

Record

January 1995

Federal Election Commission

Volume 21, Number 1

Table of Contents

- 1 **Message from the Chairman**
 - Commissioners**
 - 1 1995 Chairman and Vice Chairman Elected
 - Compliance**
 - 2 MUR 3540: Corporate Fundraising Activity Incurs Largest Penalty in FEC History
 - 2 MUR 3650: Loan Guarantors Count as Contributors
 - 3 MURs Released to the Public
 - 3 **Federal Register Notices**
 - Reports**
 - 4 Reports Due in 1995
 - Audits**
 - 6 Report on U.S. House Campaign in Florida
 - Statistics**
 - 7 Democrats Increase Pre-Election Activity
 - 8 Spending Soars for '94 Races
 - Motor Voter**
 - 9 National Mail Voter Registration Form Approved
 - Regulations**
 - 9 FEC Petitioned to Clarify Rules Governing Post Presidential Election Financial Activity
 - 9 **Advisory Opinions**
 - Court Cases**
 - 10 DSCC v. FEC(#93-1321)
 - 10 New Litigation
 - Information**
 - 11 Flashfax Menu
 - 12 **Index**

Commissioners

1995 Chairman and Vice Chairman Elected

On December 15, 1994, the Commission unanimously elected Danny L. McDonald as FEC Chairman and Lee Ann Elliott as Vice Chairman. Mr. McDonald, who was the 1994 Vice Chairman, succeeds Trevor Potter as Chairman.

Mr. McDonald has been a Commissioner since 1981 and served as the FEC Chairman in 1983 and 1989. He was reappointed by President Reagan in 1987, and by President Clinton in 1994.

Before his original appointment, he managed 10 regulatory divisions as the general administrator of the Oklahoma Corporation Commission. He previously served as secretary of the Tulsa County Election Board and as chief clerk of the board. He was also a member of the Advisory Panel to the FEC's National Clearinghouse on Election Administration.

A native of Sand Springs, Oklahoma, Mr. McDonald graduated from Oklahoma State University and attended the John F. Kennedy School of Government at Harvard University.

Mrs. Elliott was first appointed to the Commission in 1981 and reappointed in 1987 by President

(continued on page 2)

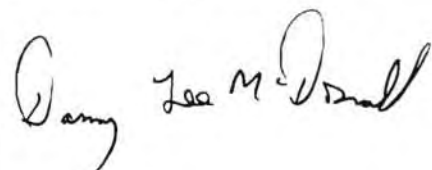
Message from Danny McDonald, Chairman

The Federal Election Commission is looking forward to another busy year in this, our twentieth year of operation.

In 1994, the Commission established a record of considerable achievement. We placed on the public record reports from federal election campaigns showing an 18 percent increase in spending from 1992. Our newly-instituted prioritization system enabled us to enforce the most significant compliance matters with unprecedented efficiency and effectiveness, a trend we plan to continue. The Commission also approved the standardized National Mail Voter Registration Form.

The coming year promises to present continued challenges and demands. As we approach the tasks of 1995, including revising Presidential funding regulations, enhancing our information and enforcement operations and hosting the annual conference for the Council of Governmental Ethics Laws, we welcome your comments and suggestions.

On a personal note, I want to extend special thanks to last year's chairman, Trevor Potter, for his outstanding leadership during the past year.



Commissioners

(continued from page 1)

Reagan, and in 1994 by President Clinton. She served as chairman in 1984 and 1990.

Before her first appointment, Mrs. Elliott was vice president of a political consulting firm, Bishop, Bryant & Associates, Inc. From 1961 to 1979, she was an executive of the American Medical Political Action Committee. Mrs. Elliott was on the board of directors of the American Association of Political Consultants and on the board of the Chicago Area Public Affairs Group, of which she is a past president. She was also a member of the Public Affairs Committee of the U.S. Chamber of Commerce. In 1979, she received the Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers.

A native of St. Louis, Mrs. Elliott graduated from the University of Illinois. She also completed Northwestern University's Medical

Association Management Executive Program and is a Certified Association Executive. ♦

Compliance

MUR 3540 Corporate Fundraising Activity Incurs Largest Penalty in FEC History

Prudential Securities Inc. (PSI) agreed to pay a \$550,000 civil penalty for having violated the Federal Election Campaign Act (the Act) by conducting illegal corporate fundraising activities. This civil penalty is the largest in the FEC's 19-year history. This benchmark aptly coincides with the one-year anniversary of the FEC's new prioritization system—a system that has allowed the FEC to focus its resources in its pursuit of significant enforcement cases.

The case at hand involves PSI fundraising activities undertaken on behalf of candidates from 1986 to 1993. The FEC found that PSI's fundraising activities often involved the use of corporate resources to solicit contributions from PSI officials and employees at other securities firms. Some fundraisers were held in PSI board rooms, and PSI clerical staff were asked to prepare materials for fundraising events during their regular work hours. In various instances, PSI collected contributions and forwarded them to the candidates' campaigns. Federal law prohibits corporations from making contributions of any kind to candidates for federal office, including fundraising activities in which a corporation's employees solicit and gather contributions using the corporation's facilities. 2 U.S.C. §441b(a).

This was the second violation of this nature by PSI. In 1987, PSI

(then known as Prudential-Bache Securities) agreed to a \$7,000 civil penalty with regard to a similar violation involving fundraising on behalf of Senator John Glenn's (D-OH) 1984 Presidential campaign (MUR 1690). Some of the PSI personnel involved in that case were also involved in the matter at hand. The Commission, therefore, determined that PSI committed "knowing and willful" violations of the Act.

