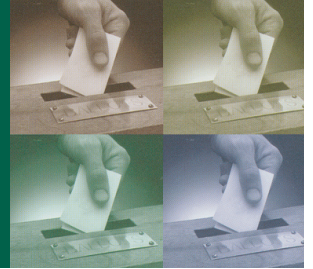




January 2005

# Election Law News

A Publication of the WRF Election Law Practice Group



## Ohio Increases Contribution Limits and Bans Corporate Issue Ads

On December 30, 2004, Ohio Governor Bob Taft signed into law legislation designed to overhaul the state's campaign finance system. Among other things, the measure raises the amount that individuals and PACs may

**For More Changes in the States, See Page 3**

contribute to legislative and statewide campaign committees

from \$2,500 to \$10,000. The increased \$10,000 contribution limit applies to both state and federal PACs. Also, corporations may now give up to \$10,000 per calendar year to a state or county political party's "restricted fund." The party may use the funds for certain overhead and get out the vote expenses.

Under the new law, individuals and PACs are prohibited from using any contributions received from a corporation or labor organization to air radio or TV ads that simply refer to a clearly identified state or local candidate during the 30 days preceding a primary or general election. (These are "electioneering communication" restrictions similar, but not identical, to the restrictions found under federal law.) Corporations may, however, allow the placement of a campaign sign on their property without violating the new campaign finance law. The Ohio law also requires a statement to appear in any radio or TV ad that clearly indicates that the communication is not authorized by a candidate, and the name of the person sponsoring the ad.

The law takes effect around the beginning of the second quarter of 2005. ■

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## New Rules for Federal Candidates: Transfers and Contributions to Other Candidates

On December 8, 2004, President Bush signed into law the Consolidated Appropriations Act, 2005 (P.L. 108-447). While much of the new law concerns federal spending, two of the Act's provisions directly affect federal campaign finance law.

The first of these changes deals with the ability of members of Congress to transfer funds from their federal campaign accounts to finance a run for state or local office. Following passage of BCRA, the FEC had ruled that federal officeholders were prohibited from using federal dollars to finance non-Federal campaigns. The Act amends federal law by permitting excess federal funds to be directed into the accounts of candidates for state and local office, or for "any other lawful purpose" provided that it is not converted to "personal use." See 2 U.S.C. § 439(a). It is important to note, however, that this change only pertains to federal law. State law also must allow the state campaigns to accept contributions from federal candidate campaign committees.

A second provision inserted into the Act allows federal candidate campaign committees to contribute up to \$2,000 per election to other federal candidate campaign committees. This change increases the limit from \$1,000 and brings contributions from members' campaign committees in line with contributions from individuals. ■

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# Official and Personal Liability for Political Committee Treasurers

At its December 16, 2004, meeting, the Federal Election Commission (FEC) adopted a Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings. The policy formalizes the circumstances in which political committee treasurers are legally liable in their official or personal capacities in the course of FEC enforcement proceedings.

When FEC enforcement proceedings are initiated against a political committee, the treasurer is named as a party to those proceedings. The treasurer is typically named in an official capacity as the person responsible for representing the political committee. However, FEC regulations explain that the treasurer of a political committee is “personally responsible” for carrying out treasurer-specific duties under the campaign finance laws. Federal courts have also addressed the personal liability of treasurers for their failure to fulfill their statutory and regulatory responsibilities. *See, e.g., FEC v. Toledano*, 317 F.3d 939, 947 (5th Cir. 2002) (stating in dicta that “the law makes the treasurer... personally liable if he fails to fulfill his responsibilities”); *FEC v. Cal. Democratic Party*, 13 F. Supp. 2d 1031, 1037 (E.D. Cal. 1998) (dismissing claims against treasurer in his personal capacity due to lack of allegation that the treasurer violated “any personal obligation”); FEC Advisory Opinion 1995-10 (“treasurer’s liability distinct from liability of committee for FECA violations, and since Congress chose to hold an individual, the treasurer, responsible for compliance with FECA it follows that ‘an individual will also stand responsible for his indiscretions as a treasurer’”) (citing and quoting *FEC v. Dramesi for Congress Comm.*, No. 85-4039 (MHC) (D.N.J. Sept. 5, 1990) (unpublished opinion)).

