

Record

July 1996

Federal Election Commission

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Audits

Audit Report on Carol Moseley Braun for U.S. Senate

An FEC audit of Carol Moseley Braun for U.S. Senate (IL), the Senator's principal campaign committee for her 1992 race, found that the committee:

- Misstated its financial activity, including overstating receipts and disbursements by \$283,336 and \$249,212, respectively;
- Accepted \$92,380 in violation of the contribution limits for individuals and political committees;
- Accepted \$56,941 in post-primary contributions in excess of what was needed to retire its primary election debt;
- Made six cash deposits totaling \$13,085, which exceeded the limit for anonymous cash contributions or which were not adequately documented so as to reveal the source of the funds;
- Failed to properly itemize and disclose a significant number of contributions from individuals;
- Accepted contributions forwarded with inadequate documentation by telemarketing and direct mail firms;
- Failed to itemize contributions that were collected and transferred by joint fundraising entities;

(continued on page 4)

Court Cases

Clifton v. FEC

On May 20, 1996, the U.S. District Court for the District of Maine invalidated the FEC's regulations on voting records and voter guides because they regulate issue advocacy and therefore go beyond the FEC's authority.

Background

The Maine Right to Life Committee (MRLC) is a nonprofit membership corporation established for the purpose of advocating pro-life stances. MRLC uses its corporate funds to create and distribute to its members and the general public voter guides and voting records. Robin Clifton is a Maine voter who wishes to receive this information.

FEC regulations at 11 CFR 114.4(c)(4) and (5) make it illegal for a corporation or labor organization to distribute voting records or voter guides to the general public if such materials expressly advocate the election or defeat of a clearly identified candidate or if the organization consults or coordinates with any candidates concerning the content or distribution of such materials. At 11 CFR 114.4(c)(5)(ii), the FEC lists additional restrictions for voter guides, such as prohibiting a corporate or labor organization from

(continued on page 4)

Compliance

Arkansas Primary Nonfiler

The Bill Powell for Congress committee was the only candidate committee that failed to file a 1996 pre-election report for Arkansas's June 11 runoff election to select a Republican nominee for the 2nd Congressional District. See the FEC news release of June 7, 1996.

The FEC is required by law to publicize the names of nonfiling candidate committees. 2 U.S.C. §438(a)(7). The FEC pursues enforcement actions against nonfilers on a case-by-case basis. ♦

MURs Released to the Public

Listed below are summaries of FEC enforcement cases (Matters Under Review or MURs) recently released for public review. This listing is based on the FEC news releases of May 21 and 31. Files on

Federal Election Commission
999 E Street, NW
Washington, DC 20463

800/424-9530
202/219-3420
202/501-3413 (Flashfax Service)
202/219-3336 (TDD)
800/877-8339 (FIRS)

Lee Ann Elliott, Chairman
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Commissioner
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John C. Surina, Staff Director
Lawrence M. Noble, General
Counsel

Published by the Information
Division

Louise D. Wides, Director
Dario Bard, Editor

closed MURs are available for review in the Public Records Office.

MUR 3181

Respondents (all in MI): (a) The Honorable Barbara-Rose Collins; (b) Collins for Congress, Terry Hasse, treasurer; (c) various individuals

Complainant: Sua sponte
Subject: Excessive contributions (in the form of guaranteed loans totaling \$75,000); failure to report loans accurately

Disposition: (a-b) Reason to believe, but took no further action (this matter has been reported to the U.S. House of Representatives Committee on Standards of Official Conduct for action that it deems appropriate); (c) reason to believe, but took no further action; sent admonishment letters

MUR 3716

Respondents (all in AL): (a) Shelby for U.S. Senate Committee, Pamela B. Blackwell, treasurer; (b) Alabama Democratic Conference (ADC), et al.; (c) A-VOTE, Paul Hubert, treasurer; (d) Timbes and Yeager, Inc., William Yeager, President; (e) Jim Sullivan

Complainants: Alabama Republican Party, J. Elbert Peters, Chairman
Subject: Failure to register and report; failure to maintain separate bank accounts for federal activity; disclaimers; excessive contributions; failure to adequately report purpose of disbursements

Disposition: (a) Reason to believe, but took no further action (failure to adequately report purpose of disbursements), sent admonishment letter; no reason to believe (excessive contributions); (b) no reason to believe (corporate contributions); reason to believe (other allegations), but took no further action, sent admonishment letters; (c) reason to believe, but took no further action (excessive contributions), sent admonishment letter; (d-e) no reason to believe

MUR 3800

Respondent: Mississippi Democratic Party Political Action Committee (MS)

Complainant: FEC initiated (RAD)

Subject: Failure to file disclosure reports timely; failure to amend Statement of Organization

Disposition: \$15,000 civil penalty

MUR 4053

Respondents: (a) Friends of Susan Bitter Smith, Karen Crotty, treasurer (AZ); (b) Susan Bitter Smith (AZ)

Complainants: Arizona State Democratic Committee, Steve Owens, Chairman

Subject: Use of contributor information for solicitation purposes

Disposition: (a) Reason to believe, but took no further action; (b) no reason to believe

MUR 4110

Respondents (all in CO):

(a) William F. Eggert; (b) Bill Eggert for Congress Committee, Patrick W. Achatz, treasurer; (c) Public Information Corporation; (d) Colorado Republican Federal Campaign Committee, Douglas L. Jones, treasurer

Complainants: Shroeder for Congress Committee, Inc., Jeffrey B. Dorschner, campaign manager (CO)

Subject: Disclaimer

Disposition: (a-d) No reason to believe

MUR 4178

Respondents: (a) Lynn Yeakel for Senate, Sidney D. Rosenblatt, treasurer (PA); (b) various individuals (PA, VT, NY); (c) PAC 250, Dean Vance, treasurer (PA); (d) Indian American Political Affairs Committee—Pennsylvania Chapter

