

RECORD

March 1989

999 E Street NW

Washington DC

20463

Volume 15, Number 3

REGULATIONS

QUESTIONNAIRE ON ALLOCATION SENT TO STATE PARTIES

In February 1989, the Commission sent out a questionnaire to the state party chairmen of the two major parties. The purpose of the questionnaire is to gather information to help the agency revise the rules on the allocation of disbursements that influence both federal and nonfederal elections (11 CFR Part 106).¹ Because party committees are the group most broadly affected by this rulemaking, the Commission prepared the questionnaire to find out how they currently allocate mixed federal/nonfederal expenses and what percentages are used to determine the federal share. The answers to these questions will greatly assist the Commission's efforts to develop realistic allocation regulations. For example, knowing the amounts and percentages now being allocated to the federal side will allow the Commission to make informed decisions on whether to set fixed percentage formulas and, if so, at what level.

The agency believes that the timing of the questionnaire is opportune since the election season has recently concluded and party committees have just compiled final figures for their year-end reports. Although response to the questionnaire is voluntary, the Commission encourages state party chairmen to take advantage of the opportunity to affect the outcome of an important rulemaking by completing and returning the form.

Franked envelopes are provided for committees' responses, due March 15, 1989. Committees are not required to identify themselves. For further information, call Susan E. Propper, Assistant General Counsel for Regulations, at 800/424-9530 or 202/376-5690.

¹For further information on the proposed rulemaking, see the February 1989 issue, p. 6, and the October 1988 issue, pp. 1 and 6.

REPORTS

1989 REPORTING REMINDER

Political committees should be aware that the reporting schedule for 1989 changes because 1989 is a nonelection year. Reporting requirements are explained below.

Questions and requests for forms should be addressed to the Information Services Division. Call 800/424-9530 or 202/376-3120.

Congressional Candidate Committees

During a nonelection year, committees authorized by Congressional candidates report on a semiannual basis (not quarterly).

continued

TABLE OF CONTENTS

	REGULATIONS
1	Questionnaire on Allocation
	REPORTS
1	1989 Reporting Reminder
	800 LINE
2	Designating a Principal Campaign Committee
	COURT CASES
3	FEC v. The Holmes Committee
3	USDC v. FEC
3	Common Cause v. FEC (87-2224)
4	New Litigation
	STATISTICS
5	PAC Count
	COMPLIANCE
6	MUR 2175: Excessive and Prohibited Contributions Accepted by 1984 Presidential Campaign
7	FEDERAL REGISTER NOTICES
7	INDEX

REPORTS

continued

Presidential Candidate Committees

Committees authorized by Presidential candidates report on either a monthly or a quarterly basis. See 11 CFR 104.5(b)(2).

PACs and Party Committees

During a nonelection year, PACs and party committees report on either a semiannual or a monthly basis (not quarterly). Committees that filed quarterly reports during 1988 now file semiannual reports. Committees that filed monthly reports during 1988 must continue to file on a monthly basis during 1989 unless they change to a semiannual schedule for the nonelection year by notifying the Commission in advance by letter. See 11 CFR 104.5(c).

SEMIANNUAL REPORTS 1989

Report	Period Covered	Filing Date*
Mid-Year	1/1- 6/30	7/31/89
Year-End	7/1-12/31	1/31/90

MONTHLY REPORTS 1989

Report	Period Covered	Filing Date*
February	1/1- 1/31	2/20/89
March	2/1- 2/28	3/20/89
April	3/1- 3/31	4/20/89
May	4/1- 4/30	5/20/89
June	5/1- 5/31	6/20/89
July	6/1- 6/30	7/20/89
August	7/1- 7/31	8/20/89
September	8/1- 8/31	9/20/89
October	9/1- 9/30	10/20/89
November	10/1- 10/31	11/20/89
December	11/1- 11/30	12/20/89
Year-End	12/1- 12/31	1/31/90

**Reports sent by registered or certified mail must be postmarked by the filing date; otherwise they must be received by the filing date. 11 CFR 104.5(e).*

Committees Active in Special Elections

Authorized committees of candidates running in special elections (elections held to fill vacant seats) must file the appropriate pre- and post-election reports in addition to filing semiannual reports. 11 CFR 104.5(h). They may also have to file special notices on last-minute contributions. 11 CFR 104.5(f). See also AO 1988-32.

