby, Douglas R. Boyd, Sr.;

Republican National Committee v. FEC: Republican National Committee, Republican Party of Colorado, Republican Party of Ohio, Republican Party of New Mexico, Dallas County (Iowa) Republican County Central Committee;

Thompson v. FEC: Congressman Bennie G. Thompson (D-MS), Congressman Earl F. Hilliard (D-AL);

Paul v. FEC: Congressman Ron Paul (R-TX), Gun Owners of America, RealCampaignReform.org, Citizens United, Michael Cloud, Carla Cloud;

National Rifle Association of America v. FEC: National Rifle Association, National Rifle Association Political Victory Fund;

Emily Echols v. FEC: Emily Echols and other citizens under the age of 18.

Legal Challenge to New \$2,000 Contribution Limit

One complaint alleges that the BCRA’s new \$2,000-per election contribution limit is excessive and gives wealthy citizens disproportionate ability to support candidates of their choice in violation of the equal protection rights of less wealthy citizens. While novel, this theory will have to contend with the arguments presented by Congressmen Thompson and Hilliard who claim their equal protection rights are violated by the BCRA’s prohibition against corporate contributions to political parties to facilitate get-out-the-vote activities.

Adams v. FEC: United States Public Interest Research Group (PIRG), California PIRG, Massachusetts PIRG, New Jersey PIRG, Association of Community Organizers for Reform Now, The Fannie Lou Hamer Project, Victoria Jackson Gray Adams, Carrie Bolton, Cynthia Brown, Derek Cressman, Victoria Fitzgerald, Anurada Joshi, Peter Kostmayer, Nancy Russell, Kate Seely-Kirk, Rose Taylor, Stephanie Wilson.

Legislators Intervene in Defense of BCRA

In addition to those legislators who are in court in an effort to overturn the BCRA, several congressmen have

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States Make Election Law Changes

State legislatures and regulatory bodies are constantly changing and refining their election and campaign finance laws and regulations. Below we highlight a few of the changes that have occurred over the last several months. Before conducting any state activity or making state contributions, it is always advisable to double check the state's laws in order to ensure that they have not changed.

Oklahoma

The Oklahoma Ethics Commission will make a number of changes to its constitutional ethics rules effective July 1, 2002. Among the changes are the following:

- ◆ A change to the definitions of “contribution,” “expenditure,” “independent expenditure,” and “political action committee” in order that express advocacy is captured and not issue advocacy.
- ◆ Elimination of the requirement that a paper copy follow an electronic copy of last minute contributions or receipts.
- ◆ A change to the date that annual PAC statements of organization are due to January 31.

There are many more technical and other reporting changes as well. See <http://www.oklaosf.state.ok.us/~ethics/proposedlaws.html>.

Illinois

On May 23, the Illinois Supreme Court reinstated the state's Gift Ban Act when it dismissed the case in *Flynn v. Ryan*. The court stated that the plaintiffs in that case, in which the circuit court struck down the Act on constitutional grounds, lacked standing.

The Gift Ban Act, Pub. L. No. 90-737, broadly prohibits the solicitation and acceptance of gifts by state officials from what are termed “prohibited sources.” The Act also covers disclaimers required on independent expenditures, among other things. The Illinois Supreme Court did not rule on the constitutionality of the Act; therefore, additional challenges are expected.

Florida

In response to last year's Eleventh Circuit ruling in *Florida Right to Life, Inc. v. Lamar*, Governor Jeb Bush has signed into law several campaign finance measures. In the most

recent enactment (former S.B. 1350), the state prohibits the making of *quid pro quo* charitable contributions by candidates, political parties, and PACs, as well as indirect contributions.

The state also increased, to third degree felony, the penalty for accepting cash contributions in excess of \$5,000.