Complainant: FEC initiated (Audit)

Subject: Excessive contributions; failure to maintain records of persons contributing in excess of \$50; failure to dispose of cash contributions over \$50; failure to properly itemize disbursements

Disposition: (a) \$32,912 civil

penalty; (b-d) reason to believe, but took no further action (excessive contributions), sent admonishment letters

MUR 4252/Pre-MUR 318

Respondents: Virginia Baxter and William Baxter (TN)

Complainant: FEC initiated (news articles)

Subject: Excessive contributions; contributions in the names of others; contributions by minors

Disposition: Reason to believe, but took no further action

MUR 4253/Pre-MUR 318

Respondents: Bonnie Croopnick and Steven Croopnick (MA)

Complainant: FEC initiated (news articles)

Subject: Excessive contributions; contributions in the names of others; contributions by minors

Disposition: Reason to believe, but took no further action

MUR 4254/Pre-MUR 318

Respondents: Birgit Hershey and Loren Hershey (VA)

Complainant: FEC initiated (news articles)

Subject: Excessive contributions; contributions in the names of others; contributions by minors

Disposition: Reason to believe, but took no further action; sent admonishment letter

MUR 4255/Pre-MUR 318

Respondents: Christopher P. Hitchcock and Martha F. Hitchcock (OH)

Complainant: FEC initiated (news articles)

Subject: Excessive contributions; contributions in the names of others; contributions by minors

Disposition: Reason to believe, but took no further action; sent admonishment letter

MUR 4264

Respondents (all in ME): (a) Maine Republican Party, P. James Nicholson, treasurer; (b) Senator Bill Cohen;

(c) Cohen for Senator Committee, Merton G. Henry, treasurer

Complainants: Democratic Senatorial Campaign Committee, Donald Foley, Executive Director (DC)

Subject: Corporate contributions

Disposition: (a) Reason to believe, but took no further action, sent admonishment letter; (b-c) no reason to believe

MUR 4296

Respondents: Overby for Congress Campaign Committee, J. Frank Myers, III, treasurer (GA)

Complainant: FEC initiated (RAD)

Subject: Failure to file 48-hour reports (in the form of draws on a line of credit guaranteed by the candidate totaling \$75,075)

Disposition: \$9,000 civil penalty

MUR 4303

Respondents: The International Bank of Commerce Committee for Improvement and Betterment of the Country, Jorge Haynes, treasurer (TX)

Complainant: FEC initiated (RAD)

Subject: Failure to file disclosure reports timely

Disposition: \$2,800 civil penalty

MUR 4304

Respondents: Alaska Democratic Party Federal Account, Thomas G. Evans, treasurer

Complainant: FEC initiated (RAD)

Subject: Failure to file disclosure report timely

Disposition: \$3,500 civil penalty

MUR 4309

Respondents: Alameda County Republican Central Committee, Robert L. Strawn, treasurer (CA)

Complainant: FEC initiated (RAD)

Subject: Failure to file disclosure reports timely

Disposition: Reason to believe, but took no further action; sent admonishment letter

MUR 4344

Respondents: D.C. Republican Committee Federal Campaign Committee, Roger Moffat, treasurer

Complainant: FEC initiated (RAD)

Subject: Failure to file disclosure report timely

Disposition: Reason to believe, but took no further action; sent admonishment letter ♦

Publications

FEC Issues 1995 Annual Report

In June the FEC issued its 21st annual report, chronicling its activities in 1995. *Annual Report 1995* includes:

- A discussion of legal issues that the Commission faced in 1995;
- An accounting of the Commission's achievements in 1995;
- Legislative recommendations submitted to Congress by the Commission in 1995;
- Charts and statistical tables depicting campaign finance activity and Commission operations during the first half of the 1996 election cycle;
- An overview of the public funding program, including a discussion of the public funding shortfall; and
- A monthly chronology of events in 1995.

Free copies of the *Annual Report 1995* are available through the FEC's Information Division. Call 800/424-9530 and press 1 at the prompt or call 202/219-3420. ♦

Audits

(continued from page 1)

- Failed to itemize and properly disclose \$21,080 in contributions received from partnerships;
- Failed to itemize in-kind contributions and disbursements totalling \$32,148 and \$37,678, respectively;
- Failed to itemize \$160,729 in contributions from other political committees;
- Failed to adequately disclose and itemize a material number of disbursements; and
- Failed to itemize credit card payments totaling \$6,906 and associated memo entries totaling \$36,677.

This audit was conducted pursuant to 2 U.S.C. §438(b), which 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 action to pursue issues revealed by the audit. ♦

Need FEC Material in a Hurry?

Use the FEC's Flashfax service to obtain FEC material fast. It operates 24 hours a day, 7 days a week. Over 300 FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

Use a touch tone phone to dial **202/501-3413** and follow the instructions. To order a complete menu of Flashfax documents, enter document number 411 at the prompt, or see page 12 of this issue of the *Record*.

Audit Reports Made Public

Thus far in 1996, the FEC has issued 13 final audit reports pursuant to 2 U.S.C. §438(b). 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 the audit report was approved:

- The Committee to Elect Michael Patrick Flanagan (January 5, 1996)
- Jude for Congress (summarized in April 1996 *Record*, page 2)(January 25, 1996)
- Minnesota Democratic Farmer Labor Party (February 12, 1996)
- Citizens for Jack Metcalf (March 12, 1996)
- Montana State Democratic Central Committee (April 1, 1996)
- Nevada State Democratic Party (April 2, 1996)
- Bob Barr for Congress '94 (April 9, 1996)
- West Virginia State Democratic Executive Committee (April 18, 1996)
- The Friends of Conrad Burns (April 24, 1996)
- Carol Moseley Braun for U.S. Senate (summarized in this *Record*, page 1)(May 6, 1996)
- United Republican Fund of Illinois (May 17, 1996)
- San Bernardino County Republican Central Committee (June 10, 1996)
- American Hospital Association Political Action Committee (June 10, 1996)

Final audit reports are available from the FEC's Public Records Office: 999 E Street, NW, Washington, DC, 20463; telephone: 800/424-9530 (option 3 on the menu) or 202/219-4140. ♦

Court Cases

(continued from page 1)

contacting a candidate (except through written questions to which a candidate may respond in writing) and requiring the organization to give all candidates for a particular office an equal opportunity to respond.

