

RECORD

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COMMISSIONERS**COMMISSIONER POTTER APPOINTED;
COMMISSIONER THOMAS REAPPOINTED**

On November 22, 1991, the U.S. Senate confirmed the appointment of Trevor Potter and the reappointment of Scott E. Thomas as members of the Commission for the terms ending April 30, 1997. Mr. Thomas and Mr. Potter were nominated by President Bush on November 21. Mr. Potter was sworn into office early in January.

Commissioner Potter assumes the seat formerly held by Thomas J. Josefiak. Commissioner Josefiak did not seek reappointment but agreed to serve after his appointment expired in April 1991 (pursuant to 2 U.S.C. §437c(a)(2)(B)) until his successor was confirmed and reported for duty.

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COMMISSIONER JOSEFIAK

Commissioner Thomas J. Josefiak first came to the Commission in January 1981, when he was appointed as Special Deputy to the Secretary of the Senate. (The Secretary of the Senate serves as an ex-officio Commissioner.) Mr. Josefiak continued in that position until August 1985, when President Reagan appointed him to the Commission for a six-year term. He was elected FEC Chairman in 1988. When his term expired in April 1991, he continued to serve until Commissioner Potter took office in January 1992.

During his tenure as Commissioner, Mr. Josefiak's knowledge of the law and understanding of people helped shape numerous Commission decisions. Regulations, advisory opinions, compliance matters, litigation and audit reports all bear the signature of his work.

FEC Commissioners and staff wish him success in all his future endeavors

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COMMISSIONERS

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Commissioner Thomas, elected 1992 Vice Chairman, has been a member of the Commission since October 1986 and served as Chairman in 1987. He was executive assistant to former Commissioner Thomas J. Harris before succeeding him as Commissioner. Joining the FEC as a legal intern in 1975, Mr. Thomas eventually became the Assistant General Counsel for Enforcement. A native of Wyoming, he graduated from Stanford University and holds a J.D. degree from the Georgetown University Law Center. He is a member of the bars for the District of Columbia, the U.S. Court of Appeals for the Ninth Circuit and the U.S. Supreme Court.

Commissioner Potter was an associate and then partner of the Washington, DC law firm of Wiley, Rein & Fielding before his appointment to the Commission. His previous experience includes serving as Assistant General Counsel at the Federal Communications Commission from 1984 to 1985 and as a Department of Justice attorney from 1982 to 1984. An Illinois native, Mr. Potter is a graduate of Harvard College and the University of Virginia School of Law. He served as editor-in-chief of the Virginia Journal of International Law and was a member of the Order of the Coif. He is currently vice chairman of the American Bar Association Committee on Election Law, Administrative Law Section.

1992 CHAIRMAN AND VICE CHAIRMAN ELECTED

On December 19, 1991, the Commission unanimously elected the 1992 officers: Joan D. Aikens as FEC Chairman and Scott E. Thomas as Vice Chairman. Mrs. Aikens, who served as Vice Chairman in 1991, succeeds John Warren McGarry as Chairman.

One of the original members of the Commission, Chairman Aikens was first appointed in 1975. Before joining the agency, she was an executive with Lew Hodges Communications, a public relations firm in Valley Forge, Pennsylvania. She was also a member of the Pennsylvania Republican State Committee, president of the Pennsylvania Council of Republican Women and on the Board of Directors of the National Federation of Republican Women.

A native of Delaware County, Pennsylvania, Mrs. Aikens has been active in a variety of volunteer organizations. She served 10 years as a member of the Commonwealth Board of the Medical College of Pennsylvania and is currently on the Board of Directors of Ursinus College, where she received her B.A. and an honorary Doctor of Law degree. She is also a member of the Washington Host Lion's Club and a member and former president of Executive Women in Government. Most recently reappointed to the Commission in 1989, Mrs. Aikens' current term expires April 30, 1995. She previously served as Chairman in 1986 and between May 1978 and May 1979.

A biography of Vice Chairman Thomas appears opposite.

Federal Election Commission, 999 E Street, NW, Washington, DC 20463
800/424-9530 202/219-3420 202/219-3336 (TDD)

Joan D. Aikens, Chairman
Scott E. Thomas, Vice Chairman
Lee Ann Elliott
Danny L. McDonald
John Warren McGarry
Trevor Potter

Walter J. Stewart, Secretary of the Senate,
Ex Officio Commissioner
Donald K. Anderson, Clerk of the House of
Representatives, Ex Officio Commissioner

REGULATIONS

FEC SEEKS COMMENTS ON PETITION TO AMEND RULES ON TRANSFERS FROM NONFEDERAL CAMPAIGNS

The Commission is seeking comments on a rulemaking petition from Congressman William M. Thomas (R-CA/20) to amend FEC regulations on transfers from a candidate's nonfederal campaign to his or her federal campaign. The regulations allow such transfers as long as the funds are not composed of any contributions that would violate the prohibitions or limits of the Federal Election Campaign Act (the Act), 11 CFR 110.3(c)(6). Congressman Thomas alleges that the regulations are ineffective because they "do not address the loophole through which... 'soft money' [i.e., money that violates the Act's limits and prohibitions] is... spent by nonfederal committees to raise 'hard' dollars that are then transferred to federal committees." He urges the Commission to amend the regulations "to ensure" that the Act is "fully enforced to the extent that 'soft money' is not indirectly used by nonfederal committees to raise funds that will be used in Federal races."

On December 26, 1991, the Commission published a Notice of Availability on the petition in the Federal Register. Public comments are due February 10, 1992, and must be submitted in writing. Congressman Thomas's petition is available in the Public Records Office; to order a copy call 800/424-9530 (ask for Public Records) or 202/219-4140.

FEC DECLINES COMMON CAUSE PETITION ON USE OF CORPORATE AIRPLANES

On December 5, 1991, the Commission decided not to open a rulemaking concerning candidate payments for use of corporate aircraft. Common Cause had requested such a change in a rulemaking petition filed on July 25, 1991.

Common Cause Petition

Under the current rules at 11 CFR 114.9(e), when a candidate committee uses an airplane owned or leased by a corporation or labor organization, the committee must pay the organization in advance of the trip at the appropriate rate: Either the first class airfare or, if the trip is to a location not serviced by commercial airlines, the usual charter rate. Common Cause argued that the first class payment

rate is lower than the organization's actual costs in providing transportation and thus proposed amending the rules to require, in all cases, payment "at the same price it would cost to charter similar aircraft."

The Commission published a notice seeking comments on the petition on August 21, 1991 (56 FR 41496) and received two comments in support of the Common Cause proposal, two against, and two neutral comments from government agencies.

Commission Decision

After considering the proposal and the comments, the Commission decided not to initiate a rulemaking. The agency explained its reasons in a Federal Register notice published December 11, 1991 (56 FR 64566).

The agency pointed out that Common Cause did not present any evidence of specific instances in which the current regulations have permitted corporations to provide travel services of greater value than the payment received.

Common Cause had claimed that the current regulations result in "corporations providing special treatment and financial benefits for Members of Congress and candidates and opening the door for special access for corporations." However, in the Commission's view, if this were actually a problem, charging campaigns the charter rate would not resolve it. The solution would be a complete ban on the campaign use of corporate airplanes.

The Commission considered such a ban, and a uniform application of the charter rate standard, before adopting the current rule in 1977. Since the approach in the current rule has proved to be practical and readily enforceable, the agency concluded that it does not warrant revision.

The agency also pointed out that the payment rate at section 114.9(e) is consistent with rates used by the House of Representatives' Committee on Standards of Official Conduct and by the General Services Administration.

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

Recent requests for advisory opinions (AORs) are listed below. The full text of each AOR is available for review and comment in the FEC's Public Records Office.

AOR 1991-36

Corporation's payment of travel expenses of PAC representative to attend political party fundraiser. (Date Made Public: November 26, 1991; Length: 8 pages)

1991-37

PAC's payment for use of incorporated firm's facilities and employee services. (Date Made Public: November 26, 1991; Length: 6 pages)

AOR 1991-38

Transfer of embezzlement restitution payments from Senator's 1988 campaign to 1994 campaign. (Date Made Public: December 2, 1991; Length: 4 pages)

AOR 1991-39

Obligation to refund contributions allegedly made in names of others. (Date Made Public: December 6, 1991; Length: 8 pages)

AOR 1991-40

Use of President's name in special project of joint fundraising committee created by party's national House and Senate campaign committees. (Date Made Public: December 12, 1991; Length: 12 pages)

ADVISORY OPINION SUMMARIES

AO 1991-29: Contributions Received and Made by Corporation's Employee Pledge Program

Contributions to the Sundstrand Corporation Good Government Pledge Program (the Pledge Program or the PAC), a separate segregated fund, are kept in "individual accounts" set up in the names of executive and administrative employees but maintained in the PAC account. Employee contributions deposited in these "accounts" are considered contributions to the PAC. The funds are subsequently disbursed by the PAC to candidates designated by the employees. Employee-designated contributions to candidates must be reported as earmarked contributions from the employees, with the PAC acting as the conduit. Although the

Commission was unable to agree whether the PAC exercises "direction or control" over the choice of recipient candidates, the PAC informed the agency that it treats employee-designated contributions as subject to its own limit.

