

# RECORD

October 1992

999 E Street NW

Washington DC

20463

Volume 18, Number 10

## PUBLICATIONS

### IRS INFORMATION AVAILABLE FROM FEC

The FEC is taking orders for an Internal Revenue Service document, "Election Year Issues," which discusses the prohibition on political campaign activities of 501(c)(3) organizations, the taxation of political organizations, and the political campaign activities of other 501(c) organizations. Excerpted from the IRS training manual entitled Exempt Organizations, the article was written by the Exempt Organizations branch, Technical Division.

To order the document at \$4.75 per copy (based on the standard photocopying charge of 5 cents per page), call the FEC at 800/424-9530 (ask for Public Records) or 202/219-4140. Visitors to the Public Records Office may wish to photocopy only selected portions of the document.

The FEC makes this document available for information purposes only as a courtesy to political committees. Readers should carefully note the FEC disclaimer attached to the document. Questions on the Internal Revenue Code should be addressed to the IRS by calling 202/622-7352 or 622-8095. The FEC has no jurisdiction over tax matters.

### REPORTS DUE IN OCTOBER: REMINDER

Quarterly, monthly and pre-general election reports are due in October. To find out what reports your committee must file, see the September Record article on reporting (pages 6-7), which shows the reporting schedule for October through January. Or call the Commission: 800/424-9530 or 202/219-3420.

### NORTH DAKOTA SPECIAL ELECTION

A special general election will be held in North Dakota to fill the seat formerly held by Senator Quentin N. Burdick, who died September 8. Call the FEC for reporting information.

### 1992 PRESIDENTIAL PRIMARY RESULTS

The FEC recently released the official election results of the 1992 Presidential primary elections, which were held in 39 states, the District of Columbia and Puerto Rico. The publication lists the total number of votes cast in each race as well as the total votes and percentage of votes each candidate received. Totals for write-in votes, "uncommitted votes" and other categories of votes are also listed. The names of individuals who received write-in votes are listed if the state provided that information.

To order a free copy of 1992 Presidential Primary Election Results, call 800/424-9530 (ask for Public Records) or 202/219-4140.

### TABLE OF CONTENTS

#### PUBLICATIONS

- 1 IRS Information Available from FEC
- 1 1992 Presidential Primary Results

#### REPORTS

- 1 Reports Due in October: Reminder
- 1 North Dakota Special Election

#### STATISTICS

- 2 18-Month Candidate and Party Activity

#### PUBLIC FUNDING

- 4 September Matching Fund Payments
- 4 Hearing on Simon Repayment Determination

#### 5 ADVISORY OPINIONS

#### 9 PUBLIC APPEARANCES

#### COURT CASES

- 10 FEC v. Political Contributions Data
- 11 Common Cause v. FEC
- 12 FEC v. Friends of Isaiah Fletcher
- 12 New Litigation

#### COMPLIANCE

- 12 Nonfilers
- 12 MURs Released to Public

#### 15 INDEX

# STATISTICS

## CANDIDATE AND PARTY COMMITTEE ACTIVITY THROUGH JUNE 30, 1992

In early August, the FEC Press Office released financial data on the activity of 1992 House and Senate campaigns and party committees through June 30, 1992, the first 18 months of the 1991-92 election cycle.

To order the press releases, call 800/424-9530 (ask for Public Records) or 202/219-4140.

### Growth in House and Senate Activity

During the first 18 months of election cycle, 1992 House and Senate campaigns raised \$90 million more and spent \$96 million more than Congressional campaigns had during the same period in the previous election cycle. The graph below illustrates this growth. All three graphs are based on an August 9 press release.

The press release also provides the following 18-month statistics:

- o An overall financial summary of House and Senate campaign activity formatted by party affiliation and candidate status (incumbents, challengers, open seat candidates);
- o Summary data on House and Senate activity over several election cycles;
- o Financial summaries of each 1992 House and Senate campaign; and
- o Rankings of House and Senate campaigns based on: receipts, contributions from individuals, contributions from PACs, disbursements, cash on hand and debts.

### Republican Party Leads in Fundraising

By June 30, 1992, Republican party committees had raised \$95 million more than Democratic committees. During the first 18 months of the 1991-92 election cycle, Republican party committees nationwide raised \$157 million compared with the \$62 million raised by their Democratic counterparts.

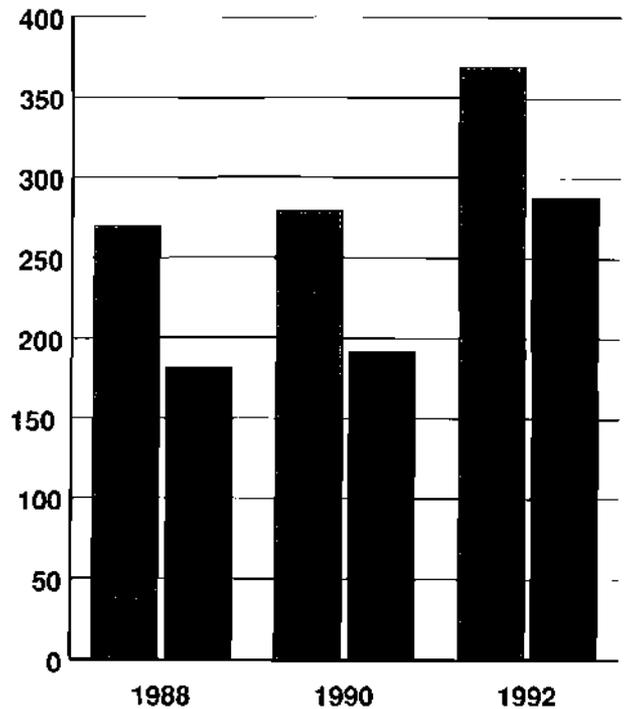
The Republicans spent \$136 million and had \$18 million cash on hand, while the Democrats spent \$58 million and had \$6 million cash on hand.

An August 5 press release includes summary tables comparing activity of the two major parties over four election cycles. The release also provides summary information on the nonfederal accounts of the national party committees for the 1991-92 election cycle, the first cycle when these committees were required to report their nonfederal activity.