PACs and party committees filing semi-annually may also have to file special election reports if they make contributions or expenditures on behalf of candidates running in special elections. 11 CFR 104.5(h). Monthly filers do not file pre- and post-election reports for special elections. However, all PACs—including monthly filers—may be required to file reports on last-minute independent expenditures. See 11 CFR 104.4(b) and 104.5(g).

Note that special elections have been scheduled in the Third Congressional District of Alabama and the Fourth Congressional District of Indiana. Information on reporting requirements for these special elections appeared in the February 1989 Record.

Filing on Time

Reports must be filed on time. If a reporting due date falls on a Sunday or federal holiday, the report must be received (or postmarked, if sent registered or certified) before the due date. 11 CFR 104.5(e). The law does not allow extensions of filing deadlines under any circumstances.

800 LINE

DESIGNATING A PRINCIPAL CAMPAIGN COMMITTEE

Under what circumstances must an individual who plans to run for federal office in 1990 or 1992 designate a principal campaign committee? Individuals running for federal office in 1990 or 1992 must designate a principal campaign committee within 15 days of becoming a candidate. 11 CFR 101.1(a). Individuals become candidates once they raise or spend more than \$5,000 to influence their future election or when someone they authorize to work on their behalf raises or spends over \$5,000 to influence their election. See 11 CFR 100.3(a).

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)

How does a candidate designate a principal campaign committee? Candidates designate a principal campaign committee by filing a Statement of Candidacy on FEC Form 2 or a letter containing the same information, i.e., the name and address of the principal campaign committee; the candidate's name, address and party affiliation; the office sought and the district and state in which the office is sought. 11 CFR 101.1(a).

Does a candidate who ran in a previous election have to file a new Form 2 for a future campaign? Yes. A candidate in a previous election must file a new FEC Form 2 within 15 days after qualifying as a candidate in a future election. The candidate may either redesignate his or her previous campaign committee (if it has not terminated) or designate a new principal campaign committee. A redesignated committee retains its original identification number; a newly designated committee receives a new one.

Does the principal campaign committee of a candidate who ran in a previous election also have to file a new Statement of Organization? If the candidate designates a new principal campaign committee, the committee must file a new Statement of Organization (FEC Form 1) within 10 days after being designated. 11 CFR 102.1(a).

If the candidate redesignates an existing committee, the committee need only amend its Statement of Organization within 10 days to reflect any new information (e.g., a change in the committee's name or address). 11 CFR 102.2(a)(2). Redesignated committees are reminded that, if outstanding debts remain from the previous election, the committee must continue to report the debts as well as contributions that have been designated by contributors to retire them. 11 CFR 104.11; 110.1(b)(3) and (4); 110.2(b)(3) and (4).

Where are Forms 1 and 2 filed? U.S. House candidates and their principal campaign committees file all statements and reports with the Clerk of the House; U.S. Senate candidates and their principal campaign committees file with the Secretary of the Senate; Presidential candidates and their principal campaign committees file with the FEC. 11 CFR Part 105.

Copies of statements and reports must also be filed with state officers. House and Senate campaigns file in the state in which the candidate seeks election; Presidential campaigns file in the states in which expenditures are made. 2 U.S.C. §439(a).

COURT CASES

FEC v. THE HOLMES COMMITTEE

On December 28, 1988, the U.S. District Court for the Western District of Kentucky granted the FEC's motion for default judgment against The Holmes Committee (the principal campaign committee for Lee Holmes' 1986 bid for a House seat). Civil Action No. C88-0274-L(B).

