

ORAL ARGUMENT SCHEDULED FOR JANUARY 27, 2010

No. 09-5342  
(consolidated with No. 08-5223)

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DAVID KEATING, EDWARD H. CRANE, III, FRED M. YOUNG, JR.,  
BRAD RUSSO, AND SCOTT BURKHARDT,  
*Plaintiffs-Appellants,*

v.

FEDERAL ELECTION COMMISSION,  
*Defendant-Appellee.*

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On Certified Questions from the United States  
District Court for the District of Columbia,  
Case No. 08-cv-00248 (JR)

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**BRIEF OF *AMICI CURIAE***

Alliance for Justice, Concerned Women for America Legislative Action  
Committee, FRC Action, The Commonwealth Foundation for Public  
Policy Alternatives, Mackinac Center for Public Policy, Caesar Rodney  
Institute, Kansas Policy Institute, FreedomWorks Foundation,  
The James Madison Institute, Public Interest Institute

*Supporting Plaintiffs-Appellants*

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*Dated: November 16, 2009*

## **CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

All parties appearing in this Court are listed in the Brief for Appellants David Keating, Fred M. Young, Jr., Edward H. Crane, III, Brad Russo, and Scott Burkhardt, as are references to the rulings and related cases.

### **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amicus curiae* Alliance for Justice states that it is a non-profit corporation, exempt from taxation under § 501(c)(3) of the Internal Revenue Code, it has no parent corporation, and is not a publicly held corporation that issues stock.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amicus curiae* The Concerned Women for America Legislative Action Committee states that it is a non-profit corporation exempt from taxation under § 501(c)(4) of the Internal Revenue Code, it has no parent corporation, and is not a publicly held corporation that issues stock.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amicus curiae* FRC Action states that it is a non-profit corporation exempt from taxation under § 501(c)(4) of the Internal

Revenue Code, it has no parent corporation, and is not a publicly held corporation that issues stock.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amicus curiae* FreedomWorks Foundation states that it is a non-profit corporation exempt from taxation under § 501(c)(3) of the Internal Revenue Code, it has no parent corporation, and is not a publicly held corporation that issues stock.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amicus curiae* Caesar Rodney Institute states that it is a non-profit corporation exempt from taxation under § 501(c)(3) of the Internal Revenue Code, it has no parent corporation, and is not a publicly held corporation that issues stock.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amicus curiae* Commonwealth Foundation for Public Policy Alternatives states that it is a non-profit corporation exempt from taxation under § 501(c)(3) of the Internal Revenue Code, it has no parent corporation, and is not a publicly held corporation that issues stock.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amicus curiae* Mackinac Center for Public Policy states that it is a non-profit corporation exempt from taxation under §

501(c)(3) of the Internal Revenue Code, it has no parent corporation, and is not a publicly held corporation that issues stock.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amicus curiae* Kansas Policy Institute states that it is a non-profit corporation exempt from taxation under § 501(c)(3) of the Internal Revenue Code, it has no parent corporation, and is not a publicly held corporation that issues stock.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amicus curiae* The James Madison Institute states that it is a non-profit corporation exempt from taxation under § 501(c)(3) of the Internal Revenue Code, it has no parent corporation, and is not a publicly held corporation that issues stock.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amicus curiae* Public Interest Institute states that it is a non-profit corporation exempt from taxation under § 501(c)(3) of the Internal Revenue Code, it has no parent corporation, and is not a publicly held corporation that issues stock.

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## **STATUTES AND REGULATIONS**

All applicable statutes are contained in the Addendum for the Brief for Appellants SpeechNow.org, except for the following, which is contained in an Addendum attached to this Brief:

11 CFR 104.18

## **GLOSSARY**

FEC	Federal Election Commission
FECA	Federal Election Campaign Act
MUR	Matter Under Review
PAC	Political Action Committee, a political committee as defined by 2 U.S.C. § 431(4)(A).
RAD	Reports Analysis Division
RFAI	Request For Additional Information

## **INTEREST OF *AMICI CURIAE*<sup>1</sup>**

At issue in this case is whether the burdens of political committee status can be imposed on independent expenditure groups whose speech is non-corrupting. If these groups cannot be made to register as political committees, even though their “major purpose” is election-related, then non-profits need not fear a burdensome investigation into their “major purpose” or the imposition of political committee status for their non-corrupting, non-election-related speech.

Alliance for Justice (AFJ) is a national association of close to 100 organizations dedicated to advancing justice and democracy. For 30 years, AFJ has been leaders in the fight for a more equitable society on behalf of a broad constituency of environmental, consumer, civil and women’s rights, children’s, senior citizens’ and other groups. AFJ is premised on the belief that all Americans have the right to secure justice in the courts and to have their voices heard when government makes decisions that affect their lives. AFJ educates nonprofits about the rules and requirements for engaging in advocacy and assists such groups in navigating the minefields associated with these rules.

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<sup>1</sup> This brief is filed pursuant to the consent of all parties. No counsel for a party authored this brief in whole or in part, nor did any party or counsel to this case make a monetary contribution intended to fund the preparation or submission of this brief.

The Concerned Women for America Legislative Action Committee (CWALAC) is the legislative and advocacy arm of Concerned Women for America. CWALAC is committed to reversing the decline in moral values in our nation and encourages its members to speak out on public issues and hold their elected officials accountable for their public policy decisions.

FRC Action, the legislative action arm of the Family Research Council, was founded to educate the public and leaders about traditional American values and to promote the philosophy of the Founding Fathers concerning the nature of ordered liberty. FRC Action is dedicated to preserving and advancing the interests of family, faith and freedom in the political arena.

The Commonwealth Foundation for Public Policy Alternatives is an independent, non-profit research and educational institute that develops and advances public policies on the nation's founding principles of limited constitutional government, economic freedom, and personal responsibility for one's actions.

The Mackinac Center for Public Policy is a nonpartisan research and education institute devoted to improving the quality of life for all Michigan citizens by promoting sound solutions to state and local policy questions. The Mackinac Center is broadening the debate on issues that have been

dominated by the belief that government intervention should be the standard solution.

The Caesar Rodney Institute (CRI) is a research and education organization dedicated to the measured improvement in the quality of life, the degree of individual liberty, and opportunity for personal fulfillment for all Delawareans. CRI's mission is to influence public policy by helping every Delawarean understand and put into practice the fundamentals of free society.

The Kansas Policy Institute provides research and initiates reform in education, fiscal policy and health care, and is dedicated to the constitutional principles of limited government, which it believes is essential for individual freedom and prosperity to flourish.