## House and Senate Activity First 18 Months of Election Cycle

Receipts  
 Disbursements

Millions of Dollars



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

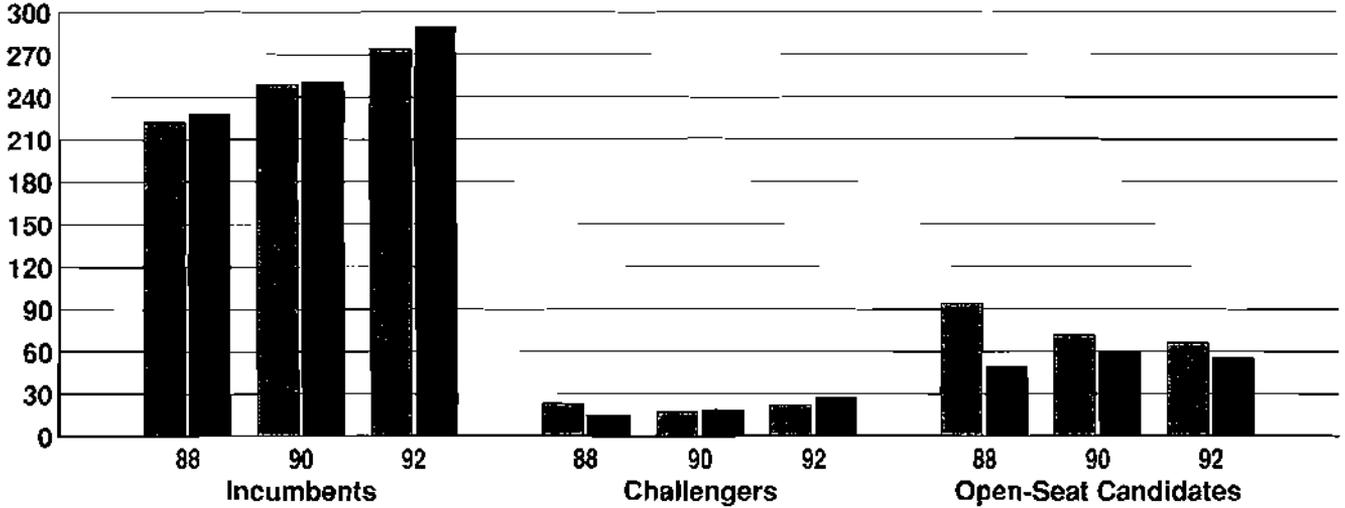
Joan D. Aikens, Chairman  
 Scott E. Thomas, Vice Chairman  
 Lee Ann Elliott  
 Danny L. McDonald  
 John Warren McGarry  
 Trevor Potter

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

**Median Receipts of House Campaigns <sup>1</sup>  
First 18 Months of Election Cycle**

■ Democrats  
■ Republicans

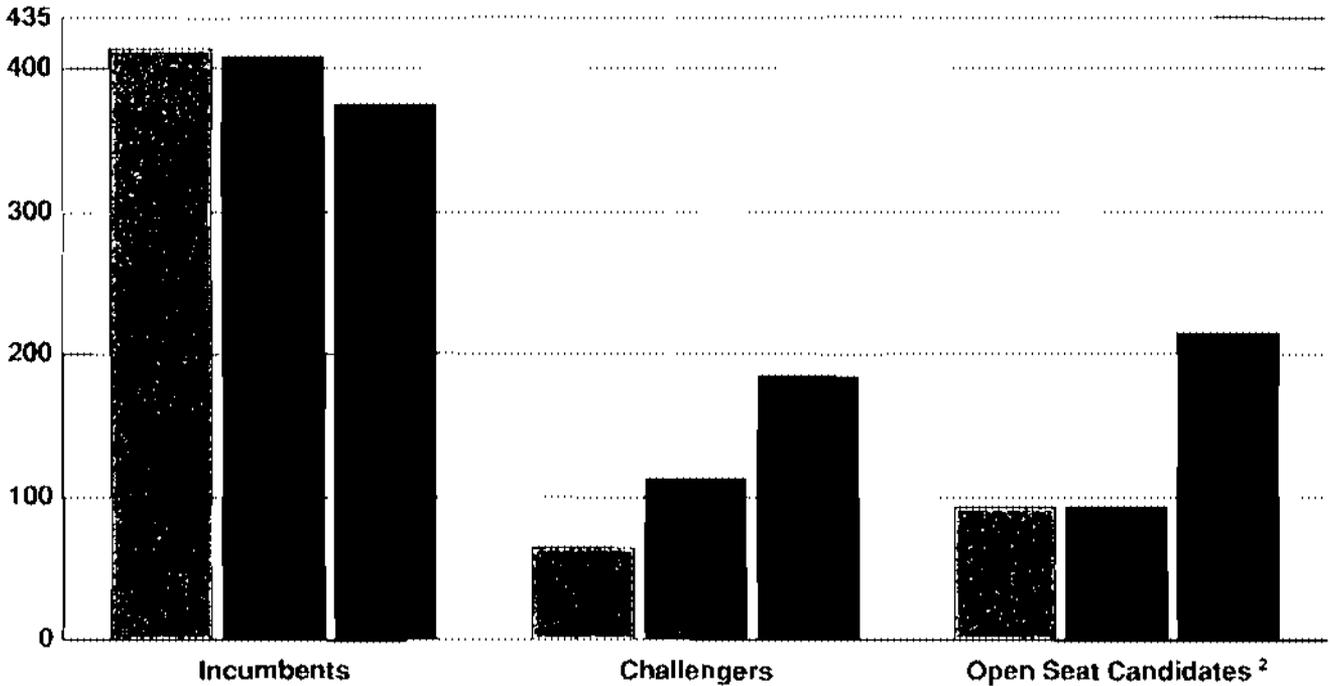
Thousands of Dollars



<sup>1</sup> Graph shows activity of House campaigns that reported raising some money by June 30 of the election year.

**Number of House Candidates <sup>1</sup>  
First 18 Months of Election Cycle**

■ 1988  
■ 1990  
■ 1992



<sup>1</sup> Graph includes only those challengers and open-seat candidates whose campaigns reported raising at least \$50,000 by June 30 of the election cycle.

<sup>2</sup> Number of open-seat Congressional Districts (no incumbent running): 1988—32; 1990—35; 1992—69.



