

# RECORD

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## SPECIAL ELECTIONS

### ALABAMA SPECIAL ELECTIONS

Alabama has scheduled special elections in the Third Congressional District to fill the seat that was held by Representative Bill Nichols, who died December 13, 1988. There are three possible special elections, but only two may be necessary.

- o **Primary Election: February 14, 1989.**
- o **Possible Runoff Election: March 7, 1989.** If, in either party, no candidate wins a majority of votes, the two top vote-getters in that party's primary will participate in a runoff.
- o **General Election: March 7 or April 4, 1989.** If a March 7 runoff is held in either party, the general election will be moved to April 4.

Reporting requirements are explained below. For further information on reporting or other requirements, call 800/424-9530 or 202/376-3120.

### Candidates' Authorized Committees

Authorized committees of candidates who participate in these elections must file reports according to the schedules given in Tables 1 through 5 (see p. 2). The committee treasurer should consult the table that corresponds to the candidate's situation.

Note that an authorized committee must also file notices on contributions of \$1,000 or more received after the closing date of books but more than 2 days before an election. The notice must reach the Clerk of the House and the Alabama Secretary of State (see below) within 48 hours of the committee's receipt of the contribution. 11 CFR 104.5(f). See also AO 1988-32.

### Party Committees and PACs

Party committees and PACs that make contributions or expenditures in connection with the special elections during the coverage dates listed in the tables (p. 2) must file the appropriate reports. Monthly filers, however, do not file special pre- and post-election reports.

Any PAC (including a monthly filer) that makes independent expenditures in connection with a special election may have to file last-minute reports on independent expenditures. Independent expenditures aggregating \$1,000 or more that are made after the closing date of books but more than 24 hours before an election must be reported within 24 hours after the

expenditure is made. 11 CFR 104.4(b) and 104.5(g).

### Contribution Limits

The limits on contributions to candidates apply separately to the primary election, the runoff election (if held) and the general election. 11 CFR 100.2, 110.1(j) and 110.2(i). A candidate must participate in an election to qualify for the limit for that election.

### Where to File

Authorized committees file with the Clerk of the House (see Form 3 for the address). Party committees and PACs file with the appropriate federal office (generally, the FEC; see Form 3X for details).

All committees must simultaneously file copies of Alabama special election reports with the Elections Division, Office of the Secretary of State, Room 21 State House, 11 Union Street, Montgomery, AL 36130.

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## TABLE OF CONTENTS

### SPECIAL ELECTIONS

- 1 Alabama Special Elections
- 3 Indiana Special General Election

### 4 ADVISORY OPINIONS

### REGULATIONS

- 6 Public Hearing on Allocation of Federal and Nonfederal Expenses

### PUBLIC FUNDING

- 7 Summary of Public Funding for 1988 Presidential Elections

### 8 FEDERAL REGISTER NOTICES

### 8 INDEX

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**REPORTING DATES FOR ALABAMA SPECIAL ELECTIONS****TABLE 1: PRIMARY ONLY**

Committees that support candidates in 2/14 primary only

| Report      | Period Covered | Reg./Cert. Mailing Date* | Filing Date |
|-------------|----------------|--------------------------|-------------|
| Pre-Primary | 1/1** - 1/25   | January 30               | February 2  |
| Semiannual  | 1/26 - 6/30    | July 31                  | July 31     |

**TABLE 2: PRIMARY, MARCH 7 GENERAL**

Committees that support candidates in 2/14 primary and 3/7 general

| Report       | Period Covered | Reg./Cert. Mailing Date* | Filing Date |
|--------------|----------------|--------------------------|-------------|
| Pre-Primary  | 1/1** - 1/25   | January 30               | February 2  |
| Pre-General  | 1/26 - 2/15    | February 20***           | February 23 |
| Post-General | 2/16 - 3/27    | April 6                  | April 6     |
| Semiannual   | 3/28 - 6/30    | July 31                  | July 31     |

**TABLE 3: PRIMARY, RUNOFF**

Committees that support candidates in 2/14 primary and 3/7 runoff

| Report      | Period Covered | Reg./Cert. Mailing Date* | Filing Date |
|-------------|----------------|--------------------------|-------------|
| Pre-Primary | 1/1** - 1/25   | January 30               | February 2  |
| Pre-Runoff  | 1/26 - 2/15    | February 20***           | February 23 |
| Semiannual  | 2/16 - 6/30    | July 31                  | July 31     |