FreedomWorks Foundation is an educational organization whose mission is to educate Americans about individual freedom, free-market economics and limited government.

The James Madison Institute is a research and educational organization, whose mission to keep citizens informed about their government is rooted in ideals such as individual liberty.

Public Interest Institute promotes the importance of a free-enterprise economic system and limited government based upon individual freedom

and liberty. The Institute encourages citizens to become better informed about public policy issues and assists them in their search for information.

Through education, *amici* promote respect for the rights of freedom of speech and of association. *Amici* have defended First Amendment rights in state and federal courts, and thus have a strong interest in whether citizens may associate and speak freely about the political process. They believe this case is an important opportunity for the Court to protect the First Amendment rights of all Americans. Further, these *amici* believe that their perspective on such issues may bring to the attention of the Court relevant matters not already brought to its attention by the parties, and that this brief may be of help to the Court.

### **SUMMARY OF ARGUMENT**

Being a political committee is burdensome. This is shown not just by the Supreme Court's repeated recognition of the fact, but by the experiences of organizations forced to comply with the requirements of PAC status. In light of this, the Court should not impose PAC status on independent expenditure groups whose speech is non-corrupting, even though their major purpose is campaign-related. To hold otherwise is to force them to comply with burdensome requirements in the absence of a compelling justification.



A holding that groups, which make only non-corrupting independent expenditures, cannot be forced to assume the burdens of PAC status has additional constitutional benefits. Non-profits engaging in non-corrupting grassroots advocacy would be similarly protected from imposition of these burdensome PAC requirements because the “major purpose” test becomes an irrelevant inquiry in the absence of corrupting speech. As a result, intrusive and burdensome government investigations into a non-corrupting organization’s “major purpose” becomes a thing of the past.

### **ARGUMENT**

This case is important to non-profit organizations because there are very real and very burdensome consequences if political committee status is imposed. Campaign finance regulation has become so complex and confusing that ordinary citizens cannot understand it, and even experts struggle with it. Professionals must be hired before one speaks alone or with others to handle the heavy workload, help maneuver through the complex web of restrictions, and help avoid the imposition of penalties. Some citizen groups are chilled from speaking because they want to avoid the complexity altogether or because they cannot afford a team of specialists. These groups are associations of citizens who pose no threat of corrupting the political process. The Court should protect them from the Federal Election

Commission's (FEC) constant expansion of efforts to regulate non-corrupting speech.

**I. The Burdens Of Political Committee Status On Core First Amendment Activity Are Real, Significant And Onerous And, Therefore, Demand A Compelling Government Interest To Justify Their Imposition.**

In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Court was concerned not only with the chilling effect of reporting and disclosure requirements on an organization's contributors, but also with the potential burden of disclosure requirements on an association's own speech. *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 265-66 (1986) (O'Connor, J., concurring) (*MCFL*) (*citing Buckley*, 424 U.S. at 66-68, 74-82). Since *Buckley*, the Court has repeatedly recognized the burdens imposed by PAC status.

"Detailed recordkeeping and disclosure obligations, along with the duty to appoint a treasurer and custodian of the records, impose administrative costs that many small entities may be unable to bear." *MCFL*, 479 U.S. at 253; *see also FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 477 n.9 (2007) ("PACs impose well-documented and onerous burdens, particularly on small nonprofits.") (*citing MCFL*, 479 U.S. at 253-255 (plurality opinion)); *FEC v. Akins*, 524 U.S. 11, 14-15 (1998) ("[T]he Act imposes extensive recordkeeping and disclosure requirements upon groups that fall within the

Act's definition of 'political committee.' Those groups must . . . file complex FEC reports. . . .").

This Court has also recognized that once an organization is found to be a political committee, "it must then submit to an elaborate panoply of FEC regulations requiring the filing of dozens of forms, the disclosing of various activities, and the limiting of the group's freedom of political action to make expenditures or contributions." *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 391-2 (D.C. Cir. 1981); *see also FEC v. GOPAC, Inc.*, 871 F. Supp. 1466, 1469 (D.D.C. 1994) (*quoting same*).

The *MCFL* Court recognized just the statutory burdens of PAC status:

Under § 432, [a PAC] must appoint a treasurer, § 432(a); ensure that contributions are forwarded to the treasurer within 10 or 30 days of receipt, depending on the amount of contribution, § 432(b)(2); see that its treasurer keeps an account of every contribution regardless of amount, the name and address of any person who makes a contribution in excess of \$50, all contributions received from political committees, and the name and address of any person to whom a disbursement is made regardless of amount, § 432(c); and preserve receipts for all disbursements over \$200 and all records for three years, §§ 432(c), (d). Under § 433, [a PAC] must file a statement of organization containing its name, address, the name of its custodian of records, and its banks, safety deposit boxes, or other depositories, §§ 433(a), (b); must report any change in the above information within 10 days, § 433(c); and may dissolve only upon filing a written statement that it will no longer receive any contributions nor make disbursements, and that it has no outstanding debts or obligations, § 433(d)(1).

Under § 434, [a PAC] must file either monthly reports with the FEC or reports on the following schedule: quarterly reports during election

years, a pre-election report within 30 days after an election, and reports every 6 months during nonelection years, §§ 434(a)(4)(A), (B). These reports must contain information regarding the amount of cash on hand; the total amount of receipts, detailed by 10 different categories; the identification of each political committee and candidate's authorized or affiliated committee making contributions, and any persons making loans, providing rebates, refunds, dividends, or interest or any other offset to operating expenditures in an aggregate amount over \$200; the total amount of all disbursements, detailed by 12 different categories; the names of all authorized or affiliated committees to whom expenditures aggregating over \$200 have been made; persons to whom loan repayments or refunds have been made; the total sum of all contributions, operating expenses, outstanding debts and obligations, and the settlement terms of the retirement of any debt or obligation, § 434(b).

*MCFL*, 479 U.S. at 253-54.

While the *MCFL* Court thoroughly recites the statutory burden of PAC status, the recitation does not fully demonstrate the effect of these burdens in practice. From creation to termination, operating a PAC is complex, time consuming, and fraught with opportunity for misstep.

**A. The organizational burdens of PAC status make it difficult to find a willing, competent individual to serve as treasurer.**

The complexity and burdens of organizing as a PAC preclude many organizations from even beginning. *See MCFL*, 479 U.S. at 255 n.8 (some “may not find it feasible to establish such a committee, and may therefore decide to forgo engaging in independent political speech”); *see also*

Interview by Jim Lehrer of Laura Murphy and Randy Tate, *Campaigns*

*Under Scrutiny – Opposing Reform*, NewsHour (Sept. 30, 1997)

[www.pbs.org/newshour/campaign/september97/hearing\\_9-30.html](http://www.pbs.org/newshour/campaign/september97/hearing_9-30.html)

(“NewsHour”) (Laura Murphy, legislative director for the American Civil Liberties Union, stating that “not everybody who is a member of the ACLU would either support the creation of a PAC, or would they want to be members of a PAC.”).