#### SEPTEMBER MATCHING FUND PAYMENTS

On August 31, the Commission certified over \$2.6 million in matching fund payments to 1992 Presidential primary candidates. The U.S. Treasury made the payments early in September. As of the September payment, primary candidates had received \$36.7 million in matching funds, as shown in the table. Candidates have requested \$3.5 million for the October payment.<sup>1/</sup>

Now that the Democratic and Republican nominating conventions are over, the candidates listed in the table are ineligible to receive matching funds except to retire debts incurred before the candidate's date of ineligibility and to wind down the primary campaign. Candidates may continue to make matching fund submissions through March 1, 1993. However, only contributions received and deposited by December 31, 1992, may be matched.

Candidate	September Payment	Cumulative Total
<b>Republicans</b>		
Patrick Buchanan	\$ 420,544	\$ 4,033,240
George Bush	175,216	9,677,368
<b>Democrats</b>		
Larry Agran	0	269,692
Jerry Brown	0	4,239,405
Bill Clinton	1,786,327	9,710,954
Tom Harkin	19,347	1,932,761
Bob Kerrey	32,046	1,959,598
Paul Tsongas	48,232	2,850,573
Douglas Wilder	0	289,027
<b>New Alliance Party</b>		
Lenora Fulani	166,843	1,756,618
<b>Total</b>	<b>\$2,648,555</b>	<b>\$36,719,235</b>

#### HEARING ON SIMON REPAYMENT DETERMINATION

In an August 5, 1992, presentation, Senator Paul Simon's 1988 Presidential committee urged the Commission to reduce the amount the committee must repay to the U.S. Treasury. In an initial determination, the agency said that the committee had to repay \$430,465. Most of that amount—\$367,906—was the pro rata portion of over \$1 million spent in excess of the Iowa and New Hampshire expenditure limits, based on the final audit report.<sup>1/</sup> The committee, Paul Simon for President, had received \$3.7 million in matching funds for the 1988 primary campaign.

In her presentation, Leslie J. Kerman, counsel for the committee, disputed the repayment amount, claiming that:

- o Several thousand dollars of television advertising costs should not be counted against the state limits because the expenses were covered under a proposed 50-percent compliance or fundraising exemption. The final audit report, which contained the FEC's initial determinations, found that the media costs were not entitled to any exemptions.
- o The expenses of a Rock Island, Illinois, office, located just outside Iowa, should not be allocated to the Iowa limit because the office functioned as a fundraising and volunteer recruitment center for the entire campaign and played a key role in the Illinois campaign. The audit report based the allocation on documentation indicating that the office was involved in the Iowa campaign but noted that the allocation could change if the committee submitted documentation showing that some of the office's activity was directed at the Illinois campaign.
- o The expenses of a Boston office should not count against the New Hampshire limit because the office focused on the Massachusetts campaign effort, contrary to the audit report, which identified evidence indicating that the office was active in the New Hampshire campaign but found no evidence indicating that the office conducted Massachusetts activity. Again, the audit reported noted that the allocation could change if the committee submitted documentation to substantiate its claim.

<sup>1/</sup>Amount includes a threshold submission for matching fund eligibility filed by John Hegelin of the Natural Law Party.

<sup>1/</sup>A ratio formula is used to calculate what portion of the excessive expenditures represented the payment of public funds as opposed to private contributions. That amount—the pro rata portion—is subject to repayment.

Ms. Kerman also argued that all of the committee's Iowa and New Hampshire spending was subject to a 50-percent fundraising exemption because the campaign activities in those states were related to the need to raise funds.

Ms. Kerman said that she would submit documentation to support her claims with respect to the Rock Island and Boston offices. In keeping with Commission policy, the documents were due five business days after the presentation, but Ms. Kerman requested an additional five business days. The Commission denied the request, noting that, with one exception, the issues raised in the presentation had already been addressed in both the interim and final audit reports. The agency pointed out that the committee had received three extensions of time—totaling over five months—to respond to the interim audit report and a two-month extension for its response to the final audit report. Thus, there was ample opportunity to submit supporting documentation.

Before making a final repayment determination, the Commission will consider the Committee's oral and written responses.

## 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 1992-35

Exemption from \$1,000 contribution limit for independent candidate. (Requested by Jon Khachaturian, Date Made Public: September 14, 1992; Length: 1 page plus attachments)

#### Correction

The September 1992 issue reversed the numbers of two advisory opinion requests that appeared on page 8. AOR 1992-31 should have been AOR 1992-32, and AOR 1992-32 should have been AOR 1992-31.

### ALTERNATIVE DISPOSITION OF AOR

#### AOR 1992-18: Campaign's Use of Property Jointly Owned by Candidate and Spouse

Congressman Richard Ray withdrew his request by letter of August 28, 1992.

### ADVISORY OPINION SUMMARIES

#### AO 1992-20: Funds from Members' Corporate Practices Used to Pay Expenses of Membership Organization's PAC

The American Speech-Language-Hearing Association (ASHA) is an incorporated membership organization whose members are individual professionals. Some individual members maintain incorporated private practices, which are not members of ASHA. In response to solicitations for contributions to its separate segregated fund, ASHA sometimes receives checks made out to ASHA-PAC that are drawn on members' incorporated practice accounts. These checks may be used to pay the PAC's administrative and solicitation expenses after the checks are endorsed to ASHA, deposited in the ASHA general treasury fund and recorded in a separate account used to defray such expenses.<sup>1</sup> This treatment of private practice checks is permissible in view of similar conclusions reached in AOs 1990-4 and 1982-61.

ASHA members who are presidents of incorporated state associations, which are not ASHA members, sometimes contribute to ASHA-PAC by checks drawn on the association accounts. Unlike private practice account checks, however, these checks may not be used to pay ASHA-PAC's administrative expenses.

Although neither the associations nor the private practices are members of ASHA, a private practice account—unlike an association account—is under the proprietary control of the member; the use of the account to make donations for ASHA-PAC's administration is inextricably identified with the member's professional vocation. As such, the activity is materially indistinguishable from donations made by corporate members of a trade association to pay the expenses of the association's separate segregated fund. See AOs 1986-13, 1982-36 and 1980-59.

Date Issued: August 10, 1992; Length: 4 pages.

