

# Record

October 1994

Federal Election Commission

Volume 20, Number 10

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## Correction to Flashfax Number

The September issue published an incorrect Flashfax number in the article on the foreign national brochure (page 3 box). The correct number for the Flashfax service is **202/501-3413**.

## Reports

### Reports Due in October

With one exception,<sup>1</sup> all types of political committees must file one or more reports in October, as explained below. Reports must be filed with the appropriate federal and state filing offices.

For more information on October reporting, see the September *Record* (pages 6-7) or the 1994 reporting handout. To order the September *Record* or handout, call 800/424-9530 (press 1 if using a touch tone phone) or 202/219-3420. The handout is also available through Flashfax; call 202/501-3413 and enter document number 344.

### Third Quarter Report

Committees filing on a quarterly basis must file an October quarterly report due October 15.

### October Monthly Report

Monthly filers must file a report due October 20 and covering September activity.

### 12-Day Pre-Election Report

The pre-election report for the November 8 general election must be filed by:

- Committees of candidates running in the November 8 election;
- PACs and party committees filing on a monthly schedule (the pre-election report is filed in lieu of the November monthly report); and
- PACs and party committees filing on a quarterly basis if the committee makes contributions or expenditures in connection with the general election during the coverage dates for the report (below).

The pre-election report, which covers activity from October 1 through October 19, is due October 27. If sent by registered or certified mail, it must be postmarked by October 24.

### 48-Hour Notices on Contributions

Committees of candidates running in the November general election must file a 48-hour notice if they receive a contribution of \$1,000 or more (including contributions and loans from the candidate) between October 20 and November 5. The committee must disclose the contribution on FEC Form 6 or in a statement containing the same information. The notice must be received by the federal and state filing offices within 48 hours of the committee's receipt of the contribution.

(continued on page 2)

<sup>1</sup> The exception is for committees of candidates who did not seek election in 1994. Their next report is the 1994 year-end report covering July through December, which is due January 31, 1995.

## Reports

(continued from page 1)

### 24-Hour Reports on Independent Expenditures

Political committees and other persons<sup>2</sup> planning to make independent expenditures to support or oppose candidates in the November 8 general election are reminded of the 24-hour reporting requirement. Under that requirement, general-election independent expenditures aggregating \$1,000 or more and made between October 20 and November 6 must be reported with the appropriate federal and state filing offices within 24-hours after the expenditure is made. ♦

*2 Individuals and other persons who are not political committees are reminded that when their independent expenditures exceed \$250 in a calendar year, they must file a report at the end of that reporting period. 11 CFR 109.2. See next article.*

**Federal Election Commission**  
999 E Street, NW  
Washington, DC 20463

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## Compliance

### MUR 3678 Individual's Failure to Report Independent Expenditures

Evans Cabinet Corporation and its CEO, Clyde Evans, agreed to pay a \$2,500 civil penalty for failing to disclose \$4,325 in independent expenditures<sup>1</sup> made in the form of newspaper ads. The civil penalty also covered other violations: failure to display the required disclaimer in the ads and the use of corporate funds to pay for the independent expenditures and \$1,700 in contributions to federal candidates.

### Failure to Report Independent Expenditures

Mr. Evans failed to file the requisite disclosure statements on the independent expenditures, which advocated the defeat of Congressman J. Roy Rowland and which appeared in Georgia newspapers during October and November of 1990 and 1992. The 1990 ads cost \$1,383 and the 1992 ads, \$2,942. Once his independent expenditures exceeded \$250 in a calendar year, Mr. Evans was required to file signed statements disclosing information on the independent expenditures and certifying, under penalty of perjury, that the expenditures were made without the consultation or cooperation of any authorized committee. 2 U.S.C. §434(c).

(Individuals—and other entities that are not political committees—

<sup>1</sup> An independent expenditure is an expenditure for a communication that expressly advocates the election or defeat of a clearly identified federal candidate but that is not made with the cooperation or consent of, or in consultation with, or at the request or suggestion of, any candidate or any of his or her agents or authorized committees. 2 U.S.C. §431(17).

may file independent expenditure statements on FEC Form 5.)

### Failure to Display Correct Disclaimer

Mr. Evans failed to display the required disclaimer statement in the ads. Although he did include a statement that identified him as the sponsor, it did not clarify that the ads were "not authorized by any candidate or candidate's committee," in violation of 2 U.S.C. §441d(a).

### Use of Corporate Funds

Mr. Evans paid for the ads with monies drawn from a special account containing loans from the corporation—\$29,000 loaned during the fall of 1990 and \$110,000 loaned during October 1992. The special account, over which Mr. Evans had sole signature authority, also contained funds from other sources and, in effect, intermingled Mr. Evans's personal funds with corporate funds. Mr. Evans drew from this account to cover a variety of expenses, including the independent expenditures and the contributions to federal candidates.

These circumstances placed the corporation and Mr. Evans in violation of 2 U.S.C. §441b, the corporation for having made loans which were used to influence federal elections, and Mr. Evans for having consented to the loans. ♦

### MUR 3781 \$35,000 in Civil Penalties for Corporate Contributions Made in Name of Another

During a period of almost 10 years, from 1983 through 1992, the University of Osteopathic Medicine and Health Sciences of Des Moines, Iowa, a nonprofit corporation, reimbursed University President Dr. J. Leonard Azneer for his contributions to federal and state candidates. The contributions to federal candidates, which totaled \$19,000,

violated the prohibition on corporate contributions (2 U.S.C. §441b) and the ban on contributions made in the name of another (2 U.S.C. §441f). The University and Dr. Azneer paid civil penalties of \$19,000 and \$16,000, respectively, for violating these provisions.