Structure of the Pledge Program

Sundstrand Corporation solicits restricted class employees to make contributions through the Pledge Program. Each participating employee contributes to an "individual account" established in his or her name. These "individual accounts" are actually bookkeeping accounts maintained in the PAC's bank account. The employee decides how the funds in his or her "account" should be spent. An Advisory Board, appointed by Sundstrand management, recommends support of selected candidates and political committees in letters sent to participating employees; employees, however, may choose to support other candidates and committees.

An employee authorizes the PAC to make a contribution to a designated recipient by signing a form requesting that a check for a specific amount be contributed to a candidate or committee. The PAC then draws the check and transmits it to the recipient along with a letter stating that the check represents a contribution from the employee. As another way of contributing, the employee may request a refund from his or her "account" and then make a direct contribution to the chosen recipient. An employee may also obtain a refund for any other reason, at his or her discretion.

Pledge Program as Separate Segregated Fund

The Pledge Program operates as a separate segregated fund (SSF). It is registered as such and, in most respects, functions as a conventional SSF: It was established by a corporation and it solicits the restricted class for contributions to be used for federal election purposes. 2 U.S.C. §441b(b)(2)(C). Although the intent to give employees control over their contributions does resemble an "employee participation plan" described at 11 CFR 114.11, the PAC does not meet the qualifying criteria for that type of plan.

Reporting Contributions to the Pledge Program

Funds solicited for federal election purposes and received by an SSF are considered reportable contributions to the SSF. 2 U.S.C. §§431(8)(a)(i) and 434(b). Therefore, the Pledge Program must report all receipts from participating employees as contributions to the PAC at the time

they are donated, regardless of how the funds are eventually designated.

Contributions Treated as Earmarked Contributions

Deferred Earmarking. A conduit for an earmarked contribution¹ is not usually viewed as itself receiving the contribution and would not generally report the earmarked contribution as a contribution to itself (counting against the individual's limit for the conduit). This, however, was the case in AO 1981-21, which discussed a "deferred earmarking" program similar to the Pledge Program. In that opinion, employees contributed to "individual accounts" maintained in an SSF's account; contributions to candidates from these "accounts" required prior approval by means of employees' signatures on a release form. The Commission similarly concluded that receipts in the individual accounts were reportable as contributions to the SSF. Furthermore, the Commission viewed employee-designated contributions to candidates as "earmarked contributions" made by the employees through the conduit SSF. Contributions to the SSF were not earmarked at the time they were made but, like contributions to the Pledge Program, were subsequently earmarked by employees.

Direction or Control. Earmarked contributions count against the original contributor's limit for the designated candidate but do not additionally count against the conduit's limit unless the conduit exercises "direction or control over the choice of recipient candidate." 11 CFR 110.6(d)(2). The Commission could not reach a majority decision as to whether the "direction or control" standard applied to the Pledge Program in the circumstances presented in the advisory opinion request. The Commission noted, however, that the PAC treats contributions made to candidates as contributions subject to its own limits.

Reporting. Because employee-designated contributions are considered earmarked, the PAC must follow the special reporting requirements for earmarked contributions under 11 CFR 110.6(c). Each reporting period during which the PAC receives candidate designations from employees, the PAC must report information on each

earmarked contribution. The information must also be reported to each recipient authorized committee when the contribution is forwarded.²

If an earmarked contribution is not also considered a contribution from the PAC, the PAC would report a refund of the same amount to the employee as of the same date it reports the receipt of the earmarked contribution. If the earmarked contribution is considered a contribution from the PAC, as the advisory opinion request suggested, PAC would report the disbursement of the earmarked contribution as attributable to both itself and the employee. See 11 CFR 110.6(d)(2).

Refunds of Employee Contributions

When an employee requests the return of funds previously contributed in order to make direct contributions to candidates or for any other reason, the PAC must report the refund on Schedule B.

Contributions Made Directly by the PAC

The PAC may, if it wishes, operate in such a manner whereby contributions to candidates are considered made directly by the PAC itself (rather than earmarked) yet still encourage employee participation in the choice of candidates to be supported. FEC regulations allow complete control of a separate segregated fund to reside with the corporation. 11 CFR 114.5(d). The method by which recipients of SSF contributions are selected is an internal management and policy matter. For example, a corporation may use a "donor selection" approach that permits PAC "members" to choose the candidate recipients for PAC contributions (as distinct from earmarking by individual contributors, as indicated in the facts presented by the Pledge Program). 11 CFR 114.5(c)(1)(iii).

Vice Chairman Joan D. Aikens and Commissioner Lee Ann Elliott filed a joint concurring opinion; Commissioner Thomas J. Josefiak also filed a concurring opinion. (Date Issued: December 3, 1991; Length: 9 pages plus 11-page concurring opinions.)
(Advisory Opinions continued)

¹Contributions designated for a particular candidate and transmitted through a conduit are earmarked contributions. 2 U.S.C. §441a(a)(8); 11 CFR 110.6(b)(1).

²The PAC must report the name and address of each contributor and, for each earmarked contribution in excess of \$200, the contributor's occupation and employer; the amount of the contribution, the date the PAC received it and the name of the intended recipient; and the date the contribution was forwarded to the intended recipient. 11 CFR 110.6(c)(1)(iv).

AO 1991-33: Allocation of Expenses When Party Committee Administrators Primary Election

Under Texas law, Democratic and Republican state and county executive committees administer primary elections (including runoffs). Payments for this activity, generally made from a separate account, are not subject to federal/nonfederal allocation under 11 CFR 106.5(a)(2) and are not reportable under FEC rules. Although a portion of a committee's day-to-day administrative expenses may be attributed as primary administration activity and be paid from the nonfederal account, only the remaining portion must be allocated between the federal and nonfederal accounts.

Background

The Texas party executive committees receive state funds, ballot access fees and privately raised donations to pay the costs of administering primary elections. State law requires a committee to deposit these funds into a separate account used solely to pay for expenses directly related to election administration activity. State law also permits a committee to attribute a reasonable portion of its administrative expenses (i.e., office overhead and staff costs) as primary administration expenses.

Application of FEC Allocation Rules

Under FEC rules, party committees must allocate certain types of disbursements between their federal and nonfederal accounts. Allocable expenses include administrative costs and other expenses which promote the party or enable it to function and influence elections. 11 CFR 106.5(a)(2). Activities to operate a primary election—e.g., providing for the mechanics of ballot access filing, procuring voting equipment and paying voting personnel—do not involve the kinds of expenses that are allocable under FEC rules. Expenses wholly related to the administration of a primary election are therefore not allocable. With respect to administrative expenses incurred partly for primary administration and partly for other party operations, a committee must first determine what share is attributable to primary administration and then allocate the remaining portion between the federal and nonfederal accounts according to FEC regulations.

As represented in the advisory opinion request, a committee will pay primary administration expenses either from the primary account set up under state law or from the nonfederal account, as opposed to using the federal account or a separate

allocation account.^{1/} The nonfederal account will pay that portion of day-to-day administrative expenses attributable to primary administration activity and will receive reimbursement from the primary account. This use of the nonfederal account is permissible as long as primary administration expenses are not included when allocating expenses between the federal and nonfederal accounts. Under these arrangements, payments for primary administration are not reportable under FEC rules. (Date Issued: November 13, 1991; Length: 5 pages)

AO 1991-34: Committee Sale of Access to Voter Data Base as Ongoing Venture

Unless deposited in a nonfederal account, proceeds received by the West Virginia Republican State Committee from its proposed venture—selling access to a leased data base of registered voters—would be considered contributions, subject to federal limits and prohibitions.