**TABLE 4: PRIMARY, RUNOFF, APRIL 4 GENERAL**

Committees that support candidates in 2/14 primary, 3/7 runoff and 4/4 general

| Report       | Period Covered | Reg./Cert. Mailing Date* | Filing Date |
|--------------|----------------|--------------------------|-------------|
| Pre-Primary  | 1/1** - 1/25   | January 30               | February 2  |
| Pre-Runoff   | 1/26 - 2/15    | February 20***           | February 23 |
| Pre-General  | 2/16 - 3/15    | March 20                 | March 23    |
| Post-General | 3/16 - 4/24    | May 4                    | May 4       |
| Semiannual   | 4/25 - 6/30    | July 31                  | July 31     |

**TABLE 5: PRIMARY, APRIL 4 GENERAL**

Committees that support candidates in 2/14 primary and 4/4 general

| Report       | Period Covered | Reg./Cert. Mailing Date* | Filing Date |
|--------------|----------------|--------------------------|-------------|
| Pre-Primary  | 1/1** - 1/25   | January 30               | February 2  |
| Pre-General  | 1/26 - 3/15    | March 20                 | March 23    |
| Post-General | 3/16 - 4/24    | May 4                    | May 4       |
| Semiannual   | 4/25 - 6/30    | July 31                  | July 31     |

\*Reports sent by registered or certified mail must be postmarked by the mailing date. Reports that are not sent by registered or certified mail must be received by the filing date.

\*\*If the pre-primary report is the first report filed by the committee, the report must disclose all activity that occurred before the committee registered and before the individual became a candidate. 11 CFR 100.3(a); 101.3; 104.3(a) and (b).

\*\*\*Note that February 20, a Monday, is a federal holiday. Because most post offices will be closed on that day as well as the preceding day (Sunday, February 19), committees that wish to send their reports by registered or certified mail should mail them on Saturday, February 18. The law does not allow extensions of reporting deadlines under any circumstances.

**INDIANA SPECIAL GENERAL ELECTION**

Indiana has scheduled a special general election in the Fourth Congressional District to fill the seat vacated by Dan Coates, who was appointed to fill the U.S. Senate seat formerly held by Vice President Quayle.

The general election will take place on **March 28, 1989**. The Democratic and Republican nominees were selected by party caucuses held January 14, 1989.

Reporting requirements are explained below. For further information on reporting or other requirements, call 800/424-9530 or 202/376-3120.

**Nominees' Authorized Committees**

Authorized committees of nominees running in the general election must file pre- and post-general election reports as indicated in the table.

Note that an authorized committee must also file special notices on contributions of \$1,000 or more received during the period March 9 through March 25. The notice must reach the Clerk of the House and the Indiana Secretary of State (see below) within 48 hours of the committee's receipt of the contribution. 11 CFR 104.5(f). See also AO 1988-32.

**Party Committees and PACs**

Party committees and PACs that make contributions or expenditures in connection with the special election during the coverage dates listed in the table must file the appropriate reports. Committees that file monthly reports during 1989, however, do not file pre- and post-election reports.

Any PAC (including a monthly filer) that makes independent expenditures in connection with the special election may have to file last-minute reports on independent expenditures. Independent expenditures aggregating \$1,000 or more that are made during the period March 9 through March 26 must be reported within 24 hours after the expenditure is made. 11 CFR 104.4(b) and 104.5(g).

**Where to File**

Authorized committees file with the Clerk of the House (see Form 3 for the address). Party committees and PACs file with the appropriate federal office (generally, the FEC; see Form 3X for more details).

All committees must simultaneously file copies of Indiana special election reports with the Office of the Secretary of State, State House, Room 201, Indianapolis, IN 46204.

**REPORTING DATES FOR INDIANA MARCH 28 GENERAL ELECTION**

| Report       | Period Covered | Reg./Cert. Mailing Date* | Filing Date |
|--------------|----------------|--------------------------|-------------|
| Pre-General  | 1/1** - 3/8    | March 13                 | March 16    |
| Post-General | 3/9 - 4/17     | April 27                 | April 27    |
| Semiannual   | 4/18 - 6/30    | July 31                  | July 31     |

\*Reports sent by registered or certified mail must be postmarked by the mailing date. Reports that are not sent by registered or certified mail must be received by the filing date.

\*\*If the pre-general report is the first report filed by the committee, the report must disclose all activity that occurred before the committee registered and before the individual became a candidate. 11 CFR 100.3(a); 101.3; 104.3(a) and (b).