The violations came to light after an independent counsel, retained by the University in October 1992, investigated Dr. Azneer's administration. Filing *sua sponte* submissions, the University voluntarily informed the FEC and the U.S. Internal Revenue Service about the contribution reimbursements.

In determining the civil penalty for the University, the Commission took into account that the school had resolved the matter with the IRS by paying \$250,000 to the U.S. Treasury in lieu of losing its tax exempt status. Additionally, the school had paid over \$23,000 to cover excise and other taxes.

The University also disclosed the reimbursement transactions to the Iowa Campaign Finance Disclosure Commission.

In February 1989, a former University vice president had raised allegations concerning Dr. Azneer's contribution reimbursement practice with some members of the school's board of trustees. The allegations were brought to the attention of the University's counsel and accountants, but the practice continued until September 1992, when Dr. Azneer was placed on administrative leave. (He has since left the University.) ♦

### **MUR 3803** **Late Receipt of** **Reattributions/Redesignations**

Under the terms of a conciliation agreement, the Ferraro for U.S. Senate committee agreed to pay a \$900 civil penalty for accepting \$4,400 in excessive contributions from 11 individuals. The committee was Geraldine Ferraro's principal

campaign committee for her unsuccessful 1992 primary campaign in New York.

Although the 11 contributors redesignated or reattributed the excess portion of their contributions,<sup>1</sup> the committee failed to obtain signed redesignations and reattributions within the 60-day time limit that runs from the date of the committee's receipt of an excessive contribution. Failing to receive the redesignations and reattributions in time, the committee should have refunded the excess amounts within the 60-day limit, as required under 11 CFR 103.3(b)(3). Because it did not, the committee, in effect, accepted excessive contributions, a violation of 2 U.S.C. §441a(f).

Additionally, the committee failed to disclose the redesignations and reattributions in the report covering the period during which they were received, in violation of 11 CFR 104.8(d)(2)(i). The committee mistakenly reported them earlier, in the report covering the period during which they were requested. ♦

### **MURS Released to the Public**

Listed below are FEC enforcement cases (Matters Under Review or MURs) recently released for public review. They are based on the FEC press releases of July 29, August 3, 4, 19 and 26, and September 12. Files on closed MURs are available for review in the Public Records Office.

<sup>1</sup> A candidate committee may ask an individual to redesignate the excessive portion of a contribution to a different election for which the contributor has not yet exceeded the limit. A committee may also ask contributors to reattribute their joint contribution so that the excessive amount is attributed to the donor who has not yet used up his or her limit. When requesting a redesignation or reattribution, a committee must offer to refund the excessive amount. See 11 CFR 110.1(b) and (k) and 110.2(b).

### **Pre-MUR 261**

**Respondents:** (a) Robert Martinez (FL); (b) Republican Party of Florida, James H. Stelling, treasurer

**Complainant:** Referral from U.S. Department of Justice

**Subject:** Excessive contributions; contributions exceeding \$25,000 limit

**Disposition:** (a)-(b) Took no action

### **MUR 2892/2846/3004**

**Respondents:** (a) West Beach Estates; (b) Haseko (Hawaii), Inc.; (c) Graham Beach Partners; (d) Haseko Realty, Inc.; (e) Haseko Engineering, Inc.; (f) Haseko (Ewa), Inc.; (g) Royal Hawaiian Country Club; (h) Y.Y. Valley Corporation; (i) Tetsuo Yasuda; (j) Yasuo Yasuda; (k)-(z) 16 other respondents agreeing to civil penalties; 100 remaining respondents

**Complainants** (all in HI): Anthony P. Locricchio; Victoria S. Creed, President, Maunawili Community Association; Karin L. Kosoc; Donna Wong

**Subject:** Foreign national contributions

**Disposition:**<sup>1</sup> (a) \$38,000 civil penalty; (b)-(f) \$30,000 civil penalty; (g)-(h) \$23,000 civil penalty; (i)-(j) \$23,000 civil penalty; (k)-(z) between \$8,000 and \$125 in civil penalties; reason to believe but took no further action (67 respondents); no probable cause to believe (12 respondents); no reason to believe (11 respondents); took no action (10 respondents)

### **MUR 3499**

**Respondents:** Doug Barnard for Congress, Committee for Druie

(continued on page 10)

<sup>1</sup> Sixty respondents received letters of admonishment from the Commission, as did more than 100 recipients of foreign national contributions who were not named as respondents. For more information on this MUR and the prohibition on foreign national contributions, see the August 3 press release and the September Record.

## Regulations

### Revised Convention Rules Now Effective

Revised regulations governing publicly financed Presidential nominating conventions became effective August 25. They will apply to the 1996 conventions.

The regulations expand disclosure by requiring convention cities to file a post-convention statement reporting the amounts spent for convention facilities and services: the total defrayed with public revenues and the total defrayed from a municipal convention fund.

Municipal convention funds are addressed in a new regulation that allows these funds to be used for publicly funded Presidential conventions as long as the fund was created to attract other conventions and events to the city (not just the nominating convention). The regulation is based on AOs 1983-29 and 1982-27.

