

# Record

January 1997

Federal Election Commission

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## Commissioners

### 1997 Chairman and Vice Chairman Elected

On December 12, 1996, the Commission unanimously elected John Warren McGarry as FEC Chairman and Joan D. Aikens as FEC Vice Chairman.

Before his original appointment to the Commission, Mr. McGarry served as special counsel on elections to the House Administration Committee. He previously combined private law practice with service as chief counsel to the House Special Committee to Investigate Campaign Expenditures, a special committee established by Congress. Before his work with Congress, Mr. McGarry served as an assistant attorney general for the Commonwealth of Massachusetts.

After graduating cum laude from Holy Cross College, Mr. McGarry did graduate work at Boston University and earned a J.D. degree from Georgetown University Law School.

Newly elected Vice Chairman Aikens is the only original member of the Commission still serving. Before her appointment, Ms. Aikens was an executive with Lew Hodges Communications, a public relations firm in Valley Forge, PA. She also was a member of the Pennsylvania Republican State Committee,

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### A Message from Chairman John Warren McGarry

Nineteen ninety seven promises to be another year of challenges for the Federal Election Commission.

- The level of reportable campaign finance activity grew at a record-setting pace during the 1995-96 election cycle totaling more than \$2.6 billion—up more than 25 percent since the last Presidential and congressional campaigns.
- This year the Commission will introduce an interim voluntary electronic filing system for disclosure reports while continuing the development of a full electronic filing system.
- Steps are underway to improve existing FEC operations including the enforcement priority system and computer initiatives.
- In the event of the passage of campaign finance reform legislation, the FEC would administer, implement and enforce any new laws enacted.

It is essential that the FEC continue to focus its limited resources on the agency's core mission and programs. We always welcome comments and suggestions on how to better serve our various constituencies.

I end this note with a personal "thank you" to our valued staff for their outstanding work and continued contributions. ♦

## Commissioners

(continued from page 1)

president of the Pennsylvania Council of Republican Women and on the board of directors of the National Federation of Republican Women.

A native of Delaware County, PA, Ms. Aikens has been active in a variety of volunteer organizations. She currently is a member of the board of directors of Ursinus College, where she received her B.A. degree and an honorary Doctor of Law degree. ♦

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## Court Cases

### DSCC v. FEC (96-2184)

On November 25, 1996, the U.S. District Court for the District of Columbia denied a request from the Democratic Senatorial Campaign Committee (DSCC) to find that the FEC violated the Federal Election Campaign Act when it failed to take action on an administrative complaint the DSCC had filed with the Commission.

The DSCC filed the lawsuit against the FEC after the agency had failed to act on its administrative complaint against the National Republican Senatorial Committee (NRSC) within 120 days. 2 U.S.C. §437g(a)(8)(A).

The DSCC filed its administrative complaint in 1993 and followed it with a supplemental complaint in 1995. See August 1993, April 1995 and July 1996 *Records* for previous actions in this case. The complaints alleged that the NRSC had made at least \$187,000 in illegal "soft money" expenditures to influence the Senate election of a Republican candidate in Georgia. The NRSC did this, the DSCC alleged, by funneling the money through four nonprofit organizations that were allegedly closely aligned with the Republican Party.

In April 1996, the DSCC asked the court to order the FEC to act on its administrative complaints. The court found the FEC's delay was contrary to law and told the agency to move forward with the case. It also told the DSCC to file another lawsuit if the FEC did not take action.

The DSCC did just that. In September it filed this case, asking the court again to order the FEC to complete the consideration of its complaint within 30 days or give the DSCC the authority to file a civil action against the NRSC.

In denying the DSCC's request, the court said the FEC's conduct did not yet constitute a failure to act that was contrary to law. Further, the FEC provided the court and the DSCC with a chronology of its actions taken over the last 15 months.

The court also based its ruling, in part, on the FEC's considerable work load, lack of resources and competing priorities. In particular, it noted the recent U.S. Supreme Court ruling in the *Colorado Republican Federal Campaign Committee* case, which was handed down in June 1996 and which invalidated part of the FEC's regulation governing expenditures by national and state party committees. See the August 1996 *Record*, page 1. That ruling, the court said, added an "additional layer of complexity" to the DSCC's allegations against the NRSC.

The court noted that the statute of limitations period was coming to a close with regard to the DSCC's administrative complaint. Therefore, the court ordered the FEC to file status reports on its progress on the administrative complaint every 30 days (the first report was due December 10, 1996) and scheduled a March status conference for the FEC and the DSCC in the event that the matter was not resolved by then.

U.S. District Court for the District of Columbia, 96-2184. ♦

### NRCC v. FEC (96-2295)

On November 18, 1996, the U.S. District Court for the District of Columbia issued an order instructing the FEC to supply the National Republican Congressional Committee (NRCC) with regular updates of its progress on the committee's administrative complaint against the actions of labor organizations during the 1996 election cycle. The order, which had been submitted by the parties involved in the suit, also

(continued on page 4)



Kent C. Cooper, right, accepts the 1996 COGEL Award for Distinguished Achievement from COGEL President Nicole Gordan, Executive Director of the New York City Campaign Finance Board.