The court decreed that the Committee violated the law by failing to file a Statement of Organization and five reports covering 1986 activity. Enjoining the Committee from future violations, the court imposed a \$30,000 civil penalty (\$5,000 for each violation). Under the court's order, the Committee must, within 15 days, pay the penalty and file the Statement and reports. The court also ordered The Holmes Committee to pay the FEC's court costs.

USDC v. FEC

On January 4, 1989, the U.S. Court of Appeals for the Second Circuit denied a petition for a rehearing filed by the United States Defense Committee (USDC). The appeals court had ruled in November 1988 that USDC's case was not ripe for judicial review and had remanded the case to the district court with instructions to dismiss the suit. Civil Action No. 88-6127. For a summary of this suit, see the January 1989 Record, p. 9.

COMMON CAUSE v. FEC (87-2224)

The U.S. District Court for the District of Columbia granted the FEC's motion to dismiss Common Cause's suit and to dissolve a protective order that had placed court documents under seal. In its order of January 11, 1989, the court noted that Common Cause did not oppose the FEC's motion.

Background

In its suit, filed August 12, 1987, Common Cause asked the court to declare that the FEC failed to take action within the required 120-day period on an administrative complaint Common Cause had filed with the Commission on October 28, 1986. Common Cause further asked the court to direct the FEC to take action within 30 days, pursuant to 2 U.S.C. §437g(a)(8). Civil Action No. 87-2224.

Common Cause had alleged in its administrative complaint that the National Republican Senatorial Committee had made excessive contributions to several candidates, a violation of 2 U.S.C. §441a(h).

continued

FEC's Motion to Dismiss Suit and Lift Seal

The Commission asked the court to dismiss Common Cause's suit because the agency had taken final action on the administrative complaint, thus rendering the litigation moot. On December 23, 1988, the Commission had voted to enter into a conciliation agreement with the National Republican Senatorial Committee and had then closed the file. Citing other "failure to act" cases filed against the agency pursuant to 2 U.S.C. §437g(a)(8), the FEC pointed out that the courts have granted similar dismissals once the agency has taken final action.

The FEC had originally requested that the court impose a seal on documents filed in the case that related to the administrative complaint, which was pending at the time and therefore subject to the confidentiality provision of 2 U.S.C. §437g(a)(12). That provision prohibits the agency from making public any information on administrative complaints until the case is resolved. The court imposed a protective seal on October 2, 1987.

Under another provision, however, the Commission must release to the public the results of its inquiries once an enforcement matter is resolved. 2 U.S.C. §437g(a)(4)(B)(i). In its motion to lift the protective seal, the FEC stated that the confidentiality requirements of §437g(a)(12) no longer applied since the agency had since closed the file on the case.

NEW LITIGATION**Fund for a Conservative Majority, Debtor**

On December 19, 1988, the U.S. Bankruptcy Court for the Eastern District of Virginia (Alexandria Division) granted the FEC's motion to file a brief as *amicus curiae* (friend of the court). The Commission's interest in this case concerns the application of the federal campaign finance law to a nonterminating political committee seeking Chapter 11 bankruptcy. Case No. 88-00924-A.

Harry P. Miller v. FEC

Harry Miller asks the court to declare that the FEC's dismissal of his complaint was contrary to law and to order the FEC to conform to the court's decision within 30 days, pursuant to 2 U.S.C. §437(g)(a)(8).

In his administrative complaint, Mr. Miller claimed that Bush-Quayle 88, Victory 88 and Texas public officials violated provisions of the public funding law.

U.S. District Court for the District of Columbia, Civil Action No. 89-0094, January 12, 1989.

Philip M. Stern v. FEC

Philip Stern asks the court to rule that the FEC acted contrary to law in dismissing an administrative complaint he had filed with the agency and to direct the FEC to take action against the respondents named in his complaint—the General Electric Company and its officers and directors. This suit was filed pursuant to 2 U.S.C. §437g(a)(8).