The Record is published by the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Commissioners are: Danny L. McDonald, Chairman; Lee Ann Elliott, Vice Chairman; Joan Aikens; Thomas J. Josefiak; John Warren McGarry; Scott E. Thomas; Walter J. Stewart, Secretary of the Senate, Ex Officio; Donald K. Anderson, Clerk of the House of Representatives, Ex Officio. For more information, call 202/376-3120 or toll-free 800/424-9530. (TDD For Hearing Impaired 202/376-3136)

## ADVISORY OPINIONS

### AO 1988-44: Effect of Statute of Limitations on Committee's Debts

The Bonner for Congress Committee, the indebted principal campaign committee of an unsuccessful 1982 primary candidate, may not file a termination report despite the fact that a state statute of limitations bars collection of debts that are over six years old.

Under the Act and FEC regulations, a committee may terminate only when it has no outstanding debts and no longer receives contributions or makes expenditures. 2 U.S.C. §433(d)(1); 11 CFR 102.3. The Bonner Committee, which ceased fundraising in July 1982, currently has a cash balance of \$2.25 and owes \$11,263 in debts, all of which were incurred before August 1982.

The Pennsylvania statute of limitations could preclude payment of the debts should the Committee be sued by its creditors and invoke the state statute as a defense. Even under these circumstances, the creditors' claims would not be extinguished under Pennsylvania law; the debts would continue to exist. The Commission, which generally looks to state law to determine whether a debt or obligation has been extinguished, concluded that the Committee still has outstanding debts and, for that reason, may not terminate.

The Committee may, however, take steps toward eventual termination by filing a debt settlement statement with the Commission. (FEC Directive 3, July 22, 1982.) If the Commission finds that the Committee has complied with procedures for settling debts owed to corporate creditors (11 CFR 114.10(c)) and with other requirements, it will notify the Committee, which may then file a termination report and stop reporting. Until then, it must continue to report its debts and obligations. Commissioner Thomas filed a concurring opinion. (Date issued: November 10, 1988; Length: 10 pages, including concurring opinion)

### AO 1988-45: Definition of National Party Committee

The Populist Party of America National Committee does not qualify as a "national committee" under the law because it has not conducted widespread federal activity. It may not, therefore, take advantage of the higher limits that apply to contributions to national committees; nor may it make coordinated party expenditures under 2 U.S.C. §441a(d).

The Act and FEC regulations define national committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political

party at the national level, as determined by the Commission." 2 U.S.C. §431(14); 11 CFR 100.13. In a series of advisory opinions, the Commission has applied several criteria to determine whether a committee has sufficient activity at the national level to qualify as a national committee. See AOs 1980-131, 1980-121, 1980-96, 1980-3, 1978-58, 1976-95 and 1975-129. Indicia of national-level activity include:

- o Nominating candidates for federal office in numerous states;
- o Engaging in certain activities on an ongoing basis (rather than for a particular election), such as conducting voter drives, providing speakers and organizing volunteer workers;
- o Publicizing issues of importance to the party;
- o Holding a national convention; and
- o Establishing a national office and state affiliates.

While the Populist Party has conducted some of the activities listed above, its activity with respect to federal candidates has been limited at the national level. Aside from the Party's Presidential ticket, which appeared on twelve state ballots, only five other Party candidates for federal office appeared on the ballot, and all of those in Pennsylvania. Moreover, the Committee's reports disclosed no contributions or other disbursements in support of Congressional candidates.

The Commission noted that the Populist Party has taken a number of steps to establish itself as a national party committee and could attain that status in the future. (Date issued: December 15, 1988; Length: 4 pages)

### AO 1988-46: Corporation's Solicitation of Licensees

By virtue of a series of affiliated relationships, Collins Foods International, Inc. may solicit contributions to its separate segregated fund from the executive and administrative personnel of Sizzler Restaurants International, Inc. and from the executive and administrative personnel of Sizzler's licensees. Collins may also solicit non-corporate Sizzler licensees.

Because Collins owns a controlling share of Sizzler's stock—63 percent—the two corporations are considered affiliated. Collins may therefore solicit Sizzler's executive and administrative personnel. 11 CFR 114.5(g)(1).