The Committee recently leased a data base of all West Virginia registered voters for use in the Committee's fundraising and candidate-support direct mail program. The Committee also purchased a computer system to run the data base. During off-election years, the Committee wishes to sub-lease the data base to various entities, including corporations. (Because, under a contract agreement, the Committee is not permitted to transmit the data base electronically to customers, it plans instead to package the data on lists, labels and the like.) The proceeds would be used as an offset to operating expenditures related to the computer operation.

The Commission generally views the sale of committee assets as a fundraising activity resulting in contributions from the purchasers. See AOs 1990-3, 1989-4, 1988-12 and 1983-2. Exceptions to this general rule apply to isolated sales of assets that have been purchased or developed for the committee's particular use (rather than for sale to others as fundraising items) and that have an ascertainable market value. See AOs 1989-4 (mailing lists and computer

^{1/} Committees with separate federal and nonfederal accounts may use either the federal account or an allocation account to pay allocated expenses. See 11 CFR 106.5(g)(1). Although not proposed by the requesters, an allocation account may not be used to pay primary administration expenses.

hardware), 1986-14 (campaign van), 1981-53 (mailing list) and 1979-24 (yard sign stakes and office equipment).

The Committee's activity does not qualify as an exception because the Committee proposes to engage in an ongoing enterprise, rather than an isolated transaction, in order to raise funds to maintain the computer system during a nonelection year. This proposal is similar to the situation in Advisory Opinion 1983-2, where the Commission concluded that a candidate committee's sale of computer services on an ongoing basis was simply a way of raising contributions to retire debts. Like the committee in AO 1983-2, the West Virginia Committee's activity would result in contributions subject to federal prohibitions, limits and disclosure requirements. For example, the Committee's proposed sale of data base access to a corporation would result in a prohibited contribution.

To avoid federal contribution restrictions, the Committee would have to deposit the funds in a nonfederal account that would not be used for federal election purposes or for payment of the federal share of administrative and fundraising costs. See 11 CFR 102.5(a)(1) and AO 1986-40. The Commission expressed no opinion on the possible application of West Virginia law or tax laws to the proposed activity, as those issues are outside its jurisdiction. (Date Issued: December 6, 1991; Length: 4 pages)

COURT CASES

FEC v. AFSME-PQ

On October 31, 1991, the U.S. District Court for the District of Columbia assessed a \$2,000 civil penalty against the American Federation of State, County and Municipal Employees-P.E.O.P.L.E., Qualified (AFSME-PQ), the separate segregated fund of AFSME and the fund's treasurer for violating reporting provisions of the Federal Election Campaign Act (FECA). The court, however, did not grant the FEC's request to issue a permanent injunction against the defendants. Civil Action No. 88-3208.

The court addressed the merits of the case on July 10, 1990, when it ruled that defendants failed to disclose in-kind contributions in a timely manner. Instead of disclosing the contribution in the reports covering the period when the contributions were actually made (i.e., when the services

were provided to candidates), AFSME-PQ had incorrectly disclosed them some months afterwards, when it paid the bills for the services.

In its October 1991 ruling on the penalty, the court observed that, although there was no bad faith by the defendants, "there is always harm to the public when the FECA is violated." Considering the maximum penalty of \$10,000 inappropriate here, the court said a \$2,000 penalty would serve the public's interest "by punishing a violation of the plain language of the statute." The court declined, however, to permanently enjoin defendants from future violations of 2 U.S.C. §434(b). The court pointed out that defendants cured the violation and have since complied with the reporting provision. Because "there has been no showing of a reasonable likelihood that the defendants will commit future violations," the court decided the public interest would not be substantially advanced by an injunction.

FEC v. NRA POLITICAL VICTORY FUND

In a November 15, 1991, order, modified on December 11, the U.S. District Court for the District of Columbia found that a \$415,745 payment made by the National Rifle Association—Institute For Legislative Action (ILA) to NRA's separate segregated fund was a corporate contribution in violation of 2 U.S.C. §441b(a). (The ILA is a component of NRA, a nonprofit corporation.) Civil Action No. 90-3090. The court ordered defendants ILA, the NRA Political Victory Fund (the separate segregated fund) and the Fund's treasurer to pay a \$40,000 civil penalty. The court also ordered defendants to comply with 11 CFR 114.5(b)(3) in future transactions. Under that regulation, a corporation may reimburse its separate segregated fund (SSF) for expenses that the corporation could lawfully have paid as an administrative or solicitation expense, but the reimbursement must be made no later than 30 days after the SSF's payment.

Defendants filed a notice of appeal on November 21, 1991.

Application of Section 114.5(b)(3)

The payment at issue originated from transactions that took place in March and July 1988, when ILA paid for two solicitation mailings. The Fund reimbursed ILA \$415,745, the full cost of the mailings, on August 1. ILA returned that amount to the Fund on October 20—81 days after the

(continued)

August payment. Because this reimbursement was made after the 30-day period specified in section 114.5(b)(3), the court found that the October 20 payment was not a permissible reimbursement of solicitation expenses, as defendants had argued, but was instead an illegal corporate contribution to the Fund. The court observed that the October 20 payment was not used to pay for the solicitation material purchased in March and July. By defendants' own account, the money was returned to the Fund to bolster its budget for campaign activities related to the 1988 elections.

Application of MCFL

The court also rejected defendants' argument that the October 20 payment was permissible under the Supreme Court's decision in FEC v. Massachusetts Citizens for Life, Inc. (MCFL), 479 U.S. 238 (1986). MCFL permitted a nonprofit corporation to make independent expenditures if, among other conditions, the corporation had a policy of not accepting donations from business corporations and labor unions. The district court found MCFL inapplicable here because the ILA does receive corporate donations.

Constitutional Status of FEC

Defendants also argued that the FEC lacked authority to bring suit because the FEC is a constitutionally flawed agency. They first claimed that the appointment of Commission members impermissibly restricts the appointment power granted the President under Article II because, under the Federal Election Campaign Act, the President is prevented from appointing more than three Commissioners from the same political party. Defendants further claimed that, because the President cannot control or remove Commissioners, the execution of the law does not rest with the President, an infringement of the sole executive power vested in the President under Article II. The court, however, ruled that the defendants did not have standing to raise these claims: "[D]efendants have raised an issue that bears on the rights of a third party, namely the President, and not on their own legal interests."

Defendants also argued that the statute's designation of the Clerk of the House and the Secretary of the Senate as nonvoting Commission members violated the separation of powers. Finding no showing that the nonvoting members participated in any decisions involving the present case, the court said that there was "no need to concern itself" with this argument.

FEC Requests Change in Civil Penalty

In its original order of November 15, the court had imposed a civil penalty in the amount of the FEC's total costs in investigating and prosecuting the violation, the amount to be calculated by the FEC.

On December 2, the FEC filed a motion asking the court to amend the civil penalty so that it reflected the amount necessary to deter similar violations rather than the costs of the agency's enforcement efforts, which the FEC viewed as unrelated to the violation at issue. The FEC also noted that such a penalty would be time consuming and burdensome to calculate.

In an amended opinion issued on December 10, the court ordered defendants to pay a \$40,000 penalty. In imposing that amount, the court considered the defendants' bad faith, the injury to the public, the defendants' ability to pay and the need to vindicate the FEC's authority. The court concluded: "Because of the deliberate nature of defendants' actions, the Court must impose a substantial penalty in order to deter them from repeating this violation." The court added that defendants could have accomplished their objective legitimately if they had used proper fiscal planning.

NEW LITIGATION

Akins v. FEC

James E. Akins and five other individuals ask the court to: Declare that the FEC's failure to act on their complaint within 120 days is contrary to law pursuant to 2 U.S.C. §437g(a)(8)(C); and order the agency to conform within 30 days.

Plaintiffs claim that they filed a complaint with the Commission on January 12, 1989. Among other allegations, the complaint alleges that the American Israel Public Affairs Committee (AIPAC) violated the Federal Election Campaign Act by failing to register as a political committee and by using corporate funds to make prohibited contributions and expenditures in support of candidates. Plaintiffs contend that the FEC has failed to take any action relative to the AIPAC allegations, although the 120-day period expired on May 12, 1989.

U.S. District Court for the District of Columbia, Civil Action No. 91-2831, November 4, 1991.

Common Cause v. FEC (91-2914)

Common Cause asks the court to:

- o Declare that the FEC's dismissal of an administrative complaint filed by Common Cause was arbitrary, capricious, an abuse of discretion and contrary to law.
- o Order the FEC to conform with the court's decision within 30 days; and
- o Award costs and attorneys' fees to Common Cause.