One of the first things a PAC must do is name a treasurer. *See* 2 U.S.C. 432(a) (“No contribution or expenditure shall be accepted or made by or on behalf of a political committee during any period in which the office of treasurer is vacant.”). The days of the volunteer treasurer are over for several reasons. It is often no easy task to find a qualified individual willing to take to serve in the position or to assume the legal liability of doing so.

First, the complexity of the job has all but required committees to look for individuals with expertise in accounting. A nine-page guidance document published by the FEC on implementing internal controls by PACs is but one example of the specialized knowledge a treasurer needs. *See* FEC Internal Controls and Political Committees at 1, 2

[http://www.fec.gov/law/policy/guidance/internal\\_controls\\_polcmtes\\_07.pdf](http://www.fec.gov/law/policy/guidance/internal_controls_polcmtes_07.pdf)

[f](#) (emphasis added) (“The responsibility of establishing the necessary control procedures falls to a political committee’s treasurer. . . . This guide should not be the only resource that is consulted. *In addition to* accounting

professionals, there are numerous resources that can be found on the Internet.”). Treasurers are expected to be up to date on the reporting and recordkeeping rules, maintain the checkbook, reconcile the bank account and reporting software used for recordkeeping, accept receipts, and make disbursements.

Second, the treasurer also has the legal responsibility to ensure that best efforts are made to collect contributor information, and prepare and file reports (electronically if required). The FEC has confirmed that treasurers may be pursued by the Commission in their *personal capacities* and thus, be personally liable. FEC Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (Jan. 3, 2005)

<<http://www.fec.gov/law/policy/2004/notice2004-20.pdf>>. An FEC brochure specifically states that “[c]ommittee treasurers may be liable for civil monetary penalties if reports are not filed or are not filed on time.” Committee Treasurers Brochure, <[http://www.fec.gov/pages/brochures/committee\\_treasurers\\_brochure.pdf](http://www.fec.gov/pages/brochures/committee_treasurers_brochure.pdf)>. Given all this, it is not hard to see why some organizations have difficulty finding an individual willing to serve as treasurer. As experts have noted, “The unintended consequence of [complicated laws] is that the price of admission into politics becomes too high. People do not want to become . . . treasurers because of the potential

liability.” Bipartisan Commission on the Political Reform Act of 1974, *Overly Complex and Unduly Burdensome: The Critical Need to Simplify the Political Reform Act* at 62 (last visited November 13, 2009) <<http://www.fppc.ca.gov/pdf/McPherson.pdf>> (“Bipartisan Commission”).

**B. The administrative burdens of PAC status.**

**1. Manpower and time commitment.**

It is becoming a rarity to find a PAC that is able to successfully operate on a small administrative budget using a volunteer staff. The time commitment required, complex rules, fines for minor missteps, and continuous recordkeeping and reporting necessitate hiring a cadre of professionals. *See* Comment of Birkenstock and Cline in Response to SEC File #S7-18-09, Political Contributions by Certain Investment Advisers at 3 (Oct. 9, 2009) <<http://www.sec.gov/comments/s7-18-09/s71809-227.pdf>> (“It is also common for candidates to have treasurers who work in finance or accounting and serve a particularly important role. . .”).

In January 2009, the FEC held a public hearing on its policies and procedures, and sought public comment. Agency Policies and Procedures, 73 Fed. Reg. 74494, 74495 (Dec. 8, 2008). In response, the FEC received comments from several individuals highlighting the administrative burdens placed on these volunteer-driven PACs:

This whole system needs to be revised, the rules are mountainous.... As a local grassroots Democratic club, for us, the rules, regulations, paperwork, filings are so complex, and if something is missed, fines are issued... this makes it impossible for a group of volunteers to operate in a relatively small way in the process, without expensive, professional assistance from one of few professionals who understand it....

Comment of Diane Valentino, Agency Procedures and Processes (Dec. 12, 2008) <<http://www.fec.gov/law/policy/enforcement/2009/comments/comm29.pdf>>. Another individual also noted the burdens which demand professional help:

I have just started a political action committee. The record-keeping burden is simply unbearable! I believe this red tape has the effect of deterring grassroots participation in the political process. If I did not have hours to volunteer to the PAC, we just could not participate. This favors the large PACs that can hire professionals to run the PAC.

Comment of Jason Eugene Call, Agency Procedures and Processes (Dec. 17, 2008) <<http://www.fec.gov/law/policy/enforcement/2009/comments/comm30.pdf>>.

For some, the sheer amount of time required to operate a PAC dictates hiring professionals. Data entry and recordkeeping can be time consuming, especially if the PAC has a large number of donors. In addition to recording all receipts and all disbursements, a treasurer must file FEC reports, IRS returns, and state reports (e.g., corporate, tax, employment).



Other individuals discover that to comply with the law's reporting requirements, they need to hire attorneys, CPAs, and IT professionals, all of which cost money that a new PAC does not have. *See* NewsHour at ¶14 (Randy Tate stating that "If you've ever set up a political action committee, you need several attorneys, a couple of CPA's, piles of paper work, and it would have a chilling effect on everyday citizens trying to organize their neighborhood to have an impact on their local member of Congress."); Bipartisan Commission at 62 ("Thus the regulations have injured grassroots democracy and have essentially professionalized politics so that you have to have lawyers and accountants on your campaign staff.").

## **2. Recordkeeping burdens of PAC status.**

Treasurers must account for every penny that comes in, and every penny that goes out. They must ensure that contributions do not come from prohibited sources, and that they do not exceed contribution limits. Treasurers also must reconcile the PAC's books, accounts, and reports. One mistake is enough to create discrepancies that are difficult to remedy and can lead to fines.

Even for those with experience, recordkeeping imposes significant burdens:

As a treasurer of a county party, and an accountant for the past 40 years, I thought I was capable of handling the reporting and record

keeping requirements for a Congressional candidate. I was wrong and my efforts to learn were severely hampered by . . . the unwieldy reporting program.

Comment of Gloria Bram, Agency Procedures and Processes (Feb. 11, 2009)

<<http://www.fec.gov/law/policy/enforcement/2009/comments/bram.pdf>>.

