

RECORD

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LEGISLATION

FEC RECOMMENDS CHANGES IN ELECTION LAWS

On March 16, 1989, the Commission transmitted to Congress and the President 30 recommendations for changes in federal election laws. If enacted, the recommendations would enhance the agency's ability to administer the Federal Election Campaign Act and the Presidential public funding statutes. The Commission is required by law to submit recommendations each year "for any legislative or other action the Commission considers appropriate...." 2 U.S.C. §438(a)(9).

Included in the package were five new proposals, urging Congress to:

- o Modify the scheme of financing Presidential elections through the \$1 income tax checkoff (26 U.S.C. §6096); at the current checkoff rate, by 1996 the Presidential Election Campaign Fund will lack sufficient funds to finance all phases of the Presidential elections;
- o Reevaluate the Commission's role in regulating political committees that engage in both federal and nonfederal election activities;
- o Amend the law to reflect the Supreme Court's decision in FEC v. Massachusetts Citizens for Life, Inc.; the Court determined that 2 U.S.C. §441b was unconstitutional as applied to independent expenditures made by certain nonprofit corporations;
- o Revise the disclaimer notice provisions in 2 U.S.C. §441d to require registered committees to display an appropriate disclaimer notice in any communication issued to the general public, regardless of its purpose or how it is distributed; and

COGEL CONFERENCE

FEC staff will be conducting workshops on campaign finance along with their Canadian, state and municipal counterparts at the 11th annual conference of the Council on Governmental Ethics Laws (COGEL). The conference will be held December 6 to 8, 1989, at the Doubletree Hotel in New Orleans.

For information about COGEL or the conference, call Joyce Bullock, Council of State Governments-COGEL, 606/231-1920.

- o Amend 2 U.S.C. §438(b) to permit the Commission to conduct random audits of political committees.

Two of the recommendations submitted in 1988 were revised this year. In these, the Commission recommended that Congress:

- o Amend 2 U.S.C. §432(g) to make the FEC the sole point of entry for all disclosure documents filed by federal candidates and committees; House and Senate candidate committees currently file, respectively, with the Clerk of the House and the Secretary of the Senate; and
- o Change the reporting deadline for monthly filers from the 20th to the 15th of the month.

Of the remaining 23 legislative recommendations, which the Commission had also submitted in 1988, several sought changes in the Presidential public funding program. The Commission again asked Congress to eliminate the state-by-state

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Presidential primary expenditure limits, combine the fundraising limit with the overall expenditure limit, and raise the qualifying threshold for primary matching funds. Other recommendations pertained to contributions and expenditures, compliance, disclaimers, public disclosure, registration, reporting and such miscellaneous issues as honoraria

This year, for the first time, the Commission established a Legislative Recommendations Committee—composed of Chairman Danny L. McDonald and Commissioner Joan D. Aikens—to explain and build support for the proposals in Congress.

The full text of the recommendations will be published later this year in the Commission's 1988 Annual Report. In the meantime, copies of the recommendations are available from the FEC's Public Records Office.

and that, unless Congress modifies the current income tax checkoff system, the Fund will be insufficient to cover expected demands for the 1996 elections.

Financed with dollars voluntarily checked off by individual taxpayers on their annual 1040 tax returns, the Fund is the sole source of public money for the three phases of Presidential elections: primaries, conventions and general elections. As Commission Chairman Danny L. McDonald observed in the letter to the committee members, the shortfall in the Fund "stems from two conflicting trends. Tax dollars flowing into the Fund have declined, while payouts have sharply increased." The chart below illustrates these trends, depicting changes in disbursements from the Fund and in the number of \$1 checkoffs going into it each year.

The Chairman pointed out that the current law provides procedures for financing Presidential elections when public funds are insufficient. General elections and national conventions would be given priority in the distribution of available money from the Fund. If funds left over were insufficient to make full matching payments to all eligible primary candidates, then prorated primary matching payments would be made. Furthermore, if there were insufficient funds for full general election and convention financing, these payments would also be prorated. See 26 U.S.C. §§9006(c) and 9037(a). "Under these circumstances," Chairman McDonald pointed out, "private contributions would be reintroduced into the general election process to make up for any shortfall in the Fund."