(Advisory Opinions continued)

<sup>1</sup> ASHA plans to inform member-contributors using private practice accounts of how ASHA will handle their contributions and give them the opportunity to have the checks returned. Although this type of notification is not required by FEC regulations, the Commission noted its approval of the practice.

resulting transfer from the nonfederal to the federal account.

The opinion included further specific reporting instructions and sample forms for guidance. Date Issued: August 13, 1992; Length: 8 pages, including sample forms.

**AO 1992-28: Repayment of Campaign's Loan to Nonprofit Corporation**

Because loan repayments made from corporate funds are prohibited, the Leahy for U.S. Senator Committee may not receive repayment of a \$50,000 interest-free loan to the Vermont Community Loan Fund (the Fund), a nonprofit corporation that promotes low-cost housing. See 11 CFR 100.7(a)(1)(i)(E) and AO 1981-17. See also AFL-CIO v. FEC and MUR 2547.1/

Although the committee has already provided \$50,000 to the Fund, a letter of intent included in the advisory opinion request states that the loan is contingent on the Commission's approval of the transaction; if the Commission disapproves, the Fund must return the money to the committee within five business days. Given the special circumstances here, the committee may obtain the return of the \$50,000 from the Fund within five business days after the receipt of this advisory opinion.<sup>2/</sup>

The Commission expressed no opinion on the application of Senate rules to the activity, or any tax ramifications, since those issues are outside its jurisdiction. Date Issued: August 13, 1992; Length: 4 pages.

<sup>1</sup>The court's opinion in AFL-CIO v. FEC, 628 F.2d. 97 (D.C. Cir., 1980), and MUR 2547 take the view that the repayment of a loan owed by a corporation or a union to its separate segregated fund is prohibited.

<sup>2</sup>Although the loan is prohibited, other options are open to the committee. It may make an outright donation to the Fund, or it may allow committee funds to be used as collateral for a bank loan to the Fund. In the latter case, however, if the Fund defaults and the bank attaches the collateral, the committee may not receive repayment from the Fund or from any person acting on the Fund's behalf, given the prohibition in 11 CFR 100.7(a)(1)(i)(E).

**AO 1992-29: Late Deposit of Contributions**

The Liz Holtzman for Senate committee must refund contribution checks that were received in late 1991 and early 1992 but not deposited by the treasurer until June 12, 1992, when they were discovered in a former employee's desk drawer. (The committee did not spend the funds pending the Commission's response in this advisory opinion.)

Under 11 CFR 103.3(a), all receipts must be deposited within 10 days of the treasurer's receipt. Treasurers may authorize agents to receive contributions and make expenditures. See 2 U.S.C. §432(a); 11 CFR 102.9. Moreover, previous advisory opinions have recognized that the receipt of contributions by a committee agent is the equivalent of the treasurer's receipt. AOs 1989-21 and 1980-42. In this case, the employee who failed to deposit the contributions within 10 days appears to have been an authorized agent of the treasurer, and his or her failure is therefore imputed to the treasurer.

Furthermore, the committee's proposal would be contrary to the rationale behind the 10-day deposit rule, as stated in the Explanation and Justification: (1) "to encourage the prompt disposition of contributions rather than permit 'stale' checks to be kept lying around or lost"; and (2) to ensure that reported receipt dates are close to actual receipt dates.

Date Issued: August 28, 1992; Length: 3 pages.

**AO 1992-34: Use of Government Car for Campaign Travel**

Michael N. Castle, the Governor of Delaware, is seeking election for the at-large House seat from Delaware and uses a state-provided automobile for his daily travel, both travel related to his House campaign and travel related to gubernatorial business. His committee, the Castle for Congress Fund, must reimburse the state for campaign-related trips at a cost-per-mile rate based on the daily commercial rental charge for a comparable vehicle.

**Commercial Rate for Government Conveyances**

When using a government conveyance for campaign travel, a committee must reimburse the government at the rate for a "comparable commercial conveyance." 11 CFR 106.3(e). In this case, the rate is the daily commercial rental rate for a comparable automobile (e.g., in terms of make and model). 11 CFR 100.7(a)(1)(iii)(B) and AO 1984-48. Because FEC regulations

require a commercial rate, the committee may not use two other reimbursement rates it had proposed: (1) a rate based on the actual per diem cost to the state for leasing the car from a local dealer on an annual basis; or (2) the IRS mileage deduction rate.

#### Cost-Per-Mile for Mixed Campaign and Noncampaign Travel

Under FEC regulations, when a trip involves both campaign and noncampaign stops, campaign-related expenses are calculated using the cost-per-mile of the transportation used. In this case, the cost-per-mile can be determined by dividing the daily commercial rental charge by the total number of miles traveled that day.

The actual cost for campaign travel—the amount that must be reimbursed to the state—is equal to the cost-per-mile multiplied by the mileage for campaign-related stops. Mileage for campaign-related stops is calculated by starting at the point of origin, determining the distance to each campaign-related stop, and ending at the point of origin.<sup>1</sup> 11 CFR 106.3(b)(2).

#### Example

Assume that the commercial rental rate for a comparable car is \$150 a day. On a particular day, the Governor travels 150 miles. Therefore, the cost-per-mile is one dollar (daily rental charge divided by total miles).

During that day, he makes the following campaign and noncampaign stops:

- o From Dover (point of origin) to Point A, 20-mile trip, noncampaign stop;
- o From Point A to Point B, 30-mile trip, campaign stop.
- o From Point B to Point C, 20-mile trip, campaign stop.
- o Point C to Point D, 40-mile trip, noncampaign stop.
- o Back to Dover from Point D, a 40 mile trip.

To determine the Governor's campaign-related mileage, the committee must create a fictional itinerary from Dover to each campaign stop and back to Dover, as follows: From Dover to Point B (say, 40

miles); to Point C (20 miles) and back to Dover (say 60 miles). Thus, the campaign mileage totals 120 miles, although the car actually traveled 150 miles that day. At a cost-per-mile rate of one dollar, the committee must reimburse the state \$120.<sup>2</sup>

#### No Reimbursement for State-Assigned Driver

The committee does not have to reimburse the cost of the state police officer who drives the Governor's car because the driver is authorized by the state. 11 CFR 106.3(e).