### **3. Reporting burdens of PAC status.**

The body of authority governing PAC reporting is confusing and complex. The Federal Election Campaign Act (FECA) is 244 pages, [www.fec.gov/law/feca/feca.pdf](http://www.fec.gov/law/feca/feca.pdf), and there are 568 pages of regulations, [www.fec.gov/law/cfr/cfr\\_2009.pdf](http://www.fec.gov/law/cfr/cfr_2009.pdf). There have been over 1,770 advisory opinions issued since 1975, <http://saos.nictusa.com/saos/searchao>, over 1,200 pages of explanations and justifications for regulations in the *Federal Register*, [www.fec.gov/law/cfr/ej\\_main.shtml](http://www.fec.gov/law/cfr/ej_main.shtml), and 379 court cases, including 13 “major cases,” [www.fec.gov/law/litigationalpha.shtml](http://www.fec.gov/law/litigationalpha.shtml) and [www.fec.gov/law/litigationmajor.shtml](http://www.fec.gov/law/litigationmajor.shtml).

There are reporting forms with instructions, [www.fec.gov/general/library.shtml](http://www.fec.gov/general/library.shtml), campaign guides, [www.fec.gov/general/library.shtml](http://www.fec.gov/general/library.shtml), and 24 brochures, [www.fec.gov/general/library.shtml](http://www.fec.gov/general/library.shtml). Other sources of information regarding the FEC’s enforcement of laws and regulations can be found in audit reports, [www.fec.gov/audits/audit\\_reports\\_auth.shtml](http://www.fec.gov/audits/audit_reports_auth.shtml), and in over 6000 Matters under Review, <http://eqs.nictusa.com/eqs/searcheqs>.

It is true that to assist PACs with compliance with these complex requirements, the law requires the FEC to provide resources and assistance. However, the FEC's fulfillment of its statutory duty to provide such assistance does not sufficiently ameliorate the burdens placed upon PACs by the complexity of reporting. Indeed, the FEC's guidance and assistance sometimes adds to the confusion. *See* Comment of Gloria Bram at ¶2 (“I was also hampered at times by the [FEC] employee's poor communication skills. They knew the program, but not [sic] how to best communicate in other areas.”).

For example, political committees that expect to receive or make contributions or expenditures in excess of \$50,000 in a calendar year are required to file reports electronically with the FEC. 11 CFR § 104.18(a)(i) and (ii). Although the FEC provides free filing software, this does not lessen the burden placed on many PACs. As one commenter noted, “[t]he current software provided – FECFile – is clunky and confusing . . . . The free FEC software need not be as fully-featured as commercial packages available to campaigns, but it should be easy to use so that low-budget candidates and committees are able to file reports without recourse to prohibitively expensive applications. . . .” Comment of Peter d’Errico, Agency Procedures and Processes (Dec. 19, 2009) < <http://www.fec.gov/law>

[/policy/enforcement/2009/comments/comm14.pdf](#)>. Another commenter stated:

The sample formats for transmitting data were poorly explained, the program was extremely convoluted and not user friendly. It shouldn't require a Master's degree in both Accounting and Systems Analysis to use it. And the experience required to use the program severely hampers the ability of new candidates with limited funds to run for public office.

Comment of Gloria Bram at ¶3.

The software is designed so that if certain mistakes are made, the treasurer will be unable to upload and file the report. If a treasurer needs assistance correcting these mistakes, he may consult the 351-page FECFile User Manual for PACs & Party Committees, < [http://www.fec.gov/electfil/unauthorized\\_manual/entireUNAUTHmanual.pdf](http://www.fec.gov/electfil/unauthorized_manual/entireUNAUTHmanual.pdf)>, or call a helpline to get an answer to questions arising out of use of the software. *Id.* at 2. However, if the treasurer has a question about the application of regulations to a specific reporting scenario, he must call either the Information Division or the Reports Analysis Division. This situation can put the treasurer in a delicate situation – he can't upload the report because he has an error, yet he may be unable to get the necessary guidance he needs because the individuals in the Information Division and RAD are not very familiar with the FEC filing software, and the individuals on the FEC software helpline are usually not familiar with the FEC's regulations. So while the treasurer is

receiving assistance from the FEC, the complexity of the software and reporting requirements limit its usefulness.

The barrier to exercising the right to association due to being regulated as a PAC is demonstrated in an experiment conducted by Dr. Milyo. In 2007, 255 subjects attempted to comply with disclosure laws from 3 states regulating ballot issue committees. Jeffrey Milyo, Ph.D., *Campaign Finance Red Tape: Strangling Free Speech & Political Debate*, at 27, Institute for Justice (Oct. 2007; last visited Nov. 13, 2009) < [www.ij.org/publications/other/campaign-finance-red-tape.html](http://www.ij.org/publications/other/campaign-finance-red-tape.html) > (“Milyo”). The difficulties of complying with reporting and disclosure laws was evident: not one subject completed all of the tasks correctly. *Id.* at 8. This is problematic because for “even a very small group with just a few contributors and expenditures, missing one filing deadline might generate hundreds of thousands of dollars in fines, or more.” *Id.* at 3. Almost 89% of the participants agreed that when the specter of fines and punishment for incorrect compliance was raised, many people would be deterred from engaging in independent political activity altogether. *Id.* at 14-16. Or, their participation in the political process was delayed for years. *Id.* at 18. A comment from one participant, a woman who served as a campaign treasurer for a political committee, is especially noteworthy:

Even with [my] limited experience I found this exercise to be complicated and mentally challenging. I took nearly the allotted [sic] amount of time to complete the forms and still made two major errors. The burdensome paper work and fines imposed for errors in reporting proved to be a hurdle that prevented the formation of our PAC . . . for a number of years.

*Id.*

In another reporting experiment, California's Bipartisan Commission found that even participants with backgrounds in campaigns could not generate a form without making multiple mistakes, even with using a fairly simple set of mock campaign data. Bipartisan Commission at 69. Those without a campaign background spent up to 3 hours completing the forms; some gave up in frustration. *Id.* Both those with campaign experience and those without it felt uncomfortable and uncertain about some of the responses on their prepared reports. *Id.*

What these two experiments show is that the PAC reporting requirements are so complex, that even those with accounting and campaign backgrounds have difficulty complying. Complex reporting is a burden in and of itself, but it also creates other burdens – administrative fines and investigations from simple errors, and deterrence of participation in the political process.