### FEC Staffer Honored with COGEL Award

Kent C. Cooper, the FEC's Assistant Staff Director for Disclosure, is the recipient of the 1996 Council on Governmental Ethics Laws (COGEL) Award for Distinguished Achievement. The award honors his work in creating and directing the FEC's Public Records Office, which is considered a model for other agencies implementing public disclosure mandates.

The award was presented at COGEL's 18th annual conference held in Philadelphia last month.

Mr. Cooper's division is responsible for receiving and processing campaign finance reports filed by Presidential and Congressional candidates, political party committees and political action committees. For researchers seeking campaign finance information, the Public

Records Office is the first contact they have with the FEC.

Mr. Cooper has been instrumental in computerizing disclosure operations within the FEC. His "storefront office" is equipped with high-speed microfilm, optical imaging and computer systems that assist the public in finding and copying disclosure information easily.

With the agency since it was established in 1975, Mr. Cooper has been an invaluable resource to researchers and representatives from states and foreign countries, teaching them how to access campaign finance information at the FEC and how to establish their own disclosure operations.

On December 18, Mr. Cooper announced that he was resigning from the Commission in order to accept a new position as Executive Director of The Center for Responsive Politics. ♦

## Audits

### Audit Reports Made Public

In the second half of 1996, the FEC issued 10 final audit reports pursuant to 2 U.S.C. §438(b). (For a listing of previously released 1996 audit reports see the July *Record*, page 4.) This provision of the Federal Election Campaign Act authorizes the FEC to audit any political committee that files reports that fail to meet the threshold level of compliance set by the FEC. The FEC has the authority to initiate an enforcement matter to pursue issues revealed by an audit.

The audited committees are listed below, along with the date that the audit was approved by the Commission:

- Idaho Republican Party Federal Campaign Account (August 2)
- Abraham for Senate (August 2)
- Republican Campaign Committee of New Mexico (August 7)
- Republican Party of Dade County (August 12)
- Democratic State Central Committee of California-Federal (September 11)
- North Carolina Democratic Victory Fund (1993) (December 3)
- North Carolina Democratic Victory Fund (1995) (December 3)
- Massachusetts Republican State Committee (December 4)
- Dan Hamburg for Congress (December 9)
- Friends for Franks (December 10)

Final audit reports are available from the FEC's Public Records Office. Dial 800/424-9530 (select option 3 from the menu) or 202/219-4140. ♦

## Court Cases

(continued from page 2)

dismissed this case without prejudice.

The NRCC had asked the court to force the FEC to take action, before the election, on three administrative complaints that it had filed with the FEC concerning the AFL-CIO and allied labor organizations. The NRCC had alleged that the labor groups were making massive expenditures coordinated with Democratic candidates, in violation of 2 U.S.C. §441b(a).

The NRCC had filed its administrative complaints with the FEC in February, March and April 1996 and had alleged that the FEC had not acted on those complaints by October 3, when the Republican committee filed its lawsuit. The NRCC said the FEC's delay could cause it irreparable injury and asked the court to order the FEC to take action before the election.

The settlement agreement requires the FEC to provide NRCC lawyers with confidential updates on the complaint. The first update is due six months after the court order and the second update is due six months later. Further updates should follow at 90-day intervals until the administrative complaint is resolved or there is further action by the court.

U.S. District Court for the District of Columbia, 96-2295. ♦

### DCCC v. FEC (96-0764)

On November 18, 1996, the U.S. District Court for the District of Columbia dismissed this case. The Democratic Congressional Campaign Committee (DCCC) had voluntarily requested such action.

Originally, the DCCC had asked the court to require the FEC to take action on an administrative complaint it filed with the agency on November 4, 1994, alleging violations of the Federal Election Cam-

aign Act (the Act) by Grant Lally, a Congressional candidate from New York.

The Act allows a complainant to file a lawsuit against the FEC if the agency fails to take action on his or her administrative complaint within 120 days after it is filed. 2 U.S.C. §437g(a)(8)(A). The DCCC filed suit on April 23, 1996, after more than 120 days had elapsed.

In its original complaint, the DCCC alleged that Mr. Lally, who was vying to represent the fifth district, received substantial, undisclosed contributions in violation of the limits of the Act. 2 U.S.C. §441a. The DCCC alleged that the money was in excess of \$300,000. Mr. Lally said the money was "personal funds" lent to the campaign. The DCCC filed a supplemental complaint in 1995 alleging that Mr. Lally had continued to violate the Act.

U.S. District Court for the District of Columbia, 96-0764. ♦

### FEC v. Parisi

On October 31, 1996, the U.S. District Court for the Southern District of New York assessed a \$30,000 civil penalty against Angelo Parisi for exceeding the contribution limits of the Federal Election Campaign Act.

The lawsuit against Mr. Parisi grew out of an administrative complaint filed with the FEC in 1994 by the Center for Responsive Politics.