PSI's fundraising efforts totaled some \$250,000 and benefited the following candidates: Presidential candidate Pete du Pont (R-DE); Senators Max Baucus (D-MT), Bill Bradley (D-NJ), Robert Dole (R-KS) and Terry Sanford (D-NC); Senatorial candidates Pete Dawkins (R-NJ) and Christine Todd Whitman (R-NJ); and Representatives Frank Guarini (D-NJ) and Charles Rangel (D-NY). The Commission did not focus on the candidate recipients and therefore made no findings against them. ♦

MUR 3650 Loan Guarantors Count as Contributors

Congresswoman Mary Rose Oakar and the Mary Rose Oakar for Congress Committee each agreed to pay a \$8,000 civil penalty for accepting excessive contributions in the form of loan guarantees totaling \$64,666.

In the course of her 1992 bid for the seat of U.S. Representative from the Tenth District of Ohio, Congresswoman Oakar obtained a \$100,000 loan from Society National Bank of Cleveland, Ohio (Society) with the help of her sister and brother-in-law, Helen and Philip Demio. The Demios provided collateral, thus becoming guarantors of the loan.

The committee used Society loan funds to make expenditures. Subsequently, Congresswoman Oakar and her campaign committee took prompt steps to repay the Society

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

800/424-9530
202/219-3420
202/501-3413 (Flashfax Service)
202/219-3336 (TDD)

Danny L. McDonald, Chairman
Lee Ann Elliott, Vice Chairman
Joan D. Aikens, Commissioner
John Warren McGarry,

Commissioner
Trevor Potter, Commissioner
Scott E. Thomas, Commissioner

John C. Surina, Staff Director
Lawrence M. Noble, General
Counsel

Published by the Information
Division

Louise D. Wides, Director
Dario Bard, Editor

loan. They retired the loan by obtaining a second \$100,000 loan from another bank using the committee's monies and Congresswoman Oakar's salary as collateral.

Under the Act, a guarantee of a bank loan is treated like a contribution to the extent that the loan remains unpaid. 2 U.S.C. §431(8)(B) (viii) and 11 CFR 100.7(a)(1)(i)(B). The Act places a limit of \$1,000 on the amount a candidate may accept from an individual. 2 U.S.C. §441a(f).

In the case at hand, then, Congresswoman Oakar's campaign committee accepted a contribution from each of the Demios equal to their share of the Society loan's collateral. Since the loan had three guarantors, the Demios in effect contributed two thirds of the loan (\$66,666)—\$33,333 each. This represents \$32,333 in excessive contributions from each of the Demios, for a combined total of \$64,666 in excessive contributions. ♦

MURs Released to the Public

Listed below are summaries of FEC enforcement cases (Matters Under Review or MURs) recently released for public review. This listing is based on the FEC press releases of October 28 and November 15 and 23, but it does not include the 5 MURs in which the Commission took no action. Files on closed MURs are available for review in the Public Records Office.

MUR 3807

Respondents: Democratic State Committee Delaware, J. Thomas Hannagan, Jr., treasurer (DE)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: \$4,400 civil penalty

MUR 3815

Respondents: Hartnett for U.S. Senate, Paul Meierer, Jr., treasurer (SC)

Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: \$9,000 civil penalty

MUR 3817

Respondent: Committee to Re-elect Congressman William D. Ford, Theodore Monolidis, treasurer (MI)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: \$5,000 civil penalty

MUR 3818

Respondents: Manton for Congress, Inc., Lloyd J. Sleeth treasurer (NY)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices; inaccurate disclosure of dates of receipts
Disposition: \$4,750 civil penalty

MUR 3892/Pre-MUR 298

Respondents: (a) John D. Murchinson (TX); (b) Bush-Quayle '92 Primary Committee, J. Stanley Huckaby, treasurer (VA)
Complainant: Center for Responsive Politics (DC)
Subject: Exceeding \$25,000 annual limit; excessive contributions
Disposition: (a) \$28,000 civil penalty (\$25,000 limit); no reason to believe (excessive contributions); (b) no reason to believe (excessive contributions)

MUR 3911

Respondents: (a) William C.W. Mow (CA); (b) Bush-Quayle '92 Primary Committee, J. Stanley Huckaby, treasurer (VA); (c) National Republican Congressional Committee, Donna Singleton, treasurer (DC); (d) U.S. Senator John Seymour Committee, Charles Bell, treasurer (CA)
Complainant: Center for Responsive Politics (DC)
Subject: Exceeding \$25,000 annual limit; excessive contributions
Disposition: (a) \$35,000 civil penalty; (b) No reason to believe; (c-d) Reason to believe, but took no

further action; sent admonishment letter

MUR 3935

Respondents: Giglio for Congress Committee, Tina J. Paterek, treasurer (IL)
Complainant: Michael Dillon (IL)
Subject: Disclaimer
Disposition: Reason to believe but took no further action; sent admonishment letter

MUR 3936

Respondents: Neal for Congress, Thomas M. Sealy, treasurer (IL)
Complainant: Michael Dillon (IL)
Subject: Disclaimer
Disposition: No reason to believe

MUR 3950

Respondents: Tulsa County Republican Committee, Rodney D. Kaufmann, treasurer
Complainant: FEC initiated
Subject: Failure to file reports on time
Disposition: \$3,700 civil penalty

MUR 3959

Respondents: (a) Americans for Harkin, Inc., Larry Hawkins, treasurer (DC); (b) David E. Johnson (DC)
Complainant: FEC initiated
Subject: Corporate contributions; excessive contributions
Disposition: (a) and (b) Reason to believe but took no further action ♦

Federal Register

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

1994-17

11 CFR Parts 9001-9007:
 Rulemaking Petition (re: Post Presidential Election Activity); Anthony F. Essaye and William Josephson; Notice of Availability (59 FR 63274, December 8, 1994)

Reports

Reports Due in 1995

This article on filing requirements for 1995 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 forms, call the FEC: 800/424-9530 or 202/219-3420.