#### Recordkeeping and Reporting

All expenditures for campaign-related travel are reportable. 11 CFR 106.3(a). The committee should retain the records on which it bases its travel expense determinations and allocations. See 11 CFR 104.14(b) and AO 1984-48.

Date Issued: August 28, 1992; Length: 4 pages.

#### PUBLIC APPEARANCES

- 10/6 Law Enforcement Coordinating Committee, U.S. Department of Justice  
Houston, Texas  
William Kimberling, Clearinghouse
- 10/7 American University  
Washington, DC  
Kathlene Martin, Information Services  
Michael Dickerson, Public Disclosure
- 10/19 American University  
Washington, DC  
Janet Hess, Information Services  
Michael Dickerson, Public Disclosure

<sup>1</sup> When a candidate conducts any campaign-related activity on a stop, the stop is considered campaign related, although incidental political contacts made during a noncampaign stop do not convert it into a campaign stop. 11 CFR 106.3(b)(3). See also the Explanation and Justification for this regulation.

<sup>2</sup> The committee must also reimburse the state for gasoline. The committee may use the usual and normal commercial charge for a gallon of gas and determine the overall miles per gallon, thus arriving at the cost-per-mile. The committee then multiplies that figure by the mileage of the fictional campaign trip.

## COURT CASES

### FEC v. POLITICAL CONTRIBUTIONS DATA, INC.

On July 30, 1992, the U.S. District Court for the Southern District of New York denied an application filed by Political Contributions Data, Inc. (PCD) for an award of over \$55,000 in attorneys' fees and other costs, which would have been payable by the FEC. The court found that the application was untimely. Further, the court found that, even if it had been filed on time, the application would have to be denied because the FEC was "substantially justified" in bringing suit against PCD.

#### Background

In this suit (PCD), the district court and the court of appeals ruled on the FEC's interpretation of the "sale or use" restriction at 2 U.S.C. §438(a)(4). Under that provision, individual contributor information (name, address, occupation and employer) copied from FEC reports "may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes...."

PCD's parent company, Public Data Access, Inc. (PDA), requested an FEC advisory opinion as to whether PDA's proposal to sell specialized contributor lists, compiled from FEC reports (as recorded on FEC computer tapes), would comply with §438(a)(4). In AO 1986-25, the FEC concluded that the proposed use was prohibited because it constituted a "commercial purpose."

After the advisory opinion was issued, and despite its conclusion, PDA formed PCD to market the contributor lists. A short time later, the National Republican Congressional Committee filed an administrative complaint against PCD, alleging violations of §438(a)(4). The Commission found probable cause to believe that PCD had violated the "commercial purpose" prohibition and, after unsuccessful attempts to reach a conciliation agreement, filed suit against PCD.

**District Court Decision.** The district court, on December 10, 1990, granted summary judgment to the FEC, finding that the agency's interpretation of "commercial purpose" was reasonable and that PCD's sale of the contributor lists could reasonably be characterized as for "commercial purposes."

The court also ruled that the FEC had properly concluded that the "media exemption" in FEC regulations did not apply to PCD's lists. Under the media exemption (11 CFR 104.15(c)), the use of contributor information copied from FEC reports is permissible "in newspapers, magazines, books or other similar communications...as long as the principal purpose of such communications is not to communicate any contributor information...for the purpose of soliciting contributions or for other commercial purposes."

**Court of Appeals.** On August 21, 1991, the U.S. Court of Appeals for the Second Circuit reversed the district court's decision. The court held that PCD's sale of the contributor lists was permissible because of the absence of addresses and phone numbers and the inclusion of a warning against the use of the information for solicitation or commercial purposes. These safeguards, in the court's view, ensured that the lists would be used for informative purposes rather than for commercial purposes. Furthermore, the court found "unreasonable" the FEC's interpretation of the media exemption in AO 1986-25—that the exemption does not apply to communications using FEC contributor information to further sales. The court found this interpretation contrary to the broad disclosure purpose of the Federal Election Campaign Act (FECA).

#### Timeliness of Application for Attorneys' Fees

On December 19, 1991, PCD applied to the district court for an award of \$55,022 in attorneys' fees and other expenses pursuant to the Equal Access to Justice Act. To be considered by a court, an application for attorneys' fees must be filed within 30 days of the date the judgment has become final. Citing judicial precedent, the district court said that "a judgment has been found to be final when the 'losing party asserts that no further appeal will be taken.'" The court found that the FEC provided "clear and unequivocal notice" that it would not appeal the court of appeals' decision in a letter from the FEC's attorney to PCD's attorney. The letter, which stated the FEC's reasons for not pursuing an appeal, was dated October 30, 1991; accordingly, the court found that the deadline expired 30 days later, on November 29, 1991, nearly a month before PCD filed its application for attorneys' fees. The court therefore denied the application because it was filed late.

### Substantially Justified Government Position

The court alternatively held that, even if the application for attorneys' fees had been filed on time, the application would have to be denied on the grounds that the FEC's position in the litigation was "substantially justified."

In determining whether the FEC's position was justified, the court first reviewed three factors based on a previous court of appeals opinion, Spencer v. NLRB: (1) the clarity of the law; (2) the foreseeable length and complexity of the government's action; and (3) the consistency of the government's position.

The court found that the FEC satisfied each of these factors. First, when the FEC brought suit, "there was little congressional or judicial guidance concerning the relevant statutory provisions." Second, "[t]he record indicates that the FEC did not engage PCD in a foreseeably lengthy or complex proceeding." And third, "[s]ince the FEC had not previously interpreted its [media exemption] regulation...prior to AO 1986-25...it is not possible that the FEC's position was inconsistent."

Beyond the Spencer analysis, the court found that the FEC's position had a "reasonable basis both in law and fact" and "could satisfy a reasonable person," the criteria set forth by the Supreme Court in Pierce v. Underwood for determining whether a position is "substantially justified."

**FEC's Position Had Reasonable Basis in Law.** In examining the FEC's interpretation of the law in order to determine its reasonableness, the court noted that, both in 11 CFR 104.15(c) (the media exemption) and in AO 1986-25, "the FEC was forced to reconcile the two conflicting goals of FECA, namely 'total' disclosure and the protection of public-spirited contributors. In trying to accommodate these competing objectives, the FEC fashioned a distinction between use of contributor information which was 'incidental' to sales, and use for which the 'primary focus' was creating sales (the former deemed permissible and the latter prohibited). AO 1986-25, at 4."