The FEC’s recently issued Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings formally adopts and clarifies this precedent. The Policy explains that the treasurer will continue to be a named party in his or her official capacity when the FEC is seeking relief against the treasurer’s political committee. However, the treasurer will be named in his or her personal capacity, and will be held personally liable, if the treasurer:

- Knowingly and willfully violated the campaign finance laws and regulations,
- Intentionally deprived himself or herself of operative facts giving rise to a violation.
- Recklessly failed to fulfill the duties that apply specifically to treasurers.

These duties include:

- Keeping an account of committee records.
- Preserving records for three years.
- Engaging in “best efforts” to obtain, maintain and submit information.
- Filing and signing FEC disclosure reports.
- Examining and investigating contributions for evidence of illegality and taking appropriate action.
- Depositing contributions to the committee.
- Authorizing agents to make expenditures on behalf of the committee.

Finally, the treasurer can be personally liable, as may any other individual associated with a political committee, for violations of the campaign finance laws that apply to persons generally. Examples of such violations include receiving contributions from foreign nationals and making or knowingly accepting contributions in the name of another. ■

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## Upcoming Dates to Remember

January	1/31/05	2004 Year End FEC report due for federal PACs
	1/31/05	2004 Year End IRS report due for nonfederal PACs **
February	2/14/05	Lobbying Disclosure Act reports due
	2/20/05 *	February monthly FEC report due for federal PACs filing monthly
	2/20/05 *	February monthly IRS Form 8872 due for nonfederal PACs filing monthly **

\* Deadlines are not extended if they fall on a weekend.

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

# Changes in the States

## Louisiana

### Regulation of Executive Branch Lobbyists

Effective January 1, 2005, Louisiana will begin to regulate those individuals who lobby the state's executive branch and, separately, those persons that have or are seeking contracts or business relationships with the state's retirement systems. These changes are a result of Act 116 (former H.B. 1246) and Act 868 (former H.B. 1215) previously signed into law by the Governor. The Louisiana Board of Ethics is currently promulgating the pertinent forms and regulations applicable to each type of lobbyist, but the first reports are not due until August 15, 2005 (for the period January 1 to June 30, 2005).

**Executive Branch Lobbying Rules.** The executive branch lobbying provisions apply to those individuals making direct communications with executive branch officials in order to influence "executive branch actions," which are any acts related to, among other things, policymaking, rulemaking, legislation or, importantly, contracts. The covered communications are those with elected or appointed officials in the state's executive branch or with employees in the executive branch. Executive branch lobbyists must register within five days of being employed as a lobbyist or within five days of the first action requiring registration. Executive branch lobbyists also must file semiannual certified reports on August 15 and February 15.

**Retirement System Gift Reporting.** In addition, for those persons having or seeking contracts or other business with a state or statewide retirement system, Louisiana has created a new expenditure reporting system. In short, no registration is required, but the state requires special semiannual expenditure reports from any person that has or is seeking to obtain contractual or other business with a state or statewide public retirement system if the person makes expenditures of more than \$500 in the aggregate in a calendar year for the benefit of retirement officials.

## New Jersey

### Executive Order Prohibits Vendor Contributions

New Jersey's outgoing Governor McGreevey issued an Executive Order on September 22, 2004, that effectively eliminates the ability of those individuals and entities

doing business with or seeking to do business with the state (and their PACs and subsidiaries) from making campaign contributions to candidates for governor and to state and county political party committees.