PUBLIC FUNDING

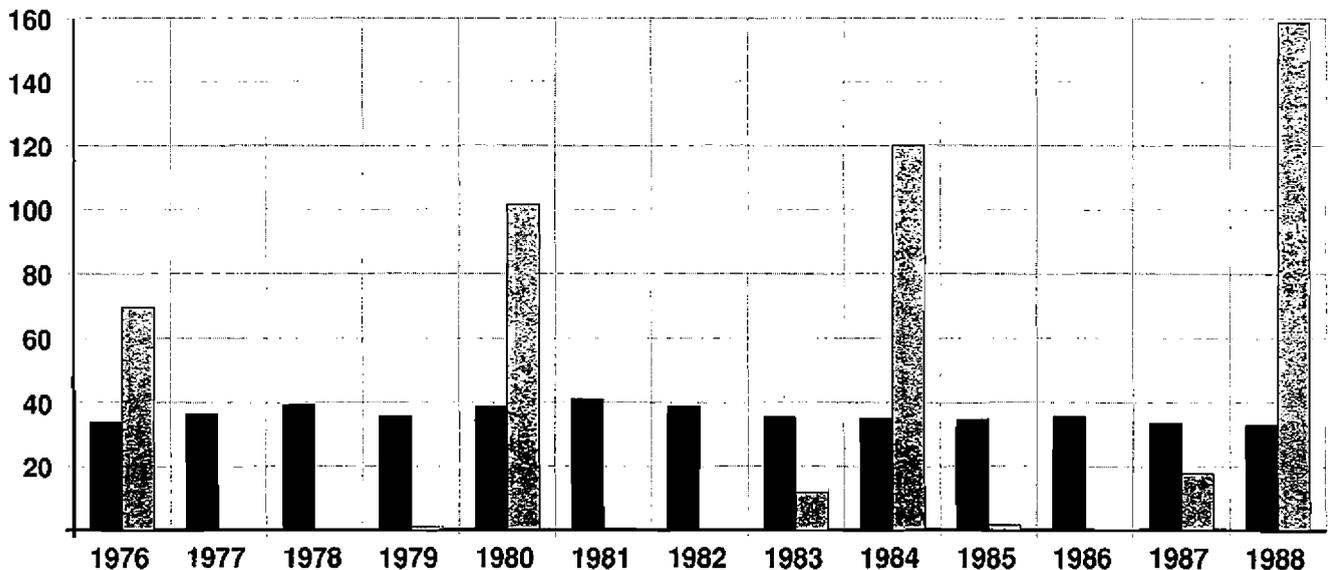
COMMISSION ALERTS CONGRESS TO DECLINE IN AVAILABLE PUBLIC FUNDS

On April 3, 1989, the Commission sent a special communication to the members of the House and Senate oversight committees alerting them to the crisis of declining funds in the Presidential public funding system. The Commission alerted the members that the Presidential Election Campaign Fund is running out of money

PRESIDENTIAL ELECTION CAMPAIGN FUND

Millions of Dollars

■ Check-Off Funds
 ▨ Disbursements



AUDITS

FEC RELEASES FINAL AUDIT REPORT FOR DU PONT CAMPAIGN

On March 16, 1989, the FEC released the final audit report for Pete du Pont's 1988 primary committee, Pete du Pont for President. This was the first 1988 Presidential audit to be completed and publicly released.

The Commission is required by law to audit the campaign finances of all committees receiving public funds to ensure that the money has been used only to cover "qualified campaign expenses," as defined in 26 U.S.C. §9032(9). See 26 U.S.C. §§9008(g) and 9038.

The audit report reviews and analyzes the committee's compliance with the Federal Election Campaign Act and with the Presidential public funding statutes of the Internal Revenue Code.

Among its findings, the Commission determined that the du Pont committee had insufficiently allocated certain expenditures to its Iowa expenditure limit. The audit report indicated that the du Pont committee should have allocated to the Iowa limit a larger portion of the expenditures incurred for a computer-based telemarketing and mail program. According to calculations by the FEC's Audit Division, the telemarketing program's total costs amounted to \$745,439.24; the committee allocated \$117,606.04 of the total to its expenditures for Iowa. Review of the records revealed, however, that Iowa was the principal focus of the telemarketing program. Consequently, the Commission concluded that a greater proportion of the telemarketing costs should have been allocated to the Iowa expenditure limit. Once the Commission reallocated the telemarketing costs, the agency found that the committee had exceeded the Iowa expenditure limitation by \$77,447.42.

The Federal Election Campaign Act prohibits Presidential primary candidates from exceeding the state-by-state expenditure limits (2 U.S.C. §441a(b)), while the Presidential Primary Matching Payment Account Act considers excessive expenditures in primary election campaigns to be "nonqualified campaign expenses." Committees using matching payments for nonqualified campaign expenses must repay a portion of such expenditures to the U.S. Treasury. 26 U.S.C. §9038(b)(2). The repayment must represent that

portion of the nonqualified expenditures that was defrayed with public funds. The FEC calculates the amount of the repayment with a formula described in 11 CFR 9007.2. Based on this formula, the Commission made an initial determination on March 9, 1989, that the committee had to repay \$23,254.83 to the Treasury.

A copy of the complete final audit report for Pete du Pont for President is available from the FEC's Public Records Office.

REGULATIONS

RULES GOVERNING TRADE ASSOCIATION SOLICITATIONS CLARIFIED

On March 10, 1989, the Commission sent to Congress an amended regulation clarifying the rules governing trade association solicitations of parent and subsidiary corporations, 11 CFR 114.8(f). The revised regulation was published in the Federal Register on March 15, 1989. See 54 Fed. Reg. 10622.

Section 114.8 sets forth the rules under which a trade association and its separate segregated fund may solicit the restricted class of its member corporations. The new subsection 114.8(f) clarifies that, if a subsidiary corporation is a member of a trade association but its parent corporation is not, the trade association may not solicit the restricted class of the parent corporation. By the same token, if the parent is a member of the trade association and the subsidiary is not, then the association may only solicit the restricted class of the parent.

The subsection also specifies the categories of persons constituting the restricted class. The restricted class of a solicitable corporation includes the stockholders and their families and the executive and administrative personnel and their families. It should be noted that this new regulation does not represent any change in the Commission's longstanding policy regarding trade association solicitations.