MRLC argued that the regulations were too restrictive, exceeding the FEC's statutory power and chilling First Amendment rights. The FEC contended that it had the authority to regulate corporate expenditures for voting records and voter guides if there was coordination with a candidate about the preparation, contents and distribution of such materials.

Court's Analysis

Section 441b prohibits "any corporation whatsoever" from making "a contribution or expenditure in connection with any [federal] election."

The court pointed out that the ban on direct corporate contributions had been upheld by the Supreme Court in *Buckley v. Valeo* on the grounds that the government's interest in preventing corruption or its appearance outweighs First Amendment concerns. On the other hand, based on the Supreme Court's opinions in *Buckley* and *FEC v. Massachusetts Citizens for Life, Inc. (MCFL)*, the court said that corporate spending cannot be limited unless it expressly advocates the election or defeat of a particular candidate. "In other words," the court concluded, "spending on issue advocacy... cannot be limited." The question the court addressed was whether a corporation's contact with a candidate when preparing a voter guide or voting record would transform permissible issue-advocacy spending into a prohibited contribution.

To answer the question, the court examined two provisions of the Federal Election Campaign Act (the

Act). In §441a, the Act sets dollar limits on contributions, and for this purpose “contribution” is defined to include “expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents.” 2 U.S.C. §441a(a)(7)(B)(i).

The other provision, §441b, prohibits corporate “contributions” and “expenditures,” which are defined to include “any direct or indirect payment...or anything of value” provided “to any candidate... in connection with any [federal] election.” 2 U.S.C. §441b(b)(2). The district court cited the *MCFL* Court’s interpretation of Section 441b as prohibiting payments (including indirect payments) made “on behalf of candidates.” The district court stated: “That is the statutory and interpretive language on which the FEC’s new regulations must be based.”

The court said that the FEC, in relying on Section 441a as its authority for the challenged regulations, had “misinterpreted the Supreme Court’s teachings.” The district court pointed out that, in *Buckley*, the Supreme Court upheld the dollar limitations on contributions because limits on amounts given to a candidate are not the same as limits on direct political speech. “Here,” the district court said, “both the disbursements and the speech are *direct political speech by the MRLC*, not by the candidate. They are thus at the heart of the [Supreme] Court’s First Amendment concerns.” (Emphasis in original.)

Court’s Conclusion

The court concluded that the FEC had based the challenged regulations on too broad an interpretation of the §441b prohibition on corporate expenditures. The court said that the voter guide regulations mistakenly hinge on whether a corporation has

had any contact with a candidate rather than on whether the voter guide conveys issue advocacy on behalf of a candidate (which would be an acceptable interpretation). Under the voting record regulations, MRLC would be in violation of §441b if it included an explanation solicited from a candidate concerning apparent inconsistencies in his or her voting record. The court stated: “...it is a distortion of the English language to say that [such an activity] would turn the MRLC’s publication...into spending ‘on behalf of’ a candidate.”

In concluding that the FEC had overstepped its authority in promulgating 11 CFR 114.4(c)(4) and (5), the court pronounced that, “as long as the Supreme Court holds that expenditures for issue advocacy have broad First Amendment protection, the FEC cannot use the mere act of communication between a corporation and a candidate to turn a protected expenditure for issue advocacy into an unprotected contribution to the candidate.”

U.S. District Court for the District of Maine, 96-66-P-H. ♦

DSCC v. FEC (95-0349)

On April 17, 1996, the U.S. District Court for the District of Columbia ruled that the FEC acted contrary to law when it allowed nearly 600 days to pass without taking any meaningful action on an administrative complaint filed by the Democratic Senatorial Campaign Committee (DSCC). Under 2 U.S.C. §437g(a)(8)(A), anyone who files a complaint with the FEC may seek court intervention if the FEC fails to complete action on the complaint within 120 days.

The DSCC filed the complaint on May 14, 1993. In the complaint, the DSCC alleged, among other things, that the National Republican Senatorial Committee had violated the law by making illegal “soft

money” contributions to influence the 1992 Senate elections—particularly the runoff in Georgia.

On February 22, 1995, the DSCC filed this suit claiming that the FEC’s failure to complete action was arbitrary and capricious.

The court reasoned that while FEC decisions concerning whether to conduct an investigation were entitled to judicial deference, the agency’s failure to consider a complaint for nearly 600 days was subject to judicial review. The court examined whether the FEC had acted reasonably in allowing nearly 600 days to pass before taking action on the DSCC’s complaint.

The criteria the court used to review the FEC’s inaction are outlined in *Rose v. FEC* (1984) and *Telecommunications Research & Action Center v. FCC* (1984); they are:

- The credibility of the allegation;
- The nature of the threat posed;
- The resources and information available to the agency;
- The novelty of the issues involved;
- The time it takes for the agency to make decisions;
- Whether Congress mandated a timetable for the agency to take action on such matters as the one at hand;
- The nature of the matter (for instance, delayed agency action on matters affecting human health and welfare are less tolerable than those in the sphere of economic regulation);
- The effect that court-ordered expedited action on the matter would have on agency activities of a higher or competing priority;
- The nature and extent of the interest prejudiced by the agency’s delay in acting on the matter; and
- The fact that the court need not “find any impropriety lurking behind agency lassitude in order to hold that agency action is ‘unreasonably delayed.’”