Plaintiff claims that the Commission should have determined that NRSC violated the contribution limits and reporting provisions of the law, as alleged in the complaint.

The complaint arose from a 1990 fundraising program. In spring and summer of that year, two joint fundraising committees (the "Inner Circle Committees") used the NRSC's "Inner Circle" contributor list to conduct a mass mailing that solicited contributions on behalf of the NRSC and Republican Senate candidates. Contributors sent their checks to the Inner Circle Committee conducting the fundraiser; that Committee then forwarded net proceeds to each participant, based on the joint fundraising allocation formula: NRSC received 1 percent of net proceeds; the remaining proceeds were allocated, in varying percentages, to campaigns of Republican Senate candidates running in 1990, 1992 or 1994.

In its suit (as in its administrative complaint), plaintiff Common Cause claims that the Inner Circle fundraising effort resulted in contributions from NRSC to the participating Republican Senatorial candidates—contributions that NRSC failed to report and that exceeded the contribution limits for 24 candidates by over \$1.4 million. According to Common Cause, the 1990 program was a mirror image of a 1986 NRSC fundraising program that was found illegal by the courts.^{1/}

To support its claims, Common Cause makes the following allegations:

1. By virtue of being controlled by NRSC, the Inner Circle Committees were affiliated with NRSC and therefore operated under the same contribution and expenditure limits.
2. The Inner Circle program "could not properly be considered joint

fundraising"; therefore, the joint fundraising regulations did not apply.^{2/}

3. Because donors did not earmark their contributions to specific candidates, the contributions represented contributions made to NRSC, and contributions to the candidates represented contributions from NRSC.
4. Alternatively, the contributions were earmarked and, because they were within NRSC's direction and control, they counted against NRSC's limits for the recipient candidates.

U.S. District Court for the District of Columbia, Civil Action No. 91-2914, November 12, 1991.

PUBLICATIONS

NEW EDITION OF COURT CASE ABSTRACTS

The FEC recently published the ninth edition of Selected Court Case Abstracts, a compilation of court cases pertaining to federal campaign finance laws. Virtually all the summaries first appeared in the Record; the new edition is current through the December 1990 issue.

Free copies may be ordered from the FEC's Information Division. Call 800/424-9530 or 202/219-3420.

The publication contains summaries of significant Supreme Court and appeals court cases concerning the Federal Election Campaign Act, FEC regulations and enforcement actions, including: Buckley v. Valeo, FEC v. National Right to Work Committee, California Medical Association v. FEC and FEC v. Massachusetts Citizens for Life, Inc. Recent district court decisions are also summarized. The volume additionally contains cases that did not directly involve the FEC, such as First National Bank of Boston v. Bellotti and Galliano v. U.S. Postal Service. Legal citations are provided for most cases. Name and subject indexes make the volume a useful research tool.

^{1/}Common Cause v. FEC, 729 F. Supp. 148 (D.D.C. 1990), aff'd mem., 923 F.2d 200 (D.C. Cir. 1990); FEC v. NRSC, 761 F. Supp. 813 (D.D.C. 1991), appeal filed, No. 91-5176 (D.C. Cir.).

^{2/}The joint fundraising rules at 11 CFR 102.17 specify that, for purposes of the contribution limits and reporting requirements, the allocated portion of each contribution received by a participating committee is treated as though the donor had directly made the contribution to the committee.

REPORTS

REPORTS DUE IN 1992

This article on filing requirements for election year 1992 is supplemented by the reporting tables that follow.

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

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

All Committees: Year-End Reports Covering 1991 Activity

All committees must file a 1991 year-end report due January 31, 1992.

Authorized Committees of Candidates

1992 House and Senate Candidates.

Authorized committees of 1992 House and Senate candidates file the following reports:

- o Quarterly reports;^{1/}
- o A pre-primary report;^{2/}
- o Pre- and post-general election reports (if the candidate participates in the general election); and
- o 48-hour notices on contributions received shortly before each election in which the candidate participates (see article on page 18). 11 CFR 104.5(a)(1) and (f).

NOTE: Committees are required to file election reports and 48-hour notices even if the candidate is unopposed in the election. Moreover, these reporting requirements still apply even if a primary or general election is not held because the candidate is unopposed or received a majority of votes in the previous election. However, a primary election that is not held because the candidate was nominated by

¹Note that an authorized committee of a 1992 candidate must file on a quarterly basis in 1992 even if the candidate withdraws before participating in the primary. However, such a committee would not have to file a pre-primary report (or other election reports) unless the candidate's name remained on the ballot.

²A pre-convention report is required only if the convention has authority to nominate. See 11 CFR 100.2(e).

a caucus or convention is not considered a separate election for reporting purposes (and for purposes of the contribution limits). See 11 CFR 110.1(j).

Other House and Senate Candidates.

Committees authorized by House and Senate candidates not running in 1992 elections file on a semiannual basis. 11 CFR 104.5(a)(2).

1992 Presidential Candidates. Authorized committees of 1992 Presidential candidates file on a monthly or quarterly basis:

- o Campaigns that have received contributions or made expenditures aggregating \$100,000 or that anticipate this level of activity file on a monthly basis. If the candidate runs in the general election, the campaign must file pre- and post-general election reports in lieu of the monthly reports due in November and December.
- o Campaigns with financial activity under \$100,000 file the following reports: quarterly reports; pre-primary reports for those primary elections in which the candidate seeks election; and pre- and post-general election reports if the candidate participates in the general election. 11 CFR 104.5(b)(1); see also 104.5(a)(1).

Other Presidential Candidates. Presidential committees retiring debts from previous campaigns may file on either a monthly or a quarterly schedule. 11 CFR 104.5(b)(2). A Presidential committee wishing to change its filing schedule should notify the Commission in writing.

PACs and Party Committees

PACs (separate segregated funds and nonconnected committees) and party committees that filed on a semiannual basis during 1991 now file on a quarterly basis. Monthly filers continue on the monthly schedule. PACs and party committees may, however, change their filing schedule, as explained later in this section.

Note that all PACs, whichever schedule they follow, are subject to the 24-hour filing requirement for last-minute independent expenditures (also explained later.)

Quarterly Filers. A PAC or party committee that files on a quarterly basis must additionally file a post-general election report. 11 CFR 104.5(c)(1)(i) and (iii).

Quarterly filers may also have to file pre-convention, pre-primary, pre-runoff and pre-general election reports. The requirement to file a pre-election report is triggered if the committee makes a contribution or expenditure in connection with the election during the applicable reporting period. 11 CFR 104.5(c)(1)(ii). A reporting period begins the day after the close of books for the last report filed and continues through the close of books for the pre-election report.

For example, a PAC or party committee's last report filed was the third quarter report that covered activity through September 30 (the close-of-books date). The committee makes a contribution on October 12 to a candidate's general election campaign. The committee must therefore file a pre-general election report, which covers activity between October 1 and October 14.

Note that, although the FEC sends committees notices of upcoming reporting deadlines for quarterly reports and general election reports, the agency does not send PACs and party committees pre-election reporting notices for Congressional or Presidential conventions, primaries or runoffs.

Monthly Filers. Unlike quarterly filers, PACs and party committees filing on a monthly basis do not file pre-election reports for conventions, primaries or runoff elections. They must, however, file pre- and post-general election reports, which are filed in lieu of monthly reports filed in November and December. 11 CFR 104.5(c)(3).

Changing the Filing Schedule. PACs and party committees filing on a quarterly schedule may change to a monthly schedule in order to avoid having to file pre-convention, pre-primary and pre-runoff reports. The committee must first notify the Commission in writing. The notification should accompany a report filed under the committee's current reporting schedule. A committee may change its filing frequency only once a year. 11 CFR 104.5(c).

24-Hour Reports on Independent Expenditures. Any PAC (including a monthly filer) that makes independent expenditures in connection with any election (convention, primary, runoff, general) may have to file a 24-hour report. This report is required when a committee makes independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before

the day of the election. The report must be filed within 24 hours after the expenditure is made. For more information on the 24-hour reporting requirement, see 11 CFR 104.4(b) and (c) and 104.5(g). See also "Where to File" (below) for special filing requirements.

Where to File

Committee treasurers must file FEC reports with the appropriate federal and state filing offices. Please note that:

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

House and Senate Candidate Committees. Principal campaign committees file with the Clerk of the House or the Secretary of the Senate, as appropriate. 11 CFR 105.1 and 105.2.