A new provision allows convention committees to raise contributions to pay legal and accounting compliance costs, but not any other expenses. Before, the Republican and Democratic convention committees could not accept any private contributions; they had to limit spending to the amount of their public funding grants.<sup>1</sup> Donations to convention compliance funds count against the donor's limit on contributions to the national committee and, in the case of an individual, against the \$25,000 annual limit on all federal contributions.

The regulations simplify terminology by using the term "commer-

cial vendor" to replace previous terms ("local," "retail," "local retail") used to describe businesses that may offer reductions, discounts and free items. Convention committees, host committees and convention cities may all accept goods and services from commercial vendors under the same terms and conditions as are provided to nonpolitical clients.

The term "local businesses" (which excludes banks) has been retained to describe businesses permitted to donate money, goods and services to host committees and convention cities for certain convention-related purposes; these businesses may also donate to a municipal convention fund.

Finally, the revised regulations reorganize the convention funding rules at 11 CFR Part 9008 and make them consistent with the regulations governing the public funding of Presidential primary and general elections, including the rules on audits and repayments.

By law, the Commission must audit publicly funded committees, including convention committees, to ensure that public funds are properly spent. (See article on audit of the 1992 Republican convention committee, page 8.)

The revised rules and their explanation and justification were published in the Federal Register on June 29, 1994 (59 FR 33606). To obtain a copy of the notice, call Public Records: 800/424-9530 (press 3 if using a touch tone phone) or 202/219-4140. The document is also available through Flashfax, the FEC's 24-hour faxing service. Call 202/501-3413 and enter document code 227. ♦

## Publications

### Updated Index to PAC Abbreviations

The Commission recently published a new edition of *Pacronyms*, an alphabetical list of acronyms, abbreviations and common names of political action committees (PACs).

For each PAC listed, the index provides the full name of the PAC, its city, state, FEC identification number and, if not identifiable from the full name, its connected, sponsoring or affiliated organization.

The index is helpful in identifying PACs that are not readily identified in their reports and statements on file with the FEC.<sup>1</sup>

To order a free copy of *Pacronyms*, call the Public Records Office at 800/424-9530 (press 3 if using a touch tone phone) or 202/219-4140.

Other PAC indexes, described below, may also be ordered from Public Records. The cost is shown in parentheses.

- An alphabetical list of all registered PACs shows each PAC's identification number, address, treasurer and connected organization (\$13.25).
- A list of registered PACs arranged by state provides the same information as above (\$13.25).
- An alphabetical list of organizations sponsoring PACs shows the PAC's name and identification number (\$7.50). ♦

<sup>1</sup> Under FEC regulations, the name of a corporate or labor PAC must include the full, official name of the connected organization. A PAC may use an abbreviated name on checks and letterhead if it is a clearly recognized abbreviation or acronym by which the connected organization is commonly known. However, both the full, official PAC name and the abbreviated name must be disclosed in all reports, statements and disclaimers. 11 CFR 102.14(c).

<sup>1</sup> The major party convention committees are entitled to receive a public funding grant of \$4 million as increased by the cost-of-living adjustment (COLA). In 1992, the COLA raised each party's convention committee entitlement to over \$11 million dollars.

## Statistics

### Congressional Fundraising Continues to Climb

By the end of June 1994—18 months into the 1993-94 election cycle—campaigns of 1994 House and Senate candidates had raised \$387.7 million, 5 percent more than their counterparts in 1992. Spending dropped 6 percent to \$270.9 million, still far exceeding spending in pre-1992 cycles (see graph).

Senate campaigns raised \$163.5 million in the first 18 months of the 1994 cycle (nearly unchanged from 1992) and spent \$113.5 million (down 8 percent). House fundrais-

ing, at \$224.2 million, was up 8 percent, but spending, at \$157.4 million, declined 4 percent.

While overall fundraising increased, PAC support of 1994 campaigns declined 1 percent from 1992 to \$97.5 million. Contributions from individuals, however, increased by 9 percent to \$224.3 million. Contributions and loans from candidates to their own campaigns went up 8 percent to \$52 million.