Sizzler's licensees are considered affiliates of Sizzler, and thus of Collins, because of the extensive control Sizzler exercises, by contract agreement, over its licensees. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2). Sizzler's control is similar to that described in AO 1979-38, in which the Commission concluded that a corporation and its licensees were affiliated based on the corporation's "continuing control and direction over the business policies, practices, and procedures of its licensees, as well as the nature and extent of the

licensees' contractual obligation to the Corporation...." See also AOs 1978-61 and 1977-70. As a result of this affiliation, Collins may solicit contributions from the executive and administrative personnel of Sizzler licensees. Collins may also solicit the licensees themselves, except incorporated licensees, which are prohibited from making contributions. 2 U.S.C. §441b; 11 CFR 114.2(b).

The Commission also concluded that Collins and Sizzler may use a payroll deduction plan to collect contributions from their executive and administrative personnel. 11 CFR 114.5(k); AO 1987-34. (Date issued: November 30, 1988; Length: 4 pages)

**AO 1988-48: Contributions to Trade Association  
PAC Matched with  
Charitable Donations**

The National-American Wholesale Grocers' Association, Inc. (NAWGA), an incorporated trade association, may match members' contributions to its separate segregated fund with donations to charities designated by contributors. This matching plan is permissible assuming:

- o Participation is limited to individual, noncorporate members of NAWGA, as specified in NAWGA's proposal; and
- o The designated charities qualify as tax-exempt entities under Section 501(c)(3) of the Internal Revenue Code.

Under the law, while corporations may pay the solicitation expenses of their separate segregated funds, they may not use this process "as a means of exchanging treasury monies for voluntary contributions." NAWGA's plan does not result in such a prohibited exchange. 2 U.S.C. §441b(b)(2)(C); 11 CFR 114.5(b). Contributing members will not receive any financial or tangible benefits, including tax benefits, through their participation in the program (though the tax ramifications of NAWGA's plan are outside the FEC's jurisdiction).

See also AOs 1987-18 and 1986-44. (Date issued: December 8, 1988; Length: 4 pages)

**AO 1988-49: Federal Bankruptcy Trustees Not  
Considered Government Contractors**

A partner and an associate of Jenner & Block, a law firm, who received federal appointments to the panel of private trustees for Chapter 7 bankruptcy cases, are not considered federal contractors.

A person who enters into contract with the federal government to provide services that are funded with money appropriated by Congress is considered a federal contractor and is therefore prohibited from making contributions or expenditures. 2 U.S.C. §441c(a)(1); 11 CFR 115.1(a) and (c); 115.2. The partner and the associate, who received federal appointments under the United States Trustee Program (Department of Justice) to the panel of private trustees for bankruptcy cases, do not fall within the definition of federal contractor because:

- o They did not enter into any contracts to obtain their positions, and their tenure and compensation are governed by federal statutes and regulations, rather than by contract; and
- o Their compensation (paid directly to Jenner & Block) comes from filing fees and portions of bankruptcy estates, not from Congressionally appropriated funds. See also AO 1987-33.

Accordingly, the partner and the associate are not barred from contributing to the nonconnected committee sponsored by Jenner & Block, The Lawyers for Better Government--Federal (although, under the committee's policy, associates do not make such contributions). Moreover, the partnership itself would not be viewed as a federal contractor solely on the basis of the trustee appointments. Compare AO 1984-10. (Date Issued: December 15, 1988; Length: 4 pages)

**CHANGE OF ADDRESS**

**Political Committees**

Registered political committees are automatically sent the Record. Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate, or the FEC, as appropriate.

**Other Subscribers**

Record subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

1. Name of person to whom the Record is sent.
2. Old address.
3. New address.
4. Subscription number. The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.

## REGULATIONS

### PUBLIC HEARING ON ALLOCATION OF FEDERAL AND NONFEDERAL SPENDING<sup>1</sup>

The Commission held an all-day hearing on December 15, 1988, to discuss how political committees should allocate disbursements that influence both federal and nonfederal elections. While the portion allocable to federal elections must be paid with funds subject to the prohibitions and limits of the Federal Election Campaign Act, the portion allocated to nonfederal activity may be financed with funds subject only to relevant state and local laws, which are often less restrictive than federal law. Money raised outside federal law is popularly called "soft money."

#### Chairman's Opening Remarks

In his opening statement, then-Chairman Thomas J. Josefiak<sup>2</sup> said that the purpose of the hearing was "to discuss ways to provide committees better guidance as to what 'reasonable allocation' means." He continued: "The task before the Commission, then, continues to be to clarify and refine the allocation regulations."