The principal campaign committee must also file a copy of every report and statement (including 48-hour notices) with the filing office of the state in which the candidate seeks election. 2 U.S.C. §439(a)(2)(B).

Presidential Candidate Committees. Principal campaign committees of Presidential candidates file with the FEC. 11 CFR 105.3.

The principal campaign committee must also file a copy of each report and statement with the filing office of each state in which the committee makes expenditures. 11 CFR 108.2.

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

PACs and Party Committees. Generally PACs and party committees file with the FEC. There are, however, exceptions:

- o Committees supporting only House candidates file with the Clerk of the House;
- o Committees supporting only Senate candidates file with the Secretary of the Senate;

(continued)

- o PACs file 24-hour notices disclosing independent expenditures on behalf of House or Senate candidates with the Clerk of the House or the Secretary of the Senate, as appropriate. (Twenty-four hour notices disclosing independent expenditures on behalf of Presidential candidates are filed with the FEC.) 11 CFR 104.4(c) and 104.5(g).

PACs and party committees must also file a copy of each statement and report with the appropriate state filing office:

- o Committees making contributions or expenditures in connection with House and Senate candidates file in the state in which the candidate seeks election. The committee is required to file only that portion of the report applicable to the candidate (e.g., the Form 3 Detailed Summary Page and the schedule showing the contribution or expenditure). 2 U.S.C. §439(a)(2)(B); 11 CFR 108.3.
- o Committees making contributions or expenditures in connection with Presidential candidates file in the states in which the Presidential committee and the donor committee have their headquarters. 11 CFR 108.4.
- o Committees making independent expenditures on behalf of Presidential candidates (including those disclosed in 24-hour notices) file in the state in which the expenditure is made. 11 CFR 104.4(c)(1), 104.5(g) and 108.2.

REPORTING TABLES

1991 YEAR-END REPORT

NOTE: All committees file this report.

Report	Period Covered	Filing Date ¹
Year-End	Closing Date of Last Report Through 12/31/91	January 31, 1992

¹Reports sent by registered or certified mail must be postmarked by the filing date (except in the case of the pre-general election report; see footnote 2). Reports sent by other means must be received by the filing date. 11 CFR 104.5(e).

1992 MONTHLY REPORTS

Report	Period Covered	Filing Date ¹
January	January 1-31	February 20
February	February 1-29	March 20
March	March 1-31	April 20
April	April 1-30	May 20
May	May 1-31	June 20
June	June 1-30	July 20
July	July 1-31	August 20
August	August 1-31	September 20
September	September 1-30	October 20
Pre-General ²	Oct. 1-Oct. 14	October 22
Post-General	Oct. 15- Nov. 23	December 3
Year-End	Nov. 24-Dec. 31	Jan. 31, '93

1992 QUARTERLY REPORTS

Report	Close of Books	Filing Date ¹
1st Quarter	March 31	April 15
2nd Quarter	June 30	July 15
3rd Quarter	September 30	October 15
Year-End	December 31	Jan. 31, '93

PRE- AND POST-ELECTION REPORTS FOR NOVEMBER 3 GENERAL ELECTION

Report	Close of Books	Filing Date ¹
Pre-General ²	October 14	October 22
Post-General	November 23	December 3

¹Reports sent by registered or certified mail must be postmarked by the filing date (except in the case of the pre-general election report; see footnote 2). Reports sent by other means must be received by the filing date. 11 CFR 104.5(e).

²If sent by registered or certified mail, the pre-general must be postmarked by October 19.

GUIDE TO 1992 REPORTING (All committees must also file a 1991 year-end report due 1/31/92.)

Type of Filer	Required Reports					
	Semi-annual	Quarterly	Monthly	Pre-Primary ¹	Pre-General	Post-General
House and Senate Campaigns of 1992 Candidates		✓		✓	✓	✓
	required only if candidate runs in election					
Other House and Senate Campaigns	✓					
1992 Presidential Campaigns Anticipating Activity of \$100,000 or Above			✓		✓	✓
	required only if candidate runs in election; filed in lieu of Nov. & Dec. mo. reports					
1992 Presidential Campaigns With Activity Less Than \$100,000		✓		✓	✓	✓
	required only if candidate runs in election					
Other Presidential Campaigns ²		✓—or—✓				
PACs and Party Committees Filing Monthly			✓		✓	✓
	in lieu of Nov. & Dec. mo. reports					
PACs and Party ³ Committees Filing Quarterly		✓		✓	✓	✓
	required only if committee makes contributions or expenditures in connection with election during report period ⁴					
	required regardless of activity					

(Reporting Tables continued)

¹Category also includes pre-convention and pre-runoff reports.

²Presidential committees in this category that wish to change their filing frequency during 1992 should notify the Commission in writing.

³PACs and party committees that filed on a semiannual basis in 1991 file on a quarterly basis in 1992. To avoid the need to file pre-primary and pre-runoff reports, these committees may change to monthly filing if they first notify the Commission in writing. Committees may change filing frequency only once a year. 11 CFR 104.5(c).

⁴A reporting period begins with the close of the last report filed and ends with the closing date for the applicable report.

**PRE-ELECTION REPORTING DATES FOR
1992 HOUSE AND SENATE PRIMARY AND RUNOFF ELECTIONS**

State or Territory	Election Day	Close of Books ^{1/}	Reg./Cert. Mailing Date ^{2/}	Filing Date ^{2/}
*Alabama Runoff	June 2 June 30	May 13 June 10	May 18 June 15	May 21 June 18
*Alaska	August 25 Sept. 8	August 5 ¹⁹	August 10 ²⁴	August 13 ²⁷
American Samoa ^{3/} Runoff	November 3 November 17	October 14 October 28	October 19 November 5 ^{4/}	October 22 November 5
*Arizona	September 8	August 19	August 24	August 27
*Arkansas Runoff	May 26 June 9	May 6 May 20	May 11 May 28 ^{4/}	May 14 May 28
*California	June 2	May 13	May 18	May 21
*Colorado	August 11	July 22	July 27	July 30
*Connecticut ^{5/}	September 15	August 26	August 31	September 3
Delaware	September 12	August 23	August 28	August 31
Dist. of Columbia	May 5	April 15	April 20	April 23
*Florida Runoff	September 1 September 29 Oct. 1	August 12 September 5 ¹¹	August 17 September 14 ¹⁶	August 20 September 17 ¹⁹
*Georgia Runoff	July 21 August 11	July 1 July 22	July 6 July 27	July 9 July 30
Guam	September 5	August 16	August 21	August 24

*States holding 1992 Senate elections.

¹This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

²Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

³In American Samoa, if a runoff is not held, the November 3 election is considered the general election, and a post-general election report is therefore required. If a runoff is held, the November 17 election is considered the general election, with the post-general reporting dates as follows: close of books, December 7; mailing and filing date, December 17.

⁴The mailing date is the same as the filing date because the computed mailing date would fall one day before the primary was held.

⁵In Connecticut, each party may hold a convention that has the authority to nominate a candidate; participating candidates must file a pre-convention report. If a candidate is so nominated at a convention, and the nomination is not challenged, the nominee does not participate in the primary and has no contribution limit or reporting requirements for the primary. 11 CFR 110.1(j)(4); see also AO 1982-49.

State or Territory	Election Day	Close of Books ^{1/}	Reg./Cert. Mailing Date ^{2/}	Filing Date ^{2/}
*Hawaii	September 19	August 30	September 4	September 7 ^{3/}
*Idaho	May 26	May 6	May 11	May 14
*Illinois	March 17	February 26	March 2	March 5
*Indiana	May 5	April 15	April 20	April 23
*Iowa ^{4/}	June 2	May 13	May 18	May 21
*Kansas	August 4	July 15	July 20	July 23
*Kentucky	May 26	May 6	May 11	May 14
*Louisiana General ^{5/}	October 3 November 3	September 13 October 14	September 18 October 19	September 21 October 22
Maine	June 9	May 20	May 25 ^{6/}	May 28
*Maryland	March 3	February 12	February 17 ^{6/}	February 20
Massachusetts	September 15	August 26	August 31	September 3
Michigan	August 4	July 15	July 20	July 23
Minnesota	September 15	August 26	August 31	September 3
Mississippi Runoff	March 10 March 31	February 19 March 11	February 24 March 16	February 27 March 19
*Missouri	August 4	July 15	July 20	July 23

(Table continued)

*States holding 1992 Senate elections.