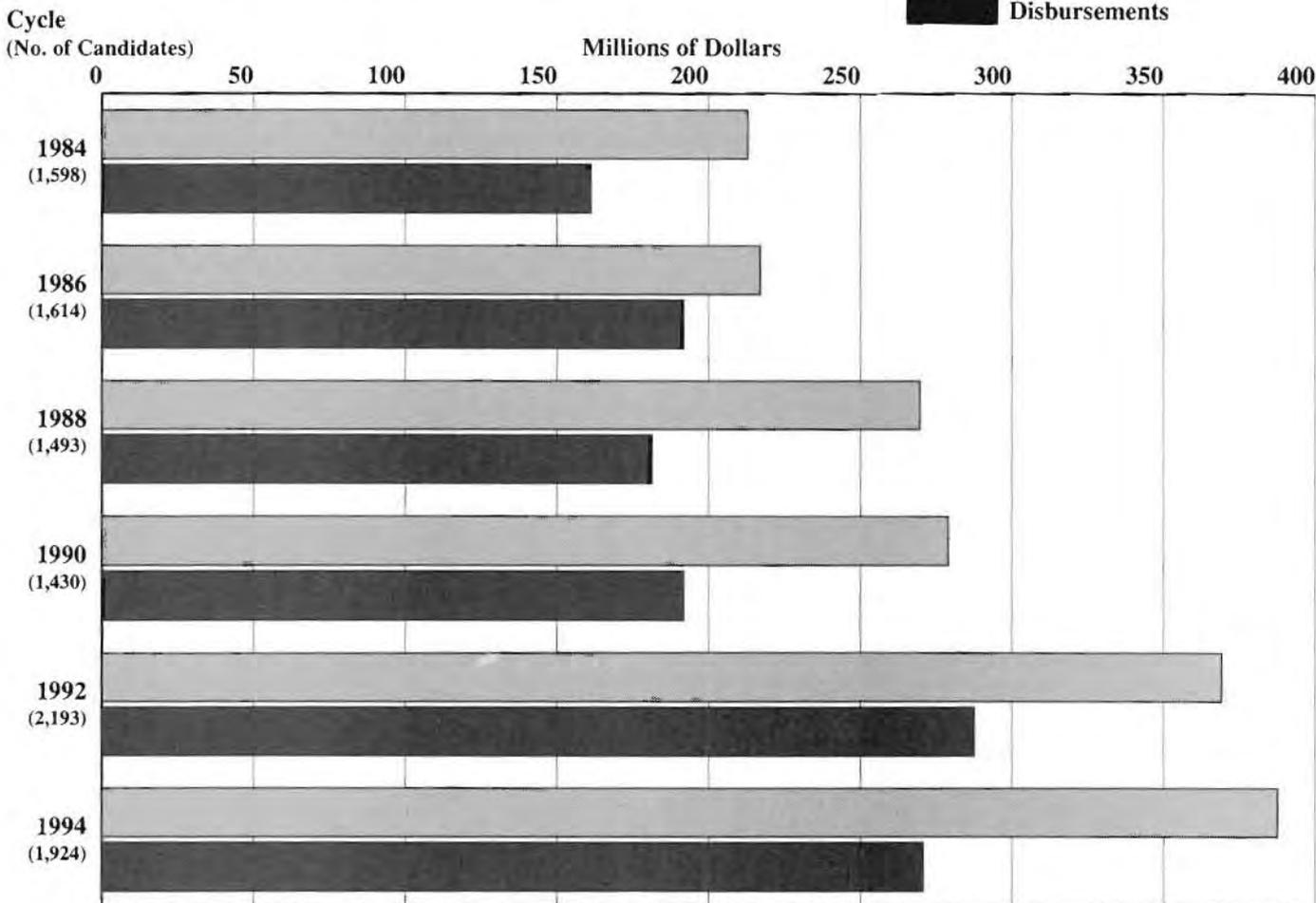
There were fewer candidates overall at the 18-month point in 1994 than in 1992. However, the number of nonincumbents who had raised at least \$50,000 by June 30 of the election year continued to increase.

Median receipts of House incumbents, challengers and open-seat candidates increased over 1992 levels except for Republican incumbents, whose median receipts declined slightly. Democratic incumbents showed the largest gain.

The graph is based on an August 12 statistical press release on 18-month House and Senate activity. Copies are available from the Public Records Office. Call 800/424-9530 (press 3 if using a touch tone phone) or 202/219-4140. You can also have the release faxed to you through the FEC's Flashfax service. Call 202/501-3413 and enter document code 627. ♦

*(Statistics continued on page 6)*

### House and Senate Activity at 18-Month Point<sup>1</sup>



<sup>1</sup> Covers activity through June 30 of the election year.

**Statistics**

(continued from page 5)

**Republicans Outraise Democrats by \$80 Million**

In raising and spending funds for election of federal candidates, Republican committees continued to outpace the Democrats during the first 18 months of the 1993-94 election cycle (January 1993 through June 1994). Republicans raised \$80 million more and spent \$63 million more than the Democrats.

Although lagging behind in total dollars, Democratic committees increased their federal fundraising and spending by 34 percent and 27 percent, respectively, compared with the same period in the 1991-92 cycle. Republican federal fundraising, by contrast, increased only 3 percent, while the Party's spending on federal election activity remained level with 1992.

Federal activity by both parties at the state and local levels continued to grow. The increases reflected in both the 1992 and 1994 cycles could, in part, be explained by changes to FEC rules. In January 1991 (the start of the 1992 cycle), the FEC implemented stricter rules on allocating expenses between federal and nonfederal activities to prevent the use of nonfederal funds ("soft money") to influence federal elections. Nonfederal funds are raised outside the limits and prohibitions of federal law and are prohibited for use in federal elections.