Year-End Reports Covering 1994 Activity

All committees must file a 1994 year-end report due January 31, 1995. The coverage and reporting dates are found in Table 1 on page 5.

Reports Covering 1995 Activity

To find out what reports your committee must file in 1995, check the Guide to Reporting table, below. Then check the accompanying tables on reporting dates, page 5. Please note that if any special elections are held in 1995, committees active in those elections may have to file special election reports, as explained below.

Committees Active in Special Elections

Committees authorized by candidates running in any 1995 special election must file election reports in addition to regularly scheduled reports. 11 CFR 104.5(h). They are also required to comply with the 48-hour notice requirement for contributions of \$1,000 or more (including loans) received shortly before an election. See 11 CFR 104.5(f).

PACs and party committees supporting candidates running in special elections may also have to file pre- and post-election reports

unless they file on a monthly, rather than semiannual, basis. 11 CFR 104.5(c)(3) and 104.5(h). However, all PACs are subject to 24-hour reporting of independent expenditures made shortly before an election. See 11 CFR 104.4(b) and (c) and 104.5(g).

When timing permits, the *Record* will alert committees to special election reporting dates in 1995.

Late Filing

The Federal Election Campaign Act does not permit the Commission to grant extensions of filing deadlines under any circumstances. Filing late reports could result in enforcement action by the Commission.

Where to File

Committee treasurers must file FEC reports with the appropriate federal and state filing offices.

Please note that:

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

House and Senate Candidate Committees. Principal campaign committees of House and Senate candidates 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 simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of the state in which the candidate seeks (or sought) election. 2 U.S.C. §439(a)(2)(B).

Presidential Committees. Principal campaign committees of Presi-

Guide to 1995 Reporting

Type of Filer	Reports			
	'94 Year-End	Semi-annual	Quarterly	Monthly
House and Senate Candidate Committees ¹	✓	✓		
Presidential Candidate Committees	✓		✓	or ² ✓
PACs and Party Committees	✓	✓	or ³	✓

¹ This category includes committees of candidates retiring debts from a previous election or running for a future election.

² Presidential committees may file on either a quarterly or a monthly basis. Those wishing to change their filing frequency should notify the Commission in writing.

³ PACs and party committees may file on either a semiannual or a monthly basis. Committees wishing to change their filing frequency must notify the Commission in writing when filing a report under the committee's current schedule. A committee may change its filing frequency only once per calendar year. 11 CFR 104.5(c).

dential candidates file with the FEC. 11 CFR 105.3. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) 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, two exceptions: Committees supporting only House candidates file with the Clerk of the House; those supporting only Senate candidates file with the Secretary of the Senate. 11 CFR 105.1 and 105.2.

PACs and party committees must simultaneously file copies of reports and statements with the Secretary of State (or equivalent officer), as follows:

- Committees making contributions or expenditures in connection with House and Senate campaigns 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 in that state (e.g., the Summary Page and the schedule showing the contribution or expenditure). 2 U.S.C. §439(a)(2)(B).
- 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. ♦

Table 1: 1994 Year-End Report
(Required of all committees.)

Report	Period Covered	Filing Date ¹
Year-End	Closing date of last report through December 31, 1994	January 31, 1995

Table 2: 1995 Semiannual Reports

Report	Period Covered	Filing Date ¹
Mid-Year	January 1 – June 30	July 31, 1995
Year-End	July 1 – December 31	January 31, 1996

Table 3: 1995 Monthly Reports

Report	Period Covered	Filing Date ¹
February	January 1 – 31	February 20
March	February 1 – 28	March 20
April	March 1 – 31	April 20
May	April 1 – 30	May 20
June	May 1 – 31	June 20
July	June 1 – 30	July 20
August	July 1 – 31	August 20
September	August 1 – 31	September 20
October	September 1 – 30	October 20
November	October 1 – 31	November 20
December	November 1 – 30	December 20
Year-End	December 1 – 31	January 31, 1996

Table 4: 1995 Quarterly Reports

(Option available to Presidential committees only.)

Report	Period Covered	Filing Date ¹
1st Quarter	January 1 – March 31	April 15
2nd Quarter	April 1 – June 30	July 15
3rd Quarter	July 1 – September 30	October 15
Year-End	October 1 – December 31	January 31, 1996

¹ Reports sent by registered or certified mail must be postmarked by the filing date; reports sent by other means must be received by the federal and state filing offices on that date. 11 CFR 104.5(e).

Audits

Report on U.S. House Campaign in Florida

An FEC audit report found that the Friends of Corrine Brown had received contributions from prohibited sources, had failed to submit correct reports and had failed to maintain adequate records for campaign transactions.

The Friends of Corrine Brown served as Ms. Corrine Brown's principal campaign committee during the 1992 race for U.S. Representative of Florida's 3rd District. In the final audit report, the Commission made the following findings:

- The committee accepted \$4,200 in corporate contributions and \$250 in contributions from foreign nationals. Both corporations and foreign nationals are prohibited sources of contributions. 2 U.S.C. §§441b and 441e. The committee should have refunded these contributions within 30 days of

Correction

In the December issue, the article on *Addy v. FEC/ Common Cause v. FEC*, appearing on page 6 under the heading "New Litigation," had two errors in the final paragraph.

First, the Commission considered the General Counsel's recommendations on this matter on August 2, 1994, not August 2, 1984.