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Court Cases

(continued from page 5)

Based on its analysis of the factors listed above, the court ruled that the FEC's failure to consider the DSCC's complaint for nearly 600 days was contrary to law. The court noted, however, that while this litigation was pending, the FEC had moved forward with respect to the DSCC's complaint. The court warned that should the FEC stall on this matter again, "the need for additional judicial intervention may well be compelling."

U.S. District Court for the District of Columbia, 95-0349. ♦

Grover v. FEC

On May 21, 1996, the U.S. District Court for the Southern District of Texas granted the FEC's motion to dismiss this suit.

Henry C. Grover had filed the suit on January 16, 1996, claiming that the \$1,000 limit on contributions from individuals and Congress's failure to pass laws to prevent "soft money"¹ from influencing federal elections were unconstitutional impediments to his primary campaign efforts. (Mr. Grover eventually lost the March 12 Texas Republican Senatorial primary.) He asserted that the \$1,000 contribution limit and

alleged "soft money laundering" (i.e., the redistribution of soft money raised by party committees to favored federal candidates) gave incumbent office holders such an overwhelming advantage that only independently wealthy challengers could run competitive campaigns against them.

The court, however, dismissed the case based on the FEC's arguments that: (1) Mr. Grover's claim was moot since the primary was over and relief no longer available; (2) the contribution limits had already been upheld by the Supreme Court in *Buckley v. Valeo*; and (3) the "soft money" issues were political and therefore outside judicial authority. The court said: "It is Congress that passed the laws and it is Congress that must engage in any necessary repairs."

U.S. District Court, Southern District of Texas, H-96-0136. ♦

¹ "Soft money" refers to funds raised and spent outside the limits and prohibitions of federal election law, including money that exceeds federal limits and money from corporate and labor treasury funds. Soft money may not be used in connection with federal elections but may be used for other purposes, such as nonfederal elections (subject to state law).

Advisory Opinions

AO 1996-8

Local Party Committees and Building Funds

The building fund exemption in the Federal Election Campaign Act (the Act) does not apply to funds established to build offices for local party committees and therefore does not preempt a Kentucky law prohibiting the Jefferson County Democratic Executive Committee (JCDEC) from accepting corporate donations to a building fund. The exemption would apply neither to a building fund set up by the JCDEC nor one set up by the Kentucky Democratic Party to buy a headquarters building for the JCDEC.

Under 2 U.S.C. §431(8)(B)(viii), funds used to defray the costs of constructing or purchasing an office building for a national or state party committee are exempt from the definitions of contribution and expenditure and are therefore not subject to the Act's contribution prohibitions or limits, including the prohibition against corporate contributions.

Previous advisory opinions have concluded that the Act's building fund exemption preempts state laws that prohibit corporations from giving to the building funds of national and state party committees. AOs 1993-9, 1991-5, 1986-40 and 1983-8. In addressing contributions to building funds established to buy or build state or national party offices, Congress explicitly decided not to place restrictions.

The building fund exemption, however, is a narrow exception provided for the benefit of national and state party committees; it is not applicable to a building fund established for the purpose of purchasing a headquarters building for a local party committee, regard-

On Appeal?

The FEC voted on whether to appeal the following court decision:

Minnesota Citizens Concerned for Life v. FEC (3-95-1147)

District court, Minnesota, ruled that 11 CFR 114.10—regulations defining and governing qualified nonprofit corporations—was unconstitutional on First Amendment grounds.

See the June 1996 *Record*, page 3.

Appeal?

Yes

less of whether the local or state party committee establishes the fund. The building fund proposed by the JCDEC, therefore, is subject to the Kentucky ban on corporate contributions regardless of whether the JCDEC or the Kentucky Democratic Party establishes it.

The Commission noted that this opinion did not address how FEC allocation regulations apply to the JCDEC because the JCDEC did not pose the question.

Date Issued: May 20, 1996;
Length: 3 pages. ♦

AO 1996-10 Corporate Employees as Stockholders

In addition to USX executive and administrative personnel, USX Corporation PAC may solicit those USX employees who can withdraw, without penalty, the company stock they own through the USX Corporation Savings Fund Plan. The PAC may use a payroll deduction plan to collect contributions from solicitable employees. 11 CFR 114.5(k) and 114.1(c)(1); AOs 1995-15 and 1994-23.

FEC Regulations

A corporate PAC may only solicit its corporation's executive and administrative personnel and stockholders (and the families of both groups). 11 CFR 114.5(g). Non-executive and non-administrative employees who hold company stock through a company investment plan may qualify as solicitable stockholders under FEC regulations if, in addition to owning stock, they possess the right to vote the stock and to receive dividends. 11 CFR 114.1(h).

In the past, the Commission has decided that employees who are able to withdraw their stock from a corporate savings plan without penalty fulfill the receive-dividends requirement. AOs 1994-36 and 1994-37.

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Statistics

Increase in Congressional Fundraising

According to official FEC figures, congressional campaign receipts in the first 15 months of the 1996 election cycle totalled \$297 million, an increase of \$43 million over the total raised at the 15-month point in the 1994 election cycle. (An election cycle is a 2-year period beginning on January 1 of the year before a federal election and ending on December 31 of the year of the election.)

Of the \$297 million total, \$108.6 million was raised by 225 Senate candidates, and \$188.4 was raised by 1,614 House candidates. Major party challengers in the House raised 62.1 percent more than their counterparts had at the 15-month point in the 1994 election cycle.

A May 23 FEC news release presents these and other statistics on congressional financial activity at the 15-month point in the 1996 election cycle.