Beginning on October 15, 2004, if a business entity, its subsidiary or a PAC or 527 political organization controlled by the business entity, solicits or makes a contribution to a campaign for a candidate for governor of New Jersey or to an incumbent governor or to a state or county political party committee that nominates a candidate for governor, the business entity is prohibited from contracts valued at more than \$17,500 with the state, its agencies and its independent authorities for at least 18 months. In other words, starting October 15, if a business entity, its subsidiary, its PAC, or one of its large principals makes a prohibited contribution, then the business is prohibited from entering into negotiations for a contract with the state for 18 months plus one day. Moreover, if a contribution is given to the sitting governor or party committee that nominated him or her for that term, the contract ban extends through the term of the governor. Under certain circumstances, the contract ban would carry over to the term of the next governor. As a result of the contract ban, the Executive Order effectively prohibits gubernatorial and state and county political party committee contributions by business entities doing business or seeking to do business with the state.

After October 15 of last year, business entities entering into contracts with the states will be required to report all contributions to New Jersey "continuing political committees" for the previous four years. In addition, such a business entity also must provide written certification that it has not made a prohibited contribution. The business entity also has a continuing duty to report contributions it makes during the term of the contract.

A copy of the entire Executive Order can be found at [www.nj.gov/cgi-bin/governor/njnewslines/view\\_article.pl?id=2151](http://www.nj.gov/cgi-bin/governor/njnewslines/view_article.pl?id=2151). The New Jersey Department of the Treasury's website at [www.state.nj.us/treasury](http://www.state.nj.us/treasury) contains detailed information and the required certifications. ■

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# FEC, IRS and Lobbying Disclosure Filing Dates for 2005

## Monthly FEC Filing Dates for PACs

January - December 2005

01/31/05	2004 Year End Report	07/20/05	July Report
02/20/05	February Report	08/20/05	August Report
03/20/05	March Report	09/20/05	September Report
04/20/05	April Report	10/20/05	October Report
05/20/05	May Report	11/20/05	November Report
06/20/05	June Report	12/20/05	December Report

**Note:** Filing dates that fall on a weekend or holiday are not extended to the next business day. Paper filers must submit their reports on the previous business day. In addition, reports must be received by these filing dates. Only reports sent by registered or certified mail may be postmarked by the filing date, and reports sent by overnight mail must be received by the delivery service by the filing date.

## Monthly IRS Filing Dates

January - December 2005

01/31/05	2004 Year End Form 8872	06/20/05	June Form 8872
02/20/05	February Form 8872	07/20/05	July Form 8872
03/15/05	Form 1120-POL*	08/20/05	August Form 8872
03/20/05	March Form 8872	09/20/05	September Form 8872
04/20/05	April Form 8872	10/20/05	October Form 8872
05/15/05	Form 990**	11/20/05	November Form 8872
05/20/05	May Form 8872	12/20/05	December Form 8872

**Note:** Federal PACs are not required to file Form 8872.

\* For political organizations that account on a calendar-year basis.

\*\* Need not be filed by Federal PACs registered with the FEC.

Additional information on IRS reporting is available at [www.irs.gov/charities/political/index.html](http://www.irs.gov/charities/political/index.html).

## Quarterly House and Senate Candidate Committee Filing Dates

01/31/05	2004 Year End Report	10/15/05	Third Quarter Report
04/15/05	First Quarter Report	01/31/06	Year-End Report
07/15/05	Second Quarter Report		

**Note:** Candidates are also required to file Pre-Primary, Pre-Runoff and Last-Minute Contribution Reports when necessary. In addition, reports must be received by these filing dates. Only reports sent by registered or certified mail may be postmarked by the filing date, and reports by overnight mail must be received by the delivery service by the filing date.

Additional information on FEC reporting is available at [www.fec.gov/info/report\\_dates.shtml](http://www.fec.gov/info/report_dates.shtml).

## Lobbying Disclosure Act Filings

02/14/05	Report covering July 1- December 31, 2004
08/15/05	Report covering January 1- June 30, 2005

Additional information on Lobbying Disclosure Act reporting is available online at <http://clerk.house.gov> and [www.senate.gov/pagelayout/legislative/g\\_three\\_sections\\_with\\_teasers/lobbyingdisc.htm](http://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm).