Second, it should be noted that the 3-2 Commission vote was composed of three votes in favor of finding "probable cause" to believe, and two votes opposed. The vote thus fell one vote shy of the four votes required for the Commission to take action. This led to the subsequent dismissal of MUR 3204.

receipt.

- The committee failed to provide documentation that it had made an advance payment to a corporation for the use of its corporate aircraft. 2 U.S.C. §441b and 11 CFR 114.9(e).
- The committee misstated financial activity, understating its receipts by \$12,325 and its disbursements by \$24,480. It also overstated its ending cash by \$12,154. 2 U.S.C. §434b(1), (2) and (4).
- The committee failed to show that \$14,500 in loans from the candidate came from her personal funds. A candidate may make contributions or loans to his or her committee without limit as long as he or she uses personal funds. 2 U.S.C. §431(8)(A)(i) and 11 CFR 110.10.
- The committee failed to itemize \$14,000 in contributions and \$54,780 in disbursements. The committee also failed to provide complete itemized information for \$73,600 in contributions, and failed to include in FEC reports the occupation and employer of contributors who gave the committee a cumulative total of \$10,450. 2 U.S.C. §§434(b)(3), (4) and (5), and 431(13); 11 CFR 104.3(a), 102.9(d) and 104.7.
- The committee failed to maintain records showing the purpose of 117 disbursements totaling \$46,962. 2 U.S.C. §432(c)(5).
- The committee made out 46 checks totaling \$26,833 payable to cash. Committees can only make cash transactions to cover petty cash expenses under \$100. 2 U.S.C. §434(b)(5)(A); 11 CFR 103.3(a) and 102.11.

- The committee failed to file 48-hour notices for contributions totaling \$80,870. Committees are required to file these notices to disclose contributions of \$1,000 or more when they are received shortly before an election. 2 U.S.C. §434(a)(6) and 11 CFR 104.5(f).
- The committee received a \$2,326 transfer from the candidate's nonfederal committee and failed to itemize it. 11 CFR 110.3(c)(6).

In response to the interim audit report, the committee amended its reports to correct many of the reporting failures. ♦

Change of Address

Political Committees

Treasurers of registered political committees automatically receive the *Record*. A change of address by a political committee (or any change to information disclosed on the Statement of Organization) must, by law, be made in writing on FEC Form 1 or by letter. The treasurer must sign the amendment and file it with the Secretary of the Senate, the Clerk of the House or the FEC (as appropriate) and with the appropriate state office.

Other Subscribers

Record subscribers who are not registered political committees should include the following information when requesting a change of address:

- Subscription number (located on the upper left corner of the mailing label);
- Subscriber's name;
- Old address; and
- New address.

Subscribers (other than political committees) may correct their addresses by phone as well as by mail.

Statistics

Democrats Increase Pre-Election Activity

Based on pre-election reports, Democratic national committees more than doubled their midterm election fundraising, compared with 1990, while their Republican counterparts received about the same amount in contributions this election cycle as they did in the 1990 election cycle. Republicans, however, maintained a financial advantage this election cycle, raising more than \$2 for every \$1 raised by the Democrats.

Comparing national party activity in Congressional races only, since the 1992 cycle, the Democrats increased their support to federal candidates by 59 percent, while Republican support dropped 11 percent.

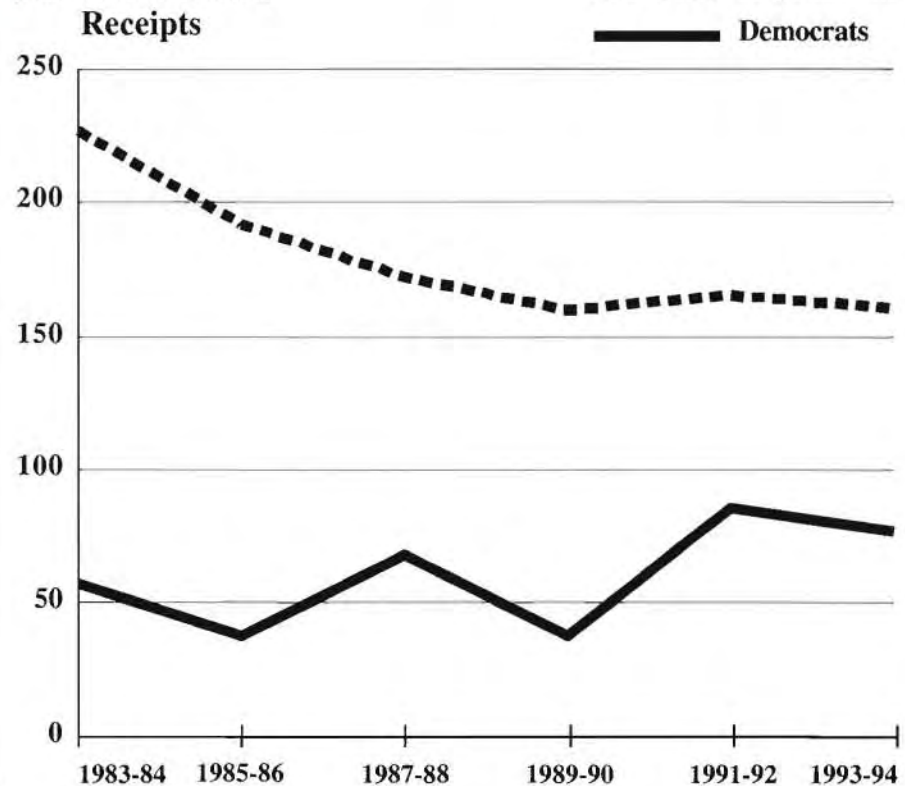
In terms of soft money (monies raised outside the limitations and prohibitions of the Federal Election Campaign Act), Democrats raised \$43 million and spent \$44 million so far this election cycle; during the same period in the 1992 election cycle, they raised \$30.9 million and spent \$26.1 million. Republicans raised \$43.6 million and spent \$42.5 million in soft money this election cycle, compared with the \$47.1 million raised and \$38.7 million spent during the same period in the 1992 election cycle. The nonfederal accounts of the Democratic National Committee and the Republican National Committee accounted for a majority of the soft money activity reported this election cycle.