The accompanying graph is based on data contained in the news release. ♦

GOP Nearly Doubles Democratic Party's Fundraising and Spending

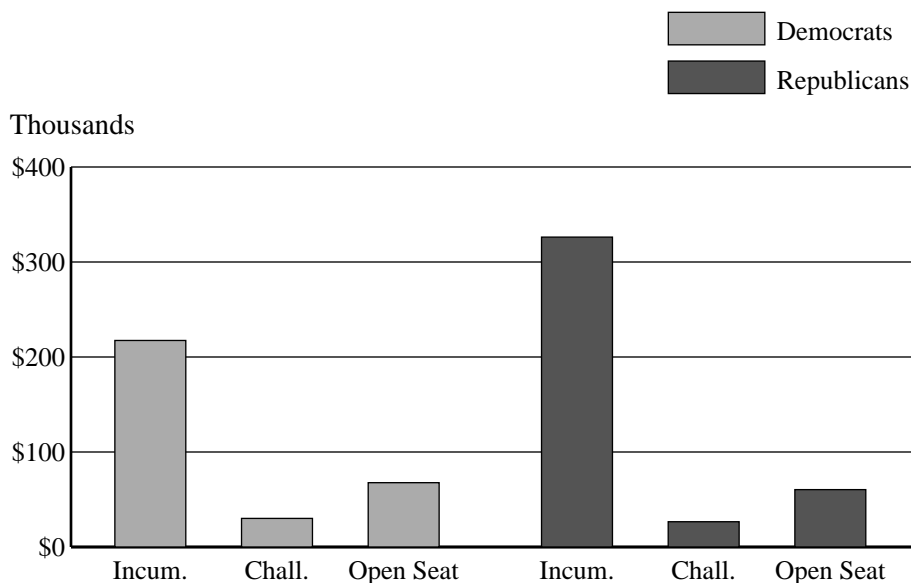
Despite sizable increases in fundraising and spending since 1994, the Democratic Party's national committees continue to be outraised and outspent by their GOP counterparts by nearly 2 to 1.

Fifteen months into the 1996 election cycle, which began January 1, 1995, the Democratic National Committee, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee together raised \$72.8 million and spent \$66.6 million. These totals represent increases of 61.6 percent and 53.5 percent, respectively, over the funds the Democratic committees had raised and spent at the 15-month point in the 1994 election cycle.

By comparison, their GOP counterparts—the Republican National Committee, the National Republican Senatorial Committee and the National Republican Congressional Committee—raised \$135.3 million and spent \$118.4

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Median Receipts of 1996 House Candidates by Candidate Type, First 15 Months of Election Cycle



Statistics

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million in the first 15 months of the 1996 election cycle. Although their increases over 1994 (a 37.9 percent increase in fundraising and a 39.8 percent increase in spending) are not as dramatic as that of the Democrats, GOP national committees continue to outraise and outspend the Democrats by a sizable margin.

With respect to “soft money,”¹ the Democrats raised \$39.9 million and the Republicans raised \$48.8 million, increases of 47.8 percent

¹ “Soft money” refers to funds raised and spent outside the limits and prohibitions of federal election law, including money that exceeds federal limits and money from corporate and labor treasury funds. Soft money may not be used in connection with federal elections but may be used for other purposes, such as nonfederal elections (subject to state law).

and 154 percent, respectively, over the totals at the same point in the 1994 election cycle.

A May 8 FEC news release presents these and other statistics on the financial activity of national party committees at the 15-month point in the 1996 election cycle.