The subjects in Dr. Milyo's experiment had little doubt that the burdens of PAC compliance, especially when combined with the threat of severe penalties, would chill participation:

Subjects were sincerely frustrated in their attempts to complete the disclosure forms – and believed these difficulties would deter political activity. . . . About two-thirds of respondents agreed that the disclosure requirements would deter many people from engaging in independent political activity. That figure rose to 85% to 89% when the specter of fines and punishment for incorrect compliance was raised.

Milyo at 14-16. After the experiment, subjects were given the opportunity to comment. By a ratio of more than 20 to one, the comments were negative, and included:

“A lawyer would have a hard time wading through this disclosure mess and we read legal jargon all the time.”

“Good Lord! I would never volunteer to do this for any committee.”

“Worse than the IRS!”

“Seriously, a person needs a lawyer to do this correctly.”

“This is horrible!”

“This was awful. I feel bad for anyone who encounters these forms in real life.”

*Id.* at 17.

Two recent FEC enforcement actions demonstrate the complexities of reporting and the threat of fines from technical violations. They provide

real-life examples of how the FEC's procedures and processes burden participants, particularly the inexperienced, and how "being subjected to such treatment leads many to swear off future involvement in the federal election process." *Statement of Reasons of Commissioners Petersen, Hunter and McGahn II*, FEC MURS 5957, 6031 at 1 <<http://eqs.nictusa.com/eqsdocs/29044243959.pdf>>.

The FEC's own commissioners have noted the wide-spread problem of burdensome requirements that deter participation. "We have been struck by the number of committees, including separate segregated funds of corporations, that seek to terminate after encountering the regulatory burdens associated with 'political committee' status the court noted in *GOPAC*." *Statement of Reasons of Commissioners Petersen, Hunter and McGahn II*, FEC MUR 6005 at 4 n.10 <<http://eqs.nictusa.com/eqsdocs/29044234461.pdf>> ("MUR 6005) (citing five committees). This was reaffirmed in the California study:

Nothing discourages the citizenry from participating in the political process more quickly or completely than a political system that is permitted to become unduly complex and incomprehensible. If the rules of the game are too difficult or complicated for the average citizen to readily understand them, the citizens are naturally repelled by that complexity. The average citizen may then rationally choose to opt out of the process rather than attempt to maneuver through the difficulties and expense of obtaining the necessary legal or technical assistance. Such complexity then runs counter to the purpose of government to encourage public participation.



*See* Bipartisan Commission at 34.

**C. FEC oversight burdens associated with PAC status.**

The burdens on a PAC do not end with the filing of its reports. After a report is filed with the FEC, it is reviewed by a Reports Analyst in the Reports Analysis Division (RAD) assigned to the PAC. If the analyst believes there is an error, however slight (e.g., misspelling of a PAC name), the PAC will usually receive a “request for additional information” (“RFAI”). The PAC is required to respond to the RFAI, and in some cases, is required to amend the report. RFAI’s themselves can create substantial burdens for small and large PACs alike. *See* Comment of Jan Baran, FEC Agency Procedures at 10 (Jan. 5, 2009) <<http://www.fec.gov/law/policy/enforcement/2009/comments/comm33.pdf>> (“These RFAIs are redundant and impose significant burdens on the recipients.”).

If there is no response to the RFAI, or if it is believed to be inadequate, the FEC may audit the PAC. One practitioner described the impact of the audit process on a PAC as potentially “catastrophic.” Testimony of Marc Elias, FEC Public Hearing on Agency Practices and Procedures at 26 (Jan. 14, 2009) <<http://www.fec.gov/law/policy/enforcement/2009/01141509hearingtranscript.pdf>>. Mr. Elias went on to explain:

The FEC – an FEC audit, for those of you who are not here and have never been through it, is equivalent to those life audits that the IRS did and drew so much criticism for. It is not “let us come in and spend a few weeks talking to you and looking at some records.” It is “give us every piece of paper that the committee has ever generated over a cycle.”

We will look at every check. We will look at every disbursement. We will look at every invitation. We will question everything and anything you have done during the course of this election cycle. It is extremely burdensome.

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So these are sweeping, sweeping audits that go on for a long period of time.

*Id.*; see also Testimony of James Bopp, Jr., FEC Public Hearing on Agency Practices and Procedures at 11 (Jan. 14, 2009) <<http://www.fec.gov/law/policy/enforcement/2009/01141509hearingtranscript.pdf>> (“If they were – and if audited to the degree that I have seen on some occasions, wanting to see every check of every donor over the last X number of years, which is often hundreds of thousands, that a – that the rules have becomes so difficult and complex and the time frames so narrow and demanding that an organization that wants to conduct its activity in an efficient and cost-effective manner cannot comply, and that the cost of compliance is nearly prohibitive. So I think what the audit process has shown. . . it has demonstrated that the complexity of the record keeping and reporting requirements have reached the point where very few entities can ever be expected to pass a real thorough audit.”); Testimony of Elias at 38 (“It’s not

clear to me why in the context of an audit where I think most people again would be shocked, most people who have not been through it would be shocked to know how legally intensive these become.”).

Completely responding to an RFAI does not always end the matter. In addition to an audit, RAD may refer apparent violations of the FECA to the FEC’s Office of General Counsel for investigation. By law, the FEC is required to resolve complaints through this investigative and enforcement process called Matter Under Review (“MUR”). Should the MUR process fail to resolve the matter, the parties have the option to pursue the matter in court. Unfortunately, once a complaint is filed or a MUR is opened, it is extremely difficult for those being investigated to have a frivolous complaint dismissed before they incur a great deal of time, resources and attorneys’ fees. *See* Testimony of Hans von Spakovsky, FEC Public Hearing on Agency Practices and Procedures at 29 (Jan. 14, 2009) <<http://www.fec.gov/law/policy/enforcement/2009/01141509hearingtranscript.pdf>>.

It is obvious from the foregoing discussion that the Government’s designation of PAC status on citizen groups is extremely burdensome on the exercise of core First Amendment freedoms. As a result, the Government must demonstrate a compelling interest to justify this burden. *See MCFL*, 479 U.S. at 256 (“When a statutory provision burdens First Amendment

rights, it must be justified by a compelling state interest.”). However, the Government’s compelling interest in deterring corruption is not implicated by independent expenditure groups and other similarly-situated citizen groups.