Among the violations, the FEC uncovered the following transactions:

- Contributions in excess of the individual \$25,000 annual limit. 2 U.S.C. §441a(a)(3). Mr. Parisi made \$33,942 in contributions in 1991, \$66,262 in contributions in 1992 and \$40,405 in contributions in 1993.
- Contributions in excess of the \$20,000 per individual limit on

contributions to a national political party committee. 2 U.S.C.

441a(a)(1)(B). Mr. Parisi gave \$27,262 to the National Republican Senatorial Committee (NRSC) and \$22,750 to the National Republican Congressional Committee in 1992. He also gave \$24,655 to the NRSC in 1993.

- Contributions in excess of the \$5,000 annual limit on contributions to a PAC. 2 U.S.C. §441a(a)(1)(C). In 1991, Mr. Parisi gave \$6,200 to American Citizens for Political Action.

Because of unusual mitigating circumstances, all but \$5,000 of the penalty was suspended. However, Mr. Parisi will be required to pay the remaining \$25,000 if he violates the contribution limits again.

U.S. District Court for the Southern District of New York, White Plains Division, 96-0348. ♦

### Reilly v. FEC

On October 18, 1996, the U.S. District Court for the Northern District of California, Oakland Division, dismissed this case.

Clinton Reilly, doing business as California Democratic Voter Checklist, asked the court to stop the FEC's investigation of him because he believed the Commission had no jurisdiction over his for-profit operation.

Mr. Reilly's slate mail business distributes lists of federal, state and local candidates and advocates their election or defeat. Mr. Reilly sold and donated space to candidates and initiative committees who wished to appear on a slate card that he distributed to voters. He said Checklist was not a political committee under the Federal Election Campaign Act (the Act).

As an alternative, Mr. Reilly asked the court to find that his business had no reporting obligations under the Act other than reporting free or reduced-cost space

on the voting slate as independent expenditures.

In a related case, *FEC v. California Democratic Voter Checklist*, the court resolved many of the same issues raised in *Reilly* in the Commission's favor. Accordingly, both Mr. Reilly and the FEC agreed to the dismissal of this case.

U.S. District Court for the Northern District of California, Oakland Division (96-2335). ♦

### Hooker v. FEC, et al.

On October 23, 1996, the U.S. District Court for the Middle District of Tennessee dismissed this case for lack of prosecution.

John Jay Hooker, who billed himself as a potential candidate for the presidency in 1996, had asked the court to declare it unconstitutional for candidates who seek federal office to accept out-of-state contributions for their campaigns.

He also had asked the court to issue a permanent injunction against candidates who solicit, accept or use contributions from outside their home states; force the sitting Congress to address the situation; and notify states that they have a right to prohibit out-of-state contributions in federal elections.

U.S. District Court for the Middle District of Tennessee, 95-0654. ♦

### New Litigation

#### FEC v. Fund for a Conservative Majority

The FEC asks the court to find that the Fund for a Conservative Majority (FCM) and its treasurer, Robert Heckman, violated the Federal Election Campaign Act (the Act) by failing to file the 1994 Year-End report on time.

The Act requires all political committees to file a year-end report by January 31. 2 U.S.C. §434(a).

The Commission alleged that Mr. Heckman filed the FCM's 1994 Year-End Report on June 27, 1996—nearly a year and a half after it was due.

The FEC also asks the court to assess an appropriate civil penalty against FCM and enjoin the political committee from not filing financial disclosure reports on time.

U.S. District Court for the Eastern District of Virginia, Alexandria Division, 96-1567-A, October 29, 1996. ♦

#### DNC v. FEC (96-2506)

The Democratic National Committee (DNC) asks the court to order the FEC to take action within 30 days on administrative complaints it filed against Bob Dole's 1996 Republican presidential campaign, Dole for President Inc.

The DNC, which filed its initial administrative complaint on June

12, 1996, and a supplemental complaint on July 22, 1996, contends that the FEC's failure to act on the complaint within 120 days after the complaint was filed was contrary to law. 2 U.S.C. §437g(a)(8)(A).

The DNC contends that Dole for President "blatantly, knowingly and willfully" disregarded the limit on expenditures by a presidential campaign during the 1996 pre-primary election season. Under the Presidential Primary Matching Payment Account Act, presidential candidates may get matching payments for their primary campaigns if they agree to limit expenditures to the legal limit. 2 U.S.C. §441a(b)(1)(A). In 1996, that limit was a little more than \$37 million.

U.S. District Court for the District of Columbia, 96-2506, October 31, 1996. ♦

### On Appeal?

#### FEC v. Christian Action Network

The Solicitor General declined to ask the U.S. Supreme Court to hear this case after a request from the Commission to do so. The U.S. Court of Appeals for the Fourth Circuit upheld the dismissal of this case. The U.S. District Court for the Western District of Virginia, Lynchburg Division, ruled against the FEC after it charged the Christian Action Network with making independent expenditures with corporate funds, failing to include a proper disclaimer on its political communications and failing to file the required disclosure reports with the FEC. See the December 1994, September 1995 and October 1996 editions of the *Record*.

#### Appealed?

No

# Reports

## Reports Due in 1997

This article on filing requirements for 1997 is supplemented by the reporting tables that follow.

