



Wiley Rein & Fielding LLP

# Election Law News

A PUBLICATION OF THE WRF ELECTION LAW PRACTICE GROUP

SEPTEMBER 2006

## New Elections and New Contribution Limits in Certain Texas Congressional Districts

By JAN WITOLD BARAN AND D. MARK RENAUD

On August 29, 2006, the Federal Election Commission (FEC) approved Advisory Opinion 2006-26, recognizing that recent redistricting activity by the U.S. District Court for the Eastern District of Texas created new, special general elections in the 23rd Congressional District of Texas, among others. It also found that contribution limits for the newly set special general election on November 7, 2006 were separate and distinct from the contribution limits that had applied to the now-cancelled regular general election that had been scheduled for that same date.

As a result of this opinion, individuals and political action committees (PACs) that contributed before August 5, 2006, to Texans for Henry Bonilla (the candidate committee that requested the advisory opinion) or to any of the other affected candidates may now contribute an additional \$2,100

(for individuals) or \$5,000 (for multicandidate PACs) for the special general election without regard to any previous contributions to that candidate's committee.

The U.S. District Court for the Eastern District of Texas issued its redistricting order on August 4, 2006, after the ruling and remand from

### CONTRIBUTION LIMITS FOR THE NEWLY SET SPECIAL GENERAL ELECTION ARE SEPARATE AND DISTINCT FROM THE CONTRIBUTION LIMITS THAT HAD APPLIED TO THE NOW-CANCELLED REGULAR GENERAL ELECTION.

the U.S. Supreme Court in *League of United Latin American Citizens v. Perry*. The district court order changed the boundaries for Texas congressional districts 15, 21, 23, 25 and 28 and set special general elections in each of these districts for November 7, 2006. These special general elections are open elections without regard to the results of the party primaries held in March 2006. If necessary, special runoffs will be scheduled by the Texas secretary of state after the special general elections.

WRF attorneys [Jan Witold Baran](#) and [D. Mark Renaud](#) represented Texans for Henry Bonilla in its advisory opinion request. ■

## FEC Denies Request for Grassroots Lobbying Exemption

The Democratic members of the Federal Election Commission (FEC) voted against a proposed rule that would have created a grassroots lobbying exemption to the nation's "electioneering communications" rules. The vote was cast in the face of a long-filed petition for rulemaking by a bipartisan group and after considering a narrowly tailored rule proposed by Republican Commissioner Hans von Spakovsky. By a vote of three to three, the Commission failed to pass the interim rule and also failed to authorize the General Counsel to initiate a formal rulemaking on the topic of a grassroots lobbying exemption.

In February 2006, a diverse group of nonprofit organizations, including the U.S. Chamber of Commerce and the AFL-CIO, petitioned the FEC for a rulemaking with respect to the blackout period for electioneering communications. Under the McCain-Feingold statute of 2002, corporations and unions and persons using funds from corporations and unions may not air television or radio communications within 30 days of a primary election or within 60 days of a general election if the communication features or mentions a clearly identified federal candidate and the communication can be

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# North Carolina Changes Electioneering Communications Law

In early August 2006, Governor Michael F. Easley of North Carolina signed into law former H.B. 1847, which made a number of technical changes to the state's campaign finance law and, most importantly, made two changes to the state's regulation of electioneering communications.

First, the new law eliminates the explicit statutory exception to the prohibition on corporate electioneering communications

that had existed for 501(c)(4) social welfare organizations.

Second, the new law lowers the electioneering communications threshold for mass mailings and telephone banks. Now, during the 30-day pre-primary election period and the 60-day pre-general election period, corporations and unions may not send mass mailings or make telephone calls about a legislative candidate if 2,500 or more people in the legislative district receive

the mailings or calls. The previous threshold was 5,000 persons.

The new law did not change the threshold for statewide candidates, nor did it change the threshold for radio or television communications within the blackout period. ■

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## FEC Fines Lockheed Martin Employees' PAC \$27,000 for Violations

IN MID-JULY, THE LOCKHEED MARTIN EMPLOYEES' POLITICAL ACTION COMMITTEE (LMEPAC) REACHED AN AGREEMENT WITH THE FEDERAL ELECTION COMMISSION (FEC) TO PAY \$27,000 IN FINES FOR FAILING TO ACCURATELY REPORT ITS CONTRIBUTIONS AND EXPENDITURES. THE FINES FOLLOWED A SUBSTANTIAL REVIEW OF THE PAC'S FINANCES BY AUDITORS FROM BOTH LOCKHEED MARTIN CORPORATION AND THE FEC.

Beginning in 2001, the PAC's assistant treasurer, Kenneth Phelps, had written checks to himself for unauthorized disbursements, recording the checks as contributions to a wide array of

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**BECAUSE OF THE MISAPPROPRIATED FUNDS AND MR. PHELPS' DESTRUCTION OF THE UNDERLYING RECORDS, LMEPAC'S REPORTS WERE OUT OF BALANCE BY MORE THAN \$194,000.**

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candidates. According to Lockheed's internal investigation, Mr. Phelps carried out his scheme over a three-year period and embezzled nearly \$170,000 from the PAC before he was caught in late 2003.