## **II. The Trickle-Down Effect Of Requiring Speech Now To Register As A Political Committee In The Absence Of Corruption.**

The *Buckley* Court held that the First Amendment prohibits an organization from being required to bear the burdens of PAC status unless the organization is under the control of a candidate or the major purpose of the organization is the nomination or election of a candidate. 424 U.S. at 79. In so doing, the Court was protecting citizen groups that only occasionally or incidentally engage in express advocacy of a candidate from suffering the onerous burdens imposed upon PACs. *Id.*

Likewise, this Court should protect citizen groups from the full panoply of PAC burdens if their speech is noncorrupting, regardless of their major purpose. Such a holding would serve two important purposes. First, as explained above, it would avoid the imposition of PAC burdens on organizations engaging in non-corrupting speech. Second, it would declare the “major purpose” test irrelevant whenever non-corrupting speech is at issue. This would provide organizations a ready defense to intrusive and burdensome investigations, which themselves may violate the First

Amendment. *See Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (“Merely to summon a witness and compel him, against his will, to disclose the nature of his past expressions and associations is a measure of governmental interference in these matters.”); *see also AFL-CIO v. FEC*, 333 F.3d 168 (D.C. Cir. 2003) (*quoting Machinists*, 655 F.2d at 387) (“Unique among federal administrative agencies, the Federal Election Commission has as its sole purpose the regulation of core constitutionally protect activity – ‘the behavior of individuals and groups only insofar as they act, speak and associate for political purposes.’”).

Currently, non-profit organizations are subjected to onerous investigations into what their true “major purpose” is, regardless of the fact that their protected issue advocacy poses no threat of corruption. Even if a non-profit organization’s communication does not contain express advocacy, or its functional equivalent, if anyone wants to silence the organization’s speech, it need only employ a weapon in the political arsenal – an FEC complaint. *See* Testimony of Jan Baran, FEC Public Hearing on Agency Practices and Procedures at 6 (Jan. 14, 2009) <<http://www.fec.gov/law/policy/enforcement/2009/01141509hearingtranscript.pdf>> (“I think it’s a serious problem. I think that there is with some

regularity, and I think Bob Bauer even suggested that complaints get filed in the heat of a campaign in order to grab a headline.”).

There are many examples from which to choose, but a recent complaint highlights this danger well. The American Leadership Project (ALP), a § 527 organization, ran ads in Ohio calling on Senator Clinton to “keep on fighting” for certain issues. MUR 6005 at 2. On April 30, 2008, counsel for Obama for America filed a complaint against the organization, alleging that it violated the FECA by failing to register as a political committee. On February 25, 2009, the Commission voted to take no further action and closed the case. However, the complaint fulfilled its purpose – it tied ALP up in the FEC’s enforcement process until well after the convention. *See Statement for the Record of Commissioner Smith*, FEC MUR 4624 at 2 (Nov. 6, 2001) < <http://eqs.nictusa.com/eqsdocs/0000018E.pdf>> (“These complaints are usually filed as much to harass, annoy, chill, and dissuade their opponents from speaking as to vindicate any public interest in preventing ‘corruption or the appearance of corruption.’”).

One practitioner correctly points out the fear that non-profits face: “All unregistered organizations of whatever kind that are seen to influence elections – or that are suspected of this activity – will undergo extensive

examination.” Robert Bauer, More Soft Money Hard Law at ¶9 (Feb. 1, 2007) < <http://www.moresoftmoneyhardlaw.com/news.html?AID=920>>.

These complaints lead to investigations, which are costly and chilling. The FEC embarks on what it terms “an extensive examination of the organization,” to determine its major purpose. FEC, Political Committee Status, 72 Fed. Reg. 5595, 5606 (Feb. 7, 2007). The similarities between the *extensive* major purpose examinations and the FEC’s investigations into coordinated communications allow us to clearly see the burdens of allowing major purpose investigations to continue absent corrupting speech.

During the 1990s, the FEC lost sight of the express advocacy standard in enforcing coordinated communications regulations. The absence of a formal bright-line content standard led to fruitless investigations that caused exactly the result the *Buckley* Court sought to avoid – the restriction of First Amendment freedoms. Without a bright-line standard, individuals accused of illicit coordination lacked the benefit of a ready and inexpensive defense to an FEC investigation. Instead, they endured highly intrusive and expensive investigations to determine whether vague standards had been satisfied.

The most well-known example is the Christian Coalition investigation. In 1992, the Democratic National Committee filed a

complaint alleging that the Coalition and various candidate committees violated FECA through alleged coordinated activities. *See* [http://www.fec.gov/law/litigation\\_CCA\\_FEC\\_A.shtml](http://www.fec.gov/law/litigation_CCA_FEC_A.shtml). The investigation and subsequent enforcement action spanned over six years. The FEC took 81 separate depositions of 48 different individuals, including past and present Coalition employees, staff from political parties and campaigns, and a former U.S. President and Vice President. Testimony of James Bopp, Jr., *Federal Election Commission Enforcement Procedures*, Committee on House Administration, Oct. 16, 2003 at 16 <<http://www.campaignlegalcenter.org/attachments/941.pdf>>. The FEC conducted a large amount of paper discovery, requiring the Coalition to search millions of pages of documents in its offices and warehouse, in order to produce over 100,000 pages. *Id.* Third parties were subpoenaed, including the Coalition's accountants, fundraising and direct mail vendors. *Id.*

All in all, the investigation was exceedingly burdensome, costing the Coalition hundreds of thousands of dollars in attorneys' fees and countless lost hours of work by employees. *Id.* at 17. For the Coalition, the "procedure was the punishment." *Id.*



During the course of the investigation, the FEC engaged in intrusive inquiry into personal religious beliefs and associations. *Id.* One shocking example of how far FEC attorneys may pry during investigations occurred during the deposition of Oliver North:

Q: (reading from a letter from Oliver North to Pat Robertson) “‘Betsy and I thank you for your kind regards and prayers.’ The next paragraph is, ‘Please give our love to Dede. . . .’ Who is Dede?”

A: “That is Mrs. Robertson.”

Q: “What did you mean in paragraph 2, about thanking –you and your wife thanking Pat Robertson for kind regards?”

A: “Last time I checked in America, prayers were still legal. I am sure that Pat had said he was praying for my family and me in some correspondence or phone call.”

Q: “Would that be something that Pat Robertson was doing for you?”

A: “I hope a lot of people were praying for me, Holly.”

Q: “But you knew that Pat Robertson was?”

A: “Well, apparently at that time I was reflecting something that Pat had either, as I said, had told me or conveyed to me in some fashion, and it is my habit to thank people for things like that.”

Q: “During the time that you knew Pat Robertson, was it your impression that he had – he was praying for you?”

O: “I object. There is no allegation that praying creates a violation of the Federal Election Campaign Act and there is no such allegation in the complaint. This is completely irrelevant and intrusive on the religious beliefs of this witness.”