The accompanying graph is based on data contained in the news release. ♦

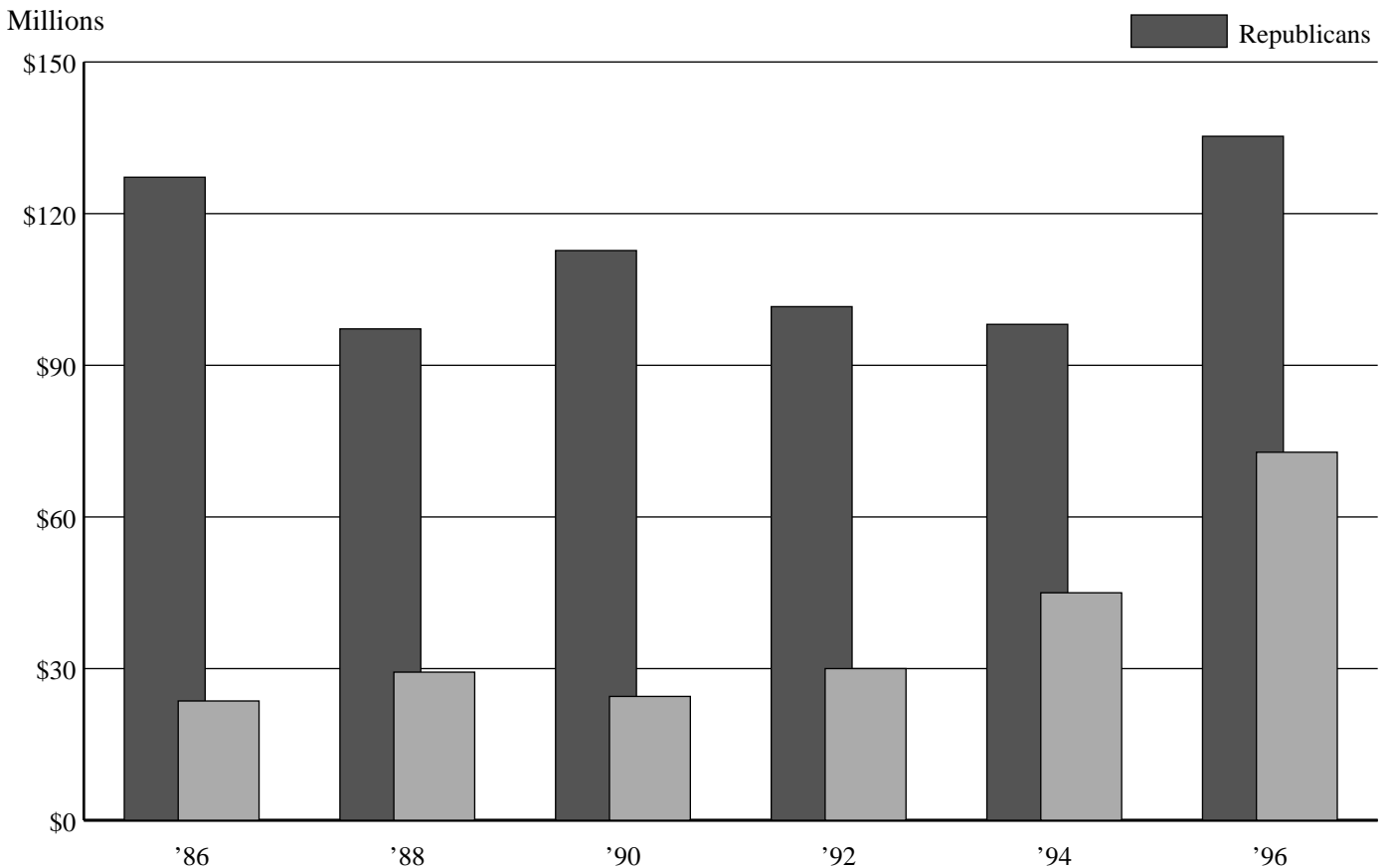
How to Get News Releases

The news releases mentioned in the articles above may be ordered from the Public Records office: call 800/424-9530 and press 3 at the prompt. To receive faxed copies, call the 24-hour Flashfax service: 202/501-3413. Request document 530 for statistics on 15-month House and Senate activity (this is not the complete news release,

however) and document 531 for statistics on 15-month national party activity (this is the complete news release).

The news releases are also available on the FEC’s World Wide Web site (<http://www.fec.gov>) under the “News Releases and Media Advisories” menu option (again, this is not the complete congressional statistics release). The latest data are also available as downloadable databases on the FEC’s Web site; select “Financial Information for Candidates, Parties and PACs” from the main menu. ♦

National Party Committee Fundraising, First 15 Months of Election Cycle



Advisory Opinions

(continued from page 7)

The USX Plan

Employees who own stock through the USX plan have the right to vote the stock. The remaining issue is whether they can withdraw stock without penalty and thus fulfill the receive-dividends requirement.

The USX plan has five accounts for employees to invest in:

- The Rollover and Pre-1987 After-Tax accounts have no withdrawal restrictions; employees who own stock in these accounts may be solicited.
- The Company Contributions account requires that funds be in the account for 24 months before they can be withdrawn; only employees who have funds that meet this withdrawal requirement may be solicited.
- The After Tax Savings (Post 1986 Funds) account requires that employees wait 24 months before they can withdraw any corporate matching funds; only employees who own stock with their own funds or with corporate matching funds that meet this withdrawal requirement may be solicited.
- The Pre-Tax Savings account requires that employees be at least age 59 1/2 and have savings invested for more than 24 months before savings can be withdrawn without penalty; only employees meeting these requirements may be solicited.

Date Issued: May 10, 1996;
Length: 6 pages. ♦

AO 1996-11 Incumbent Appearances at Convention of Membership Organization

The National Right to Life Committee (NRL), a nonprofit, tax-exempt membership corporation, may, during its open-to-the-public

convention, engage in several activities involving two federal officeholders (one seeking reelection to the House, the other seeking the Presidency), provided that it meets certain conditions. These conditions will ensure that NRL does not provide something of value to the candidates, who may hold concurrent campaign events in the same hotel as the NRL convention.

Candidate Appearances

The limited exceptions for corporate and labor activity provided under 11 CFR 114.3(c)(2) and 114.4(b)(1) do not apply with regard to NRL's proposal to invite two incumbent candidates to give convention speeches to the general public. Those regulations permit an incorporated membership organization to use its general treasury funds to sponsor and finance campaign-related appearances, but only before the organization's restricted class¹ and other employees.

An event is campaign related if it involves: (1) the solicitation or acceptance of contributions to the candidate's campaign or (2) communications expressly advocating the election or defeat of any candidate. AOs 1994-15, 1992-6 and 1988-27. Factors such as the setting, timing and statements or expressions of the purpose of an event, and the substance of the remarks or speech made, are also important in determining whether an appearance is campaign related.

On the other hand, if a speech is not campaign related and the speaker is not appearing in his or her capacity as a candidate for federal office, a corporation may invite the general public as well as its restricted class to attend the speech; this would not constitute the

¹ The restricted class includes the noncorporate members of a membership organization, its executive and administrative personnel and the families of both groups. 11 CFR 114.7(a).

making of a prohibited contribution or expenditure by the corporation. 60 FR 64266 (December 14, 1995).

NRL's proposal is similar in several respects to the situations presented in the advisory opinions cited above. NRL invited the speakers, not as candidates, but rather as legislators with influence over legislation of interest to convention attendees. The speeches themselves will not afford the candidates or anyone else the opportunity to expressly advocate their election or to solicit contributions on behalf of any candidate.

However, the NRL proposal differs from the situations addressed in AOs 1992-6 and 1988-27 because the organization would be paying candidates' travel costs to both the convention and to campaign events conducted by the candidates.

Moreover, the convention falls within the 1996 election season, and the candidates' speeches will address topics that may be campaign issues. Further, NRL will not invite any opposing candidates to speak. Consequently, the candidates' appearances at the convention may be used to promote their candidacies.

Nevertheless, NRL may invite the candidates to speak at the convention if the following conditions are met:

- If NRL knows that the candidates' campaign committees will sponsor collateral campaign events on site while the convention is in progress, NRL may not use its general treasury funds to pay the travel costs for the candidates and their staff. NRL must notify each candidate of this prohibition.
- Communications by NRL, any person speaking on its behalf, the candidates or their agents may not contain express advocacy.
- Introductions may not discuss the speakers' candidacies beyond noting that they are candidates.