After this amendment to the regulations has been before Congress for 30 legislative days, the Commission will publish a notice in the Federal Register to announce its effective date.

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)

STATISTICS

MAJOR PARTY ACTIVITY IN 1988

On March 27, 1989, the FEC released a statistical study of the financial activity of the Republican and Democratic parties for the 1987-88 election cycle.

The study shows that, while the Republicans still lead the Democrats in total receipts and expenditures, Democratic committee activity in 1988 increased nearly 100 percent over 1986 in three key areas: fundraising, coordinated party expenditures and total disbursements. However, in comparison with the last Presidential election cycle (1984), Democratic gains in these areas were more modest. The Democrats experienced a 30 percent increase in total receipts and a 25 percent increase in total disbursements since 1984; coordinated party expenditures in 1988, however, were almost 100 percent greater than in 1984. Republican gains were made primarily in the area of coordinated party expenditures—up 58.7 percent from 1986 and up 12.9 percent from 1984. Total receipts for the Republicans were up 3.2 percent from 1986, but they were down 11.6 percent from 1984. The Republicans' total disbursements declined 0.7 percent in 1988 from 1986, while they were down 14.6 percent from 1984.

The table at the right summarizes major party receipts, expenditures, contributions to candidates and coordinated party expenditures in the past three election cycles. (Coordinated party expenditures are made by parties on behalf of federal candidates and are subject to special limitations. 2 U.S.C. §441a(d).) The figures,

expressed in millions of dollars, combine state and local committees with national party committees:

	83-84	85-86	87-88
Democrats			
Raised*	\$98.5	\$64.8	\$127.9
Spent*	97.4	65.9	121.9
Contributed	2.6	1.7	1.7
Coordinated Exp.	9.0	9.0	17.9
Republicans			
Raised*	\$297.9	\$255.2	\$263.3
Spent*	300.8	258.9	257.0
Contributed	4.9	3.4	3.4
Coordinated Exp.	20.1	14.3	22.7

*Excludes transfers between certain affiliated committees.

Chart I on the following page depicts 1988 support of candidates (i.e., contributions to candidates and coordinated party expenditures) made by the various committees within the major parties—the Republican and Democratic national, Senatorial and Congressional campaign committees. The graph also shows aggregate candidate support by state and local party committees. As Chart I demonstrates, the Republicans outspent the Democrats in supporting House and Senate candidates at the national level, but the Democrats reported spending more than twice as much as the Republicans reported at the state and local levels. This difference may be explained, in part, by "agency agreements" between Republican state parties and the national Republican committees. Under such agreements, state committees designate the national committees to make coordinated party expenditures instead of the state committees.

Chart II compares contributions and coordinated expenditures made by the two parties for Congressional candidates over the past 10 years. As can be seen in this chart, the Republicans in the past election maintained their support of candidates at approximately the same level as in 1986—i.e., increasing their overall support of candidates for both houses of Congress by only 0.85 percent. At the same time, the Democrats in 1988 increased their support of House and Senate candidates by more than 48 percent over 1986.

In addition to describing nationwide party activity, the FEC's 1988 study provides state-by-state and per-candidate figures on party expenditures in the 1988 elections.

A copy of the FEC statistical press release detailing this information is available from the agency's Public Records Office. Call 800/424-9530. The Final Report on 1988 party activity will be released later this year.