In April, the state enacted a set of measures that appear to have narrowed the definition of “political committee” to include only the following:

1. A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year:
 - a. Accepts contributions for the purpose of making contributions to any candidate, political committee, committee of continuous existence, or political party;
 - b. Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;
 - c. Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or
 - d. Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, committee or continuous existence, or political party.

New Fla. Stat. Ann. § 106.011(1)(a). These measures also adjusted reporting requirements, fines for late-filed reports, and other campaign finance provisions.

New York

On April 1, 2002, the New York state expanded the reach of its lobbying laws to include local lobbying in municipalities of more than 50,000 inhabitants. Lobbyists in these local areas who spend more than \$2,000 per calendar year attempting to influence governmental action must now file bimonthly financial and activity reports with the New York State Lobbying Commission. For more information on these changes, please see <http://www.nylobby.state.ny.us/locallob.html>.

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Tentative Rulemaking Calendar—Late May 2002 Through January 2003¹

As can be seen in the table below, the Federal Election Commission (“FEC”) has already begun the process to promulgate regulations under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). The first set of regulations concern soft money, but the Commission will take up the other areas covered by BCRA soon thereafter. All of the dates below, except for the soft money calendar, are subject to change. For up-to-the-minute information, one should check the FEC’s website at www.fec.gov.

For additional information, please contact Jan Witold Baran (202.719.7330 or jbaran@wrf.com).

Date	Soft Money (excluding conventions)	Electioneering Communications	Coordinated & Independent Expenditures
May	<p>5/29 Requests to testify were due</p> <p>5/29 Public comments on NPRM were due</p>	<p>5/20 NPRM to Regulations Committee</p> <p>5/29 Regulations Committee discussion</p>	<p>5/27 NPRM to Regulations Committee</p>
June	<p>6/4-5 Public hearing</p> <p>6/10 Final rules and E&J circulated to Regulations Committee and all Commissioners</p> <p>6/13 Final rules and E&J discussed by Regulations Committee</p> <p>6/19 Final rules and E&J approved by Commission</p> <p>6/20 Final rules transmitted to Congress</p> <p>6/25 Final rules promulgated/E&J published in the Federal Register</p> <p>6/25 90-day deadline for promulgating soft money final rule</p>	<p>6/20 Approve NPRM</p> <p>6/26 Begin comments</p>	<p>6/7 Regulations Committee discussion</p> <p>6/27 Approve NPRM</p>
<div style="border: 1px solid black; padding: 10px; width: fit-content; margin: auto;"> <p>All dates are tentative and subject to change. Check www.fec.gov for the latest publicly-announced dates from the FEC.</p> </div>			
July		<p>7/26 Public comments due¹</p>	<p>7/3 Begin comments</p>
August		<p>8/7-8 Hearing</p> <p>8/26 Final regulations to Regulations Committee</p>	<p>8/2 Public comments due¹</p> <p>8/14-15 Hearing</p>
September		<p>9/6 Regulations Committee discussion</p> <p>9/19 Approve final rules</p> <p>9/25 Publish final rules</p>	<p>9/3 Final regulations to Regulations Committee</p> <p>9/13 Regulations Committee discussion</p> <p>9/26 Approve final rules</p>
October			<p>10/2 Publish final rules</p>
November	<p>11/6 BCRA effective date</p> <p>11/6 Regulations effective date</p>	<p>11/6 BCRA effective date</p>	<p>11/6 BCRA effective date</p>
December		<p>12/22 270 days from enactment of BCRA</p>	<p>12/22 270 days from enactment of BCRA</p>
January 2003	<p>1/1/03 Contribution limit effective date</p>		

¹All of the dates, except those for soft money, are subject to change.