In his administrative complaint, Mr. Stern alleged that GE/PAC's contributions were not made for "political purposes" but to advance GE's lobbying interests and that GE was not therefore entitled to the exemption that permits a corporation to use general treasury funds for "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes...." [Emphasis added.] 2 U.S.C. §441b(b)(2)(C). He claimed that, as a result of using GE/PAC for lobbying rather than political purposes, GE's funding of the PAC resulted in prohibited corporate expenditures under 2 U.S.C. §441b(a).

Mr. Stern claimed that patterns in GE/PAC's contributions to 1986 candidates showed that the funds were given to promote the company's lobbying interests. For example, he pointed out that the PAC contributed to incumbent House candidates—including those without opponents—98 percent of the time and that GE/PAC gave to both the incumbent and the challenger in five Senate races. In his civil complaint, Mr. Stern points to similar contribution patterns for the 1988 election cycle.

U.S. District Court for the District of Columbia; Civil Action No. 89-0089 (NHJ), January 12, 1989.

FEC v. Survival Education Fund, Inc. et al.

The FEC asks the court to declare that:

- o The Survival Education Fund, Inc., a nonprofit corporation, made corporate expenditures in connection with a federal election by financing direct mail fundraising solicitations in a joint effort with the National Mobilization for Survival, a closely related unincorporated group (2 U.S.C. §441b(a)); and
- o Both defendants (Survival Education Fund and National Mobilization for Survival) failed to include the required disclaimer on the solicitation material, which expressly advocated the defeat of a clearly identified candidate (2 U.S.C. §441d(a)(3)).

The FEC further asks the court to assess the appropriate civil penalties against defendants (2 U.S.C. §437g(a)(6)(C)), permanently enjoin them from further similar violations and award the FEC court costs.

U.S. District Court for the Southern District of New York, Civil Action No. 89-CIV-0347, January 17, 1989.