It is the responsibility of the committee treasurer to file required reports on time. To assist treasurers, the Commission sends committees FEC reporting forms and notices of upcoming reporting deadlines.

For further information on reporting or to order extra forms, call the FEC: 800/424-9530 or 202/219-3420.

## Year-End Reports Covering 1996 Activity

All committees must file a 1996 year-end report due January 31, 1997. The coverage and reporting dates are found in Table 1 on page 7.

## Reports Covering 1997 Activity

To find out what reports your committee must file in 1997, check the Guide to Reporting table, below. Then check the accompanying tables on reporting dates, page 7. Please note that if any special elections are held in 1997, committees active in those elections may have to file special election reports, as explained below.

## Committees Active in Special Elections

Committees authorized by candidates running in any 1997 special election must file election reports in addition to regularly scheduled reports. 11 CFR 104.5(h). They are also required to comply with the 48-hour notice requirement for contributions of \$1,000 or more (including loans) received shortly before an election. See 11 CFR 104.5(f).

PACs and party committees supporting candidates running in special elections also may have to file pre- and post-election reports

unless they file on a monthly, rather than semiannual, basis. 11 CFR 104.5(c)(3) and 104.5(h). However, all PACs are subject to 24-hour reporting of independent expenditures made shortly before an election. See 11 CFR 104.4(b) and (c) and 104.5(g).

When timing permits, the *Record* will alert committees to special election reporting dates in 1997.

## Late Filing

The Federal Election Campaign Act does not permit the Commission to grant extensions of filing deadlines under any circumstances. Filing late reports could result in enforcement action by the Commission.

## Where to File

Committee treasurers must file FEC reports with the appropriate federal and state filing offices.

Please note that:

- The addresses for the federal offices (FEC and Secretary of the Senate) appear in the instructions to the Summary Page of FEC Forms 3 and 3X.
- A list of state filing offices is available from the Commission.

*House Candidate Committees.* In 1996, the FEC promulgated new regulations that changed the point of entry for disclosure forms for principal campaign committees of House candidates. They now file with the FEC. 11 CFR 105.1. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of the state in which the candidate seeks (or sought) election. 2 U.S.C. §439(a)(2)(B).

*Senate Candidate Committees.* Principal campaign committees of

## Guide to 1997 Reporting

Type of Filer	Reports			
	'96 Year-End	Semi-annual	Quarterly	Monthly
House and Senate Candidate Committees <sup>1</sup>	✓	✓		
Presidential Candidate Committees	✓		✓	or <sup>2</sup> ✓
PACs and Party Committees	✓	✓	or <sup>3</sup>	✓

<sup>1</sup> This category includes committees of candidates retiring debts from a previous election or running for a future election.

<sup>2</sup> Presidential committees may file on either a quarterly or a monthly basis. Those wishing to change their filing frequency should notify the Commission in writing.

<sup>3</sup> PACs and party committees may file on either a semiannual or a monthly basis. Committees wishing to change their filing frequency must notify the Commission in writing when filing a report under the committee's current schedule. A committee may change its filing frequency only once per calendar year. 11 CFR 104.5(c).

Senate candidates file with the Secretary of the Senate, as appropriate. 11 CFR 105.2. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of the state in which the candidate seeks (or sought) election. 2 U.S.C. §439(a)(2)(B).

*Presidential Committees.* Principal campaign committees of Presidential candidates file with the FEC. 11 CFR 105.3. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of each state in which the committee makes expenditures. 11 CFR 108.2.

*Candidate Committees with More Than One Authorized Committee.* If a campaign includes more than one authorized committee, the principal campaign committee files, with its own report, the reports prepared by the other authorized committees as well as a consolidated report (FEC Form 3Z or page 5 of FEC Form 3P, as appropriate). 11 CFR 104.3(f).

*PACs and Party Committees.* Generally, PACs and party committees file with the FEC. 11 CFR 105.4. There is one exception: Committees supporting only Senate candidates file with the Secretary of the Senate. 11 CFR 105.2.

PACs and party committees must simultaneously file copies of reports and statements with the Secretary of State (or equivalent officer), as follows:

- Committees making contributions or expenditures in connection with House and Senate campaigns file in the state in which the candidate seeks election. The committee is required to file only that portion of the report applicable to the candidate in that state (e.g., the Summary Page and the schedule showing the contribution or expenditure). 2 U.S.C. §439(a)(2)(B).

(continued on page 8)

**Table 1: 1996 Year-End Report**

(Required of all committees.)

Report	Period Covered	Filing Date <sup>1</sup>
Year-End	Closing date of last report through December 31, 1996	January 31, 1997

**Table 2: 1997 Semiannual Reports**

Report	Period Covered	Filing Date <sup>1</sup>
Mid-Year	January 1 – June 30	July 31, 1997
Year-End	July 1 – December 31	January 31, 1998

**Table 3: 1997 Monthly Reports**

Report	Period Covered	Filing Date <sup>1</sup>
February	January 1 – 31	February 20
March	February 1 – 28	March 20
April	March 1 – 31	April 20
May	April 1 – 30	May 20
June	May 1 – 31	June 20
July	June 1 – 30	July 20
August	July 1 – 31	August 20
September	August 1 – 31	September 20
October	September 1 – 30	October 20
November	October 1 – 31	November 20
December	November 1 – 30	December 20
Year-End	December 1 – 31	January 31, 1998

**Table 4: 1997 Quarterly Reports**

(Option available to Presidential committees only.)