These statistics are among many found in a press release issued on November 2. The compilation covers national party activity from January 1, 1993, through October 19, 1994. ♦

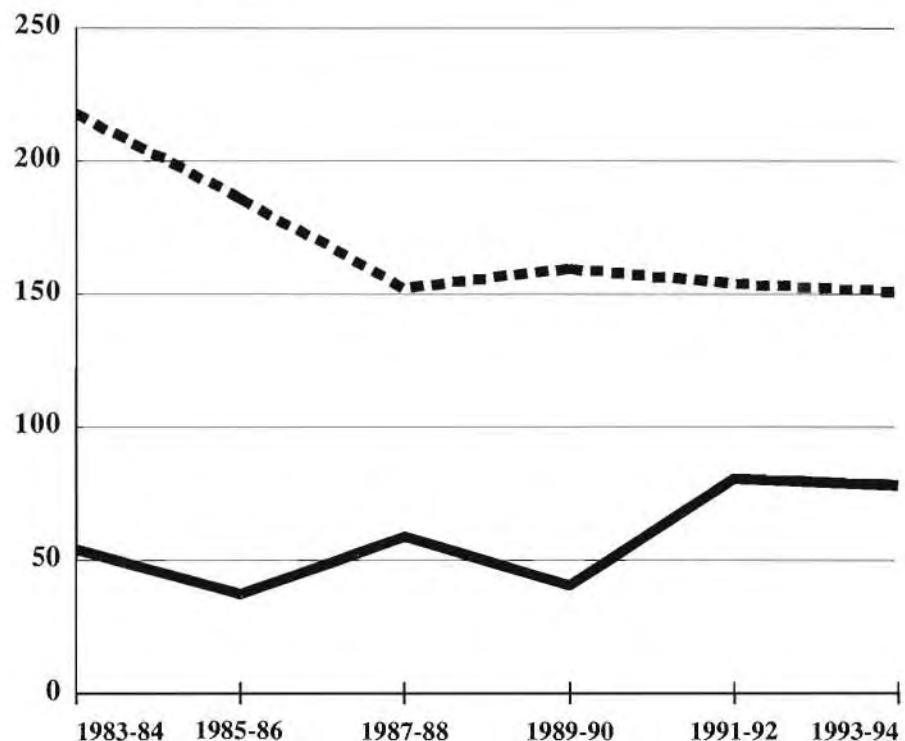
(Statistics continued on page 8)

Activity of National Party Committees Through Twenty Days Prior to the General Election

(Thousands of Dollars)



Disbursements



Statistics

(continued from page 7)

Spending Soars for '94 Races

Pre-election reports show that spending by U.S. Congressional candidates has grown by \$69 million over 1992 levels. This 18 percent increase occurred despite the absence of the unusual factors of redistricting and reapportionment that contributed to the 1992 upsurge in activity.

Contributions from individuals and PACs were the leading sources of support for both Senate and

House candidates. FEC reports covering activity through October 19 show that Senate candidates received \$137 million in individual contributions compared with \$37 million in PAC contributions. House candidates received \$154 million in individual contributions and \$107 million in PAC contributions.