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- Convention functions may not include solicitation of contributions or distribution of campaign materials.
- Any contribution from NRL's political committee to either candidate's campaign must not be in consideration for the candidate speaker's attendance.
- NRL may pay for communications that publicize campaign events as long as the communications are directed to the restricted class only. Candidates who wish to advertise in the convention program book must pay, in advance, the usual and normal charge for such advertisements.

Press Conference

The featured candidates may participate in an NRL-sponsored press conference provided that:

- The organization neither endorses the candidates nor expressly advocates the election or defeat of other candidates during the conference; and
- NRL distributes notices of the press conference only to those news organizations it customarily contacts when holding press conferences for other purposes. 11 CFR 114.4(c)(6).

Tapes

NRL may provide free copies of audio and video tapes of convention speeches only to the candidate speakers. AOs 1980-90 and 1978-60. However, NRL may sell the tapes to news organizations and the general public for the usual and normal charge.

Coordination

While 11 CFR 114.3(a)(1) and 114.4(a) permit NRL to coordinate the proposed speeches and press conference with the candidates, any coordination beyond that described in the regulations may cause future communications by NRL or its PAC

to the general public on behalf of the speaker candidates to be viewed as prohibited in-kind corporate contributions. 11 CFR 114.2(c) and 109.1(b)(4); AO 1996-1.

Tax Consequences

The Commission expressed no opinion regarding qualification for tax-exempt status under 26 U.S.C. §501(c)(4) or any tax ramification because these issues are outside its jurisdiction.

Date issued: May 20, 1996;
Length: 8 pages. ♦

AO 1996-12 Criteria for Qualified Campaign Expenses

The Lenora B. Fulani for President '96 committee, should it receive public funding, must abide by the same documentation requirements for campaign expenses as all other publicly funded Presidential campaigns. The fact that Dr. Fulani is a member of a socialist collective and plans to hire collective members to provide campaign services and as vendors would not, in itself, cause her to be held to a higher standard than other publicly funded campaigns.

The committee's disbursements to vendors will be considered qualified campaign expenses as long as Dr. Fulani can demonstrate that they represent the usual and normal charge for campaign-related services actually rendered.

A publicly funded candidate bears the burden of demonstrating that his or her disbursements were made for qualified campaign expenses. 11 CFR 9033.1(b)(1). The specific requirements for documenting disbursements are set out at 11 CFR 9033.11(b). These requirements enable the Commission to verify, during the post-primary audit process, that public funds were spent in connection with the candidate's campaign. In most cases, complying with these requirements will ad-

equately demonstrate that a candidate's disbursements are qualified campaign expenses. However, a candidate may be required to provide further documentation should the audit process or an FEC investigation prompt questions about campaign transactions. Dr. Fulani will be expected to comply with these requirements and the same standard of proof as other publicly funded candidates, regardless of whether she conducts campaign business with members of the socialist collective and close political associates.

Disbursements are not automatically considered nonqualified campaign expenses when they are made to vendors with which the candidate has a close relationship. The fact that a transaction between a candidate and a vendor is not conducted at arms length—that is, is not entered into in the ordinary course of business by parties with independent interests—would not, by itself, lead to the conclusion that it was a nonqualified campaign expense. In determining whether a transaction complies with the Federal Election Campaign Act, the Commission generally focuses upon whether the committee paid the usual and normal charge for the goods or services provided, rather than on whether the transaction was at arms length. However, under some circumstances, the fact that a vendor-candidate transaction was not at arms length may be an indication that it was not made in connection with the campaign. In that case, the nature of the campaign's contractual relationships with its vendors would be relevant.

Dr. Fulani is urged to take steps to satisfy the documentation requirements and to otherwise comply with federal election laws and regulations.

Date Issued: May 20, 1996;
Length: 7 pages. ♦

AO 1996-14 Use of Excess Campaign Funds for Moving Expenses

Retiring Congressman Kika de la Garza may use excess campaign funds to move his belongings from his congressional office in Washington, D.C., and his home in Virginia to his home in Texas. This use of campaign funds is not considered personal use.

Excess campaign funds may be used for any lawful purpose, but may not be converted to the personal use of any person. 2 U.S.C. §439a. Personal use is defined as the use of campaign funds to pay for an expense that would exist irrespective of the candidate's campaign or duties as a federal officeholder. 11 CFR 113.1(g).

Under 11 CFR 113.2(a)(2), a federal officeholder may use excess campaign funds to wind down his or her congressional office. The transfer of Congressman de la Garza's office belongings to his home in Texas is part of the costs of winding down his office; therefore, campaign funds may be used.

Although the expenses associated with moving the Congressman's belongings from his Virginia home to Texas are not winding down costs as defined at 11 CFR 113.2(a)(2), campaign funds may nonetheless be used because his proposed use of campaign funds is limited to paying the expense of his return to Texas. These expenses may be treated under 11 CFR 113.2(a) as necessary and ordinary expenses incurred in connection with ending his duties as a federal officeholder.

Congressman de la Garza's campaign should report these moving expenses as it would any other disbursement, with the purpose and the payees noted.

Date Issued: May 31, 1996;
Length: 4 pages. ♦

AO 1996-15 Discarding Envelopes Used to Mail Reports to State

The State of Oklahoma Ethics Commission may discard the envelopes or other packaging in which it receives copies of federal campaign finance reports. FEC regulations do not mention the need to maintain such materials. Furthermore, the obligation to file timely is viewed from the aspect of when the filing is made with the Commission or other filing office, or, alternatively, the postmarked date when sent by registered or certified mail.

The Oklahoma Commission will continue to stamp the date of receipt and the postmark date on the copies of the FEC reports it receives.