The court of appeals, which found this distinction too narrow, "thus placed greater emphasis on the importance of public disclosure than the FEC had," the district court stated. However, the district court observed that the agency "had not abandoned the pursuit of disclosure... [but] simply had attempted to establish a compromise..." The court therefore found that "the FEC's position

had a reasonable basis in law and was 'substantially justified.'"

**FEC's Position Was Reasonable as Applied to PCD's Activities.** The court also found reasonable the factors upon which the FEC had relied in concluding that PCD was similar to a list broker: the format of PCD's lists; the specialization of the lists to accommodate clients; the incorporation of PCD for the purpose of marketing lists; the composition of its clients, two-thirds of whom were political committees, candidates and consultants "who reasonably could be expected to make solicitations"; and the stated intention of two clients to use PCD's list to solicit contributions, as the FEC's investigation had revealed.

The court of appeals rejected the FEC's conclusion in AO 1986-25 partly because only two clients had purchased PCD lists for solicitation purposes, and neither had used the lists for that purpose. "But that some of PCD's clients were interested in the lists for the exact purpose prohibited by 2 U.S.C. §438(a)(4)," the district court stated, "indicates that the FEC did have a reasonable basis in fact to believe that PCD's activities may have violated the prohibition. Although PCD's lists did not contain street addresses or telephone numbers, they were hardly useless to a buyer aiming to make solicitations..."

### COMMON CAUSE v. FEC (91-2914)

As stipulated by both parties, the U.S. District Court for the District of Columbia dismissed this case with prejudice on July 31, 1992, without ruling on the issues. The FEC and Common Cause stipulated the dismissal in light of the recent court of appeals decision in FEC v. National Republican Senatorial Committee (NRSC).<sup>1/</sup> Common Cause had challenged the FEC's dismissal of a complaint alleging that the NRSC had exceeded the contribution limits by exercising "direction or control" over earmarked contributions raised in a 1990 fundraising program.<sup>2/</sup> See 11 CFR 110.6(d) (2). However, in the NRSC case, decided on June 12, 1992, the U.S. Court of Appeals for the District of Columbia Circuit held that the NRSC had not exercised direction or control in a somewhat similar fundraising program that took place in 1986.

(Court Cases continued)

<sup>1</sup> See the August 1992 Record, page 11.

<sup>2</sup> See the January 1992 Record, page 9.

**FEC v. FRIENDS OF ISAIAH FLETCHER COMMITTEE**

This case was closed on August 6, 1992, when the FEC notified the U.S. District Court for the District of Maryland that the committee and its treasurer, Isaiah Fletcher, had paid a court-ordered penalty to the satisfaction of the agency. The FEC's acknowledgment of satisfaction followed a February 1991 order holding defendants in contempt for failing to pay a penalty assessed in April 1989 for reporting violations (Civil Action No. FN 88-2323).

**NEW LITIGATION**

**Akins, Ball, et al. v. FEC**

Pursuant to 2 U.S.C. §437g(a)(8)(C), James E. Akins, George Ball and five other plaintiffs ask the court: (1) to declare that the FEC's dismissal of their administrative complaint was in violation of 2 U.S.C. §437g; (2) to order the agency to comply with §437g within 30 days; and (3) to award to plaintiffs their costs and attorneys' fees.

In their administrative complaint, MUR 2804, plaintiffs alleged that the American Israel Public Affairs Committee (AIPAC), an incorporated lobbying group, violated the Federal Election Campaign Act by failing to register as a political committee and by making prohibited expenditures. They also alleged that AIPAC and 27 political committees were affiliated with one another. On December 19, 1989, the Commission found no reason to believe the organizations were affiliated. After investigating the remaining violations, the Commission, on June 16, 1992, found no probable cause to believe that AIPAC was a political committee but did find probable cause with respect to prohibited contributions by AIPAC. However, the agency took no further action with respect to this finding because, as explained in a Statement of Reasons dated July 28, 1992, the situation presented a "close question," and clarifying regulations should be implemented before imposing penalties.

In their court case, plaintiffs repeat the allegations made in their administrative complaint and claim that the FEC's decisions in the matter were arbitrary, capricious and contrary to law.

U.S. District Court for the District of Columbia, Civil Action No. 92-1864, August 10, 1992.



**FEC PUBLISHES NONFILERS**

The Commission recently cited the committees of the candidates listed below for failing to file reports. The names of authorized committees that fail to file reports are published pursuant to 2 U.S.C. §438(a)(7). Enforcement actions against nonfilers are pursued on a case-by-case basis.

Candidate	Office Sought	Report Not Filed
Gorham	House-OK/02	Pre-Primary
Hill	House-OK/02	Pre-Primary
Houghton	House-NY/31	Pre-Primary
Jones	House-FL/17	Pre-Primary
Oberst	House-SC/01	Pre-Primary
Vardeman	House-OK/02	Pre-Primary

**MURS RELEASED TO THE PUBLIC**

Listed below are MURS (FEC enforcement cases) recently released for public review. The list is based on the FEC press releases of August 14 and September 4 and 11, 1992. Files on closed MURS are available for review in the Public Records Office.

Unless otherwise noted, civil penalties resulted from conciliation agreements reached between the respondents and the Commission.