Tentative Rulemaking Calendar—Late May 2002 Through January 2003¹

Glossary: **NPRM** – Notice of Proposed Rulemaking
 E&J – Explanation & Justification

Millionaire's Amendment	Increased Contribution Limits	Other Provisions*
6/24 NPRM to Regulations Committee		
<div style="border: 1px solid black; padding: 10px; background-color: #e0e0e0;"> <p>All dates are tentative and subject to change. Check www.fec.gov for the latest publicly-announced dates from the FEC.</p> </div>		
7/10 Regulations Committee discussion	7/29 NPRM to Regulations Committee	7/8 NPRM to Regulations Committee 7/17 Regulations Committee discussion
8/1 Approve NPRM 8/7 Begin comments	8/9 Regulations Committee discussion 8/29 Approve NPRM	8/8 Approve NPRM 8/14 Begin comments
9/6 Public comments due ¹ 9/18-19 Hearing	9/5 Begin comments	9/13 Public comments due ¹ 9/25-26 Hearing
10/2 Final regulations to Regulations Committee 10/11 Regulations Committee discussion 10/24 Approve final rule 10/29 Publish final rule	10/7 Public comments due ¹ 10/23 Hearing	10/9 Final regulations to Regulations Committee 10/18 Regulations Committee discussion 10/31 Approve final rule
11/6 BCRA effective date	11/8 Final regulations to Regulations Committee 11/20 Regulations Committee discussion	11/6 BCRA effective date 11/6 Publish final rules
12/22 270 days from enactment of BCRA	12/12 Approve final rules 12/18 Publish final rules 12/22 270 days from enactment of BCRA	12/22 270 days from enactment of BCRA
	1/1 BCRA effective date for contributions	

*Other provisions include contributions by minors, foreign nationals, U.S. nationals, inaugural committees, fraudulent solicitations, disclaimers, personal use and civil penalties.

McConnell v. FEC Update

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intervened in defense of the BCRA. They include U.S. Senators John McCain (R-AZ), Russell Feingold (D-WI), Olympia Snowe (R-ME), and James Jeffords (I-VT), as well as U.S. Representatives Christopher Shays (R-CT) and Martin Meehan (D-MA).

Court Orders Expedited Proceedings

The Court, facing a November 6, 2002 effective date for the new law, ordered expedited proceedings with all discovery to end by October 25 and oral arguments to be held December 4. The Court is expected to issue a ruling promptly following oral arguments.

The Court has ordered the following procedural timetable in the McConnell case:

Track Case Developments on the Internet

You may track case developments at www.law.stanford.edu/library/campaignfinance. All complaints, discovery requests, pleadings and court orders can be obtained at the Stanford website, as well as related legal materials.

For additional information, please contact Lee E. Goodman (202.719.7378 or lgoodman@wrf.com) or Thomas W. Kirby (202.719.7062 or tkirby@wrf.com).

McConnell v. FEC Procedural Timetable

April 24	General discovery begins
May 7	Deadline for amendment of pleadings, intervention or other parties, or consolidation of additional cases
May 27	Deadline for the Government's answers
August 26	Deadline for the parties to request documents, answers to interrogatories and request admissions
Sept. 18	Deadline for serving deposition notices
Sept. 30	End of all discovery
Oct. 4	Deadline to serve fact witness affidavits, expert reports and supporting documentary evidence
Oct. 4	Begins period for cross-examination of fact and expert witnesses
Oct. 14	Deadline to serve rebuttal affidavits, expert reports and documentary evidence
Oct. 25	Ends period for cross-examination of fact and expert witnesses
Nov. 4	Deadline for filing opening briefs in support of judgment, accompanied by fact witness and expert testimony and documentary evidence
Nov. 18	Deadline for filing opposition briefs
Nov. 25	Deadline for filing reply briefs
Dec. 4	Oral Argument

Recent Appointments

Carol A. Laham was recently appointed by ABA President-Elect Alfred P. Carlton, Jr. to the ABA Standing Committee on Election Law Advisory Commission.

Jan W. Baran was recently appointed by ABA President-Elect Alfred P. Carlton, Jr. as Special Advisor to the ABA Standing Committee on Judicial Independence.