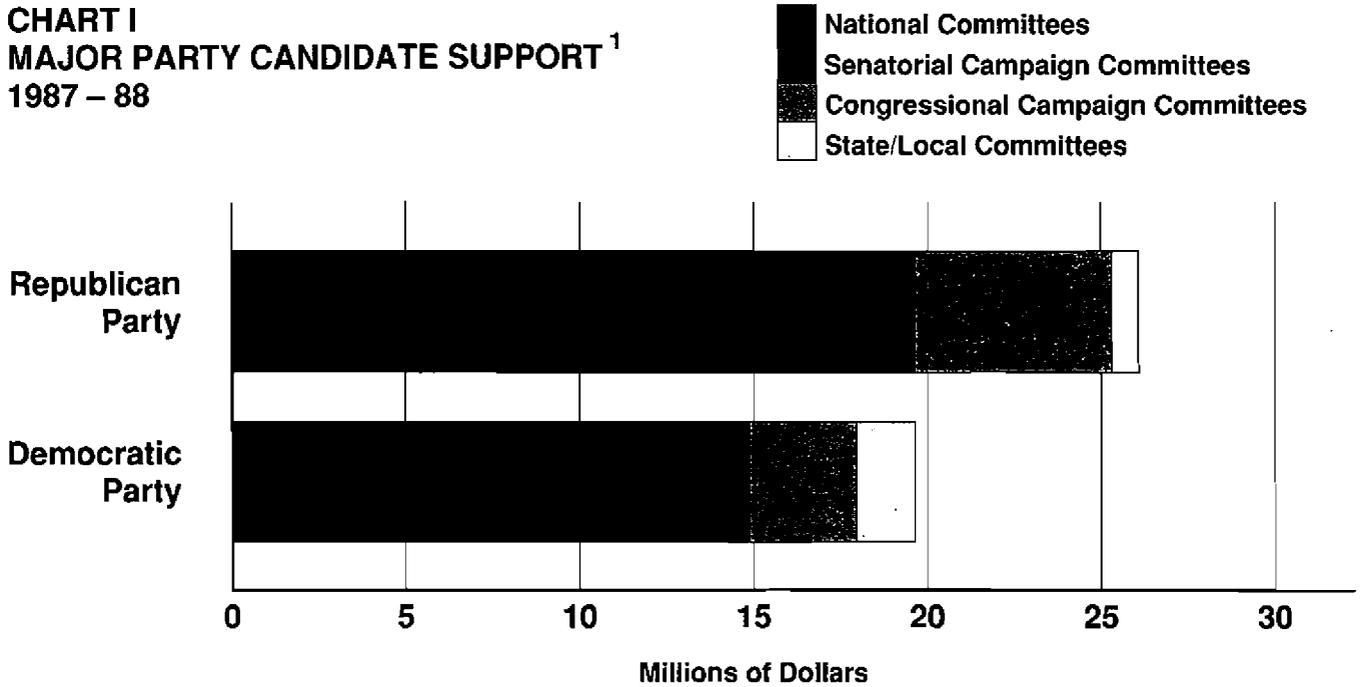
FEDERAL REGISTER

FEDERAL REGISTER NOTICES

Copies of notices are available in the Public Records Office.

Notice	Title
1989-4	11 CFR 114.8(f); Trade Association Solicitations: Final Rule, Transmittal of Regulation to Congress (54 Fed. Reg. 10622, March 15, 1989)
1989-5	Filing Dates for Wyoming Special Election (54 Fed. Reg. 12954, March 29, 1989)

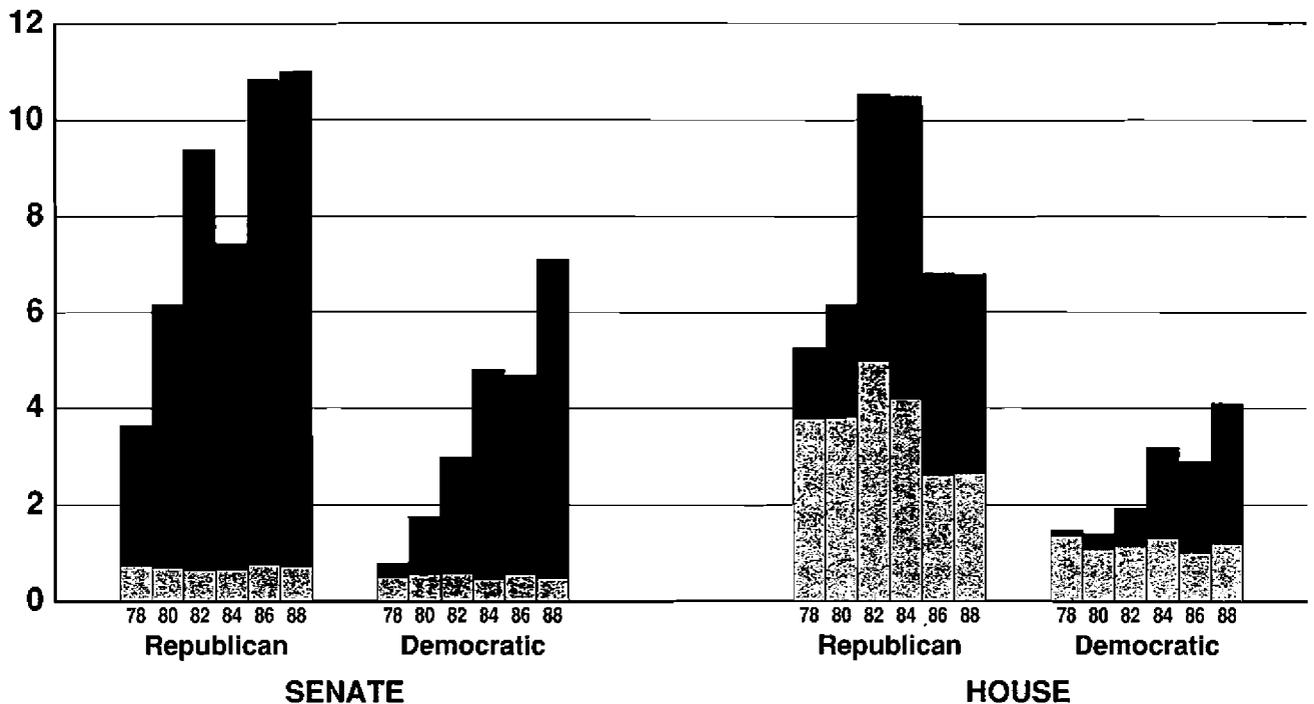
**CHART I
MAJOR PARTY CANDIDATE SUPPORT¹
1987 - 88**



**CHART II
PARTY SUPPORT OF CONGRESSIONAL
CANDIDATES, 1978 - 88**

Millions
of Dollars

Coordinated Party Expenditures
Contributions



¹Support includes both contributions to and coordinated party expenditures (§441a(d)) on behalf of federal candidates.

COMPLIANCE

MUR 2545: Excessive Contributions Made and Accepted by PAC

This MUR, resolved through pre-probable cause conciliation, involved the acceptance by a corporate PAC of excessive contributions made by seven individuals (all employees of the sponsoring corporation). The PAC concurrently made excessive contributions to both a Senate and a House campaign committee.