**MUR 1461**

**Respondents** (all in CA): (a) Californians for Democratic Representation; (b) Armenian National Committee PAC; et al. (c)-(t)

**Complainant:** Louis William Barnett, National Foundation to Fight Political Corruption, Inc. (CA)

**Subject:** Failure to file Statement of Organization and reports; disclaimer; excessive and corporate contributions

**Disposition:** (a) U.S. District Court Judgment: \$15,000 civil penalty; (b) \$750 civil penalty; (c)-(t) multiple findings; see file

**MUR 1602/1596**

**Respondents:** (a) Republican National Independent Expenditure Committee, Rodney A. Smith, Treasurer (DC); (b) National Republican Senatorial Committee (DC); et al. (c) and (d)

**Complainants:** Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee (DC)

(1602); Common Cause (DC) (1596)

**Subject:** Affiliation; excessive contributions; independent expenditures

**Disposition:** (a) and (b) No probable cause to believe; (c) and (d) no reason to believe

#### MUR 2745

**Respondents:** (a) Humphrey for Senate Campaign Committee Inc., Samuel D. Heins, treasurer (MN); (b) Hanson '88 Committee, Victor L. Johnson, treasurer (MN);

(c) Minnesota State Democratic Farm Labor Party; (d) LeSueur County Democratic Farm Labor Committee (MN); et al. (e)-(f)

**Complainant:** Tony Trimble, Independent Republicans of Minnesota and Jann L. Olsten, National Republican Senatorial Committee (DC)

**Subject:** Failure to disclose in-kind contributions; excessive contributions

**Disposition:** (a) Reason to believe but took no further action (in-kind contributions); no reason to believe (other allegations); (b) took no action; (c) reason to believe but took no further action (phone books); no reason to believe (other allegations); (d) reason to believe but took no further action; (e) and (f) no reason to believe

#### MUR 2810

**Respondents:** (a) Free the Eagle, Inc., Howard Segermark, managing director (DC); (b) Coalition for a Winning Ticket, Kim R. Pearson, treasurer

**Complainant:** Department of Justice referral

**Subject:** Corporate contributions; failure to file Statement of Organization and reports; disclaimer

**Disposition:** (a) \$2,500 civil penalty; (b) \$3,500 civil penalty

#### MUR 3091

**Respondents** (all in FL): (a) Robert Kunst; (b) Cure AIDS Now; (c) The Oral Majority  
**Complainant:** Conservative Campaign Fund (DC)

**Subject:** Independent corporate expenditures; failure to report; disclaimer

**Disposition:** (a)-(c) Reason to believe but took no further action

#### MUR 3099

**Respondents** (all in FL): (a) Dick Leonard Group II, Inc. (DLG II); (b) Dick Leonard, chairman, DLG II; (c) Whitney Babcock, president, DLG II; (d) William Bush, executive director, DLG II; et al. (e)-(g)

**Complainant:** Department of Justice referral

**Subject:** Corporate contributions; contributions made in names of others

**Disposition:** (a) and (b) joint \$1,000 civil penalty; (c) \$500 civil penalty; (d) \$500 civil penalty; (e)-(g) reason to believe but took no further action

#### MUR 3140

**Respondents** (all in NJ): (a) Zimmer for Congress, Maria Holliday, treasurer; (b) Friends of Dick Zimmer, Judith A. Allen, treasurer; et al. (c) and (d)

**Complainant:** Raymond Babinski, treasurer, Chandler for Congress (NJ)

**Subject:** Excessive contributions; improper transfers

**Disposition:** (a) and (b) Reason to believe but took no further action; (c) and (d) no reason to believe

#### MUR 3348

**Respondents:** The Committee for Quality Hospital Care, Paul Moran, treasurer (MA)

**Complainant:** FEC initiated

**Subject:** Failure to disclose source of initial cash on hand; failure to file reports on time

**Disposition:** \$7,500 civil penalty

#### MUR 3369

**Respondents:** Curry for Congress, Vincent G. Thomas, treasurer (VA)

**Complainant:** FEC initiated

**Subject:** Excessive contributions; contributions by a foreign national; inaccurate disclosure

**Disposition:** Reason to believe but took no further action

#### MUR 3445

**Respondents:** (a) Frank Riggs (CA); (b) Frank Riggs for Congress Committee, Daniel Jacob Christensen, treasurer (CA);  
**Complainant:** Cindy Claymore Watter (CA)

**Subject:** Failure to file 48-hour notices; inaccurate disclosure

**Disposition:** (a) no reason to believe; (b) reason to believe but took no further action (disclosure); no reason to believe (other allegations)

#### MUR 3454

**Respondents:** Al Brown for Congress Committee, Nancy Lampton, treasurer (KY)

**Complainant:** Ladonna Y. Lee on behalf of Eddie Mahe Company (DC)

**Subject:** Failure to report disputed debt; inaccurate disclosure; failure to file report

**Disposition:** Reason to believe but took no further action (filing report); no reason to believe (other allegations)

(continued)

**MUR 3504**

**Respondents:** Independent Republicans of Minnesota, John Burger, treasurer  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time  
**Disposition:** \$5,000 civil penalty

**MUR 3512**

**Respondents:** (a) Bruno's Good Government League, Glenn J. Griffin, treasurer (AL); (b) Bruno's Inc. (AL)  
**Complainant:** FEC initiated  
**Subject:** Failure to file reports and Statement of Organization on time; excessive contributions; corporate contributions  
**Disposition:** (a) \$25,000 civil penalty; (b) \$500 civil penalty

**MUR 3515**

**Respondents:** (a) Volunteers for Shimkus Committee, Patsy S. Hubbard, treasurer (IL); (b) ICAN, Inc. (AKA Illinois Communities in Action Now)  
**Complainant:** William P. Houlihan, Sangamon County Democratic Committee (IL)  
**Subject:** Corporate contribution; improper reporting  
**Disposition:** (a) and (b) No reason to believe

**MUR 3519**

**Respondents:** Tom Mims for Congress Campaign Committee, Stephen Martin, treasurer (FL)  
**Complainant:** Russell Janutolo (FL)  
**Subject:** Failure to file report with Secretary of State  
**Disposition:** Reason to believe but took no further action

**MUR 3520**

**Respondents:** (a) The President's Dinner (AKA 1991 Republican Senate-House Dinner Committee), Stan Huckaby, treasurer (DC); (b) The President's Dinner (AKA 1992 Republican Senate-House Dinner Committee), Stan Huckaby, treasurer (DC)  
**Complainant:** Andre LeCann (DC)  
**Subject:** Inaccurate reporting; improper solicitation  
**Disposition:** (a) Reason to believe but took no further action (reporting); (b) no reason to believe (solicitation)

**MUR 3521**

**Respondents (all in CA):** (a) Gloria Ochoa; (b) Gloria Ochoa for Congress; (c) Friends of Gloria Ochoa, David L. Peri, treasurer  
**Complainant:** Michael A. Thomas (CA)  
**Subject:** Use of government facilities and funds  
**Disposition:** (a)-(c) No reason to believe