Governor's Legal Counsel

Returns to Wiley Rein &

Fielding's Election Law Practice

Lee E. Goodman has rejoined the firm's nationally recognized Election Law Practice after serving as Deputy Counselor & Deputy Director of Policy for Governor James S. Gilmore III of Virginia. In addition to experience advising corporations, public officials and agencies on a wide range of legal and policy matters, Mr. Goodman also has extensive experience in political campaigns. He was a Policy Analyst for former Vice President George H.W. Bush's Fund for America's Future PAC (1986-1987). He was Policy Director for candidate Jim Gilmore's gubernatorial campaign (1997). He served as Regional Director of Lawyers for Bush-Cheney and Executive Director of Virginia Lawyers for Bush-Cheney (2000). In November 2000, Mr. Goodman assisted the Bush-Cheney campaign's legal office in the Florida recount at campaign headquarters in Austin, Texas. At WRF, Mr. Goodman will litigate and advise clients on federal, state and local campaign finance laws, First Amendment rights of political participation, the use of the Internet for political purposes, as well as government ethics and lobbying laws. Mr. Goodman currently is assisting in litigation of the landmark case *McConnell v. FEC* challenging the constitutionality of the Bipartisan Campaign Reform Act. Mr. Goodman received his B.A., with highest distinction, from the University of Virginia and his J.D. from the University of Virginia School of Law where he served as Articles Editor for the *Journal of Law & Politics*.

Mr. Goodman can be reached at 202.719.7378 or lgoodman@wrf.com.

Save the Date!

PLI Seminar Set for September 19-20, 2002

The Practising Law Institute has set September 19 and 20 as the dates for its annual election law seminar. "Corporate Political Activities 2002: Complying with Campaign Finance, Lobbying & Ethics Laws" will be held in Washington, DC at the St. Regis Hotel, 923 16th Street (at 16th and K Streets), NW. Jan W. Baran is once again one of the Co-Chairs of this informative seminar.

For more information on the PLI Seminar, call PLI's Customer Relations Department at 800-260-4PLI [-4754] or register online at www.pli.edu. Refer to Source Code: PLA2 8A505.

States Make Election Law Changes

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Virginia

Effective July 1, 2002, all PACs seeking to influence the outcome of a Virginia election must file six reports a year. Per HB 556, codified at Va. Code § 24.2-923.C, the separate schedules for the May and November elections are eliminated.

Virginia reports are now due on the following dates.

<u>Due Date</u>	<u>Covering</u>
Eight days before the first Tuesday in March	Through the 11th day before that Tuesday
Eight days before the first Tuesday in May	Through the 11th day before that Tuesday
Eight Days before the first Tuesday in June	Through the 13th day before that Tuesday
Eight days before the Tuesday after the first Monday in November	Through the 13th day before that Tuesday
Not later than the 30th day after the November election date	Through the 23rd day after the election date
Not later than January 15	Through December 31

A PAC may file a "no activity" report for any period in which it has no activity.

For additional information, please contact Carol A. Laham (202.719.7301 or claham@wrf.com).

Recent Publications

Jan W. Baran recently published the following law review articles:

"U.S. Supreme Court Case Preview: *Republican Party of Minnesota v. Kelly*—Judges and Elections: Is Silence Golden?" *Election Law Journal*, Vol. 1, No. 2, pg. 259 (2002).

"Judicial Elections and Campaign Finance Reform," *Toledo Law Review*, 33 U. Tol. L. Rev. 335 (2002).

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- ◆ **Election Law News:** Reporting on Federal, State and Congressional Statutes relating to Election Law and Government Ethics.
- ◆ **Executive Summary:** A report on developments affecting professional liability insurers.
- ◆ **Franchise Alert:** Updates in the Franchise Law Arena.
- ◆ **Government Contracts Issue Update:** A report addressing federal, state and local procurement matters effecting government contractors.
- ◆ **Mass Media Update:** Industry and regulatory developments affecting mass media communications.
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