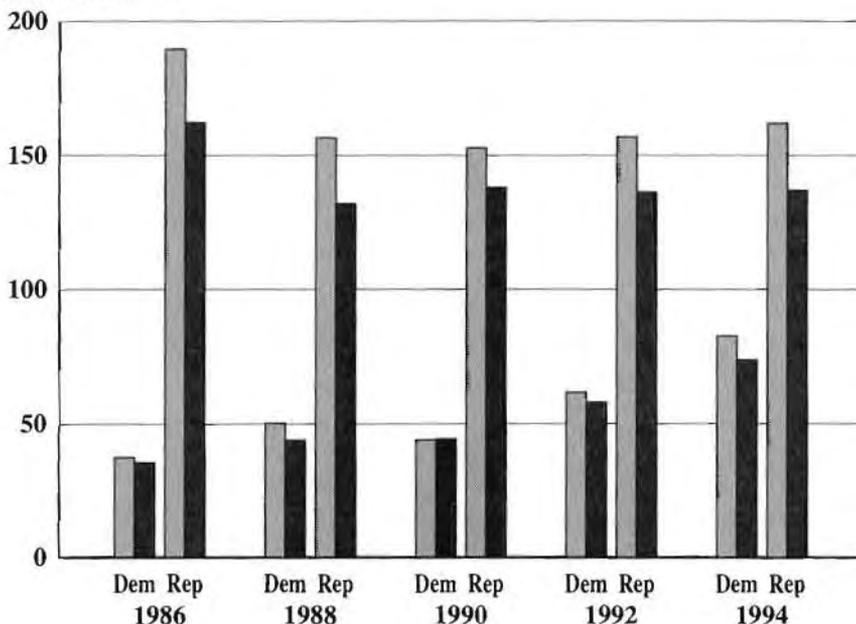
The new rules required, for the first time, that national party committees disclose their nonfederal activity in FEC reports. Those reports show that the Democratic national committees took the lead in nonfederal fundraising, more than doubling nonfederal receipts and disbursements compared with the previous cycle. Nonfederal fundraising by the Republican national committees, by contrast, was down 28 percent, and spending increased only a modest 4 percent.

**Federal Activity of Party Committees at 18-Month Point<sup>1</sup>**

**Receipts and Disbursements**

Receipts  
Disbursements

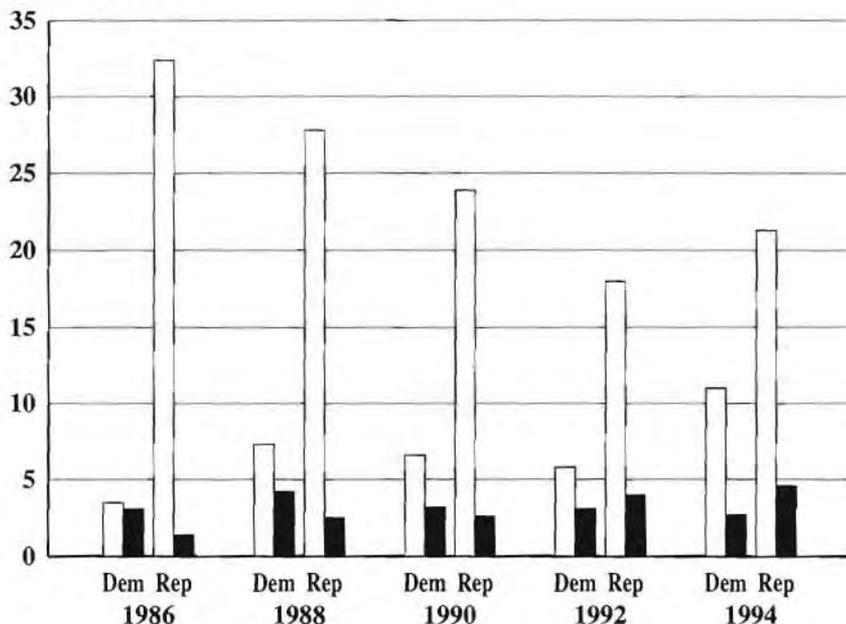
Millions of Dollars



**Cash on Hand and Debts**

Cash on Hand  
Debts

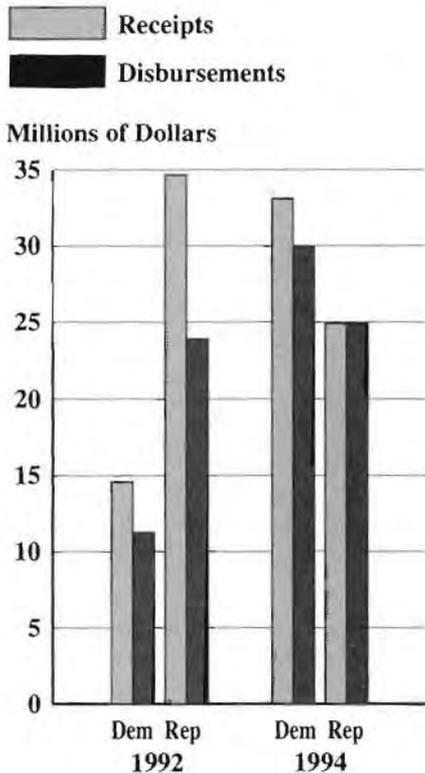
Millions of Dollars



<sup>1</sup> Covers activity through June 30 of the election year. Includes federal activity at all levels of the party: national, state and local.

More information on Democratic and Republican party activity is available in an August 8 press release, which can be ordered from Public Records. Call 800/424-9530 (press 3 if using a touch tone phone) or 202/219-4140. The press release is also available through the FEC's 24-hour Flashfax service. Call 202/501-3413 and enter document code 628 at the prompt. ♦

**Nonfederal Activity of National Party Committees at 18-Month Point <sup>1</sup>**



<sup>1</sup> Covers activity through June 30 of the election year. Includes activity of each party's three national-level committees (the national committee and the House and Senate campaign committees).

**Advisory Opinions**

**AO 1994-25  
Corporation Handling Convention Arrangements as Political Committee**

FEE Enterprises (FEE), a corporation organized to conduct the Libertarian Party's 1996 Presidential convention, qualifies as a political committee under the Federal Election Campaign Act (Act); as such, it must register and file periodic reports.