Report	Period Covered	Filing Date <sup>1</sup>
1st Quarter	January 1 – March 31	April 15
2nd Quarter	April 1 – June 30	July 15
3rd Quarter	July 1 – September 30	October 15
Year-End	October 1 – December 31	January 31, 1998

<sup>1</sup> Reports sent by registered or certified mail must be postmarked by the filing date; reports sent by other means must be received by the federal and state filing offices on that date. 11 CFR 104.5(e).

## Reports

(continued from page 7)

- Committees making contributions or expenditures in connection with Presidential candidates file in the states in which the Presidential committee and the donor committee have their headquarters. 11 CFR 108.4. ♦

## 800 Line

### Candidate Committee Termination and Debt Settlement

This article, written for authorized candidate committees, explains how to settle debts and terminate the committee.

It is reprinted from a previous post-election edition of the *Record*.

#### Eligibility for Termination

An authorized committee may terminate its registration and reporting obligations by filing a termination report, provided that:

- It has ceased raising and spending funds (11 CFR 102.3(a)(1));
- It has extinguished all debts and, if the committee is a principal campaign committee, the debts of any other committees authorized by the candidate for the election cycle have also been extinguished (11 CFR 102.3(a)(1) and (b));
- It does not have any funds or assets available to pay debts owed by another committee authorized by the same candidate, regardless of the election cycle (11 CFR 116.2(c)(1)(ii)); and
- It is not involved in an ongoing FEC enforcement matter (MUR), audit or court case.

#### Termination Report

If a committee is eligible to terminate, it may file a termination report at any time.

When filing a termination report, the treasurer should check the "Termination Report" box on the Form 3 Summary Page (Line 4). The termination report for an authorized committee must include:

- The disclosure of all receipts and disbursements not previously reported;
- A statement explaining how any excess campaign funds will be used and, if applicable, whether the funds will be used for the individual's duties as a federal officeholder; and
- A statement, signed by the treasurer, verifying that any remaining noncash assets will not be converted to personal use. 11 CFR 102.3(a).

After filing a termination report, however, the committee must continue to file regularly scheduled reports until it receives notice from the FEC that the termination report has been accepted.

#### Committees That Have Debts But Want to Terminate

A terminating committee—that is, a committee that raises contributions and makes expenditures only for the purpose of paying debts and winding-down costs—can eliminate its debts in one of two ways: It may assign its debts to another committee of the same candidate, or it may settle them for less than the amount owed. 11 CFR 116.1(a), 116.2(a) and 116.2(c)(3). These procedures are explained below.

#### Assigning Debts to Another Committee

To expedite termination, an authorized committee that qualifies as a terminating committee and has no cash on hand or assets available to pay its debts may assign them to another authorized committee of the same candidate, provided that:<sup>1</sup>

- The assignment is permitted under applicable state laws (e.g., laws on debts and creditors);
- The committee assigning the debts was organized for an election already held;
- No later than 30 days before the assignment takes effect, the assigning committee notifies each creditor in writing of the name and address of the committee assuming the debts; and
- The committee assuming the debts notifies the FEC in writing that it has assumed the obligation to pay and report the debts. (The committee uses separate schedules to report the debts and the contributions raised to retire them.)

Once the debts are assigned, the assigning committee may terminate. 11 CFR 116.2(c)(3).

#### Settling Debts

An authorized committee may extinguish its debts by settling them for less than the amount owed if:

- The committee qualifies as a terminating committee (that is, one that raises contributions and makes expenditures only for the purpose of paying debts and winding-down costs);
- The candidate does not have another authorized committee with enough funds to pay all or part of the debts; and
- The committee files a debt settlement plan (see below), which is subject to FEC review, and complies with the other rules governing debt settlement. 11 CFR 116.1(a), 116.2(a), 116.2(c)(1) and 116.7.

Note that a committee may not terminate until the debt settlement process is concluded.

#### Debts Subject to Settlement

The following debts may be settled for less than the amount owed in accordance with debt settlement procedures:

<sup>1</sup> Special rules apply to Presidential candidate committees receiving public funds. See 11 CFR 116.2(c)(3).

- Debts owed to commercial vendors;
- Salary owed to employees;
- Debts arising from advances by individuals (e.g., campaign staff) using personal funds or credit cards to pay campaign expenses; and
- Loans owed to political committees or individuals (including the candidate). 11 CFR 116.7(b).

All such settlements must be made in the ordinary course of business. The Commission will review them to ensure they are not in violation of the Act or FEC regulations. 11 CFR 116.2(a).