## Semiannual/Quarterly FEC Filing Dates for PACs

01/31/05	2004 Year End Report
07/31/05	Mid-Year Report
01/31/06	Year-End Report

**Note:** A PAC that is a semiannual/quarterly filer and makes contributions in connection with special elections or primary elections will have additional reports due. In addition, reports must be received by these filing dates. Only reports sent by registered or certified mail may be postmarked by the filing date, and reports sent by overnight mail must be received by the delivery service by the filing date.

## FEC Proposes Payroll Deduction for Trade Association PACs

At its open meeting on December 16, 2004, the Federal Election Commission (FEC) approved a Notice of Proposed Rulemaking (NPRM) pertaining to the use of payroll deduction systems by a member corporation to collect contributions to a trade association's federal PAC. The NPRM proposed a change in the FEC's current rules.

Under current law, a corporate member of a trade association (or the trade association itself) may solicit the corporation's restricted class (*i.e.*, its executive or administrative

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**The change would ... allow corporations to use payroll deduction to collect contributions to a trade association's PAC from the corporation's restricted class.**

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personnel, stockholders and their families) for contributions to the trade association's federal PAC if the corporation has provided prior approval to the trade association. However, current FEC regulations prohibit a member corporation from employing a payroll deduction or another type of check-off system for purposes of collecting contributions for the trade association PAC.

The change proposed by the NPRM would eliminate this restriction and allow corporations to use payroll deduction to collect contributions to a trade association's PAC from the corporation's restricted class. Finally, the proposed regulations include a requirement that a corporation utilizing payroll deduction for a trade association PAC make the payroll deduction system available at cost upon written request to any labor union representing any members working for the corporation

The Commission, in the NPRM, mandates that comments to this rulemaking be filed by January 21, 2005. Interested parties may also request to testify at any open hearing on the proposed rule changes. ■

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## Former Connecticut Governor Pleads Guilty

According to news accounts, former Connecticut Governor John Rowland pleaded guilty in December to federal charges related to ethics violations. Among other things, the news reports point out that the former governor had accepted improper gifts and gratuities, including work on his vacation home. Because of these and similar ethics charges, Rowland resigned from his office on July 1, 2004. One result of the Rowland debacle and other recent corruption scandals in the state is that the state legislature is considering tighter ethics rules for all government officials and employees. ■

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## WRF Attorney News

### Speeches



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### Accolades

Wiley Rein & Fielding partner Jan Witold Baran, head of the firm's Election Law & Government Ethics Practice, has been named a "Top Campaign & Elections Lawyer" and one of the "Top 50 Lawyers" in Washington, DC by *Washingtonian* magazine. Baran advises clients and litigates on federal, state and local campaign finance laws, government ethics requirements and lobbying laws.

Seven other Wiley Rein & Fielding attorneys were selected as "Top Lawyers:" Fred F. Fielding, H. Jason Gold, Valerie P. Morrison, Thomas W. Queen, Barbara "Biz" Van Gelder, James H. Wallace, Jr. and Richard E. Wiley. Chosen by their peers for inclusion in the list, these "Top Lawyers" represent many of the firm's practices and are a reflection of the firm's diverse talent and capabilities. ■

## House Adopts Electronic LDA Filing

According to an announcement on the website of the Clerk of the U.S. House of Representatives, <http://clerk.house.gov>, lobbyists and their employers may now file their Lobbying Disclosure Act (LDA) registrations and reports electronically rather than in paper form. The new filing mechanism employs an ACES digital signature system. According to the announcement, those vendors with General Services Administration

“Lobbyists and their employers may now file their Lobbying Disclosure Act (LDA) registrations and reports electronically rather than in paper form with the House.”

authorization to provide such a system are AT&T/Verisign, Digital Signature Trust (DST), and Operational Research Consultants. However, at the current time, only DST offers the individual certificates that the House is using.