O: “It is a very strange line of questioning. You have got to be kidding, really. What are you thinking of, to ask questions like that? I mean, really. I have been to some strange depositions, but I don’t think I have ever had anybody inquire into somebody’s prayers. I think that is really outrageous. And if you want to ask some questions regarding political activities, please do and then we can get over this very quickly. But if you want to ask about somebody’s religious activities, that is outrageous.”

Q: “I am allowed to make-“

O: “We are allowed not to answer and if you think the Commission is going to permit you to go forward with a question about somebody’s prayers, I just don’t believe that. I just don’t for a moment believe that. I

find that the most outrageous line of questioning. I am going to instruct my witness not to answer.”

Q: “On what grounds?”

O: “We are not going to let you inquire about people’s religious beliefs or activities, period. If you want to ask about someone’s prayers- Jeez, I don’t know what we are thinking of. . . .”

Q: “Will you take that, at the first break, take it up- we will do whatever we have to do.”

O: “You do whatever you think you have to do to get them to answer questions about what people are praying about.”

Q: “I did not ask Mr. North what people were praying about I am allowed to inquire about the relationship between-“

O: “Absolutely, but you have asked the question repeatedly. . . .”

Q: “I have been asking you a series of questions about your relationship with Pat Robertson, the Christian Coalition. . . . It is relevant to this inquiry what relationship you had with Pat Robertson and I have asked you whether Pat Robertson had indicated to you that he was praying for you.”

O: “If that is a question, I will further object. . . .”

Q: “Was Pat Robertson praying for you in 1991?”

O: “Same objection.”

A: “I hope so. I hope he still is.”

*Id.* at 18-19.

The AFL-CIO was also the subject of a complaint filed by a political party alleging coordination with the Democratic Party and candidates.

Although the AFL-CIO was absolved of formal liability, “the intrusion and expense of responding to the FEC’s investigation was punishment enough.”

AFL-CIO Plaintiffs’ Opening Brief: Title II Issues at 12, *McConnell v. FEC*, 540 U.S. 93 (2003). More than 150 individuals and entities were joined in the case or subpoenaed as third party witnesses. *Id.* at 13. The 55,000 pages of documents, subpoenaed over the course of three years, comprised

“‘extraordinarily sensitive political information that would not be available in the absence of an investigation of complaints filed with the FEC,’ including ‘plans and strategies for winning elections, materials detailing political and associational activities, and personal information concerning hundreds of employees, volunteers and members of’ the AFL-CIO. . . .” *Id.* (citation omitted). A similar far-ranging investigation was conducted by the FEC into the 1996 advertising communications of business groups. *Id.* at 13 n.13.

Investigations similar to those described above are possible today, with the “major purpose” test replacing coordination as the vehicle for them. These burdens arising out of these investigations clearly demonstrate that the “major purpose” test should not be permitted to be used as a political weapon to silence opponents. Rather, it is a shield against registration by organizations that show some potential for corruption. If this Court holds that independent expenditure groups do not trigger political committee registration no matter what their major purpose, then the major purpose test can be discarded if only non-corrupting speech is involved. Consequently, non-profit organizations avoid a burdensome investigation into their major purpose if their only speech is similarly non-corrupting.

If non-corrupting speech makes the major purpose inquiry irrelevant, non-profits would have a ready-made affirmative defense to stop a major purpose investigation in its tracks. A politically-motivated complaint could be disposed of quickly before an investigation could become burdensome and intrusive. An organization would need only show that the complained-of communication was constitutionally protected speech that posed no threat of corruption, and the investigation would end there.

Until the application of the major purpose test is limited to corrupting speech, a non-profit can engage in all the constitutionally protected, non-corrupting speech it wishes, but the threat of political committee status, and the intrusive investigation that precedes it, is always there.

### **CONCLUSION**

For the foregoing reasons, the Court should find that the onerous burdens of political committee status cannot be constitutionally imposed on organizations whose speech is non-corrupting, regardless of their “major purpose.”

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(d) and 32(a)(2) because this brief contains 6,999 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2009, I caused this Brief of *Amici Curiae* to be filed electronically with the Clerk of the Court using the CM/ECF System and sent via the ECF electronic notification system to all CM/ECF registered counsel of record.

I further certify that on this 16th day of November, 2009, I filed with the Clerk's Office of the United States Court of Appeals for the District of Columbia Circuit, via hand delivery, the required number of copies of this Brief of *Amici Curiae*, and further certify that I served, via First Class U.S. Mail, postage prepaid, the required number of said Brief to the following:

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ORAL ARGUMENT SCHEDULED FOR JANUARY 27, 2010

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DAVID KEATING, EDWARD H. CRANE, III, FRED M. YOUNG, JR.,  
BRAD RUSSO, AND SCOTT BURKHARDT,  
*Plaintiffs-Appellants,*

v.

FEDERAL ELECTION COMMISSION,  
*Defendant-Appellee.*

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On Certified Questions from the United States  
District Court for the District of Columbia,  
Case No. 08-cv-00248 (JR)

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ADDENDUM

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**§ 104.18**

accordance with 11 CFR 106.7 shall report each disbursement from its Federal account for allocable expenses, or each payment from an allocation account for such activity. In the report covering the period in which the disbursement occurred, the State, district, or local committee shall state the full name and address of each individual or vendor to which the disbursement was made, the date, amount, and purpose of each such disbursement, and the amounts allocated to Federal and non-Federal portions of the allocable activity. If the disbursement includes payment for the allocable costs of more than one activity, the State, district, or local party committee must itemize the disbursement, showing the amounts designated for payments of particular categories of activity as described in 11 CFR 106.7. The State, district, or local party committee must also report the total amount paid that calendar year to date for each category of allocable activity.

(ii) A State, district, or local committee of a political party that pays allocable expenses from a Federal account and a Levin account in accordance with 11 CFR 300.33 shall report disbursements from those accounts according to the requirements of 11 CFR 300.36.

(4) *Recordkeeping.* The treasurer of a State, district, or local party committee must retain all documents supporting the committee's allocations of expenditures and disbursements for the costs and activities cited at paragraph (b) of this section, in accordance with 11 CFR 104.14.

[67 FR 49114, July 29, 2002]

**§ 104.18 Electronic filing of reports (2 U.S.C. 432(d) and 434(a)(11)).**

(a) *Mandatory.* (1) Political committees and other persons required to file reports with the Commission, as provided in 11 CFR Parts 105 and 107, must file reports in an electronic format that meets the requirements of this section if —

(i) The political committee or other person has received contributions or has reason to expect to receive contributions aggregating in excess of \$50,000 in any calendar year; or

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(ii) The political committee or other person has made expenditures or has reason to expect to make expenditures aggregating in excess of \$50,000 in any calendar year.