Acknowledging that "the allocation issue became clouded by allegations that the campaigns of both Presidential candidates raised large amounts of so-called 'soft money,'" Chairman Josefiak stressed that "there is no ambiguity or loophole in federal election law that permits the spending of 'soft money' in support of federal candidates." If abuses of soft money occurred in the past election cycle, "the Commission will vigorously pursue any complaint brought before it." He also observed that the soft money controversy has largely focused on who raised the funds and how the money was raised rather than on how the funds were spent.

<sup>1</sup>The Commission announced the hearing in a Notice of Proposed Rulemaking on the allocation rules, 11 CFR Part 106 (53 Fed. Reg. 38012, 9/29/88; change of hearing date published 10/13/88 at 53 Fed. Reg. 40070). For a summary of the Rulemaking Notice, see the October 1988 Record, p. 1. See also *Common Cause v. FEC* in the same issue, p. 6. The transcript of the hearing is available in the Public Records Office.

<sup>2</sup>Commissioner Josefiak's term as FEC Chairman expired in December 1988; Commissioner Danny L. McDonald serves as the 1989 Chairman.

In response to those who advocate FEC regulation of money raised for nonfederal elections, Mr. Josefiak said that Congress did not grant the FEC authority over nonfederal activity. "We cannot impose our jurisdiction upon legitimate state and local political activity by virtue of an imputed or tangential effect upon federal elections." He went on to say that the Commission has a responsibility to "clarify the allocation regulations...to more clearly define the threshold for asserting federal election law jurisdiction." The agency must also "assure the public of the continuing integrity of federal election law contribution limits and the public financing of Presidential elections."

#### Testimony

The Commission heard conflicting views from representatives of party committees and public interest groups. Party committee witnesses saw no evidence that soft money was improperly used in the past Presidential election, arguing that the problem was "perceptual," caused by misleading news articles. They claimed that soft money was properly used to fund state and local races. Mr. E. Mark Braden, representing the Republican National Committee, said: "I don't know of a single soft dollar spent for a George Bush yard sign or bumper sticker." He also argued that most money raised by state and local party committees meets the federal law's requirements anyway. Mr. Joseph A. Rieser of the Democratic National Committee noted that "only about 30 percent" of funds raised by the DNC in 1988 were in the form of nonfederal contributions.

In contrast to the parties' views, Ms. Ellen S. Miller of the Center for Responsive Politics contended that soft money has undermined the integrity of the public funding law. She said that fundraisers associated with the Presidential candidates raised at least \$130 million from private sources in 1988, although the campaigns "are supposed to be primarily funded by the \$92.2 million the two candidates receive from taxpayers." Mr. Fred Wertheimer of Common Cause also believed that soft money was eroding the integrity of Presidential public financing. He said that each Presidential campaign in the general election raised more than \$20 million in soft money. He suggested that Presidential candidates who receive public funding be required to certify that they will not raise any soft money.

On the specific issue of allocation, party representatives and Common Cause also disagreed. Mr. Wertheimer urged the Commission to reject the use of any prohibited funds for voter registration and get-out-the-vote drives, while Mr. Gordon M. Strauss of the Ohio Republican Party, Mr. Robert F. Bauer of the Democratic Congressional Campaign Committee and Mr. Rieser (DNC) opposed any fixed formula.

Rather than a uniform approach to allocation, the party representatives advocated more flexible standards that would take into account the varying levels of federal activity among party committees. At the same time, they were against complex methods of allocating expenses, and asked the Commission to develop methods that could be easily used by people who have not had specialized training. Mr. Rieser (DNC) said that many party committees are staffed by volunteers and that even those committees with paid workers have a high turnover.

An important point discussed by the national party representatives was the need for increased disclosure. While they disagreed on the extent of disclosure that should be required, they concurred in saying that party committees should report the allocation method used and the percentage of spending allocated as a federal expense.

## PUBLIC FUNDING

### SUMMARY OF PUBLIC FUNDING FOR 1988 PRESIDENTIAL ELECTIONS

By the end of 1988, the Commission had certified over \$176 million in federal funds for the 1988 Presidential elections.

#### Primary Matching Funds

The Commission's total certifications for 1988 matching funds reached \$65,704,805 by December 1988. This figure will change as candidates continue to request matching funds through the March 1989 deadline to retire qualified campaign debts and wind down campaign activity. Even after March, the Commission may certify funds based on resubmissions (corrections to matching fund requests that were previously rejected because of inadequacies).