The Secretary of State or equivalent state officer is responsible for:

- Receiving and maintaining federal campaign finance reports and statements;
- Keeping these documents for 2 years after their date of receipt;
- Making each report and statement available, within 48 hours of receipt, to the public for inspection and copying; and
- Compiling and maintaining a current list of all reports and statements pertaining to each candidate. 2 U.S.C. §439(b) and 11 CFR 108.1 and 108.6.

Date issued: May 20, 1996;
Length: 3 pages. ♦

AO 1996-16 Defining a News Entity

The on-line, television and radio entities of Bloomberg, L.P., qualify as press entities. As such, they are entitled to the news story exemption at 2 U.S.C. §431(9)(B)(i) and may conduct their proposed Electronic Town Meetings with Presidential candidates.

The Proposal

Bloomberg's Electronic Town Meetings would electronically link a Presidential candidate with Bloomberg terminal users and invited guests. A moderator would open the meeting, introduce the candidate and invite the candidate to make brief remarks. The moderator would then allow the electronically linked audience to pose questions to the candidate via electronic mail.

Each town meeting would last approximately one hour. The event would be covered as a news story by Bloomberg Information TV, Bloomberg Information Radio and Bloomberg Business News. The program would be available to other news entities via satellite.

The News Story Exemption

The Federal Election Campaign Act exempts from the definition of expenditure any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication. 2 U.S.C. §431(9)(B)(i).

Several factors are considered in determining whether an activity qualifies for the news story exemption:

- Whether an entity is a press entity as described in the statute;
- Whether the press entity is owned by any political party, political committee or candidate; and
- Whether the press entity is acting as a press entity in performing the media activity. 2 U.S.C. §431(9)(B)(i); AO 1982-44.

The Bloomberg entities involved with the Electronic Town Meetings are press entities providing news and commentary through computer, television and radio. There is no indication that they are owned or controlled by any political party, political committee or candidate.

Moreover, like the presentation of more traditional news stories and
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news programs, the means of presentation will be controlled by the press entity. Each meeting will be a discrete and structured forum with a moderator, a set format and a time limit.

Therefore, since the Bloomberg entities qualify as press entities and will be acting as such during the event, the proposed Electronic Town Meetings with Presidential candidates qualify for the news story exemption and are permissible.

Date Issued: May 23, 1996;
Length: 5 pages. ♦

AO 1996-17 Cars Provided as Official Vehicles of Convention

General Motors Corporation may loan cars to the Democratic and Republican parties for use at their national nominating conventions.

Under the proposed agreement, GM would loan cars to the parties in exchange for which GM and its dealers could advertise GM cars as the official cars of the Democratic and Republican conventions. The convention committees would agree to use the vehicles only for purposes connected to their conventions. Following the conventions, GM would resell the cars to the dealers with credit toward the purchase price for the period of convention use.

Corporations are generally banned from contributing anything of value in connection with a federal election. 2 U.S.C. §441b. A national Presidential nominating convention is considered an election under 2 U.S.C. §431(1)(B). However, under 11 CFR 9008.9(b), a commercial vendor may provide goods for a Presidential nominating convention in exchange for promotional considerations if the vendor has an estab-

lished practice of providing goods on a similar scale and on similar terms to nonpolitical clients or if the terms and conditions are consistent with established practice in the vendor's trade or industry. Also, the value of the goods may not exceed the commercial benefit reasonably expected to be derived from the unique promotional opportunity presented by the convention.

In AO 1988-25, the Commission approved GM's sale of cars to local GM dealers who, in turn, made them available on loan to the conventions. In its 1994 revisions to the convention regulations, the Commission specifically expanded this result to cover all commercial vendors, including manufacturers, not just the local and retail businesses that were the focus of the 1988 opinion.

Because GM's proposed vehicle loan program comports with the regulations, the activity is permissible and will not result in prohibited contributions.

Date Issued: May 23, 1996;
Length: 3 pages. ♦

Advisory Opinion Requests

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

AOR 1996-23
PAC disaffiliation following corporate breakup (ITT Corporation; May 20, 1996; 13 pages plus 42-page attachment)

AOR 1996-24
Use of campaign funds for legal expenses (Congressman Wester S. Cooley; May 23, 1996; 5 pages)

AOR 1996-25
Fulfilling best-efforts requirement to seek contributor information from individuals without permanent employers (Seafarers Political Activity Donation; May 28, 1996; 6 pages)

AOR 1996-26

Corporation as collecting agent for contributions to PAC of affiliated trade association (FTD Association; June 3, 1996; 5 pages plus 45-page attachment) ♦

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Flashfax Menu Revised

Flashfax documents may be ordered 24 hours a day, 7 days a week, by calling **202/501-3413** on a touch tone phone. You will be asked for the numbers of the documents you want, your fax number and your telephone number. The documents will be faxed shortly thereafter.

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Change of Address**Political Committees**

Treasurers of registered political committees automatically receive the Record. A change of address by a political committee (or any change to information disclosed on the Statement of Organization) must, by law, be made in writing on FEC Form 1 or by letter. The treasurer must sign the amendment and file it with the Secretary of the Senate or the FEC (as appropriate) and with the appropriate state office.

Other Subscribers

Record subscribers who are not registered political committees should include the following information when requesting a change of address:

- Subscription number (located on the upper left corner of the mailing label);
- Subscriber’s name;
- Old address; and
- New address.

Subscribers (other than political committees) may correct their

Kansas Special Election Reporting

Committees involved in Kansas’s August 6 special primary election to fill Senator Robert Dole’s seat must follow the reporting schedule below:

	Close of Books	Certified Mail Date	Filing Date
Pre-Primary Report	Jul. 17	Jul. 22	Jul. 25

Committees that are also involved in this contest’s November 5 special general election must, in addition, follow the reporting schedule below:

	Close of Books	Certified Mail Date	Filing Date
Pre-General Report	Oct. 16	Oct. 21	Oct. 24
Post-General Report	Nov. 25	Dec. 5	Dec. 5

These committees must also follow the regular quarterly reporting schedule.

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