This determination is based on an arrangement proposed by the Libertarian National Committee (LNC) under which: A for-profit corporation founded by four individuals, each contributing \$3,333 in start-up capital, would organize, promote and stage the convention; the corporation, called FEE, would rent a convention hall and charge the LNC for its use; FEE would purchase ad space in the LNC's monthly newspaper and rent its mailing list in order to promote the convention to potential attendees; and attendees would pay fees directly to FEE. No other funds would change hands between the LNC, FEE and the candidates, and all charges would be at the fair market value. FEE would not owe the LNC anything if FEE turned a profit; nor would the LNC or the candidates reimburse FEE if it suffered a loss.

**FEE's Status as Political Committee**

Although the LNC did not believe FEE would be required to register and report as a political committee, FEE does qualify as a political committee.

The Act defines a "political committee" as any committee, club, association, or other group of persons which receives contributions or makes expenditures aggre-

gating in excess of \$1,000 during a calendar year. Also determinative is whether the major purpose of the organization is to make expenditures or solicit contributions for the nomination or election of candidates. See *Akins v FEC*, No. 92-1864 (D.D.C. March 30, 1994). Furthermore, a committee or organization representing a national party in making arrangements for its convention to nominate a Presidential ticket is required to register and report as a political committee. 11 CFR 9008.1(b). See also 2 U.S.C. §437(2). Because FEE's sole purpose is to make the arrangements for the Libertarian Party's convention to nominate its 1996 Presidential ticket, it qualifies as a political committee with registration and reporting obligations.

**FEE's Affiliated Status**

FEE is affiliated with the LNC, based on several factors of affiliation listed under 11 CFR 100.5(g)(4)(ii) and 110.3(a)(3)(ii).<sup>1</sup> For example the four individuals who plan to establish FEE are members of the LNC, thus satisfying the criterion at 11 CFR 100.5(g)(4)(ii)(D).

FEE's status as a political committee affiliated with the LNC (rather than a corporate vendor providing services to the LNC) overrides FEE's status as a corporation. The financial arrangements between FEE and the LNC, therefore, do not raise any issues related to the corporate prohibition under 2 U.S.C. §441b.

The affiliated relationship, however, also means that FEE shares a common contribution limit with the LNC and any other political committees affiliated with the LNC. When, therefore, FEE's members contribute \$3,333 each towards the

(continued on page 8)

<sup>1</sup> Specifically, FEE satisfies the criteria at 11 CFR 100.5(g)(4)(ii)(D), (E), (F), (G) and (I), and 110.3(a)(3)(ii)(D), (E), (F), (G) and (I).

## Advisory Opinions

(continued from page 7)

corporation's start-up costs, these funds count toward each individual's \$20,000 contribution limit for the LNC. Similarly, funds raised by FEE for the convention would be considered contributions to the LNC. In particular, funds raised through the sale of ad space in the LNC newspaper, if purchased by individuals or corporations through the auspices of FEE, would generally be considered contributions and would be subject to the limitations and prohibitions of the Act. 11 CFR 102.5(a)(3); AOs 1990-3 and 1978-46. Funds from corporations could not be used for federal purposes but could be placed in a nonfederal account. See AO 1978-46.

### Allocation of Federal and Nonfederal Funds

The Commission cautioned the Libertarian Party regarding its proposed split of the convention into federal and nonfederal components for purposes of funding convention operations. In its request, the LNC stated that all activities involving the selection of its Presidential and Vice Presidential nominees would take up only one day of the six-day convention. The Commission observed, however, that activities related to the Presidential nomination were also scheduled to take place on other days and that the major purpose of the convention appeared to be the nomination of the Presidential ticket.

Date Issued: August 19, 1994;  
Length: 6 pages. ♦

## Advisory Opinion Requests

Advisory opinion requests (AORs) are available for review and comment in the Public Records Office.

### AOR 1994-29

Application of contribution limits to candidate running in primaries of two parties. (Levy for Congress Committee; August 30, 1994; 2 pages)

### AOR 1994-30

T-shirts bearing candidate-support messages marketed by commercial vendor through radio ads and at candidate events. (Conservative Concepts; September 1, 1994; 11 pages)

### AOR 1994-31

Use of contributions designated for general election when candidate/nominee withdraws. (Congressman Dean Gallo; September 6, 1994; 3 pages)

### AOR 1994-32

Applicability of FEC confidentiality rules to complainant's public disclosure of letter submitted in enforcement matter. (Kellie Gasink; September 15, 1994; 2 pages) ♦

## Audits

### FEC Releases Audit on 1992 Republican Convention

The Committee on Arrangements for the 1992 Republican National Convention received \$11.05 million in federal funds for the Presidential nominating convention in Houston. Based on audit findings, the Commission determined that the committee had to repay \$47,411 to the U.S. Treasury: \$46,375 in unspent federal funds and \$1,036 in committee checks never cashed by the payees. The committee has repaid \$26,273 to date.