Background

The MUR was internally generated by a referral from the FEC's Reports Analysis Division (RAD). A regular review of the PAC's 1986 reports turned up the contributions to and from the PAC that appeared to exceed the election law's limitations. RAD referred the matter to the General Counsel's Office.

General Counsel's Report

The Commission found reason to believe that the PAC, a Senate campaign committee, a House campaign committee and their respective treasurers had violated 2 U.S.C. §441a(f), which prohibits knowingly accepting an excessive contribution. The Commission also found reason to believe that the PAC and its treasurer had violated 2 U.S.C. §441a(a)(1)(A), which places a limit of \$1,000, per candidate, per election, on contributions to candidates made by individuals and committees other than multicandidate committees. Finally, the Commission found reason to believe that the seven individuals had violated 2 U.S.C. §441a(a)(1)(C) by making contributions exceeding \$5,000 per year to a PAC.

On its 1986 pre-general election report, the PAC disclosed contributions received from seven individuals which, when combined with previous contributions from those persons, ranged from \$10,000 to \$12,800 per contributor per calendar year. The PAC contended that the money had been raised for use in nonfederal elections; the PAC had mistakenly believed that federal prohibitions and limitations on contributions did not apply to funds raised for nonfederal activity.¹ The seven contributors also claimed that they had been told by the PAC that the limitation applied only to contributions intended for use in federal elections and that their contributions were for use

in state and local elections only. RAD advised the PAC to refund the excessive portions of the contributions. The PAC later refunded \$45,601 of the \$48,000 in excessive contributions made by the seven individuals.²

The PAC's 1986 July quarterly report disclosed a \$5,000 contribution to a Senate campaign and a \$2,000 contribution to a House campaign. Only a multicandidate committee can make contributions to federal candidates in excess of \$1,000 per candidate, per election, but the PAC had not met the law's qualifications for multicandidate committees.³ The PAC asserted that its contribution to the Senate campaign was meant for the candidate's state campaign committee and that the Senate committee had not alerted the PAC that it was a federal campaign committee. The PAC later asked the campaigns to refund the excessive portions of its contributions; both campaigns complied.

The Commission determined that, by making excessive contributions of \$4,000 and \$1,000 to the Senate and House campaign committees, the PAC had violated section 441a(a)(1)(A). In addition, the two candidate committees and their treasurers had violated section 441a(f) by accepting the excessive contributions.

Conciliation Agreements

The corporate PAC, the seven individuals and the two campaign committees expressed a desire to enter into conciliation agreements with the Commission prior to the Commission's finding probable cause to believe violations had occurred. The House campaign was the first to settle the matter by agreeing to pay a civil penalty of \$250. Later, while maintaining that its violations were the result of reasonable errors, the PAC agreed to pay a civil penalty of \$7,500 for its violations. At the same time, the seven individuals agreed to pay civil penalties ranging from \$500 to \$780 each, with a total of \$4,800 paid by the seven. Lastly, the Senate campaign committee asserted in its agreement that it "did not knowingly and willfully violate the law," but it agreed to pay a civil penalty of \$750, thereby settling the matter.

²The PAC subsequently reported the remaining \$2,398.64 in excessive contributions as a debt.

³To qualify as a multicandidate committee, a political committee must be registered with the FEC for six months, have more than 50 contributors, and have made contributions to five or more federal candidates. See 2 U.S.C. section 441a(a)(4) and 11 CFR 100.5(e)(3).

¹A committee with only one account for both federal and nonfederal activity may accept only contributions that are permissible under the Act and regulations, regardless of whether the contributions are to be used for federal, state or local elections. See 11 CFR 102.5(a)(1)(i).

COURT CASES

FEC v. FURGATCH (88-6047)

On March 8, 1989, the U.S. Court of Appeals for the Ninth Circuit issued an opinion affirming in part the district court's decision in FEC v. Harvey Furgatch (Civil Action No. 86-6047). The appeals court upheld the lower court's imposition of a \$25,000 civil penalty assessed for violations of the election law related to independent expenditures Mr. Furgatch had made during the 1980 Presidential campaign. The appeals court also vacated a permanent injunction against Mr. Furgatch imposed by the district court. The injunction was remanded to the lower court with instructions to limit its duration and to specify the conduct it prohibited.

On March 22, 1989, the FEC filed a petition for a rehearing by the appeals court and a suggestion for rehearing en banc. A decision in this matter is pending.

Background

In January 1987 the appeals court issued a separate decision related to Mr. Furgatch's independent expenditures. In FEC v. Furgatch, the court determined that Mr. Furgatch had violated the election law by failing to report his expenditures (amounting to \$25,008) for two newspaper ads and by failing in one of them to state that the ad was not authorized by any candidate or candidate's committee. 2 U.S.C. §§434(e)(1-2) and 441(d)(a), respectively. The decision reversed and remanded a district court finding that Mr. Furgatch had not violated the election law.¹

On remand, in concordance with the appeals court's interpretation of the "express advocacy" standards, the district court found that Mr. Furgatch had violated the election law and assessed a civil penalty of \$25,000. The court also permanently enjoined the defendant from future similar violations of the law.