**Debts Owed to Commercial Vendors.** A commercial vendor<sup>2</sup> (incorporated or unincorporated) may settle a debt for less than the amount owed provided that:

- Credit was initially extended in the ordinary course of business (see 11 CFR 116.3);
- The committee undertook all reasonable efforts to pay the debt, such as raising funds, reducing overhead and liquidating assets; and
- The vendor pursued remedies to collect the debt as vigorously as those pursued to collect debts from nonpolitical debtors in similar circumstances. Remedies might include, for example, late fee charges, referral to a collection agency or litigation. 11 CFR 116.4(d). The creditor is not, however, required to pursue activities that are unlikely to result in the reduction of a debt.

**Salary Owed to Staff.** Unpaid salary owed to a committee employee may be settled for less than the amount owed or entirely forgiven, or alternatively it may be

<sup>2</sup> A commercial vendor is a business or an individual who provides goods or services to a candidate or political committee and whose usual business is the provision of those goods or services. 11 CFR 116.1(c).

converted to volunteer work if the employee signs a statement agreeing to the arrangement. 11 CFR 116.6.

**Other Amounts Owed to Staff and Other Individuals.** When a committee owes money to staff or other individuals who have used personal funds to pay expenses on the committee's behalf, these debts may be settled for less than the amount owed or entirely forgiven. 11 CFR 116.5(d). For more information, order the Staff Advances handout, which is available through Flashfax (document 317). The Flashfax number is 202/501-3413.

**Loans from Individuals and Political Committees.** Loans (except bank loans—see below) may also be settled for less than the amount owed or entirely forgiven. 11 CFR 100.7(a)(1).

### Creditor's Right

A commercial vendor or other creditor—including a committee employee—is not required to settle or forgive debts owed by a committee. 11 CFR 116.4(e), 116.5(d) and 116.6(b).

### Debts Not Subject to Settlement

Two categories of debts may not be settled for less than the amount owed but must be disclosed in a debt settlement plan:

- Bank loans (including lines of credit);<sup>3</sup> and
- Repayment obligations of publicly funded campaigns. 11 CFR 116.7(c).

### Debt Settlement Plans

Debt settlement plans are filed on FEC Form 8. Step-by-step instructions for completing Form 8 are on the back of the form. See also the

<sup>3</sup> The Commission recognizes that, under extraordinary circumstances, such as the death or bankruptcy of the candidate, settlement of a bank loan may be appropriate. The Commission will consider specific situations on a case-by-case basis.

example of a completed Form 8 in the *Campaign Guide for Congressional Candidates and Committees*, pages 57-60.

The Commission recommends that committees include as many settlement agreements as possible in one plan. 11 CFR 116.7(a).

A committee must postpone making actual payments to creditors until after the Commission has reviewed the debt settlement plan. Moreover, the committee must continue to report its debts until the Commission has completed its review. 11 CFR 116.7(a) and (d).

Once the Commission has reviewed the debt settlement plans, the committee may pay the creditors the agreed-upon amounts and then file a termination report.

### Bankruptcy

If a candidate or committee is released from debts through a bankruptcy court decree pursuant to 11 U.S.C. Chapter 7, the committee must include in a debt settlement plan the court order and a list of the obligations from which the committee is released. 11 CFR 116.7(g).

### Disputed Debts

A disputed debt is a disagreement between a creditor and a committee as to the existence of a debt or the amount owed. If something of value was provided, the committee must continue to report the following information on Schedule D until the dispute is resolved:

- The amount the committee admits is owed;
- The amount the creditor claims is owed; and
- Any amounts the committee has paid the creditor.

The committee may note in its report that disclosure of the disputed debt is not an admission of liability or a waiver of its claims against the creditor.

Note that, in a debt settlement plan, a terminating committee must

(continued)

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describe any disputed debts and the committee's efforts to resolve them. 11 CFR 116.10.

### Unpayable Debts

If a committee has an outstanding debt that is at least two years old and that cannot be paid because the creditor has gone out of business or cannot be located, the committee may request an FEC determination that the debt is unpayable. See 11 CFR 116.9 for further details.

### Administrative Termination

An authorized committee that is inactive and wishes to terminate but cannot reach settlement agreements with its creditors may ask the FEC for administrative termination. See 11 CFR 102.4 for further details.

If you have any questions, call the Information Division at 800/424-9530 (press 1 if using a touch tone phone) or 202/219-3420. ♦

## Advisory Opinions

### AO 1996-35 Status of Greens/Green Party USA As National Committee of Political Party

The Greens/Green Party USA (G/GPUSA) does not conduct enough national political campaign activity to qualify as the national committee of a political party.

G/GPUSA, which is headquartered in Blodgett Mills, NY, is recognized throughout much of the United States as the representative organization of the Green Party movement.

In this election cycle, it mounted a presidential campaign with Ralph Nader as its candidate. It ran eight candidates for congressional seats in

five states. Mr. Nader appeared on the ballot as the Green Party presidential nominee in 16 states. G/GPUSA also is affiliated with 14 state organizations, publishes a party journal, holds party conventions and maintains a website on the internet.