¹This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

²Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

³Note that the filing date is a federal holiday. Because filing dates are not extended when they fall on nonworking days, the report should be received by the appropriate filing offices by September 4, the Friday before (or sent by registered or certified mail and postmarked by that date).

⁴In Iowa, a party may, under certain circumstances, have the option of holding a convention to nominate a candidate for the general election. In that case, a pre-convention report would be required instead of a pre-primary report.

⁵A post-general election report is also required. Note that if a candidate is unopposed in the general election, his or her committee nevertheless has a contribution limit for the general and is required to file pre- and post-general election reports. 11 CFR 110.1(j)(3) and AO 1984-54.

⁶Note that the last day for a registered/certified postmark is a federal holiday, when post offices are closed. The report should therefore be postmarked before that date.

State or Territory	Election Day	Close of Books ^{1/}	Reg./Cert. Mailing Date ^{2/}	Filing Date ^{2/}
Montana	June 2	May 13	May 18	May 21
Nebraska	May 12	April 22	April 27	April 30
*Nevada	September 1	August 12	August 17	August 20
*New Hampshire	September 8	August 19	August 24	August 27
New Jersey	June 2	May 13	May 18	May 21
New Mexico	June 2	May 13	May 18	May 21
*New York	September 15	August 26	August 31	September 3
*North Carolina Runoff	May 5 June 2	April 15 May 13	April 20 May 18	April 23 May 21
*North Dakota	June 9	May 20	May 25 ^{3/}	May 28
*Ohio	May 5	April 15	April 20	April 23
*Oklahoma Runoff	August 25 September 15	August 5 August 26	August 10 August 31	August 13 September 3
*Oregon	May 19	April 29	May 4	May 7
*Pennsylvania	April 28	April 8	April 13	April 16
Puerto Rico	June 14	May 25	May 30	June 2
Rhode Island	September 15	August 26	August 31	September 3
*South Carolina Runoff	June 9 June 23	May 20 June 3	May 25 ^{3/} June 11 ^{4/}	May 28 June 11
*South Dakota Runoff	June 2 June 16	May 13 May 27	May 18 June 4 ^{4/}	May 21 June 4
Tennessee	August 6	July 17	July 22	July 25 ^{5/}

*States holding 1992 Senate elections.

¹This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

²Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

³Note that the last day for a registered/certified postmark is a federal holiday, when post offices are closed. The report should therefore be postmarked before that date.

⁴The mailing date is the same as the filing date because the computed mailing date would fall one day before the primary was held.

⁵Note that the filing date is a Saturday. Because filing dates are not extended when they fall on nonworking days, the report should be received by the appropriate filing offices by July 24, the Friday before.

State or Territory	Election Day	Close of Books ^{1/}	Reg./Cert. Mailing Date ^{2/}	Filing Date ^{2/}
Texas Runoff	March 10 April 14	February 19 March 25	February 24 March 30	February 27 April 2
*Utah ^{3/}	September 8	August 19	August 24	August 27
*Vermont	September 8	August 19	August 24	August 27
Virginia ^{4/}	June 9	May 20	May 25 ^{5/}	May 28
Virgin Islands	September 8	August 19	August 24	August 27
*Washington	September 15	August 26	August 31	September 3
West Virginia	May 12	April 22	April 27	April 30
*Wisconsin	September 8	August 19	August 24	August 27
Wyoming	August 18	July 29	August 3	August 6

*States holding 1992 Senate elections.

¹This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

²Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

³In Utah, the Democratic and Republican conventions are scheduled for June 13 and June 28, respectively, and participating candidates must file a pre-convention report. A candidate receiving at least 70 percent of the convention vote becomes the party's nominee and does not participate in the primary. In that case, the nominee has no contribution limit or reporting requirements for the primary. 11 CFR 110.1(j)(4); see also AO 1978-30.

⁴In Virginia, each party within a Congressional District decides whether to hold a primary or a convention. Candidates participating in a convention must file a pre-convention report. The 1992 convention dates are not yet set, pending redistricting approval.

⁵Note that the last day for a registered/certified postmark is a federal holiday, when post offices are closed. The report should therefore be postmarked before that date.

800 LINE**LAST-MINUTE CONTRIBUTIONS:****48-HOUR NOTICES REQUIRED**

Authorized committees of federal candidates must file special notices if they receive contributions of \$1,000 or more shortly before the election. 2 U.S.C. §434(a)(6)(A); 11 CFR 104.5(f). These notices are called "48-hour notices" because they are due within 48 hours of the committee's receipt of the contribution.

Overview of 48-Hour Notice Rules

The 48-hour notice requirement applies to contributions of \$1,000 or more received after the 20th day, but more than 48 hours, before any election (primary, runoff, general or special).^{1/} Authorized committees must file notices on such contributions with the appropriate state and federal offices.^{2/} A notice must be received by the filing offices within 48 hours of the campaign's receipt of the contribution. 2 U.S.C. §434(a)(6)(A); 11 CFR 104.5(f).

Types of Contributions. The 48-hour notice requirement applies to all types of contributions of \$1,000 or more, including:

- o Monetary and in-kind contributions;
- o Loans (other than bank loans);

^{1/} Authorized committees of House candidates file with the Clerk of the House; authorized committees of Senate candidates file with the Secretary of the Senate; committees of Presidential candidates file with the FEC. 2 U.S.C. §432(g); 11 CFR 105.1-105.3. House and Senate committees must simultaneously file copies of 48-hour notices with the Secretary of State (or equivalent filing officer) in the state in which the candidate is seeking election. 2 U.S.C. §439(a)(2)(B). Presidential candidate committees should consult 2 U.S.C. §439(a)(2)(A) for requirements on filing with state offices.

^{2/} Because 48-hour notices do not have to be signed by the treasurer, they may be sent by mailgram, telegram or telefacsimile (fax) machine in order to meet the 48-hour requirement. AO 1988-32. The fax numbers for the Clerk of the House and the Secretary of the Senate are: House—202/225-7781; Senate—202/224-1851. NOTE: Other reports and statements may not be faxed.

- o Guarantees and endorsements of bank loans;
- o Contributions, personal loans and endorsements of bank loans made by the candidate. 2 U.S.C. §431(8)(A); 11 CFR 100.7(a).

Contents of Notice. The notice must disclose:

- o The name of the candidate and the office sought;
- o The complete identification of the contributor (name, address and, if the contributor is an individual, occupation and employer); and
- o The date and amount of the contribution. 2 U.S.C. §434(a)(6)(A); 11 CFR 104.5(f).

Reporting Contributions a Second Time. The committee must itemize contributions disclosed in a 48-hour notice a second time on the next regularly scheduled report. 2 U.S.C. §434(a)(6)(B); 11 CFR 104.5(f).

Issues Arising in FEC Enforcement Cases

When reviewing reports filed after an election, the Commission checks to see if contributions subject to the 48-hour requirement have been properly disclosed in notices. If not, the Commission may initiate an enforcement action (referred to as a Matter Under Review or MUR). The following summaries of selected MURs clarify some misunderstandings about the 48-hour notice requirement.

Failure to Meet 48-Hour Deadline. In MUR 3172, a Senate campaign's 48-hour notices did not reach the filing offices within 48 hours. Instead of filing notices on large contributions as they were received, the campaign delayed filing until the day after the primary, when it filed a single notice disclosing 26 contributions totaling \$35,350. The campaign also failed to file any notices at all on another set of contributions totaling \$32,500. The campaign agreed to pay a \$5,700 civil penalty.

Unopposed Campaign's Failure to File. In MUR 3171, the campaign of a House candidate who was unopposed in the primary failed to file 48-hour notices on six contributions totaling \$19,350. The campaign did not understand that 48-hour notices are required even when a candidate is unopposed and his or her name does not appear on the ballot. The Commission, however, has determined that the reporting requirements apply even in such cases; the date the election would have been held is the date used for reporting purposes. AOs

1986-21, 1984-54 and 1978-65; see also 11 CFR 110.1(j)(3). The campaign paid a \$2,135 civil penalty.

Failure to Report Loans and Loan Guarantees. In MUR 3215/3156, a Senate campaign did not understand that 48-hour notices are required for all types of contributions. The campaign failed to file 48-hour notices on guarantees of bank loans and a personal loan from the candidate—both of which are considered contributions. These and other contributions not disclosed in 48-hour notices totaled \$61,000. The civil penalty was \$2,000.

A House campaign, the respondent in MUR 3057, agreed to pay a \$3,000 civil penalty for failing to file 48-hour notices on two bank loans guaranteed by the candidate (\$61,201) and two other contributions (\$3,500).