In order to file electronically in the House, a company must apply for an individual subscription-based certificate service with DST. This may take several days because of identity requirements. Second, the computer used for the LDA filing must have the appropriate version of Adobe Reader installed. With this system in place, a lobbyist and lobbyist employer may begin to use the filing aspect of Adobe software to file forms LD-1 and LD-2 with the House using the electronic signature.

Please note that the Senate already employs an electronic filing system, but this system is different from the one employed by the House. See [www.senate.gov/pagelayout/legislative/g\\_three\\_sections\\_with\\_teasers/lobbyingdisc.htm](http://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm). LDA reports are due on February 14, 2005, and copies must be filed with each house of Congress. ■

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## Recent FEC Advisory Opinions

### 2004-41: FEC FINDS NO AFFILIATION

On December 16, 2004, the FEC found no affiliation between the federal PACs of the CUNA Mutual Insurance Society (CMIS) and the Credit Union National Association (CUNA). FEC Advisory Opinion 2004-41, at <http://ao.nictusa.com/ao/no/040041.html>. The FEC found this lack of affiliation because, among other things, there were: (1) no overlapping ownership interests except for a 1/135,000 vote based upon mutual insurance policies, (2) no formal agreements for one entity to participate in the governance of the other and (3) an overlap of membership/mutual policy owners of only 6.1 percent. Because the FEC found the CMIS PAC and CUNA's PAC, the Credit Union Legislative Action Council (CULAC), not to be affiliated, the two PACs each maintain their own contribution limits.

### 2004-42: USE OF LLC FOR PAC EXPENSES

In FEC Advisory Opinion 2004-42, available at <http://ao.nictusa.com/ao/no/040042.html>, the FEC allowed a wholly owned and affiliated LLC of a corporation to pay the establishment, administrative and solicitation expenses of the corporation's connected federal PAC. In addition, the FEC allowed the PAC to use the name of the LLC and not the parent in the PAC name as long as the identity of the parent corporation was disclosed on FEC Form 1, Statement of Organization.

### FEC FAILS TO ISSUE LOWEST UNIT CHARGE OPINION

At its open meeting on December 16, 2004, the FEC failed to reach an agreement with respect to a request from the Missouri Broadcasters Association (MBA). In its Advisory Opinion Request, available at [www.fec.gov/aos/aoreq.shtml](http://www.fec.gov/aos/aoreq.shtml), the MBA asked whether a broadcasting station may charge a federal candidate what is known as the "lowest unit charge" (LUC) for advertisements even if the candidate fails to include the disclaimer required by the Communication Act of 1934 (as amended by the Bipartisan Campaign Reform Act of 2002), which triggers LUC eligibility. Because of this intersection of the nation's communications and campaign finance laws, and the uncertainty caused by the Federal Communication Commission's failure to promulgate any rules under the statute at issue, the FEC put off discussion on this request until later in 2005. ■

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# WRF Publishes Updated Foreign Corrupt Practices Act Handbook

**W**iley Rein & Fielding's International Trade and Election Law & Government Ethics Practices have published an updated Foreign Corrupt Practices Act (FCPA) Handbook. The Fall 2004 edition of the handbook reviews the principal provisions of the Act, which prohibits U.S. companies from bribing foreign officials in order to obtain or retain business. It highlights several important legal developments, such as recent court rulings and the impact of the Sarbanes-Oxley Act, and describes factors likely to signal sensitive situations.

Companies and individuals found in violation of the FCPA are subject to substantial fines, imprisonment and forfeiture of property. Therefore, U.S. companies should rigorously review their FCPA compliance programs and ensure that their overseas branches, subsidiaries, managers and agents are aware of corporate procedures for handling contracts with foreign government entities or involving government officials. A well-conceived compliance program is an essential element for avoiding trouble and, should problems arise, a critical mitigating factor under the corporate sentencing guidelines. ■

## Receive a Copy of the FCPA Handbook

An excerpt of the updated handbook appears on the WRF website at [www.wrf.com](http://www.wrf.com). To obtain a complete copy of the handbook, or for specific corporate compliance concerns, please contact:

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