**MUR 3523**

**Respondents:** California Pro Life Council, Inc., PAC (federal and nonfederal accounts), Andra Rory Moreno, treasurer  
**Complainant:** FEC initiated  
**Subject:** Improper transfer of corporate funds  
**Disposition:** \$4,000 civil penalty

**MUR 3529**

**Respondents:** (a) Deddeh for Congress, Barbara Hunsaker, treasurer (CA); (b) Deddeh for Senate, Barbara Hunsaker, treasurer (CA)  
**Complainant:** Bob Filner (CA)  
**Subject:** Corporate contributions; failure to disclose contributions  
**Disposition:** (a) and (b) Reason to believe but took no further action

**MUR 3548**

**Respondents:** Rhode Island Republican State Central Committee, Robert Goldberg, treasurer  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time  
**Disposition:** \$2,000 civil penalty

**MUR 3567**

**Respondents:** Lily Chen for Congress, Paul Chen, treasurer (CA); (b) Paul Chen  
**Complainant:** FEC initiated  
**Subject:** Excessive contributions  
**Disposition:** (a) and (b) Reason to believe but took no further action

## INDEX

The first number in each citation refers to the "number" (month) of the 1992 Record issue in which the article appeared; the second number, following the colon, indicates the page number in that issue.

### ADVISORY OPINIONS

- 1991-29: Contributions received and made by corporation's employee pledge program, 1:4
- 1991-32: Charges for consultant's fund-raising services, 5:6
- 1991-33: Allocation of expenses when party committee administers primary election, 1:6
- 1991-34: Committee sale of access to voter data base as ongoing venture, 1:6
- 1991-35: Application of allocation rules when SSF's nonfederal account pays its own administrative expenses, 2:10
- 1991-36: Corporation's payment of employee's travel expenses to attend party fundraiser, 3:5
- 1991-37: Nonconnected PAC's payment to incorporated firm for shared facilities and services contributed to committees, 3:5
- 1991-38: Repayment of embezzled funds to candidate committee, 3:6
- 1991-39: Contributions suspected of being made in names of others, 4:9
- 1992-1: Campaign salary paid to candidate; reimbursements for campaign expenses, 4:9
- 1992-2: Party reallocation of staff salaries as fundraising expenses, 4:10
- 1992-3: Corporation's payment of benefits for employee/ candidate on unpaid leave, 5:8
- 1992-4: Campaign's payment of candidate's living expenses and spouse's salary, 4:10
- 1992-5: Candidate's appearance in cable public affairs programs, 5:8
- 1992-6: Honorarium paid to candidate for speech on campaign issues, 4:11
- 1992-7: Corporate PAC's solicitation of franchise personnel, 6:4
- 1992-8: Tax seminars as fundraising mechanism, 5:8
- 1992-9: Cooperative's twice-yearly solicitation through raffle at annual meeting, 6:5
- 1992-10: Committee's disbursement to nonprofit voter organization, 6:5
- 1992-11: Computer-generated summary page and detailed summary page, 6:6
- 1992-12: Candidate's future ownership of campaign van, 7:7

- 1992-14: Candidate's designation of excess campaign funds in event of his death, 7:7
- 1992-15: Extension of time for redesignations of general election contributions when candidate loses primary, 8:6
- 1992-16: Nonfederal contributions made by U.S. subsidiary of foreign corporation, 8:7
- 1992-17: Affiliation of partnership PAC with SSFs of the corporate partners, 8:8
- 1992-19: State campaign's lease of computers to candidate's federal campaign, 9:9
- 1992-20: Funds from members' corporate practices used to pay expenses of membership organization's PAC, 10:5
- 1992-21: Excess campaign funds of 1994 candidate donated to §170(c) charity, 8:9
- 1992-23: Ads paid for by incorporated membership organization, 10:6
- 1992-24: Campaign's sale of assets and other debt retirement activities, 10:6
- 1992-25: Utah convention as separate election, 9:9
- 1992-27: Retroactive allocation of fundraising expenses, 10:7
- 1992-28: Repayment of campaign's loan to nonprofit corporation, 10:8
- AO 1992-29: Late deposit of contributions, 10:8
- AO 1992-34: Use of government car for campaign travel, 10:8

### COURT CASES

#### FEC v.

- AFSCME-PQ, 1:7
  - America's PAC, 7:10
  - Black Political Action Committee, 8:13
  - Caulder, 8:13
  - Eldredge for Congress Committee, 9:11
  - Friends of Isaiah Fletcher Committee, 10:12
  - International Funding Institute, 9:11
  - Kopko, 8:11
  - National Republican Senatorial Committee (91-5176), 8:11
  - NRA Political Victory Fund, 1:7
  - Political Contributions Data, Inc., 10:10
  - Populist Party (92-0674), 5:9
  - Schaefer, Friends of, 6:6
  - Wright, 7:8
- v. FEC
- Akins, 1:8, 3:7; 8:11
  - Akins, Ball, et al., 10:12
  - Branstool, 3:8
  - Bryan v. FEC, 8:13
  - Common Cause (91-2914), 1:9; 10:11
  - Common Cause (92-0249), 3:8
  - Freedom Republicans, Inc., 3:7; 6:7
  - LaRouche, 4:8

(continued)

- National Rifle Association of America (NRA) (89-3011), 4:8
- Schaefer, 6:6
- Spannaus, 6:6
- Trinsey, 3:7
- White, 7:9

**REPORTING**

Pre-primary, pre-runoff reporting dates

- AK date changed, 7:16
- FL date changed, 9:8
- House and Senate, 1:14
- OH, SC dates changed, 5:9
- Presidential, 2:10; 3:10

Schedule for 1992, 1:10; 3:8; 6:2; 9:6

Special election, North Dakota, 10:1

Waivers, July 15 quarterly, 7:16

**SPENDING LIMITS FOR 1992**

Coordinated party, 3:1

Presidential, 3:14

**800-LINE ARTICLES**

Advances by staff: contribution limits and reporting, 9:10

Compliance with laws outside FEC's jurisdiction, 3:12

Contributions: receipt and deposit, 6:10

Debt settlement plans: postponing payment to creditors, 8:10

Last-minute contributions: 48-hour notices required, 1:18

Names of corporate and labor PACs, 8:10

Registration by candidates and their committees, 2:12

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