Mr. Furgatch subsequently petitioned the appeals court to find that the district court had abused its discretion in assessing a \$25,000 penalty. He also asked the appeals court to find that the lower court's permanent injunction was not authorized by the election law, was impermissibly vague and was not imposed in compliance with Rule 65(d) of the Federal Rules of Civil Procedure.

Appeals Court Decision

In finding that the district court had not abused its discretion in imposing the civil penalty, the appeals court observed that the Federal Election Campaign Act (the Act) permits a court to assess a civil penalty "which does not exceed the greater of \$5,000 or an amount equal to any contribution or expenditure involved" in the violation. 2 U.S.C. §437g(a)(6)(B). Since the total expenditures Mr. Furgatch had made for the ads amounted to \$25,008, the district court had assessed a \$25,000 penalty.

With regard to the permanent injunction, Mr. Furgatch had claimed that the Act permitted a court to issue an injunction only when a person "is about to commit" a violation of the law. The FEC claimed that the relevant statute, 2 U.S.C. §437g(a)(6)(B), gave a court the authority to issue an injunction on the basis of either a past or a threatened future violation. Admitting that the language of the statute did not clearly indicate whether Congress intended to limit injunctive relief to cases of imminent violations of the Act, the court cited legislative history to conclude that the FEC was correct in its interpretation of section 437g.

Nevertheless, the court said, the district court could not issue an injunction pursuant to section 437g(a)(6)(B) unless there was a likelihood of future violations. The court found that although the record supported a finding that Mr. Furgatch was likely to violate the election law again, it did not justify a permanent injunction—that is, an injunction lasting the duration of his life.

In remanding the injunction to the lower court, the appeals court instructed it to limit the injunction to a "reasonable duration." The appeals court also required the district court to state, in compliance with Rule 65(d), the reasons for the injunction and the specific actions restrained by it.

FEC's Petition for Rehearing

In petitioning for rehearing on the remand limiting the duration of the permanent injunction, the FEC claims that the district court's permanent injunction against the defendant was consistent with the appeals court's own observation that Mr. Furgatch was likely to commit further violations of the law. The district court's action was also consistent, the FEC claims, with the explicit authority given to the courts in 2 U.S.C. §437g(a)(6)(B) to issue a "permanent" injunction "upon a proper showing that the person involved has committed" a violation of the election law.

The appeals court's decision on the rehearing is pending.

¹FEC v. Furgatch, 807 F.2d 857 (9th Cir). For a summary of this decision, see the March 1987 Record.

FEC v. COMMITTEE TO ELECT BENNIE BATTS

On February 14, 1989, the U.S. District Court for the Southern District of New York granted the FEC's motion for summary judgment in FEC v. Committee to Elect Bennie O. Batts (Civil Action No. 87-5789(GLG)). The committee was Mr. Batts' principal campaign committee for his unsuccessful 1984 primary campaign in New York's 20th Congressional District.

The court found that the committee and its acting treasurer, Evelyn Batts (the candidate's wife), violated the election law by:

- o Failing to amend its Statement of Organization to reflect Mrs. Batts' actual role as treasurer and as custodian of the committee's books and accounts and to disclose a campaign depository (2 U.S.C. §433(c));
- o Commingling committee funds with the personal funds of Mrs. Batts in Mrs. Batts' personal bank account (2 U.S.C. §432(b)(3));
- o Failing to use the official campaign depository for receiving contributions and making expenditures (2 U.S.C. §432(h)(1)); and
- o Knowingly accepting more than \$10,000 in excessive contributions from Mrs. Batts' personal account (2 U.S.C. §441a(f)).

The court also found that Mrs. Batts personally violated the election law by making excessive contributions from her personal account.

Observing that the committee's violations had resulted from "at most...sloppy bookkeeping and unprofessional behavior," and that there was no implication that the defendants had been "motivated by personal gain," the court assessed civil penalties of \$100 against the committee and its acting treasurer, Mrs. Batts. The court also assessed a \$1 civil penalty against Mrs. Batts personally. In addition, the court permanently enjoined the defendants from similar future violations of the election law.

FEC v. BOB RICHARDS FOR PRESIDENT COMMITTEE (88-2832)

On March 22, 1989, the U.S. District Court for the District of Columbia issued a final consent order and judgment in FEC v. Bob Richards for President Committee, Washington, D.C. (Civil Action No. 88-2832). The Richards (Washington) committee is a nonauthorized committee affiliated with the Waco, Texas, Bob Richards for President Committee, Mr. Richards' principal campaign committee for his 1984 Presidential campaign.

By the terms of the consent order, the court declared that the Richards (Washington) committee violated the election law and FEC regulations by:

- o Failing to file an amended Statement of Organization (FEC Form 1) reflecting its affiliation with the Richards (Texas) committee (2 U.S.C. §433(c));

- o Using Mr. Richards' name in its committee name (a nonauthorized committee may not use a candidate's name in its committee name) (2 U.S.C. §432(e)(4));
- o Knowingly accepting an excessive contribution in the form of a \$60,000 loan from the Populist Party (2 U.S.C. §441a(f));
- o Transferring \$5,000 to the Richards (Texas) committee from funds derived from excessive (i.e., prohibited) contributions (11 CFR 102.6(a)(1)(iv)); and
- o Failing to include an authorization notice in a solicitation letter that expressly advocated Mr. Richards' election (2 U.S.C. §441d(a)).