The maximum amount a primary candidate may receive in matching funds is half of the statutory spending limit (\$10 million), as adjusted for inflation. The 1987 cost-of-living adjustment (COLA) brought the 1988 spending limit to \$23.050 million; a 1988 candidate could receive half that amount, or \$11.525 million, in matching funds. By December 1988, however, no candidate had reached that limit.

#### Convention Funding

The Democratic and Republican parties each received \$9.220 million in federal funds to finance their 1988 Presidential nominating conventions. Because major parties may receive their grants the year before the election, in July 1987 the Commission certified \$8.892 million to each convention committee. This amount represented the statutory entitlement of \$4 million increased

by the 1986 COLA. In March 1988, after the 1987 COLA became available, the agency certified an additional \$328,000 to each party.

#### General Election Funding

During July and August 1988, the Commission certified \$46.1 million in public funds to each major party Presidential campaign. This amount represented the statutory entitlement of \$20 million increased by the 1987 COLA.

### PUBLIC FUNDING CERTIFICATIONS (as of December 1988)

| Primary Matching Funds               | Amount Certified         |
|--------------------------------------|--------------------------|
| Babbitt (D)                          | \$ 1,078,939             |
| Bush (R)                             | 8,393,099                |
| Dole (R)                             | 7,618,116                |
| Dukakis (D)                          | 9,040,028                |
| Du Pont (R)                          | 2,550,954                |
| Fulani (New Alliance)                | 938,798                  |
| Gephardt (D)                         | 2,896,397                |
| Gore (D)                             | 3,853,402                |
| Haig (R)                             | 538,539                  |
| Hart (D)                             | 1,122,282                |
| Jackson (D)                          | 7,701,169                |
| Kemp (R)                             | 5,852,590                |
| LaRouche (D)                         | 825,577                  |
| Robertson (R)                        | 9,691,014                |
| Simon (D)                            | 3,603,901                |
| <b>Total</b>                         | <b>\$ 65,704,805</b>     |
| <br>                                 |                          |
| Convention Funding                   | Amount Certified         |
| Democratic Party                     | \$ 9,220,000             |
| Republican Party                     | 9,220,000                |
| <b>Total</b>                         | <b>\$ 18,440,000</b>     |
| <br>                                 |                          |
| General Election Funding             | Amount Certified         |
| Dukakis and Bentsen (D)              | \$ 46,100,000            |
| Bush and Quayle (R)                  | 46,100,000               |
| <b>Total</b>                         | <b>\$ 92,200,000</b>     |
| <br><b>Total 1988 Public Funding</b> | <br><b>\$176,344,805</b> |

# FEDERAL REGISTER

## FEDERAL REGISTER NOTICES

Copies of notices are available in the Public Records Office.

| Notice  | Title  |
|---------|--|
| 1988-14 | 11 CFR Parts 113, 114 and 116; Debts Owed by Candidates and Political Committees; Notice of Proposed Rulemaking (53 Fed. Reg. 49193, December 6, 1988) |

# INDEX

This cumulative index lists advisory opinions, court cases and 800 Line articles published in the Record during 1989. The first number in the citation refers to the "number" (month) of the Record issue; the second number, following the colon, indicates the page number in that issue.

## OPINIONS

- 1988-37: Affiliated status of two corporate PACs after leveraged buy-out, 1:6
- 1988-44: Effect of statute of limitations on committee's debts, 2:4
- 1988-45: Definition of national party committee, 2:4
- 1988-46: Corporation's solicitation of licensees, 2:4
- 1988-47: Publisher's donation of free magazines to candidate prohibited, 1:6

- 1988-48: Contributions to trade association PAC matched with charitable donations, 2:5
- 1988-49: Federal bankruptcy trustees not considered government contractors, 2:5

## COURT CASES

- FEC v.
- AFSCME-PQ, 1:11
  - Braun for Congress Committee, 1:10
  - Chipman C. Bull for Congress, 1:11
  - Californians for a Strong America, 1:9
  - Californians for a Strong America, 1:11
  - Citizens Party, 1:12
  - Dietl for Congress, 1:10
  - Ted Haley Congressional Committee, 1:9
  - Life Amendment Political Action Committee, 1:11
  - Populist Party, et al., 1:12
  - Cesar Rodriguez, 1:10
  - Taylor Congressional Committee, 1:10

- v. FEC
- USDC, 1:9

## 800 LINE

- Debt retirement by candidate committees, 1:7

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