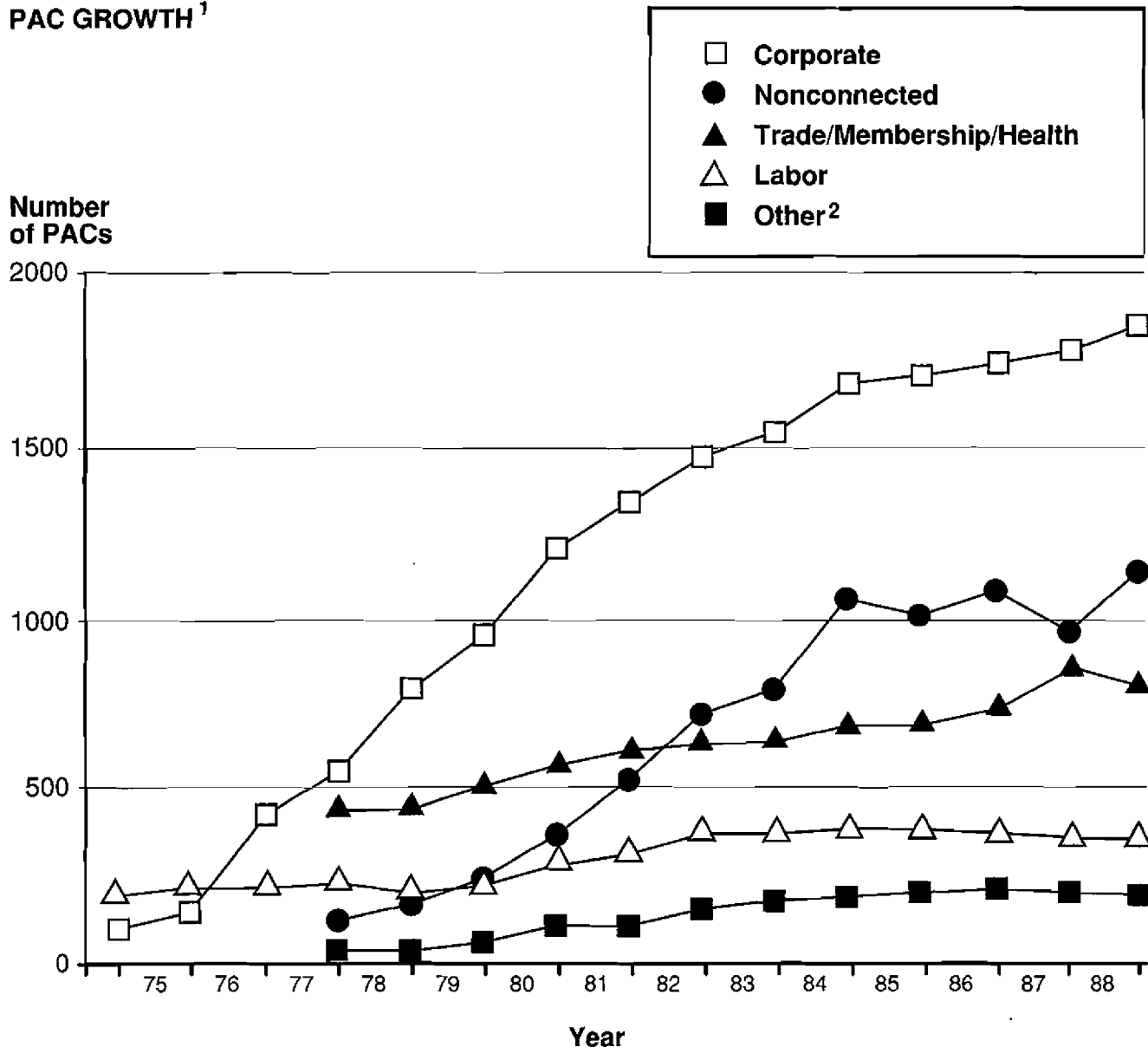
STATISTICS

The graph plots the total number of PACs from 1974 through 1988 and is based on the FEC's press release of January 13, 1989. Financial activity is not reflected. Statistics on the 1987-88 election cycle will be issued at a later date.

1988 PAC COUNT

At the end of 1988, 4,268 PACs were registered with the FEC, an increase of 103 over the 1987 year-end total. (The term PAC or political action committee refers to any political committee not authorized by a federal candidate or established by a political party.)

PAC GROWTH¹



¹For the years 1974 through 1976, numbers are not available for Nonconnected PACs, Trade/Membership/Health PACs or PACs in the "Other" category.

²"Other" category consists of PACs formed by corporations without capital stock and incorporated cooperatives.



MUR 2175: Excessive and Prohibited Contributions Accepted by 1984 Presidential Campaign

A 1984 Presidential primary candidate, his campaign committee, the committee treasurer and two media firms doing business with the campaign were the respondents in MUR 2175, which was resolved through conciliation agreements that included civil penalties.

Complaint

The Audit Division discovered several possible violations of law during a mandatory audit of a 1984 Presidential primary campaign that received matching funds. With the Commission's approval, these matters were referred to the Office of General Counsel.

General Counsel's Report

Prohibited Extensions of Credit. The Audit Division alleged that two media firms had made prohibited corporate contributions to the campaign by extending credit outside the normal course of business and by failing to make a reasonable effort to collect the debt. 11 CFR 100.7(a)(4) and 114.10. Both firms were able to demonstrate commercially reasonable collection efforts (for example, repeatedly seeking payment, engaging counsel to assist in debt collection, threatening law suits and, in one case, successfully suing the campaign). As to the initial extension of credit, both firms purchased media time for the campaign up front, requiring payment at a later time. This appeared to be the ordinary practice of one firm, but not of the other. That firm's contract with the campaign specified: "we agree to pay media bills for you in advance, contrary to our usual policy, providing you keep your account current within 60 days of billing...." The General Counsel concluded that the firm's extension of credit of approximately \$103,000 to the campaign was outside the ordinary course of business and resulted in a prohibited corporate contribution (a violation of 2 U.S.C. §§441a(f) and 441b(a)).