The consent order required the defendants to:

- o File the amended Statement of Organization, reflecting the Richards (Washington) committee's affiliation with the Richards (Texas) committee, with the Commission within 20 days; and
- o Pay a civil penalty of \$15,000 within 20 days.

The court also permanently enjoined the defendants from future similar violations of the election law.

FEC v. POPULIST PARTY

On March 22, 1989, the U.S. District Court for the District of Columbia issued a final consent order and judgment in FEC v. Populist Party, et al. (Civil Action No. 88-0127). By the terms of the consent order, the court declared that the Populist Party, a political committee, and Willis Carto, acting as treasurer, violated the election law and regulations by:

- o Failing to file 1985 mid-year and year-end reports on time (2 U.S.C. §434(a)(4)(A)(iv));
- o Failing to file, in a timely manner, amended Statements of Organization reflecting Mr. Carto's role as treasurer of the committee and a change in the committee's campaign depository (2 U.S.C. §433(c));
- o Failing to file, in a timely manner, quarterly reports for April, July and October 1986 (2 U.S.C. §434(a)(A)(i));
- o Failing to file, in a timely manner, a 1986 post-general election report (2 U.S.C. §434(a)(4)(A)(iii));
- o Failing to disclose in any report the purpose of approximately \$8,000 in operating expenditures made to one payee (2 U.S.C. §434(a)(4)(iii));
- o Failing to disclose, in a timely manner, the receipt of a \$500 contribution from an individual (2 U.S.C. §434(b)(3)(A));
- o Failing to disclose and continuously report certain outstanding debts and obligations, amounting to approximately \$299,817 (2 U.S.C. §434(b)(8); 11 CFR 104.11); and
- o Knowingly accepting corporate contributions (2 U.S.C. §441b(a)).

The court also found that the corporations had violated the law in making contributions to

the committee. The Spotlight, a weekly newspaper, and its owner, Cordite Fidelity, Inc., had made \$10,479 in prohibited corporate contributions; Liberty Lobby, Inc., had contributed \$7,500. The court also found that Mr. Carto, in his capacity as a director or officer of both corporations (in addition to being treasurer of the Populist Party), had violated 2 U.S.C. §441(b) by consenting to the corporate disbursements.

The consent order required the defendants Populist Party, Liberty Lobby, Inc., Cordite Fidelity, Inc., The Spotlight and Mr. Carto, both personally and as treasurer of the Populist Party, to pay a civil penalty of \$20,000 within 20 days; the defendants were jointly and severally liable for the payment. The court also permanently enjoined the defendants from similar future violations of the election law.

NEW LITIGATION

FEC v. Mark Weinberg

The FEC asks the district court to declare that Mark Weinberg, an individual working in the commodities market, violated the terms of a conciliation agreement entered into with the Commission in September 1988.

According to the terms of the conciliation agreement, Mr. Weinberg agreed to pay a \$17,000 civil penalty for knowing and willful violations of sections 441a(a)(1)(A) and 441a(a)(3) of the election law. As of the filing date of this action, the Commission had not received any payments from the defendant. The election law permits the FEC to institute a civil action against persons believed to have violated any provision of a conciliation agreement. 2 U.S.C. §437g(a)(5)(D).

The FEC also asks the court to:

- o Order the defendant to comply with the terms of the conciliation agreement within 10 days;
- o Assess additional monetary penalties against Mr. Weinberg for failing to comply with the agreement;
- o Permanently enjoin the defendant from future violations of the agreement; and
- o Award the FEC interest on the civil penalty provided for in the conciliation agreement, as well as costs in this action.

U.S. District Court for the District of Columbia, Civil Action No. 89-0416, February 15, 1989.

800 LINE

BASIC RECORDKEEPING FOR ALL POLITICAL COMMITTEES

All political committees must keep records of their receipts and disbursements. Under section 432(c) of the Federal Election Campaign Act, recordkeeping is the responsibility of the committee treasurer.

The FEC's recordkeeping regulations cover three areas:

- o The information that your committee must record;
- o The back-up documentation that your committee must keep; and
- o The recordkeeping duties of persons other than the treasurer.

This article answers some common questions about the recordkeeping rules. The answers are based on provisions in the Federal Election Campaign Act (specifically, 2 U.S.C. §432), the FEC's regulations (11 CFR) and Commission advisory opinions (AOs). This article does not discuss particular requirements that apply only to certain committees, so committees should be sure also to consult their Campaign Guide. Anyone with a question about recordkeeping may call the FEC's Information Services Division at 800/424-9530 or 202/376-3120.

Record Maintenance

Our Statement of Organization (FEC Form 1) asks us to identify a "Custodian of Records." What does this mean? Although it is the treasurer of a political committee who is legally responsible for keeping accurate records and for filing disclosure reports, many committees assign bookkeeping duties to another individual. The name, address and committee position of the person who actually maintains the financial records of a political committee must be identified as the "Custodian of Records" on Form 1. The treasurer or assistant treasurer may serve as custodian. 11 CFR 102.2(a)(1)(iii).

How long must our committee retain records? Committee treasurers must keep back-up records for each report for three years after the report is filed. A photocopy of each report must also be kept. 2 U.S.C. §432(d); 11 CFR 102.9(c) and 104.14(b)(2) and (3).