(2) Once any political committee or other person described in paragraph (a)(1) of this section exceeds or has reason to expect to exceed the appropriate threshold, the political committee or person must file electronically all subsequent reports covering financial activity for the remainder of the calendar year. All electronically filed reports must pass the Commission's validation program in accordance with paragraph (e) of this section. Reports filed on paper do not satisfy a political committee's or other person's filing obligations.

(3) *Have Reason to Expect to Exceed.*

(i) A political committee or other person shall have reason to expect to exceed the threshold stated in paragraph (a)(1) of this section for two calendar years following the calendar year in which the political committee or other person exceeds the threshold unless—

(A) The committee is an authorized committee, and has \$50,000 or less in net debts outstanding on January 1 of the year following the general election, and anticipates terminating prior to January 1 of the next election year; and

(B) The candidate has not qualified as a candidate for the next election and does not intend to become a candidate for federal office in the next election.

(ii) New political committees or other persons with no history of campaign finance activity shall have reason to expect to exceed the threshold stated in paragraph (a)(1) of this section within the calendar year if—

(A) It receives contributions or makes expenditures that exceed one quarter of the threshold amount in the first calendar quarter of the calendar year; or

(B) It receives contributions or makes expenditures that exceed one-half of the threshold amount in the first half of the calendar year.

(b) *Voluntary.* A political committee or other person who files reports with the Commission, as provided in 11 CFR part 105, and who is not required to file

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electronically under paragraph (a) of this section, may choose to file its reports in an electronic format that meets the requirements of this section. If a political committee or other person chooses to file its reports electronically, all electronically filed reports must pass the Commission's validation program in accordance with paragraph (e) of this section. The committee or other person must continue to file in an electronic format all reports covering financial activity for that calendar year, unless the Commission determines that extraordinary and unforeseeable circumstances have made it impracticable for the political committee or other person to continue filing electronically.

(c) *Definition of report.* For purposes of this section, *report* means any statement, designation or report required by the Act to be filed with the Commission.

(d) *Format specifications.* Reports filed electronically shall conform to the technical specifications described in the Federal Election Commission's Electronic Filing Specifications Requirements. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Electronic Filing Specifications Requirements.

(e) *Acceptance of reports filed in electronic format; validation program.* (1) Each political committee or other person who submits an electronic report shall check the report against the Commission's validation program before it is submitted, to ensure that the files submitted meet the Commission's format specifications and can be read by the Commission's computer system. Each report submitted in an electronic format under this section shall also be checked upon receipt against the Commission's validation program. The Commission's validation program and the Electronic Filing Specification Requirement are available on request and at no charge.

(2) A report that does not pass the validation program will not be accepted by the Commission and will not be considered filed. If a political committee or other person submits a report that does not pass the validation program, the Commission will notify

the political committee or other person that the report has not been accepted.

(f) *Amended reports.* If a political committee or other person files an amendment to a report that was filed electronically, the political committee or other person shall also submit the amendment in an electronic format. The political committee or other person shall submit a complete version of the report as amended, rather than just those portions of the report that are being amended. In addition, amendments must be filed in accordance with the Electronic Filing Specification Requirements.

(g) *Signature requirements.* The political committee's treasurer, or any other person having the responsibility to file a designation, report or statement under this subchapter, shall verify the report in one of the following ways: by submitting a signed certification on paper that is submitted with the computerized media; or by submitting a digitized copy of the signed certification as a separate file in the electronic submission. Each verification submitted under this section shall certify that the treasurer or other signatory has examined the report or statement and, to the best of the signatory's knowledge and belief, it is true, correct and complete. Any verification under this section shall be treated for all purposes (including penalties for perjury) in the same manner as a verification by signature on a report submitted in a paper format.

(h) *Schedules and forms with special requirements.* (1) The following are schedules and forms that require the filing of additional documents and that have special signature requirements:

(i) Schedules C-1 and C-P-1, Loans and Lines of Credit From Lending Institutions (see 11 CFR 104.3(d)); and

(ii) Form 8, Debt Settlement Plan (see 11 CFR 116.7(e)).

(2) If a person files a report electronically by submitting a diskette to the Commission and is required to file any of the schedules or forms listed in paragraph (h)(1) of this section, the person shall file a paper copy of the required schedule or form with the electronic submission, or a digitized version as a

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separate file in the electronic submission, by the close of business on the prescribed filing date.

(3) If a person files a report electronically by uploading the data to the Commission's electronic filing system and is required to file any schedules or forms listed in paragraph (h)(1) of this section, the person shall file a paper copy or a digitized version of the required schedule or form by the close of business on the prescribed filing date.

(i) *Preservation of reports.* For any report filed in electronic format under this section, the treasurer or other person required to file any report under the Act shall retain a machine-readable copy of the report as the copy preserved under 11 CFR 104.14(b)(2). In addition, the treasurer or other person required to file any report under the Act shall retain the original signed version of any documents submitted in a digitized format under paragraphs (g) and (h) of this section.

[65 FR 38423, June 21, 2000, as amended at 67 FR 12840, Mar. 20, 2002]

**§ 104.19 Special reporting requirements for principal campaign committees of candidates for election to the United States Senate or United States House of Representatives.**

(a) *Scope.* The principal campaign committees of candidates for elections to the office of United States Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress must file reports required under this section with the Commission.

(b) *Timing and contents of reports.* (1) By July 15 of the year preceding the year in which the general election for the office sought is held, each principal campaign committee shall file a report that includes the following information:

(i) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the primary election as determined as of June 30 of that year including contributions to the candidate or any of the candidate's authorized committees received by June 30 of that year that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or re-

designated for the primary election under 11 CFR 110.1(b)(5);

(ii) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the general election that have been received by June 30 of that year including contributions to the candidate or any of the candidate's authorized committees received by June 30 of that year that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(iii) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by June 30 of that year that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);

(iv) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by June 30 of that year that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(v) The aggregate amount described in paragraph (b)(1)(i) of this section minus the aggregate amount described in paragraph (b)(1)(iii) of this section; and

(vi) The aggregate amount described in paragraph (b)(1)(ii) of this section minus the aggregate amount described in paragraph (b)(1)(iv) of this section.

(2) By January 31 of the year in which the general election for the office sought is held, each principal campaign committee shall file a report that includes the following information:

(i) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the primary election as determined as of December 31 of the year preceding the year in which that general election is held including contributions to the candidate or any of the candidate's authorized committees received by December 31 of the year preceding the year in which