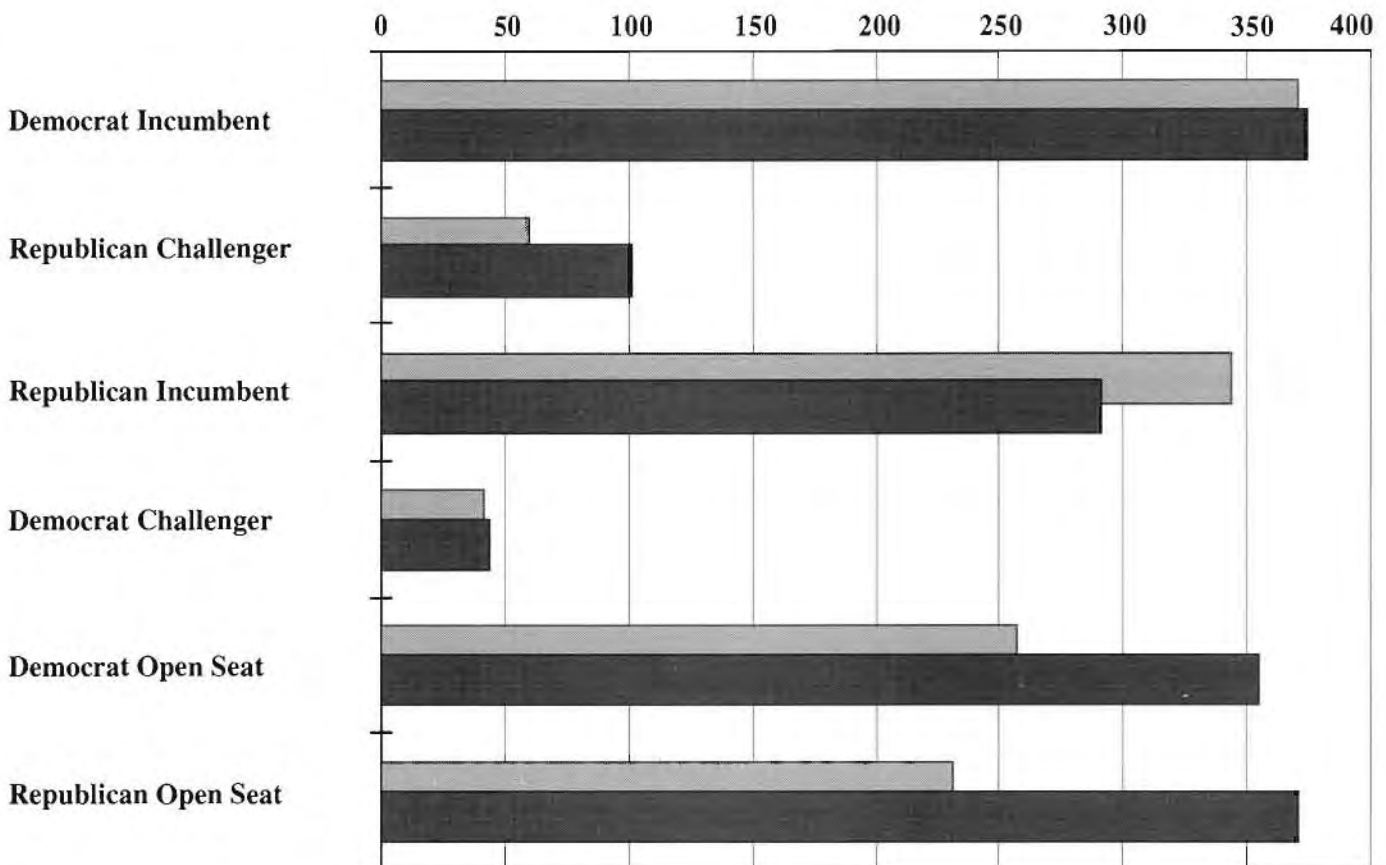
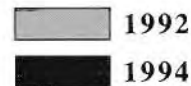
Median disbursements for House Republican challengers nearly doubled from 1992, to \$103,240, while Democratic challengers' median increased 8 percent, to \$45,904. Median disbursements for House Democratic incumbents

increased one percent, to \$375,448, while the median for Republican incumbents decreased 15 percent, to \$292,297. In open seat races, median spending for Democrats increased 38 percent to \$355,513, while the median for their Republican counterparts increased 60 percent, to \$371,779.

These figures are based on FEC reports covering activity through October 19. More detailed information is available in an FEC press release issued on November 4. To obtain a copy of the release, call 800/424-9530 (ask for Public Records) or 202/219-4140. ♦

Median Disbursement by House Candidates¹

(Thousands of Dollars)



¹ Covers election cycle activity through 20 days before the general election.

Motor Voter

National Mail Voter Registration Form Approved

Registering to vote is an easy New Year's resolution to keep this year. A Commission-approved, mail voter registration form is expected to be publicly available by January 1, 1995.

The national form, mandated by the National Voter Registration Act of 1993, provides citizens greater flexibility in the times and places they can register to vote. Citizens who reside or have an address in the United States can use the form to register to vote in their state of residency. They may also report a change of name and/or address, and declare a party affiliation. This form enables them to do it all by mail.

Citizens in all but five states (Arkansas, New Hampshire, North Dakota, Virginia and Wyoming) will be able to use this form anywhere in the U.S.A. to register in their home state. Completed forms are to be mailed to each state's election authorities.

The FEC has mailed printing specifications and a camera-ready copy of the form to each state's chief election official. Each state will be responsible for the actual printing and distribution of the form. The national form is not intended to supplant state registration forms. ♦

Regulations

FEC Petitioned to Clarify Rules Governing Post Presidential Election Financial Activity

The FEC received a Petition for Rulemaking requesting clarification as to whether the Commission's rules govern campaign financial activity related to the operation of the Electoral College and possible Congressional involvement in the Presidential selection process. This Petition for Rulemaking was received on November 18, 1994, from Anthony F. Essaye and William Josephson.

The petitioners note that in instances when the Electoral College vote or when a vote in Congress becomes a contested part of the process whereby a President and a Vice President are chosen, the regulations do not state whether the Federal Election Campaign Act or the Presidential Election Campaign Fund Act applies to a candidate's receipts or disbursements at this stage of the process.

The Commission has published a Notice of Availability in the Federal Register seeking comment on whether it should initiate a rulemaking in response to the petition. (59 FR 63274, December 8, 1994)

The public comment period for this Notice closes on January 9, 1995. If the Commission does decide to address this question in the rules, it may choose to incorporate it into the ongoing revision of the rules governing Presidential candidates who accept federal funding. ♦

Advisory Opinions

Advisory Opinion Requests

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

AOR 1994-35

Reporting of bank loan repaid in full via mortgage loan. (Susan Alter; November 15, 1994; 1 page plus 6-page attachment)

AOR 1994-36

SSF solicitation of employees who are beneficial stockholders in employee-owned company. (Science Applications International Corporation; November 18, 1994; 2 pages plus 46-page attachment)

AOR 1994-37

Sharing of paid staff and facilities between candidate's federal committee and his nonfederal exploratory committee. (Congressman Charles E. Schumer; November 18, 1994; 4 pages)

AOR 1994-38

Applicability of state disclosure obligations to Congressional campaign's donation to state ballot proposition committee. (Roybal-Allard for Congress Committee; December 2, 1994; 3 pages)

AOR 1994-39

Applicability of definition of member to affiliates who pay dues and receive some benefits of membership but not the right to vote. (National Association of Surety Bond Producers; December 5, 1994; 1 page plus 10-page attachment) ♦

Court Cases

Democratic Senatorial Campaign Committee v. FEC (93-1321)

On November 14, the U.S. District Court for the District of Columbia ordered the FEC to vacate its dismissal of the Democratic Senatorial Campaign Committee's (DSCC's) complaint against the National Republican Senatorial Committee (NRSC) with respect to excessive contributions made in the 1992 Georgia U.S. Senate race. The court based this judgment on FEC regulations defining general and runoff elections. 11 CFR §100.2(b) and (d).