The audit report suggested that \$10,202 incurred by a staff member on behalf of the committee should be considered contributions. About half of these expenses were for the individual's own campaign-related travel and subsistence, but they were not reimbursed within the time limits. An advance for an individual's own travel, food and lodging expenses—unless exempt under 11 CFR 100.7(b)(8)—is considered a contribution if not reimbursed within 30 days from the date incurred or, in the case of credit card charges, within 60 days after the closing date of the billing statement on which the charges first appear. 11 CFR 116.5(b). The committee said that it had been unaware of the time periods for reimbursement.

The staff member also charged about \$5,000 in expenses for meals provided to campaign volunteers. Although the committee argued that it had reimbursed the individual before he paid the bill, this kind of staff advance (in contrast to the individual's own travel and subsistence expenses) results in a contribution at the time the expense is incurred.<sup>1</sup>

The audit also discovered almost \$400,000 in committee debts that had not been reported. The committee said that it did not receive the invoices until months after the reporting deadline. Reporting estimates of those debts, the committee argued, would have been

<sup>1</sup> The explanation and justification for the newly effective convention funding rules explain that a convention committee accepting full public financing may nevertheless accept contributions in the form of staff advances as long as they are later reimbursed in full, which extinguishes the contributions. Until repaid, an advance counts against the individual's \$20,000 per year contribution limit for the affiliated national party committee. See 59 FR 33608, June 29, 1994.

inaccurate and misleading. The committee did, however, file amended schedules disclosing the debts.

Final audit reports are available from the Public Records Office. ♦

## Court Cases

### New Litigation

#### **Fulani v. FEC (94-1593)**

Lenora Fulani and her 1992 Presidential committee, Lenora B. Fulani for President Committee, petition the court to review a Commission decision to conduct an investigation into the committee's campaign finances pursuant to the public funding statute. Dr. Fulani and the committee claim that the FEC investigation violates their constitutional rights and exceeds the FEC's authority.

On July 26, 1994, the FEC voted to open an investigation into a possible misuse of federal funds by the Fulani committee, which had received about \$2 million in primary matching funds. The investigation was authorized under 26 U.S.C. §9039(b). That provision grants the FEC the specific authority to audit and investigate committees receiving matching funds

The committee says it believes that the FEC opened the investigation in response to a July 8 article published in a weekly Washington, D.C., newspaper (*Washington City Paper*). The article described alleged public funding abuses by the Fulani organization. However, the committee claims that the FEC already knew about the allegations because they were based on a complaint filed with the Commission about six months earlier.

The complaint was the subject of a suit filed by the Fulani committee in June 1994, which is still pending in district court in New York. In that

case, the committee contended that the complaint was invalid because not all of it was sworn to by the complainant, as required under 2 U.S.C. §437g, and was therefore invalid. The committee said that the FEC had exceeded its enforcement authority by processing an improper complaint. (See summary in the *August Record*, page 11.)

In this new action, petitioners accuse the FEC of "forcing" them to defend themselves on two fronts and of "undermining due process protections."

U.S. Court of Appeals for the District of Columbia Circuit,<sup>1</sup> No. 94-1593, August 25, 1994.

#### **Funk v. FEC**

Plaintiffs seek a ruling that the FEC's decision to take no action on their administrative complaint, Matter Under Review (MUR) 3625, was contrary to law. They ask the court to order the agency to take remedial action within 30 days or, alternatively, to transfer the complaint to a federal grand jury in the Southern District of California for investigation of the allegations. Finally, they ask the court to find unconstitutional a provision of the Federal Election Campaign Act establishing the District of Columbia as the sole venue for certain court cases.

Plaintiffs in the suit are Robert L. Funk, the manager of James H. Gilmartin's unsuccessful 1992 House campaign, and Mr. Gilmartin himself, the 1992 and 1994 Democratic nominee for California's 25th Congressional District seat. In MUR 3625, plaintiffs alleged that the Valencia National Bank made a prohibited in-kind contribution by distributing a newsletter featuring a picture of Mr. Gilmartin's opponent,

bank chairman Howard McKeon, along with an article congratulating him on his 1992 Republican primary victory. (Mr. McKeon resigned his chairmanship after winning the 1992 House race.) The newsletter was circulated to all account holders and was also made available at the bank.

Plaintiffs raise the additional issue of possible insider loans made to members of the bank's board of directors during Mr. McKeon's tenure. With respect to this allegation, plaintiffs named the Comptroller of the Currency as a defendant.

Under 2 U.S.C. §437g(a)(8)(a), all litigation challenging Commission determinations in MURs must be filed in the U.S. District Court for the District of Columbia. Plaintiffs claim that the provision deprives them—and other aggrieved parties—of their constitutional right of due process by denying them the use of their local district courts and forcing them either to pay the extra costs of litigation in a foreign jurisdiction or to drop their claims.

U.S. District Court for the District of Columbia, Civil Action No. 94-1894, August 30, 1994. ♦

### Federal Register

Federal Register notices are available from the FEC's Public Records Office.