Receipts

What are the requirements for keeping records of contributions received from individuals? Records must be kept for all contributions received. For each contribution exceeding \$50,

continued

committee records must note the amount, the date received and the donor's name and address. For contributions of \$50 or less, the Commission has recommended that a committee record the same information that the regulations require for larger contributions. AOs 1981-48 and 1980-99. If aggregate contributions from one individual total over \$200 in a calendar year, committee records must identify each contribution by listing the amount, the date received, and the donor's name, address, occupation and employer. 2 U.S.C. §§431(13)(A) and 432(c); 11 CFR 102.9(a)(1) and (2).

How do we record the contributions received as part of a mass collection?¹ For small cash contributions (not more than \$50 each) collected at a fundraiser, a committee may record the name of the event, date and total amount collected. AOs 1981-48 and 1980-99.

Do the same recordkeeping rules apply to contributions from PACs and parties? No. All contributions from PACs and party committees—regardless of amount—must be recorded in detail. For each PAC and party receipt, the recipient committee must record the name, and address of the committee making the contribution, the date received and the amount. 2 U.S.C. §432(c)(4); 11 CFR 102.9(a)(3).

Sometimes, someone other than the treasurer receives a contribution for the committee and forwards it to the treasurer. Does the person collecting the contribution have any record-keeping duties?² Yes. Any person receiving a contribution on behalf of a committee must forward the contribution to the treasurer with the required information identifying the contributor, amount and date received. Contributions to an authorized committee must be forwarded to the treasurer within 10 days. Contributions to PACs and party committees that are greater than \$50 must also be forwarded within 10 days. Contributions to PACs and party committees that are \$50 or less must be forwarded within 30 days. 2 U.S.C. §432(b); 11 CFR 102.8.

What is meant by the "date received?" The date received is the date that the person who first received the contribution took possession of it. 11 CFR 102.8(a).

¹The entire amount paid to attend a fundraiser or other political event is a contribution. 11 CFR 100.7(a)(2).

²Other rules may also apply if, for example, the contribution was earmarked or was received by a collecting agent. Consult your *Guide* for further information regarding a particular activity.

What if a committee cannot obtain the necessary information from a contributor? The treasurer must be able to prove that he or she made "best efforts" to obtain the information. The treasurer should keep a written record (either a letter or a written memorandum of a telephone conversation) showing a clear request for the necessary information. The treasurer must also inform the contributor that the reporting of such information is required by law. 2 U.S.C. §432(i); 11 CFR 104.7.

Disbursements

Must our committee also keep records identifying disbursements? Yes. The treasurer must record all disbursements, regardless of amount, by noting the date made, the amount paid, the purpose, and the name and address of the payee. If the disbursement is made on behalf of a clearly identified candidate, the records must also identify the candidate and the office he or she is seeking. 11 CFR 102.9(b)(1).

How detailed does the notation of the purpose have to be? It should identify exactly why the disbursement was made. For example, "expenses" would not suffice, while "postage" would. 11 CFR 102.9(b)(1)(iv) and 104.3(b)(3)(i).

Do we need to keep back-up documentation? Yes, usually. The treasurer must keep a receipt, invoice or canceled check for each disbursement exceeding \$200. 11 CFR 102.9(b)(2).

Must our committee make all disbursements by check? Generally, yes. All disbursements, except those made from petty cash, must be made by check or a similar draft drawn on the committee's own bank account. 11 CFR 102.10 and 103.3(a).

When can we use our petty cash fund to make disbursements? When payments to one person do not exceed \$100 per transaction. 2 U.S.C. §432(h)(2); 11 CFR 102.11.

Are there special recordkeeping requirements for petty cash payments? The treasurer must record the names and addresses of persons to whom disbursements from the fund are made, along with the date, the amount and the purpose. If a disbursement is made for a candidate, the treasurer should also note the name of the candidate, as well as the office sought. 11 CFR 102.11.

Our committee uses a credit union. May we use carbon copies of share drafts or checks as back-up documentation? Yes, as long as the treasurer retains the monthly account statement showing payment by the credit union of the share draft or check. 11 CFR 102.9(b)(2)(iii).

How should we document advances to staff for travel and subsistence? For advances of \$500 or less, the committee should keep expense account documentation of the expense account (such as an expense voucher) and the canceled check to the employee. If the staff member was advanced more than \$500, the name and address of the employee should be noted, along with the amount advanced, the date and the purpose. 11 CFR 102.9(b)(1) and (2)(i).

If our committee uses a credit card for making disbursements, what documentation should we keep? The committee should keep either its monthly billing statement or a receipt for each transaction, along with the canceled check used to pay the bill. 11 CFR 102.9(b)(2)(ii).

What if our treasurer can't locate the required documentation for a disbursement? As in the case of missing contributor information, the treasurer should be able to show "best efforts" by providing, for each payment, at least one written effort to obtain a copy of a receipt, invoice or canceled check. 11 CFR 102.9(d).

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- o Campaign Guide for Congressional Candidates and Committees
- o Campaign Guide for Political Party Committees
- o Campaign Guide for Corporations and Labor Organizations
- o Campaign Guide For Nonconnected Committees

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