The Federal Election Campaign Act (the Act) defines a national committee as the organization that, by virtue of a party's bylaws, is responsible for the day-to-day operations of that party at the national level. 2 U.S.C. §431(14). A political party, according to the Act, is an association, committee or organization that nominates a candidate for election to federal office and whose name appears on the ballot as the candidate of that group. 2 U.S.C. §431(16).

G/GPUSA qualifies as a political party because its federal candidates appeared on the ballot in several states as the party's nominees.

To obtain national committee status, however, the Commission relies on several criteria to determine whether a political party has demonstrated sufficient activity on the national level. Those criteria include:

- Nominating candidates for various Presidential and Congressional offices in numerous states;
- Engaging in certain activities—such as voter registration and get-out-the-vote drives—on an ongoing basis;
- Publicizing the party's supporters and primary issues throughout the nation;
- Holding a national convention;
- Setting up a national office; and
- Establishing state affiliates.

A party cannot qualify for national committee status if its activity is focused only on the Presidential and Vice Presidential election, if the activity is limited to one state or if the party has only a few federal candidates on a limited number of state ballots. On the other

hand, ballot access for Presidential candidates is a prerequisite for any organization trying to attain national committee status.

In the case of G/GPUSA, it did obtain ballot access for Mr. Nader, but, through a unique set of circumstances, the party's candidate apparently did not qualify as a candidate under the Act. Mr. Nader, in an effort to avoid the FEC's registration and reporting requirements, said that he would campaign for the presidency without meeting the Act's definition of a candidate.<sup>1</sup>

Because Mr. Nader is not a candidate for purposes of the Act, he also does not qualify as a candidate in evaluating G/GPUSA's status as a national committee. In addition, G/GPUSA only achieved ballot access in five states for eight candidates seeking federal office in 1996—a level of activity deemed too limited to qualify for national committee status.

This conclusion means G/GPUSA may not accept contributions from any donor for its federal accounts that are greater than \$5,000 per year. The Party and its committees also may not make expenditures pursuant to 2 U.S.C. §441a(d).

G/GPUSA may approach the Commission through the Advisory Opinion process to inquire about its status after it has expanded its activities.

Date Issued: November 18, 1996;  
Length: 4 pages. ♦

<sup>1</sup>Under 2 U.S.C. §431(2), an individual becomes a candidate for federal office when that person, or his or her committee, receives contributions or makes expenditures in excess of \$5,000. Mr. Nader stated that he would not spend more than \$5,000 in his campaign and would not have to file with the FEC.

## AO 1996-42 Disaffiliation of PAC After Corporate Spin Off

Lucent Technologies Inc.'s (Lucent's) separate segregated fund is no longer affiliated with AT&T PAC, the SSF of its former corporate parent, AT&T Corp. Before Lucent PAC can begin payroll deductions to its own PAC, it must ask for an affirmative response from company employees who had previously contributed to AT&T PAC through payroll deductions.

### Affiliation Status

The separation process began in early 1996 and extended over several months. AT&T incorporated Lucent as a wholly-owned subsidiary and, on February 1, 1996, began transferring some of its assets and liabilities to Lucent.

In April 1996, AT&T offered more than 112 million shares of Lucent common stock in an initial public offering. After this, AT&T owned 82.4 percent of Lucent's common stock which it distributed to its stockholders in September. That distribution completed the separation of the two companies and AT&T and Lucent became two publicly held companies.

FEC regulations state that SSFs controlled by the same corporation, including a parent or subsidiary, are affiliated for purposes of the Federal Election Campaign Act (the Act). 11 CFR 100.5(g)(2). That means they share contribution limits. When an entity is not an acknowledged subsidiary of another entity, Commission regulations provide for an examination of a number of factors to determine whether one company is an affiliate of another and, hence, whether their respective SSFs are affiliated. See 11 CFR 110.3(a)(3)(ii).

After the distribution of common stock, Lucent PAC and AT&T PAC no longer met many of the criteria listed in 110.3 and, consequently, were no longer affiliated. Any

factors indicating a continuity of the relationship between the two companies were substantially outweighed by factors indicating separate control of the companies. AT&T had no ownership interest in Lucent, no power to participate in Lucent operations, no ability to vote for Lucent's board of directors and no authority to control Lucent's officers or directors. As of the distribution, there was no overlap of directors, officers or employees.

With respect to the commonality of AT&T and Lucent shareholders, the requester anticipates that a distinct difference in ownership will result from the public trading of Lucent stock.

### Aggregating Contributions

When making contributions after disaffiliation, both Lucent PAC and AT&T PAC must take into account their predistribution contributions. AO 1993-23. To determine the amounts that each PAC may contribute to the same candidate after disaffiliation, the PACs must add the amounts given by each PAC for a particular election before disaffiliation and attribute that sum to their respective contribution limits.