#### **1994-11**

11 CFR Parts 100 and 113: Expenditures; Personal Use of Campaign Funds; Proposed Rule; Request for Additional Comments (59 FR 42183, August 17, 1994)

#### **1994-12**

11 CFR Parts 107, 114 and 9008: Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions; Final Rule; Announcement of Effective Date (59 FR 43726, August 25, 1994)

<sup>1</sup> *Challenges to FEC actions made under the public funding provisions are filed directly with this court.*

**Compliance***(continued from page 3)*

Douglas Barnard, Jr., David B. Bell, treasurer (GA)

**Complainant:** FEC initiated

**Subject:** Failure to file 48-hour notices

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

**MUR 3510**

**Respondents:** Friends of Siljander, Dave Yeakel, treasurer (VA)

**Complainant:** Felix J. Chabot (VA)

**Subject:** Disclaimer

**Disposition:** Reason to believe but took no further action; sent admonishment letter

**MUR 3608**

**Respondents:** Bush-Quayle '92 General Committee, Inc., J. Stanley Huckaby, treasurer (DC)

**Complainant:** Albert McAlister, South Carolina Democratic Party

**Subject:** Receipt of impermissible in-kind contribution; failure to report in-kind contribution

**Disposition:** \$10,000 civil penalty; \$600 payment to U.S. Treasury

**MUR 3622**

**Respondents:** (a) Clinton/Gore '92 Committee, Robert Farmer, treasurer (AR); (b) President Bill Clinton (DC); (c) Vice President Al Gore (DC); (d) Time Books and Peter Osnos, Publisher (NY); (e) Dove Audio, Inc., and Michael Viner, President (CA)

**Complainant:** Bush-Quayle '92 and Bobby R. Burchfield, General Counsel (DC)

**Subject:** Corporate contributions; disclaimer; contributions in name of another; failure to report

**Disposition:** (a)-(e) No reason to believe

**MUR 3772**

**Respondents** (all in CA): (a) Marta Russell; (b) Jane Small; (c) Gordon Anthony; (d) Douglas Martin; (e) Eric Voltz; (f) Robert Hall; (g) Barbara Boxer for U.S. Senate, Harold Silen, treasurer

**Complainant:** Marta Russell

**Subject:** Contributions in name of another;

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

**MUR 3781/Pre-MUR 273**

**Respondents:** (a) University of Osteopathic Medicine and Health Sciences of Des Moines, Iowa; (b) Dr. J. Leonard Azneer (IA)

**Complainant:** *Sua sponte*

**Subject:** Corporate contributions; contributions in name of another  
**Disposition:** (a) \$19,000 civil penalty; (b) \$16,000 civil penalty

**MUR 3803/Pre-MUR 268**

**Respondents:** Ferraro for U.S. Senate, Charles N. Atkins, treasurer (NY)

**Complainant:** *Sua sponte*

**Subject:** Excessive contributions; failure to obtain and report redesignations and reattributions  
**Disposition:** \$900 civil penalty

**MUR 3809**

**Respondents:** Sellers for U.S. Senate Committee, Heather E. Sellers, treasurer (AL)

**Complainant:** FEC initiated

**Subject:** Failure to file reports on time

**Disposition:** \$1,300 civil penalty

**MUR 3811**

**Respondents:** National Albanian American PAC, Martin V. Delisi, treasurer (FL)

**Complainant:** FEC initiated

**Subject:** Failure to file reports on time

**Disposition:** \$1,000 civil penalty

**MUR 3822**

**Respondents** (all in TN): (a) Zach Wamp; (b) Committee to Elect Zach Wamp, L. Dan Johnson, treasurer

**Complainant:** Meyer for Congress, F. Scott LeRoy, treasurer (TN)

**Subject:** Failure to register candidacy

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

**Nonfilers Published**

The candidate committees listed below failed to file required campaign finance reports. The list is based on the FEC press releases of September 6, 9 and 16. The Commission is required by law to publicize the names of nonfiling authorized committees. 2 U.S.C. §438(a)(7). The agency pursues enforcement action against nonfilers on a case-by-case basis. ♦

Candidate	Office Sought	Report Not Filed
Adams, Eric	House, NY/11	Pre-Primary
Diaz-Balart, Lincoln	House, FL/21	Pre-Primary
Henry, Blair	Senate, WA	Pre-Primary
Kennedy, Bev	House, FL/20	Pre-Primary
Liston, John	Senate, MD	Pre-Primary
Little, Marc	House, FL/03	Pre-Primary <sup>1</sup>
Long, Patricia	House, MA/07	Pre-Primary
Montgomery, David	House, WA/02	Pre-Primary
Reynolds, Tom	House, WI/04	Pre-Primary
Shukdinas, Michael	House, FL/15	Pre-Primary
Wiley, Mike	Senate, FL	Pre-Primary <sup>1</sup>
Zwibel, David	House, NY/26	Pre-Primary

<sup>1</sup> The Florida pre-primary report was due Friday, September 2. (The following Monday, September 5, was a federal holiday.) The Little campaign report was received on Wednesday, September 7, and the Wiley campaign report was received on Tuesday, September 6.

**MUR 3922**

**Respondents:** Brooklyn Democrats Federal Campaign Account, Gerald P. Garson, treasurer (NY)

**Complainant:** FEC initiated

**Subject:** Failure to file reports on time

**Disposition:** \$5,000 civil penalty

**MUR 3949**

**Respondents:** (a) Senator Herb Kohl (WI); (b) Herb Kohl for United States Senate, Inc., Linda De La Mora, treasurer (WI)

**Complainant:** Robert T. Welch

**Subject:** Improper reporting of forgiven loans

**Disposition:** (a)-(b) No reason to believe

**MUR 3977**

**Respondents:** Friends of Geri Rothman-Serot, Roy Hendin, treasurer (MO)

**Complainant:** FEC initiated

**Subject:** Failure to file 48-hour notices

**Disposition:** \$7,000 civil penalty ♦

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