A general election was held in Georgia on November 3, 1992, in which none of the candidates for U.S. Senate won a majority. Under Georgia law, when an election for U.S. Senator fails to produce a majority winner, a second election must be held between the top two vote getters. Such an election was held on November 24, 1992.

Under the Federal election law, the DSCC and the NRSC were each permitted to spend up to \$535,608 on behalf of their party nominee in the 1992 Georgia general election for U.S. Senate. 2 U.S.C. §441a(d). The NRSC had exhausted this spending authority by November 3, while the DSCC had not. Subsequently, the NRSC requested an advisory opinion from the FEC as to whether to classify the November 24 election as a second general election or as a runoff. The NRSC would be legally entitled to a new \$535,608 spending authority if the election were deemed a general election, but not if it were deemed a runoff election. Since the Commission split 3-3¹ on how to classify the

November 24 election, no advisory opinion was issued. The NRSC then proceeded to spend nearly the full amount permitted for a general election in support of its candidate for the November 24 election. The DSCC, on the other hand, limited its expenditures to the balance which remained from the original §441a(d) allowance.

The DSCC filed a complaint with the FEC on November 19, alleging that the NRSC had violated federal election law by exceeding its §441a(d) spending limit in this race. The Commission split 3-3 on whether or not to initiate an investigation and then dismissed the DSCC's complaint. The DSCC then brought this case before the court.

Based on its interpretation of FEC regulations, the court concluded that the November 24 election was not a general election. It reasoned that the election could not qualify as a general election because it was not held on the Tuesday following the first Monday in November in an even numbered year, nor was it designed to fill a vacancy, thus failing to meet either of the criteria for a general election. 11 CFR §100.2(b).

The court further reasoned that the November 24 election fit the definition of a runoff election because it was held after a general election and it was prescribed by applicable state law as the means for deciding which candidate was the winner. 11 CFR §100.2(d).

The court disagreed with the argument that the November 24 election could be both a general and a runoff election. The court observed that the regulations do not state that a runoff election can also be a general election, whereas, in defining other types of elections, the regulations clearly state where overlap is possible.

The court ordered the FEC to initiate appropriate enforcement proceedings against the NRSC. ♦

New Litigation

Lytle v. FEC, et al.

Terry L. Lytle, an independent U.S. Senate candidate, asks the court to find it unconstitutional for U.S. Senate candidates to accept contributions from out-of-state sources. Mr. Lytle brings this case against the FEC, the Tennessee Election Commission (TEC) and two candidates who opposed him in the 1994 Tennessee U.S. Senate race.

The plaintiff argues that:

- Senators who have received out-of-state money compromise the constitutional rights of residents of every state to elect and have the undivided loyalty of two U.S. Senators;
- Citizens of wealthier and more populous states can achieve greater influence in Congress at the expense of the citizens of less affluent and less populous states by making out-of-state contributions; and
- By accepting out-of-state contributions, Senators dilute the concept of a legislative body that represents 50 unique state constituencies, and create a possible convergence of interests at several levels of the federal government in violation of the principles of checks and balances and the separation of powers.

The plaintiff asks the court to:

- Remove the defendant candidates from the Senate race; or
- Immediately enjoin the FEC and the TEC, postpone the Senate election and order the defendant candidates to refund all out-of-state contributions.

U.S. District Court for the Middle District of Tennessee, No. 3-94-0946, October 25, 1994. ♦

¹ Four votes (out of six) are required to adopt advisory opinions and to take action in compliance matters. 11 CFR 112.4(a).

Information

Flashfax Menu

To order any of these documents, 24 hours a day, 7 days a week, call **202/501-3413** on a touch tone phone. You will be asked for the numbers of the documents you want, your fax number and your regular number. The documents will be faxed shortly thereafter.

Disclosure

- 301. Guide to Researching Public Records
- 302. Accessibility of Public Records Office
- 303. Federal/State Records Offices
- 304. Using FEC Campaign Finance Information
- 305. State Computer Access to FEC Data
- 306. Direct Access Program (DAP)
- 307. Sale and Use of Campaign Information

Limitations

- 315. Contributions
- 316. Coordinated Party Expenditure Limits
- 317. Advances: Contribution Limits and Reporting
- 318. Volunteer Activity
- 319. Independent Expenditures
- 320. Local Party Activity
- 321. Corporate/Labor Facilities
- 322. Corporate/Labor Communications
- 323. Trade Associations
- 324. Foreign Nationals

Public Funding

- 330. Public Funding of Presidential Elections
- 331. The \$3 Tax Checkoff
- 332. 1993 Changes to Checkoff
- 333. Recipients of Public Funding
- 334. Presidential Fund Tax Checkoff Status

Compliance

- 340. Candidate Registration
- 341. Committee Treasurers
- 342. Political Ads and Solicitations
- 343. 10 Questions from Candidates
- 344. Reports Due in 1994
- 345. Primary Dates and Deadlines for Ballot Access
- 346. Filing A Complaint