So, if before disaffiliation AT&T PAC gave \$2,000 to a candidate for the general election and Lucent PAC subsequently gave \$1,000 to the same candidate for the same election (Lucent formed its own PAC after it split from AT&T, but before the disaffiliation had been carried out formally), then the two SSFs may each contribute just \$2,000 more to that candidate for the general election.<sup>1</sup>

Similarly, Lucent PAC and AT&T PAC must aggregate the pre-disaffiliation contributions of employees with any post-disaffilia-

<sup>1</sup>A multicandidate PAC may contribute up to \$5,000 to any candidate per election. 2 U.S.C. §441a(a)(2)(A).

tion contributions received from those same employees. That would mean that if a Lucent employee gave \$1,000 to AT&T PAC and \$1,000 to Lucent PAC during 1996, that person could have contributed only \$3,000 more to Lucent PAC during that year.<sup>2</sup>

### Payroll Deduction

In anticipation of the spin-off, Lucent informed its employees that it planned to transfer their authorization for payroll deduction from AT&T PAC to Lucent PAC. However, it gave employees the option of canceling the payroll deduction by returning termination forms that the PAC distributed. For those employees who did not return the termination form, Lucent PAC assumed consent and, in October, deducted the PAC contribution from their paychecks.

This arrangement is not sufficient. Lucent PAC must obtain express and separate payroll deduction authorizations from Lucent's eligible employees in order to implement payroll deductions for their contributions to Lucent.<sup>3</sup>

Lucent PAC may keep the funds received prior to this advisory opinion's release (and for any monthly payroll deductions not immediately reversible due to administrative difficulties)<sup>4</sup> from those employees who did not give

(continued)

<sup>2</sup>An individual may contribute up to \$5,000 to a multicandidate PAC during a calendar year. 2 U.S.C. §441a(a)(1)(C)

<sup>3</sup>In AO 1989-16, the Commission required a new company that had been separated from its parent to get reauthorization for contributions to the new company's SSF from those employees who had contributed to the parent company's PAC through payroll deduction.

<sup>4</sup>In Lucent's situation, the payroll deductions in question are for October, November and, possibly, December.

## Advisory Opinions

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affirmative consent to the payroll deduction only under the following circumstances:

- The employee must sign a deduction authorization form.
- The employee must approve any past payroll deductions made by Lucent PAC.
- Lucent PAC must receive an employee's affirmative response affirmatively within 60 days of receipt of this advisory opinion in order to keep any prior deductions.
- Lucent PAC must refund all deductions to employees who do not respond within the 60 days and must stop deducting PAC contributions from employees who do not give their affirmative consent.
- Until Lucent PAC receives an affirmative reply, it must place prior unauthorized deductions in a separate account from which it will not make disbursements or maintain sufficient funds in its current account to make refunds to employees without using those amounts for other disbursements.

Date Issued: November 18, 1996;  
Length: 9 pages. ♦

### AO 1996-45 Use of Campaign Funds for Seminar on Community Relations

Congresswoman Lucille Roybal-Allard may use campaign funds to pay travel expenses for consultants who lead a seminar on racial and ethnic relations that she intends to sponsor in her district.

Congresswoman Roybal-Allard, who represents California's 33rd District, plans to host a special seminar that will focus on ways participants can be more sensitive and responsive to people from different ethnic backgrounds and on how the various groups can work

more effectively to promote racial and ethnic harmony. The 33rd District has diverse demographics and the seminar may be especially useful to nonprofit organizations and city agencies that work with the various populations.

The seminar will be free to participants. One of the cities in the congresswoman's district is expected to donate the use of a conference room for the event. The consultants who will speak at the seminar will offer their services free of charge if transportation and lodging are made available. The congresswoman's staff members will mail out the invitations, but they will do so on their own time and no congressional resources will be used.

While Congresswoman Roybal-Allard will sponsor the event in her official capacity as a federal officeholder, the seminar will happen after the November elections and will not be used as a forum to highlight her re-election campaign.

FEC regulations prohibit candidate committees from converting excess campaign funds to personal use of a candidate or of any other person. 11 CFR 113.2(d). The rules make clear, however, that campaign funds may be spent to defray any ordinary and necessary expenses in connection with a person's duties as a federal officeholder. 11 CFR 113.2(a)

In this instance, the proposed seminar is related to the congresswoman's duties as a federal officeholder. The seminar is planned as a community service, will be held at least 30 days after the 1996 general election and will have a direct relationship to public policy matters that are of concern to members of Congress. Thus, the travel and hotel costs of speakers are ordinary and necessary expenses related to the seminar, and campaign funds may be used to cover them.

The congresswoman's campaign committee, Lucille Roybal-Allard

for Congress, must report the expenditures related to the event as other disbursements.

Date Issued: November 8, 1996;  
Length: 3 pages. ♦

### Advisory Opinion Requests

Advisory opinion requests are available for review and comment in the Public Records Office.

#### AOR 1996-50

Disaffiliation between membership organizations' separate segregated funds (Farm Credit Council, November 25, 1996; 10 pages plus 50-page attachment)

#### AOR 1996-51

Qualification as a state committee of a political party (Reform Party of Arkansas, October 24, 1996; 1 page plus 12-page attachment)

#### AOR 1996-52

Return of excess Congressional campaign funds to original donors and their resolicitation for gubernatorial campaign donations (Robert E. Andrews for Congress Committee, November 11, 1996; 4 pages plus 4-page attachment) ♦

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