Late Action to Correct Excessive Contributions. Audit staff found that the campaign received excessive contributions from 49 individuals. The excessive portions of their contributions, amounting to \$19,607, were either refunded or reattributed to other contributors, but not within a reasonable time. On the average, it took the campaign 241 days from the date of receipt to take remedial action. The campaign's failure to refund or reattribute the excessive contributions

within a reasonable time resulted in violations of the contribution limits. 2 U.S.C. §§441a(a)(1)(A) and 441a(f).

Candidate's Excessive Expenditures Through Use of Credit Card. Under 26 U.S.C. §9035(a), a candidate who receives primary matching funds must limit spending from personal funds to \$50,000. By July 1983, the candidate had already spent \$48,750 against this limit. In the General Counsel's view, the candidate exceeded his limit by using his personal credit card for campaign purchases that exceeded \$1,250. From August 1983 through August 1984, the credit card balance for campaign expenses exceeded \$1,250 on numerous monthly billings (and reached over \$20,000 on several occasions). Because the candidate was personally liable for the unpaid balance and because payments made during the campaign period were 266 days late, on average, the candidate exceeded his personal spending limit when the campaign failed to pay the credit card balance within a reasonable time.

Expenditures Made with Spouse's Credit Card. The candidate's wife charged campaign expenditures on a credit card in both her name and the committee's name. She and the campaign, therefore, were jointly and individually liable for payment on the account. The General Counsel concluded that, because of her liability, she made excessive contributions to her husband's campaign whenever credit card charges for campaign expenses exceeded \$1,000.

Commission Determination

The Commission decided to take no action concerning possibly excessive contributions made by the candidate's wife. With respect to the other violations, on August 25, 1988, the Commission entered into a conciliation agreement in which the candidate, the campaign committee and the committee treasurer agreed to pay a \$12,000 civil penalty. The Commission found probable cause to believe the media vendor had made a prohibited contribution and, on November 7, 1988, voted to enter into a conciliation agreement that included a \$5,000 civil penalty.

FEDERAL REGISTER**INDEX****FEDERAL REGISTER NOTICES**

Copies of notices are available in the Public Records Office.

Notice	Title
1989-1	Filing Dates for Alabama Special Elections (54 <u>Fed. Reg.</u> 2227, January 19, 1989)
1989-2	Filing Dates for Indiana Special Election (54 <u>Fed. Reg.</u> 2228, January 19, 1989)
1989-3	11 CFR Parts 110, 113, 114 and 116; Debts Owed by Candidates and Political Committees; Additional Public Hearing Date (54 <u>Fed. Reg.</u> 6684, February 14, 1989)

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
-Bull for Congress,	1:11
-Californians for a Strong America (88-1554),	1:9
-Californians for a Strong America (88-06499),	1:11
-Citizens Party,	1:12
-Dietl for Congress,	1:10
-Haley Congressional Committee,	1:9
-Holmes Committee,	3:3
-Life Amendment Political Action Committee,	1:11
-Populist Party,	1:12
-Rodriguez,	1:10
-Survival Education Fund, Inc.,	3:4
-Taylor Congressional Committee,	1:10
Fund for a Conservative Majority, Debtor,	3:4
_____ v. FEC	
-Common Cause (87-2224),	3:3
-Miller,	3:4
-Stern,	3:4
-USDC,	1:9; 3:3

800 LINE

Debt retirement by candidate committees,	1:7
Designating a Principal Campaign Committee,	3:2

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.

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

Official Business

Bulk Rate Mail
Postage and Fees Paid
Federal Election Commission
Permit Number G-31