Federal Election Commission

- 401. The FEC and the Federal Campaign Finance Law

- 402. La Ley Federal relativa al Financiamiento de las Campañas
- 403. State and Local Elections and the Federal Campaign Law
- 404. Compliance with Laws Outside the FEC's Jurisdiction
- 405. Biographies of Commissioners and Officers
- 406. Telephone Directory
- 407. Table of Organization
- 408. Index for 1993 *Record* Newsletter
- 409. Free Publications
- 411. Complete Menu of All Material Available

Clearinghouse on Election Administration

- 425. List of Reports Available
- 426. Voting Accessibility for the Elderly and Handicapped Act
- 427. National Voter Registration Act of 1993 (see also document 226)

Money in Politics Statistics

- 625. 1991-92 Political Money
- 626. 1993 Year-End PAC Count
- 627. 1993-94 Congressional
- 628. 1993-94 National Party
- 629. 1993-94 PAC Finances

1996 Presidential Election

- 651. Gramm

Regulations (11 CFR Parts 100-201)

- 100. Part 100, Scope and Definitions
- 101. Part 101, Candidate Status and Designations
- 102. Part 102, Registration, Organization and Recordkeeping by Political Committees
- 103. Part 103, Campaign Depositories
- 104. Part 104, Reports by Political Committees
- 105. Part 105, Document Filing
- 106. Part 106, Allocations of Candidate and Committee Activities
- 107. Part 107, Presidential Nominating Convention, Registration and Reports
- 108. Part 108, Filing Copies of Reports and Statements with State Offices
- 109. Part 109, Independent Expenditures
- 110. Part 110, Contribution and Expenditure Limitations and Prohibitions
- 111. Part 111, Compliance Procedure
- 112. Part 112, Advisory Opinions
- 113. Part 113, Excess Campaign Funds and Funds Donated to Support Federal Officeholder Activities
- 114. Part 114, Corporate and Labor Organization Activity

- 115. Part 115, Federal Contractors
- 116. Part 116, Debts Owed by Candidates and Political Committees
- 200. Part 200, Petitions for Rulemaking
- 201. Part 201, Ex Parte Communications

Recent Actions on Regulations, Including Explanations and Justifications

- 225. Use of Candidate Names
- 226. Rules to Implement National Voter Registration Act of 1993
- 227. Presidential Nominating Conventions

Forms

- 361. Form 1, Statement of Organization
- 362. Form 2, Statement of Candidacy
- 363. Form 3 and 3Z, Report for an Authorized Committee
- 364. Form 3X, Report for Other Than an Authorized Committee
- 365. Form 5, Report of Independent Expenditures
- 366. Form 6, 48-Hour Notice of Contributions/Loans Received
- 367. Form 7, Report of Communication Costs
- 368. Form 8, Debt Settlement Plan
- 369. Form 1M, Notification of Multi-candidate Status

Schedules

- 370. Schedule A, Itemized Receipts
- 371. Schedule B, Itemized Disbursements
- 372. Schedules C and C-1, Loans
- 373. Schedule D, Debts and Obligations
- 374. Schedule E, Itemized Independent Expenditures
- 375. Schedule F, Itemized Coordinated Expenditures
- 376. Schedules H1-H4, Allocation
- 377. Schedule I, Aggregate Page Nonfederal Accounts

U.S. Code (Title 2)

- | | |
|------------------|------------------|
| 431. Section 431 | 441. Section 441 |
| 432. Section 432 | 442. Section 442 |
| 433. Section 433 | 451. Section 451 |
| 434. Section 434 | 452. Section 452 |
| 437. Section 437 | 453. Section 453 |
| 438. Section 438 | 454. Section 454 |
| 439. Section 439 | 455. Section 455 |

Advisory Opinions

- 801. AO 1994-1
- 802. AO 1994-2
- 803. AO 1994-3
- 804. AO 1994-4

(continued on page 12)

Information*(continued from page 11)*

805. AO 1994-5
 806. AO 1994-6
 807. AO 1994-7
 808. AO 1994-8
 809. AO 1994-9
 810. AO 1994-10
 811. AO 1994-11
 812. AO 1994-12
 813. AO 1994-13
 814. AO 1994-14
 815. AO 1994-15
 816. AO 1994-16
 817. AO 1994-17
 818. AO 1994-18
 819. AO 1994-19
 820. AO 1994-20
 821. AO 1994-21
 822. AO 1994-22
 823. AO 1994-23
 824. AO 1994-24
 825. AO 1994-25
 826. AO 1994-26
 827. AO 1994-27
 828. AO 1994-28
 829. AO 1994-29
 830. AO 1994-30

831. AO 1994-31
 832. AO 1994-32
 900. Brochure
 901. AO 1993-1
 902. AO 1993-2
 903. AO 1993-3
 904. AO 1993-4
 905. AO 1993-5
 906. AO 1993-6
 907. AO 1993-7
 908. AO 1993-8
 909. AO 1993-9
 910. AO 1993-10
 911. AO 1993-11
 912. AO 1993-12
 913. AO 1993-13
 914. AO 1993-14
 915. AO 1993-15
 916. AO 1993-16
 917. AO 1993-17
 918. AO 1993-18
 919. AO 1993-19
 920. AO 1993-20
 921. AO 1993-21
 922. AO 1993-22
 923. AO 1993-23
 924. AO 1993-24
 925. AO 1993-25

Index

The first number in each citation refers to the "number" (month) of the 1995 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "1:4" means that the article is in the January issue on page 4.

Court Cases

_____ v. FEC
 – Democratic Senatorial Campaign Committee (93-1321), 1:10
 – Lytle, 1:10

Reports

– Schedule for 1995, 1:4

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

Official Business
 Penalty for Private Use, \$300



Printed on recycled paper

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