Failure to Identify Contributors in Full. In MUR 2766, a Senate campaign's 48-hour notices failed to include complete contributor identification, omitting contributor addresses, occupations and employers from contributions totaling \$381,050. The campaign agreed to pay a \$3,500 civil penalty.

Pressures of Campaign Unacceptable Reason for Failure to Comply. The respondent in MUR 3044, a special election House campaign, failed to include complete contributor information on last-minute contributions totaling \$200,500 (the campaign omitted addresses, occupations and employers) and failed to file any notices at all on \$156,000 in contributions, including two \$50,000 bank loans endorsed by the candidate. The campaign argued that it was unable to comply in full with the 48-hour notice requirements due to unique circumstances: The campaign was under pressure because the candidate ran in three special elections all scheduled within the same month; the campaign received a large number of last-minute contributions (about 100) shortly before the special general election; and the campaign staff was inexperienced. Rejecting these arguments, the Commission found probable cause to believe that the campaign violated the 48-hour notice requirement. The campaign agreed to pay a \$3,000 civil penalty.

More Information

If you have questions on the 48-hour notice requirement, call the Information Services Division: 800/424-9530 or 202/219-3420.

PUBLIC FUNDING

PRESIDENT AND SIX OTHER CANDIDATES QUALIFY FOR MATCHING FUNDS

During November and December, the following 1992 Presidential candidates became eligible to receive matching funds for their primary campaigns:

- o Former Senator Paul E. Tsongas
- o President George Bush
- o Governor Bill Clinton
- o Senator Tom Harkin
- o Senator J. Robert Kerrey
- o Governor L. Douglas Wilder
- o Former Governor Edmund G. Brown, Jr.

Dr. Lenora B. Fulani, a minor party candidate, was the first candidate to qualify for matching funds. She became eligible in October.

Under the matching fund program, eligible candidates receive matching federal dollars for a portion of the contributions they raise. The federal government will match up to \$250 per contributor, but only contributions from individuals qualify for matching. To establish eligibility for the program, a candidate must submit documentation showing that he or she raised in excess of \$5,000 in matchable contributions in each of at least 20 states (i.e., over \$100,000). This threshold submission is reviewed by the FEC's Audit Division before the Commission makes its determination. The candidate must also agree to comply with the law in a letter of agreement and certification (a "9033 letter").

Presidential candidates may establish their eligibility for matching funds during 1991 and, once eligible, submit additional contributions for matching funds (called matching fund submissions) on specified dates. The U.S. Treasury is expected to make the first matching fund payments early in January 1992. Candidates may continue to make matching fund submissions once a month through March 1, 1993.

GEPHARDT COMMITTEE PRESENTATION ON REPAYMENT DETERMINATION

In an open session on November 6, 1991, Robert F. Bauer, counsel for the Gephardt for President Committee, Inc., responded to the Commission's initial determination that the Committee must repay \$126,383 in primary matching funds to the U.S. Treasury. The Committee had received \$4.396 million in primary matching funds for Congressman Gephardt's 1988 Presidential campaign. The

(continued)

repayment represents a pro rata portion of the amount the Committee spent in excess of the Iowa expenditure limit, based on the final audit report.^{1/}

Mr. Bauer elaborated on the Committee's written response to the initial repayment determination. Arguing that the repayment should be reduced, he contested several findings in the audit report. For example, he contended that the Committee's allocation of 25 percent of Iowa expenditures to the national limit should be allowed because the Iowa caucus has assumed a national dimension, blurring the distinction between expenditures incurred to influence the Iowa voters and efforts to influence voters nationwide. The Commission, however, rejected that approach in the final audit report.

The Commission will consider the Committee's oral and written responses when it makes a final repayment determination, which will be accompanied by a Statement of Reasons.

STATISTICS

FINAL REPORT ON 1989-90 CYCLE RELEASED

On December 10, 1991, the Commission released its final statistics on the 1989-90 election cycle. The 5-volume Final Report gives a complete picture of the 1989-90 financial activity of House and Senate committees, party committees and PACs. The study is a compilation of data from reports filed by committees during the cycle.

The Final Report is a valuable source for researchers in the campaign finance field. Copies may be ordered from the Public Records Office at a cost of \$10 per volume (advance payment is required). Call or write the office: 999 E Street, NW, Washington, DC 20463; 800/424-9530 (ask for Public Records) or 202/219-4140.

The Report is also available on three computer tapes at a cost of \$50 per tape; to order, call the FEC's Data Systems Development Division on the 800 number listed above (ask for the Data Division) or on 202/219-3730.

^{1/}The audit report was summarized in the July 1991 Record.

AUDITS

FEC RELEASES SIMON AUDIT REPORT

On October 22, 1991, the Commission approved the final audit report on Paul Simon for President, Senator Simon's 1988 Presidential campaign committee. The report contained the Commission's initial determination that the committee repay \$430,465 in federal funds to the U.S. Treasury. The Simon Committee had received \$3.774 million in federal matching funds.

The Simon Committee has the opportunity to dispute the initial determination in writing. Under the public funding regulations, the agency may also grant a committee's request to make an oral presentation. When making its final repayment determination, the agency considers all committee responses. 11 CFR 9038.2(c) and (d).

This article highlights the findings in the audit report, which is available for review in the Public Records Office.

Expenditures in Excess of the Iowa and New Hampshire Spending Limits

The Commission initially determined that the Simon Committee exceeded the state spending limits in Iowa and New Hampshire by over \$1 million.

Amounts spent in excess of the state spending limits are considered nonqualified campaign expenses, which are subject to repayment based on a ratio formula (explained at 11 CFR 9038.2(b)(2)(iii)). Application of the ratio to the Simon Committee's expenditures in excess of the state limits resulted in a \$367,906 initial repayment determination.

	State Limit	Spending Over Limit	Repayment Amount
Iowa	\$775,218	\$ 909,962	\$294,963
New Hamp.	\$461,000	\$ 224,850	\$ 72,943
TOTAL		\$1,134,813	\$367,906

Based on audit findings, the Commission increased by \$892,889 and \$238,295, respectively, the amounts the Committee had allocated to the Iowa and New Hampshire limits. The material below explains why the Commission adjusted the allocations in selected categories of expenses.

Exempt Fundraising Expenses. The Committee had excluded 45 percent of its total Iowa spending as exempt fundraising

costs without providing adequate documentation to support that percentage.

The Committee also misapplied a 10 percent compliance exemption to all of its Iowa spending. Under 11 CFR 106.2(c)(5), the 10 percent compliance exemption applies only to salary and overhead expenditures.

As a result of the misapplied exemptions, the Commission considered that an additional \$375,763 was allocable to the Iowa limit.

Media Costs. The audit report found that the Committee had also incorrectly applied a 50 percent fundraising exemption to its purchase costs for Iowa media spots even though the ads did not contain any fundraising appeal. See AO 1988-6. The Commission rejected the Committee's argument that the ads were the first step in a multi-tiered fundraising strategy in which fundraising appeals would follow. The Committee also underallocated or failed to allocate costs for media commissions. Based on these findings, the Commission considered \$62,841 in media costs as allocable to the Iowa limit. An additional \$5,142 in media costs was found to be allocable to the New Hampshire limit.

The Commission rejected the Committee's claim that a 50 percent compliance exemption should apply to its media commission costs. The Committee had asserted that the exemption was reasonable because the media firm performed some "compliance-related work" and because the ads contained the required disclaimer notice (2 U.S.C. §441d(a)). However, the compliance exemption applies only to legal and accounting costs incurred solely to insure compliance with the law. 11 CFR 106.2(c)(5)(i). The one narrow exception to this rule (the 10 percent salary and overhead exemption) does not cover broadcast media.

Travel and Subsistence. The Commission considered \$102,408 in travel and subsistence expenses as allocable to Iowa, and \$40,478 as allocable to New Hampshire. The Committee had, in some cases, failed to allocate travel and subsistence costs of individuals who worked in the state for five or more consecutive days as required under 11 CFR 106.2(b)(2)(iii). Moreover, the Committee had misapplied the 5-day rule to staff assigned to the Iowa and New Hampshire field offices, whose travel and subsistence expenses could not be excluded under that rule.

Regional and State Offices. Although the Committee claimed that its office in Rock Island, Illinois (near the Iowa

border) focused on the Illinois campaign, FEC auditors found evidence indicating that the office's activities were overwhelmingly directed toward influencing the Iowa election. Accordingly, the Commission viewed \$103,997 in Rock Island expenses as allocable to the Iowa limit.