Ironically, an internal audit report completed by the corporation early in 2001 had recommended some safeguards that, had they been properly implemented, would have reduced the likelihood that Mr. Phelps could have stolen the PAC funds. Specifically, the report recommended dividing the responsibility for completing the reports from the custodian of the cash reports. This recommendation was never implemented, however, because the corporation delegated the authority to outsource the reporting obligations to the assistant treasurer, who never acted on the recommendation.

Because of the misappropriated funds and Mr. Phelps' destruction of the underlying records, LMEPAC's reports were out of balance by

more than \$194,000. Although recognizing that there were some mitigating circumstances, the Commission nevertheless imposed a significant fine on the PAC. The FEC rejected a separate finding in its staff audit report that the PAC failed to maintain proper payroll deduction authorization (PDA) forms for 42% of its contributors. In their Statement of Reasons, the Commissioners noted a March 2006 change in Commission policy that enabled PACs to satisfy their recordkeeping requirements without producing the original PDAs.

For a discussion of the steps that PACs can take to help prevent this kind of situation from happening, please refer to the March 2004 *Government Contract Issue Update* article entitled "Manage Embezzlement Risks to Protect Those Precious PAC Dollars." ■

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# Vermont's Contribution Limits Revert to Old Levels after *Randall v. Sorrell*

In June 2006, the U.S. Supreme Court struck down Vermont's Act 64 contribution limits and candidate spending limits as unconstitutionally restrictive in the case of *Randall v. Sorrell*. Justice Stephen G. Breyer stated in a plurality opinion that Vermont's exceptionally low contribution limits infringed on First Amendment rights because they were not "closely drawn" to the state's policy goals. The Court also held that Vermont's campaign spending limits were unconstitutional restrictions on candidates' First Amendment free speech guarantees.

After the ruling, the contribution limits that existed prior to the enactment of Act 64 came back into effect, according to the secretary of state. Because the spending limit provisions of Act 64 were never put into effect, this part of the ruling does not require changes for candidates or campaigns. In addition, all provisions of Vermont's campaign finance law that were not declared unconstitutional remain in effect.

Under the current contribution limits, individuals and entities that are not

parties or political committees may contribute up to \$1,000 per election to candidates or candidate committees. Political committees may contribute up to \$3,000 per election to candidates or candidate committees. Political parties may make unlimited contributions to candidates or candidate committees. The \$2,000 per cycle limit on contributions from individuals or entities to political action committees and political parties was not addressed by the Supreme Court and remains in effect.

The new contribution limits are posted on the Vermont secretary of state's website and included in the campaign finance guide published by the Office of the Vermont Secretary of State. For more information, see [www.vermont-elections.org/elections1/campaign\\_finance\\_newlimits.html](http://www.vermont-elections.org/elections1/campaign_finance_newlimits.html).

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## Grassroots Lobbying

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received by 50,000 or more persons in the candidate's congressional district or state. The bipartisan group requested a regulatory exemption for legitimate grassroots lobbying advertisements since Congress is in session for all or part of the 30- and 60-day blackout periods in election years.

Without such an exception, nonprofit corporations, labor unions and for-profit corporations will remain unable to reach those individuals who are the most likely to put political pressure on a member of Congress to take

a certain action with respect to a pending bill or other aspect of the legislative process—even in the face of critical or devastating legislation affecting them and their members directly. The 60-day corporate and union blackout period for electioneering communications for the 2006 general election begins on September 8, 2006. ■

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Hilton Washington Embassy Row  
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Washington, DC 20036

## About the Conference:

Public attention on political contributions and recent scandals has made activity by corporations, trade and membership associations and unions more complex than ever. At this program, high-level government officials and expert private practitioners will address issues for those representing PACs, lobbyists, corporations, associations, unions and other interest groups.

## WRF Participants:

- Political Action Committees  
**Jan Witold Baran**, Co-Chair  
September 14, 2006 | 11:30 AM
- Contributions to Parties, 527s and 501(c)s  
**Caleb P. Burns**, Speaker  
September 14, 2006 | 3:00 PM
- FEC Enforcement and Audits  
**Jan Witold Baran**, Co-Chair  
September 15, 2006 | 2:15 PM

Register online at [www.pli.edu](http://www.pli.edu)  
or call 800.260.4PLI  
(refer to Priority Code GSP6-9AWRF)

## UPCOMING DATES TO REMEMBER



### September 8, 2006

- 60-day pre-general election blackout period on corporate- and union-funded electioneering communications begins

### September 20, 2006

- September monthly FEC report due for federal PACs filing monthly
- September monthly IRS Form 8872 due for nonfederal PACs filing monthly\*

### October 15, 2006

- Third quarter FEC report due for federal PACs filing quarterly and for federal candidates
- Third quarter IRS Form 8872 due for nonfederal PACs filing quarterly\*

### October 20, 2006

- October monthly FEC report due for federal PACs filing monthly
- October monthly IRS Form 8872 due for nonfederal PACs filing monthly\*

### October 26, 2006

- Pre-general FEC report due for federal PACs filing monthly, for federal PACs filing quarterly and for federal candidates
- Pre-general IRS Form 8872 due for nonfederal PACs filing monthly and for nonfederal PACs filing quarterly\*

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.

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