For similar reasons, the Commission found \$46,773 in expenses related to the Committee's Manchester and Boston offices as allocable to the New Hampshire limit. Documentation submitted by the Committee failed to support its claim that the Manchester office operated as a New England regional office and that the Boston office was a Massachusetts field office.

Vendors. The audit report identified \$143,113 in expenditures to various vendors that should have been allocated to Iowa, and \$39,320 that should have been allocated to New Hampshire. The Committee had failed to allocate costs of opinion polls and related travel costs. Moreover, the Commission found no evidence to support the Committee's claim that payments for the computer processing of Iowa voter information and for the development of Iowa and New Hampshire campaign plans were exempt fundraising expenses.

Salary. The audit found that the Committee had failed to allocate \$21,624 (Iowa) and \$55,153 (New Hampshire) in salary and FICA payments for staff assigned to Iowa and New Hampshire and for other staff who stayed in those states for five or more consecutive days. 11 CFR 106.2(b)(2)(ii).

Other Nonqualified Campaign Expenses

In addition to amounts spent in excess of the state limits, the audit report identified other nonqualified expenses: \$134,081 in undocumented expenditures and \$25,865 in Iowa tax penalties and expenses incurred after the candidate's date of ineligibility that did not qualify as winding down costs. See 11 CFR 9032.9, 9033.11, 9034.4(a)(3) and (b)(3). The Commission therefore made an initial determination that the Committee repay \$53,014, the portion of these nonqualified expenses that was paid with public funds.

Other Repayments

The Commission made an initial determination that the Committee repay \$9,545, representing matching funds the Committee received for contributions that were not matchable and uncashed Committee checks. See 11 CFR 9034.3(e) and 9038.6.

(Audits continued)

FINAL AUDIT REPORTS RELEASED

Listed below, in chronological order, are the final audit reports that have been released between December 1990 and December 1991. The FEC is required to audit Presidential and convention committees that received public funds. In addition, the Commission may audit any committee whose reports indicate that the committee has not met threshold requirements for substantial compliance with the Federal Election Campaign Act. 2 U.S.C. §438(b).

Copies of audit reports are available for review at the Public Records Office and may be ordered from that office. Call 800/424-9530 (ask for Public Records) or 202/219-4140.

Campaign for a New Majority (Federal)

Date Released: December 4, 1990
Length: 2 pages

Durenberger for U.S. Senate Volunteer Committee

Date Released: January 14, 1991
Length: 5 pages

Dole for President Committee

Date Released: April 30, 1991
Length: 67 pages plus attachments

Gephardt for President Committee, Inc.

Date Released: June 18, 1991
Length: 54 pages

Anna Eshoo for Congress

Date Released: July 17, 1991
Length: 5 pages

Jack Kemp for President; Kemp/Dannemyer Committee and Victory '88 (joint fundraising committees)

Date Released: July 31, 1991
Length: 52 pages

Curry for Congress

Date Released: August 19, 1991
Length: 5 pages

Friends of Sam Beard for the U.S. Senate

Date Released: August 27, 1991
Length: 4 pages

The Gephardt Committee (joint fundraising committee)

Date Released: September 9, 1991
Length: 5 pages

Taylor for Congress Committee

Date Released: September 17, 1991
Length: 4 pages

Paul Simon for President

Date Released: October 30, 1991
Length: 76 pages plus attachments

Bush-Quayle 88; George Bush for President, Inc./Compliance Committee

Date Released: November 6, 1991
Length: 32 pages plus attachments

Dukakis/Bentsen for President Committee, Inc.; Dukakis/Bentsen General Election Legal and Compliance Fund

Date Released: December 3, 1991
Length: 26 pages

Dukakis for President Committee, Inc.

Date Released: December 17, 1991
Length: 35 pages

PROCEDURES**REVISED POLICY ON COMMITTEE TERMINATION**

The Commission recently revised Directive No. 45, which contains agency policy and procedures for the administrative termination of political committees. Most committees terminate by meeting the requirements of 11 CFR 102.3 (i.e., the committee has no debts and will no longer receive contributions or make expenditures). Under the administrative termination procedures of 11 CFR 102.4, the Commission may administratively terminate the reporting obligations of an inactive committee.¹ The agency may take this action on its own or at the request of the committee. If the agency initiates the action, the committee has an opportunity to object. 11 CFR 102.4(c).

Administrative termination allows certain committees that have outstanding debts to be relieved of reporting obligations. For example, if a committee and a creditor have reached an impasse with respect to a disputed debt, the committee would have to keep reporting the debt indefinitely unless the committee were administratively terminated. This procedure would alleviate the committee's reporting obligations, but not the debt claim. See AO 1990-15.

Administrative termination also allows the Commission to purge its computer system

¹The Commission, for some years, put a hold on administrative terminations but revived the procedure after AO 1990-15 was issued in August 1990.

of inactive committees, thus saving computer space as well as the costs of mailing notices to these committees. Directive No. 45 states that the FEC will review its data bases every nonelection year to select committees that may be eligible for administrative termination.

FEC-Initiated Administrative Terminations

The new Directive revises the criteria the agency uses to select committees for possible administrative termination. These criteria, previously based on dollar thresholds, are now based on a committee's financial activity and reporting status over several years' time.

Under the revised Directive, an authorized committee may be selected for administrative termination if:

- o It was established for an election that was held five or more years ago and it either has not filed reports for a year or appears to be reporting solely to disclose its debts; or
- o It was authorized by an individual who never met the definition of candidate under 2 U.S.C. §431(2).

An unauthorized committee may be selected if:

- o It has not filed reports for at least three years and its debts exceed its cash on hand (based on previous reports); or
- o It has had no significant financial activity in the last three years and appears to be reporting solely to disclose its debts; or
- o It does not appear to have met the definition of political committee at 2 U.S.C. §431(4) and has not communicated with the FEC for at least one year.

Requests for Administrative Termination

When a committee requests administrative termination, it must include the following information for each outstanding debt:

- o The terms and conditions of the initial extension of credit;
- o The steps taken by the committee to repay the debt; and
- o The efforts made by the creditor to obtain payment.

If necessary, the Commission will send the committee a request for additional information (RAFI) to obtain the above information or an explanation of any discrepancy. The Directive was revised to make clear that if a committee fails to provide the above information, its request will not be processed.

Review of Administrative Terminations

The revised Directive assigns the Office of General Counsel the responsibility to review administrative terminations to ensure compliance with 11 CFR 102.4 (see below) and other relevant regulations.

Section 102.4(a) Factors. A committee may be administratively terminated based on the following factors listed in section 102.4(a)2/ of FEC regulations:

- o The committee's aggregate activity for one year is less than \$5,000.
- o The committee did not report receiving any contributions the previous year.
- o The committee's last report disclosed minimal expenditures.
- o The committee's primary purpose in filing reports has been to disclose outstanding debts and obligations.
- o The committee's outstanding debts exceed its cash on hand.
- o The committee does not have substantial accounts receivable.
- o The committee's debts and obligations do not appear to present a possible violation of the prohibitions or limits on contributions.
- o The committee has failed to file reports for the previous year. (However, this may result in an FEC enforcement action; see below.)

Directive Requirements. Under Directive No. 45, all committees must meet two general conditions:

- o The committee may not be involved in any FEC enforcement or litigation action; and
- o The committee may not be an authorized committee of a candidate who is seeking election.

²See also 11 CFR 102.4(c).

CONFERENCES

NONCONNECTED COMMITTEE CONFERENCE

On January 27, 1992, the FEC will hold a conference in Washington, D.C., to assist nonconnected political action committees with their 1992 election activity.

Workshops

In addition to an introduction to the campaign finance law, the conference will include workshops on fundraising, candidate support, reporting, and allocation of federal and nonfederal activity. A workshop for partnerships will also be offered. In addition, a representative of the Internal Revenue Service will be available to answer election-related tax questions.

Registration Information

The \$100 registration fee for the conference covers the cost of the conference, materials and meals (continental breakfast and lunch). Call the FEC to order a registration form and schedule of workshops (800)424-9530 or (202)219-3420.

To avoid a late fee, the registration form (with fee enclosed) must be postmarked by January 13, 1992.

Hotel

The conference will be held at the Sheraton-Carlton, 923 16th Street, NW, Washington, DC 20006. Call 202/638-2626 for room reservations. To receive the group rate of \$165 per night, notify the hotel that you will be attending the FEC conference.

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